

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:40 a.m. on Tuesday, March 22, 2005, in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Amy Campbell, Kansas Association of Beverage Retailers  
Tom Palace, Petroleum Marketeers & Convenience Store Association of Kansas  
Phil Bradley, Kansas Licensed Beverage Association  
Marge Roberson, Newton liquor retailer  
Larry Knackstedt, Overland Park liquor retailer  
Garry Winget, Kansans for Addiction Prevention  
Tom Groneman, Director, Alcoholic Beverage Control Division, Dept. Of Revenue  
Tuck Duncan, Kansas Wine & Spirits Wholesalers Association  
Sandy Jacquot, League of Kansas Municipalities  
Bob Alderson, Casey's General Stores  
Terry Presta, Governmental Affairs Chairman, Petroleum Marketers and Convenience Store Association of Kansas  
Mike Thornbrugh, QuikTrip Corporation, Tulsa, OK  
Jim Scott, Ft. Scott liquor retailer

Others attending:

See attached list.

Chairman Brungardt made some committee announcements. He said committee members had been given copies of a letter addressed to the committee from Senator Apple asking for special consideration of **HB 2309**, which was assigned to this committee late last week. The Chairman asked the members to review his request, and the committee would take the matter up later in the meeting. He noted minutes for the March 3, 8, and 9 meetings had been distributed last week, and asked for consideration for approval.

Senator Ostmeyer made a motion to approve the minutes as written, seconded by Senator Reitz, and the motion carried.

**SB 298 - Liquor control act and cereal malt beverage laws; uniformity; Sunday sales**

Chairman Brungardt opened the hearing on **SB 298**. Amy Campbell, on behalf of The Kansas Association of Beverage Retailers (KABR), testified in support of **SB 298**. She stated that this bill is asking the Kansas Legislature to assert its authority over the sale and distribution of alcoholic liquor in the State of Kansas. She explained liquor store owners are engaged in a partnership with the state. 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. Ms. Campbell said that KABR believes this partnership extends beyond the issuance of taxation to the mutual interest of maintaining an even playing field and the safe and legal sale of adult beverages.

Ms. Campbell stated that the clarification of state control and regulation of the Liquor Control Act is their number one priority, and that KABR opposes making **SB 298** a conglomeration of various initiatives unrelated to the primary objective. She said the bill before the committee was a simplified version of **SB 305** from the 2004 session. **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

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distribution of alcoholic beverages. Ms. Campbell's written testimony reflected why KABR feels the uniformity of Kansas liquor laws is so important. She included with her testimony a suggested amendment which would replace Section 5, page 8, of K.S.A. 41-303. ([Attachment 1](#))

Tom Palace, Petroleum Marketers & Convenience Store Association of Kansas (PMCA), and also on behalf of the QuikTrip Corporation, the Kansas food Dealers Association, and Casey's General Stores, spoke in favor of **SB 298**. He said that this bill would allow licensed retailers of cereal malt beverages (CMB) and retail liquor dealers to sell packaged products on Sundays. 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. CMB retailers, operating under a uniform law don't have the opportunity to opt-out of a law, and obviously this puts all CMB retailers at a competitive disadvantage in cities and counties where Sunday sales are allowed. He stated **SB 298** will help codify the current liquor laws and help small businesses be competitive with the neighboring states of Kansas. ([Attachment 2](#))

Phil Bradley, Kansas Licensed Beverage Association (KLBA), testified in support of **SB 298**. He stated that consistency of what is, and more importantly is not, allowed throughout the state makes for less confusion and a greater compliance with all statutes and regulations. He pointed out the 18<sup>th</sup> amendment to the U.S. Constitution gives the states the right to regulate alcohol issues, and KLBA believes that uniformity serves Kansas best. ([Attachment 3](#))

Marge Roberson, owner of Roberson's Liquor Store in Newton, KS, spoke in favor of **SB 298**. She stated she was a Director and Past President of the Kansas Association of Beverage Retailers (KABR), and shared her experience of working with a committee for several years to revise the Liquor Control Act to eliminate the unenforceable provisions and contradictory language. The Legislature never adopted the revisions that were submitted for consideration. Ms. Roberson asked the legislators to work with the retailers in trying to clean up this issue once and for all by passing **SB 298**. ([Attachment 4](#))

Larry Knackstedt, retail liquor store owner and board member of the KABR, testified in support of **SB 298**. He explained that for him, the local ordinances allowing for Sunday sales and holidays sales have meant that his customers never have a need to go anywhere else to purchase their adult beverages. He stated it is time for Kansas to set up a uniform Liquor Control act, and he supported that effort 100%. He asked that the Legislature protect his business from the competition from across the state border by preserving his ability to open the store on the days which are now in effect. ([Attachment 5](#))

Garry Winget, President, Kansans for Addiction Prevention (KAP), spoke in partial support of **SB 298** as it is very important to have a uniform liquor code so that enforcement and licensing that is fair to everyone can be accomplished. He said it was in the best interest of the people in Kansas to restore the state's previous status and not have Sunday sales of alcohol. He stated that there will continue to be a creeping expansion of alcohol sales unless the Liquor Control Act is made uniform. ([Attachment 6](#))

Tom Groneman, Director of the Alcoholic Beverage Control Division, testified in support of **SB 298**, and uniformity of the Liquor Control Act. He stated that the ability of cities to charter out from under provisions of the act have led to numerous local ordinances which are almost impossible to track and difficult to regulate. ([Attachment 7](#))

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association (KWSWA), testified as a neutral conferee on **SB 298**. He stated that KWSWA still supported the concept of uniformity bills, but felt needed time was running out with the shortness of session days left to work on such a complex topic. He explained the concerns that KWSWA has outlined in his detailed written testimony. He stated that KWSWA saw no difficulty in allowing this bill to rest in this committee until the start of next session when concerns could be thoroughly reviewed and addressed. ([Attachment 8](#))

Sandy Jacquot, League of Kansas Municipalities, testified as an opponent to **SB 298**. She said there had 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



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which is what this bill purports to do. 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.

Ms. Jacquot stated that if the committee passes out a uniform Liquor Control Act bill, the League wanted to point out two problematic provisions in **SB 298**. The first provision relates to Section 2(c) which is totally preemptive for cities and counties. Under this provision, not only would local governments be prohibited from adopting ordinances or resolutions in conflict, but the local governments could not even adopt provisions more restrictive or supplemental to **SB 298**. She stated that the League has pointed out on numerous occasions, taking away local control of alcohol means alcohol is less regulated. The state does not fill in with regulations where local governments are preempted. Ms. Jacquot explained the second provision related to Section 9 which allows a city to permit the Sunday sale of packaged liquor by adopting an ordinance. This provision is subject to a protest to compel an election. She said the numerous cities that have adopted ordinances and, in addition, those that have had an election, must once again opt in to provide for Sunday packaged liquor sales. The League requests that this provision be an opt-out, rather than opt-in if this bill moves forward. She stated if the Legislature deems it appropriate to make the Liquor Control Act uniform, then it should allow for more local control, and provide for Sunday packaged liquor sales on an opt-out basis. (Attachment 9)

Chairman Brungardt asked what Ms. Jacquot's position was on cereal malt beverage (CMB). She responded that the League likes that provision if the bill passes. She explained that currently the CMB Act is uniform, and the League tells cities they cannot allow for the Sunday sale of CMB. The Chairman asked if the League would like some type of provision for grandfathering of those local governments that have already gone through the process of opting in. Ms. Jacquot said that somehow it needs to be addressed.

Chairman Brungardt opened the floor for discussion on whether the committee wanted to have uniform liquor, or make this look like one action for CMB and for liquor store beer as part of that policy, or if the committee does not want to have uniformity. He stated that most people feel that the state should have some responsibility in this area and should have some control.

Senator Barnett commented that if this bill was just about uniform liquor laws, he would not have any problem with it. However, he said this bill is about Sunday sales expanded down to CMB sales, and there are a lot of negatives to the bill. He stated making this preemptive is bad public policy.

Senator Vratil stated that it was important for the state to have uniform liquor control provisions, and it was good to extend those provisions to cereal malt beverage products. He explained that one could say there has been no harm done by not having uniformity for the last several years, but all it takes is one prevailing city attorney and the state could have a very serious situation. There is a long history in this state with the Legislature controlling consumption of alcoholic beverages in a uniform manner, and that history has served the state well; therefore, the state needs to get back to that situation.

Senator O'Connor stated that she supports the concept of CMB and has no concern with that issue, but is concerned that the state has not grandfathered in the local governments whose hours are different from what is required by this bill. She asked if this bill would require those areas to change their local laws.

Chairman Brungardt explained that this is a policy decision and asked what the committee's desire was regarding **SB 298**.

Senator Vratil made a motion that the committee recommend **SB 298** favorably for passage, and Senator Gilstrap seconded the motion.

Committee discussion followed. Chairman Brungardt called for a vote on the motion. The motion carried to pass **SB 298** out of committee.

### **SB 299 - Liquor control act and cereal malt beverage laws; uniformity; Sunday sales**

Chairman Brungardt opened the hearing on **SB 299**. Bob Alderson, on behalf of Casey's General Stores,

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Inc., the Petroleum Marketers and Convenience Store Association of Kansas, Inc., QuickTrip and the Kansas Food Dealers Association, testified in support of **SB 299**. He shared background information on cereal malt beverage (CMB), and explained the difference between CMB and the liquor store beer. He said the coalition sponsoring this proposed bill to reclassify CMB, requires the exercise of a local option by a city or county in order for the bill's provisions to become operative. The bill will allow each community to decide for itself whether CMB should be reclassified to include malt products containing not more than 5% of alcohol by weight. Each community will be able to exercise the same right of self determination that has been afforded by many of the other state laws enabling the local sales of alcoholic beverages.

Mr. Alderson talked briefly on the issue of state taxes possibly being lost to the state on CMB products because of the shift in where those products will be sold with the passage of **SB 299**. He said for that reason it was determined to make all sales of CMB in the original and unopened package under the CMB Retailers' Act subject to both the liquor enforcement tax and the state and local sales taxes. This could produce tax revenues in excess of those taxes currently produced in the cities and townships where the CMB Retailers' Act is applicable. Mr. Alderson stated that this is an economic issue which allows for competition on an equal basis with retail liquor dealers. It would allow CMB retailers the opportunity to regain the share of the cereal malt product market they lost over the past several years. (Attachment 10)

Terry Presta, Petroleum Marketers and Convenience Store Association of Kansas, testified in favor of **SB 299**. He talked about the history of CMB, and how a new classification of beer was created during the years of prohibition and was considered non-intoxicating. Laws were created to keep organized crime from dominating alcohol throughout the nation. He explained that the coalition he represents proposed this legislation to recapture some of the market that was lost when the drinking age changed from 18 to 21, and which also should have been the time to change the CMB laws. He stressed one of the main purposes of this bill is to highlight the misconception people have about CMB and strong beer. In regard to the tax issue, Mr. Presta said this bill would allow the state, cities, counties and beer retailers to be equal when pricing their product, and no one has an advantage. He concluded that **SB 299** brings parity back to the liquor industry. (Attachment 11)

Mike Thornbrugh, QuikTrip Corporation, submitted written testimony in support of **SB 299**. (Attachment 12)

Amy Campbell, Kansas Association of Beverage Retailers, appeared in opposition to **SB 299**. She explained that the depth of opposition to this legislation is very strong by retail liquor store owners. This is not about a six pack of beer, but involves products including malt based coolers, fruit flavored malt beverages that mimic liquor based products, mini-kegs, and kegs. The proposed legislation would encourage further expansion and proliferation of flavored malt based products on the market. She said the sale of liquor store beer in all existing CMB outlets would only move those sales from Kansas liquor stores to a multitude of other businesses. To replace CMB with stronger beer is to remove that product with less alcohol content from the market altogether. (Attachment 13)

Ms. Campbell stressed the proposed bill would have a very negative impact upon the retail liquor stores' businesses throughout the state. She asked if the legislators were willing to give an unfair competitive advantage to large corporate entities at the expense of small business, and what is the public policy being advanced by this legislation.

Jim Scott, Fort Scott liquor retailer and past president of KABR, submitted written testimony in opposition to **SB 299**. (Attachment 14)

Tuck Duncan, Kansas Wine & Spirits Wholesales Association, testified in opposition to **SB 299**. He referred to Mr. Alderson's earlier testimony which stated, "It is anticipated by the coalition that the application of the Cereal Malt Beverage Retailers' Act in any city or township will produce in some shift in sales of these products from liquor stores to convenience stores and food dealers." He emphasized that is the purpose of this bill - to shift sales. In summary, Mr. Duncan stated it would be inappropriate for the legislature to re-establish market share after 56 years wherein the current stakeholders have relied upon the



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existing system. It would truly be poor public policy particularly if the only rationale for redefining or eliminating cereal malt beverages is to alter market share. He said there are historical accidents that have created the system Kansas has in place today, a history that sets parameters; but, it is a history that needs to be respected to avoid economic dislocation of Kansas' retail liquor dealers and to maintain an orderly market as described heretofore. (Attachment 15)

Garry Winget, Kansans for Addiction Prevention (KAP), expressed strong opposition against **SB 299**. He stated that convenience was the issue for KAP, and they do not want the public to have greater convenience for alcohol consumption. KAP is especially bothered that 18 year olds would be selling a product with more alcohol content, and prefer that it be sold by 21 year olds and older. He stated this is a bad proposal, and KAP stands solidly against it. (no written testimony submitted)

Tom Groneman, Director of the Alcoholic Beverage Control Division, testified as a neutral conferee on **SB 299**. He asked if the bill passes that the effective date be extended until January 1, 2006, in order to permit the Division to make the necessary changes to existing systems and procedures and to work with local governments to put in place the needed business processes. (Attachment 16)

Chairman Brungardt closed the hearing on **SB 299**. He announced that with time permitting, the committee would return to this bill for questions and discussion.

Chairman Brungardt called the committee's attention to Senator Apple's letter requesting special consideration be given to **HB 2309** by this exempt committee which involves three counties that Senator Apple represents. He explained that the bill just got through the House, and was assigned to this committee late last Friday. He stated, since this is the last day for committee meetings, if this committee wishes to advance the bill, that option is available to the committee at this time. (Attachment 17)

Following brief committee discussion, Senator Reitz made a motion to pass the bill out favorably, seconded by Senator O'Connor, and the motion carried.

Chairman Brungardt called for discussion on **SB 299**, and asked what was the committee's intention for handling this proposed legislation.

Committee discussion regarded this bill being a market share argument, the strong opposition of liquor retailers, tax problems, and regulation issues. Following discussion, the consensus of the committee was to hold this bill for consideration next session due to the difficult nature of this proposed legislation.

The meeting adjourned at 11:55 a.m.







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## TESTIMONY PRESENTED TO THE SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS MARCH 22, 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. The bill before you is a simplified version of Senate Bill 305 from the 2004 session.

Please find attached an amendment which amends section 5 to reflect current law.

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.

Senate Federal & State Affairs  
Committee  
3-22-05  
Attachment 1

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

1. Off premise licensees are uniquely affected by the current question of law.
2. Off premise licensees are licensed by the State and not local units of government.
3. Off premise licensees must meet strict qualifications, unmatched by other types of liquor or cereal malt beverage licensees.
4. Employees of licensees must meet strict qualifications, unmatched by other types of liquor or cereal malt beverage licensees.
5. 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.

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. In the spirit of allowing local control of days of sale, KABR would welcome an amendment to add the option of certain holiday sales to the bill.

It should be remembered that local governments will continue to have the ability to generally regulate liquor stores through regular business related ordinances and specifically by limiting hours of business, 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.



**41-303. Retailer's license, premises outside city.** (a) The director may license the sale of alcoholic liquor at retail in the original package on premises not located in an incorporated city for use or consumption off the premises, if such premises are located in any township having a population of more than 5,000. No such license shall be granted to any applicant unless the applicant possesses all the qualifications required of other applicants for retailers' licenses except the qualification of residence within a city. In the event that any license has been issued under the provisions of this section in a township having a population of more than 5,000, and thereafter such township population decreases or has decreased to 5,000 or less, such licenses shall continue to be valid and the licensees shall be eligible for renewal of such licenses at the appropriate time if they are otherwise qualified.

No such license shall be granted to any applicant under this section unless the board of county commissioners of the county in which such township is located adopts a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a license authorized by this section.

In the event that any license has been issued under the provisions of this section in a township having a population of more than 5,000, and thereafter the premises so licensed are annexed to a city wherein retail liquor licenses may be issued, such licenses shall continue to be valid and the licensees shall be eligible for renewal of such licenses at the appropriate time even though the licensees shall not reside in the cities to which the areas are annexed if the licensees are otherwise qualified and if they reside in the township in which the premises were originally located or in the city to which the premises have been annexed.

(b) Any retail license issued prior to the effective date of this act for premises not located in an incorporated city or in a township having a population of more than 5,000 shall continue to be valid and such premises shall continue to be eligible for licensure if the board of county commissioners of the county in which the premises are located has adopted a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a license authorized by this subsection.

1 ified electors of a township in which a city of the third class is located  
2 voted against the adoption of the liquor amendment at the general elec-  
3 tion held in November, 1948, if any city of the third class is located in  
4 two or more townships, the total vote for and against the amendment in  
5 all the townships in which such city is located shall be used to determine  
6 whether such city is located in a township in which a majority of the  
7 qualified electors voted against the amendment.

8 Sec. 5. K.S.A. 2004 Supp. 41-303 is hereby amended to read as fol-  
9 lows: 41-303. (a) The director may ~~license the sale of~~ *issue to qualified*  
10 *applicants licenses to sell at retail* alcoholic liquor ~~at retail~~ in the original  
11 package on premises not located in an incorporated city for use or con-  
12 sumption off the premises, if such premises are located in any township  
13 having a population of more than 5,000. No such license shall be granted  
14 *issued* to any applicant unless the applicant possesses all the qualifications  
15 required of other applicants for retailers' licenses except the qualification  
16 of ~~residence~~ *residency* within a city. ~~In the event that~~ *If* any license has  
17 been issued under the provisions of this section in a township having a  
18 population of more than 5,000, and thereafter such township population  
19 decreases or has decreased to 5,000 or less, such licenses shall continue  
20 to be valid and the licensees shall be eligible for renewal of such licenses  
21 at the appropriate time if they are otherwise qualified.

22 No such license shall be ~~granted~~ *issued* to any applicant under this  
23 section unless the board of county commissioners of the county in which  
24 ~~such township is the premises for which licensure is sought~~ *are* located  
25 adopts a resolution approving the issuance of such license. A certified  
26 copy of such resolution shall accompany the application for a license au-  
27 thorized by this section.

28 ~~In the event that any~~ *(b)* *If* a license has been issued under the pro-  
29 visions of this section in a township having a population of more than  
30 5,000, and thereafter the premises so licensed are annexed to a city  
31 wherein retail liquor licenses may be issued, such ~~licenses~~ *license* shall  
32 continue to be valid and the licensees shall be eligible for renewal of such  
33 ~~licenses may be renewed~~ *at the appropriate time even though the licens-*  
34 ~~ees shall licensee does not reside in the cities city to which the areas are~~  
35 ~~area is annexed if the licensees are otherwise licensee otherwise is qual-~~  
36 ~~ified and if they reside in the township resides in the county in which the~~  
37 ~~premises were originally located prior to annexation or in the city to which~~  
38 ~~the premises have been annexed.~~

39 ~~(b) (c)~~ Any retail license issued prior to the effective date of this act  
40 for premises not located in an incorporated city ~~or in a township having~~  
41 ~~a population of more than 5,000 shall continue to be valid and such prem-~~  
42 ~~ises shall continue to be eligible for licensure if the board of county com-~~  
43 ~~missioners of the county in which the premises are located has adopted~~



1 ~~a resolution approving the issuance of such license. A certified copy of~~  
2 ~~such resolution shall accompany the application for a license authorized~~  
3 ~~by this subsection.~~

4 (d) A retailer issued a license pursuant to this section may sell at retail  
5 alcoholic liquor in the original package on Sunday between the hours of  
6 12 noon and 8 p.m. if the board of county commissioners of the county  
7 adopts a resolution permitting such sales in the township where the re-  
8 tailer's licensed premises are located. The county clerk shall send a cer-  
9 tified copy of such resolution to the director and to the township board  
10 of trustees of the township.

11 Sec. 6. K.S.A. 2004 Supp. 41-347 is hereby amended to read as fol-  
12 lows: 41-347. (a) The director may issue, in accordance with rules and  
13 regulations of the secretary: (1) To one or more charitable organizations  
14 a temporary permit authorizing the sale of alcoholic liquor at an auction;  
15 or (2) to an individual a temporary permit authorizing the sale of one or  
16 more limited issue porcelain containers containing alcoholic liquor. The  
17 permit shall be issued in the names of the charitable organizations or  
18 individual to which it is issued.

19 (b) Applications for temporary permits shall be required to be filed  
20 with the director not less than 14 days before the event for which the  
21 permit is sought unless the director waives such requirement for good  
22 cause. Each application for a permit authorizing an auction shall state the  
23 purposes for which the proceeds of the event will be used. The application  
24 shall be upon a form prescribed and furnished by the director and shall  
25 be filed with the director in duplicate. Each application shall be accom-  
26 panied by a permit fee of \$25 for each day for which the permit is issued;  
27 ~~which.~~ Such fee shall be paid *in full* by a certified or cashier's check of a  
28 bank within this state, United States post office money order or cash ~~in~~  
29 ~~the full amount thereof.~~ All permit fees collected by the director pursuant  
30 to this section shall be remitted to the state treasurer in accordance with  
31 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt  
32 of each such remittance, the state treasurer shall deposit the entire  
33 amount in the state treasury to the credit of the state general fund.

34 (c) Temporary permits shall specify the premises for which they are  
35 issued and shall be issued only for premises ~~where the city, county or~~  
36 ~~township zoning code allows use for which the permit is issued~~ *which*  
37 *comply with all applicable zoning regulations.*

38 (d) A temporary permit shall be issued for a period of time not to  
39 exceed three consecutive days, the dates and hours of which shall be  
40 specified in the permit. Not more than one temporary permit may be  
41 issued to any one applicant in a calendar year.

42 (e) All proceeds from an auction for which a temporary permit is  
43 issued shall be used only for the purposes stated in the application for

## SUNDAY RETAIL LIQUOR SALES

1-6

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
Gardner	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
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RECEIVED  
DEPARTMENT OF REVENUE  
NOV 15 2004  
ALCOHOLIC BEVERAGE CONTROL DIV

CITY OF SHAWNEE

CHARTER ORDINANCE NO. 32

A CHARTER ORDINANCE EXEMPTING THE CITY OF SHAWNEE, KANSAS FROM THE PROVISIONS OF K.S.A. 41-712 PROHIBITING ALCOHOLIC LIQUOR SALES ON SUNDAY AND CERTAIN HOLIDAYS.

WHEREAS, the City of Shawnee, Kansas, is authorized to exercise the powers, functions, and duties of a city of the first class, including home-rule powers in the manner and subject to the limitations provided by Article XII, Section 5 of the Constitution of the State of Kansas; and

WHEREAS, K.S.A. 41-712 was adopted in 1949 as part of an enactment in Chapter 242 of the Session Laws, commonly known as the Kansas Liquor Control Act, which enactment does not apply uniformly to all cities;

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the City of Shawnee, Kansas:

SECTION 1. The City of Shawnee, Kansas, by the power invested in it by Article XII, Section 5 of the Constitution of the State of Kansas, hereby exempts itself from and makes inapplicable to it K.S.A. 41-712, a legislative enactment which is applicable to the City of Shawnee, Kansas but is not applicable uniformly to all cities in the State of Kansas.

SECTION 2. The City of Shawnee may by ordinary ordinance enact substitute and additional provisions in lieu of those from which it hereby exempts itself.

SECTION 3. This Charter Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

SECTION 4. This is a Charter Ordinance and shall not take effect unless, the Governing Body by Ordinance, without petition, submits this Charter Ordinance to a referendum in the manner provided by Article XII, Section 5 of the Constitution and this Charter Ordinance shall then become effective only if and when approved by a majority of the electors voting thereon.

SECTION 5. Upon its effective date, this Charter Ordinance shall be recorded by the City Clerk in a book maintained for charter ordinances of the City and shall be filed with the Secretary of the State of Kansas.

1-7

CITY OF SHAWNEE

ORDINANCE NO. 2739

AN ORDINANCE AMENDING SHAWNEE MUNICIPAL CODE SECTION 5.08.040, SUBSECTION A, REGULATING HOURS AND DAYS OF OPERATION OF ALCOHOLIC LIQUOR SALES AND REPEALING EXISTING SUBSECTION A OF SECTION 5.08.040.

WHEREAS, on June 28, 2004, the City of Shawnee, Kansas, Governing Body passed Charter Ordinance 32, exempting the City of Shawnee, Kansas, from the provisions of K.S.A. 41-715, which regards the sale of alcoholic liquor on Sunday and holidays and is part of a non-uniform enactment;

WHEREAS, on June 28, 2004, the City of Shawnee, Kansas, Governing Body passed Ordinance No. 2725, which called an public election for Charter Ordinance No. 32, to be held in conjunction with the general election of November 2, 2004; and

WHEREAS, on November 2, 2004, a majority of the public voted to approve Charter Ordinance No. 32.

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Shawnee, Kansas:

SECTION 1. Shawnee Municipal Code Subsection A of Section 5.08.040, is hereby amended to read as follows:


- A. No person shall sell at retail any alcoholic liquor:
  1. before 9:00 a.m. or after 11:00 p.m. Monday through Saturday; or
  2. before 11:00 a.m. or after 8:00 p.m. on Sunday.

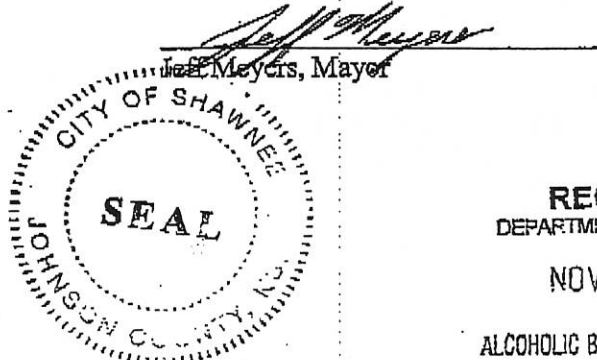
SECTION 2. Existing Subsection A of Section 5.08.040 is hereby repealed.

SECTION 3. This Ordinance shall take effect and be in full force and effect from and after its publication in an official City newspaper as provided by law.

PASSED by the Governing Body this 8th day of November, 2004.

APPROVED AND SIGNED by the Mayor this 8th day of November, 2004.

ATTEST:   
Vicki Charlesworth, City Clerk



RECEIVED  
DEPARTMENT OF REVENUE  
NOV 15 2004  
ALCOHOLIC BEVERAGE CONTROL DIV



Testimony: Senate Federal and State Affairs Committee  
From: Thomas M. Palace  
Date: March 22, 2005  
RE: SB 298 Uniformity, Sunday Sales

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

My name is Tom Palace. I am Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas Petroleum companies and convenience store owners throughout Kansas. 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 (25, see attached list) 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 convenience stores 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 Kansas  
201 NW Highway 24 • Suite 320 • PO Box 8479  
Topeka, KS 66608-0479  
785-233-9655 Fax: 785-354-4374

Senate Federal & State Affairs  
Committee  
3-22-05  
Attachment 2



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.

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

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Testimony on SB-298, March 22, 2005  
Senate 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 18<sup>th</sup> 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. 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**

Senate Federal & State Affairs

Committee

3-22-05

Attachment 3



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

Testimony to Support Senate Bill 298  
Marjorie L. Roberson

Chairman Brungardt and Members of the 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. Thank you for the opportunity to testify today in support of SB 298.

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.

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 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.

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

Senate Federal & State Affairs  
Committee  
3-22-05  
Attachment 4

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

March 22, 2005

Senate Federal and State Affairs Committee  
Senator Brungardt, 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.

I support Sunday Sales.

I support 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 would be happy to answer questions.

Senate Federal & State Affairs  
Committee  
3-22-05  
Attachment 5

## KANSANS FOR ADDICTION PREVENTION (KAP)

Garry Winget, President

P.O. Box 16774, Wichita, Kansas 67216

**SUBJECT: Senate Bill 298**

March 9, 2005

Due to lack of action following court rulings, we now have Sunday sales of alcohol in Kansas. We believe that it is in the best interest of the people of Kansas to restore our previous status and not have Sunday sales of alcohol. At the same time, it is very important to have a uniform liquor code so that enforcement and licensing that is fair to everyone can be accomplished. There will continue to be a creeping expansion of alcohol sales unless the liquor control act is made uniform

We have communicated technical data to the legislature on a regular basis giving the information you need so that you can act in the best interests of the people of Kansas through decreased consumption of alcohol. Please take action to stop this expansion of sales of alcohol in Kansas.

Senate Federal & State Affairs

Committee

3-22-05

Attachment

6



Testimony on Senate Bill No. 298

Concerning alcoholic liquor;

To  
The Senate Federal and State Affairs Committee  
By  
Tom Groneman, Director  
Alcoholic Beverage Control Division

March 22, 2005

---

Mr. Chairman, members of the committee, thank you for allowing me to appear before you today regarding Senate Bill 298.

My comments regarding this bill will be very brief. The Division of Alcoholic Beverage Control supports making the liquor control act uniform. The ability of cities to charter out from under provisions of the act have led to a numerous local ordinances which are almost impossible to track and difficult to regulate. I request that you support SB 298 and pass it favorably.

I would be glad to answer any questions.

Senate Federal & State Affairs  
Committee  
3-22-05  
Attachment 7

## SUNDAY RETAIL LIQUOR SALES

7-2

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Kansas Wine & Spirits  
Wholesalers Association

To: Senate Committee on Federal & State Affairs  
From: R.E. "Tuck" Duncan  
RE: SB 298 - Uniformity

The KWSWA has supported uniformity bills. We still support the concept but candidly we believe with only nine (9) working days left in the session this is too complex a topic to tackle. We have many concerns about the current bill including:

On page 3, lines 38 we are including new language that may impact localities in the regulation of cereal malt beverage licenses. I don't quite know the impact, and have not had enough time to study same, but inasmuch as CMB licenses are issued by cities and counties I am not sure whether this language is necessary. We would like more time to consider same.

On page 4 at line 20 we prefer the affirmative directive that "No city shall enact..." rather than the passive language being substituted.

At lines 35-38 page 4 it provides 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 **more restrictive** than or supplemental to the Kansas liquor control act.*

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? 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 I could invoke... the point is we have not had sufficient time to consider these impacts, or other possible unintended consequences, at this late date of the session.

Does the provisions on page 5 beginning at line 19 place a 90 day freeze on the issuance of all retailer's licenses in this state? Or just those in currently dry cities? Or could a city which currently allows the sale ban its sale: "*if the governing body of such city, within 90 days after the effective date of this act, adopts an ordinance prohibiting the licensing of the sale at retail of alcoholic liquor in the original package within such city.*"

Did we not already amend 41-303 (L. 2004, ch. 94, § 2; July 1) regarding licenses in townships and thus is Section 5 page 8 still required ?? If so, is that because we must

Senate Federal & State Affairs

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3-22-05

Attachment 8



eliminate the population requirement altogether? Is that what the legislature wishes? How is it that a population requirement makes the act not uniform? We would like more time to consider these questions.

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? We would like more time to consider this question.

Does New Section 9 mean that a governing body could deny retailers in a city that has already approved Sunday sales (in some cases by popular vote) the continued opportunity to sell on Sunday? We would like more time to consider same and oppose any provision that repeals Sunday sales.

The provisions at page 11, line 36 as follows:

(1) *Any person to advertise any alcoholic liquor by means of handbills; or*  
(2) *any retailer of alcoholic liquor to advertise any alcoholic liquor by means of billboards along public highways, roads and streets or to have on the retailer's licensed premises any billboard advertising alcoholic liquor;*

we believe have either been found unenforceable by the Attorney General or the courts and should be deleted. We are also concerned about the potential discriminatory effects of denying one kind of retailer the right to advertise but allow another type of retailer that right.

Some of the concerns identified above also exist in the provisions of the revisions to the Kansas cereal malt beverage act. Beginning at page 14 new section 12.

I recognize that some of these provisions have been considered previously, and that we have not heretofore raised some of these concerns; however, in light of the numerous wine cases and the Costco case (Washington state) our antenna are extremely sensitive to the potential unintended consequences that such changes may arouse.

We see 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.*

TO: Senate Federal and State Affairs Committee

FROM: Sandra Jacquot, Director of Law/General Counsel

DATE: March 22, 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 two problematic provisions in SB 298. Section 2(c) is totally preemptive for cities and counties. Under this provision, not only would local governments be 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 wishes to prohibit a liquor store from being too close to a day care center, it could not add a distance provision, because that would be supplemental to K.S.A. 41-710. This is but one example of the effect of a restrictive preemption provision. As the League has pointed out on numerous occasions, taking away local control of alcohol means alcohol is less regulated. The state does not fill in with regulations where local governments are preempted. One size truly does not fit all.

The second provision the League wants to point out to the committee is Section 9. This provision allows a city to permit the Sunday sale of packaged liquor by adopting an ordinance. This is subject to a protest to compel an election. Thus, the numerous cities that have adopted ordinances

and, in addition, those that have had an election, must once again opt in to provide for Sunday packaged liquor sales. This negates the will of those cities whose voters have already made that decision and possibly subjects those cities to yet another election. The League requests that this provision be an opt-out, rather than opt-in if this bill moves forward.

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 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.

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

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

**March 22, 2005**

Chairman Brungardt and Members of the Committee:

My name is Bob Alderson, and I am appearing on behalf of Casey's General Stores, Inc. in support of Senate Bill No. 299. I also am authorized to present this testimony on behalf of the Petroleum Marketers and Convenience Store Association of Kansas, Inc., QuikTrip and the Kansas Food Dealers Association. These organizations and businesses have formed a coalition for the purpose of supporting legislation which will enable coalition members to regain an appropriate share of the market for cereal malt products.

Collectively, the coalition of retail grocers and convenience stores has thousands of locations throughout Kansas; employs thousands of Kansans, with an annual payroll in the hundreds of millions of dollars; pays millions of dollars in Kansas property taxes; and also collects and remits millions of tax dollars to the State of Kansas.

**BACKGROUND**

Currently, grocery stores and convenience stores are licensed to sell cereal malt beverage (CMB) in the original and unopened containers. CMB is statutorily defined as a malt product containing not more than 3.2% alcohol by weight. CMB is commonly referred to as "3.2 beer." Substantially all other alcoholic malt beverages are defined as "beer" and may be sold by the package only in retail liquor stores.

In 1937, the Kansas legislature defined the terms "spirituous, malt, vinous, fermented or other intoxicating liquors" as meaning "all beverages which contain three and two tenths percent (3.2%) of alcohol

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Attachment 10



by weight and all such beverages are hereby declared intoxicating liquors under the laws of this state." (L. 1937, Ch. 213, §1, amending §21-2109 G.S. 1935.) That same enactment also declared that, whenever the terms "intoxicating liquors" and "intoxicating liquor" were used in the statutes they were to be construed as meaning beverages containing more than 3.2% of alcohol by weight. That same year, the legislature enacted a cereal malt beverage law, which is the forerunner of the present statutes contained in K.S.A. 41-2701 et seq. Thus, from that point forward, an alcoholic malt product containing not more than 3.2% of alcohol by weight was not regarded by law as an intoxicating liquor, while any such product containing more than 3.2% alcohol by weight was considered an intoxicating liquor.

The 1937 enactments were passed in the context of Article 15, Section 10 of the Kansas Constitution, which prohibited the manufacture and sale of intoxicating liquors. That prohibition remained until the further amendment of this section in 1948, allowing the legislature to regulate, license and tax the manufacture and sale of intoxicating liquor. Following that significant constitutional about face, the Kansas Liquor Control Act was enacted in 1949. However, the cereal malt beverage statutes were continued in existence, and the distinction between 3.2 beer and beer was perpetuated, with such distinction remaining today.

The law establishing the drinking age for all alcoholic beverages at 21 was passed in 1985. While the sale of beer by retail liquor stores has increased significantly since that time, there has been a corresponding decline in the sale of CMB by grocery stores and convenience stores. These trends in the sale of alcoholic malt beverages are primarily the result of a public misperception that CMB products are "weaker" and of a lesser quality than the alcoholic malt beverages sold in liquor stores.

This misconception originated during the time when there was a difference in the legal drinking age. Persons between the ages of 18 and 21 were allowed to purchase CMB, but were not allowed to purchase beer or alcoholic liquor. Presumably, when the enactment of the Kansas Liquor Control Act perpetuated the separate classifications of alcoholic malt beverages, the purpose was to make available only to "adults" the "strong beer," based on a belief that there was a significant difference in alcoholic content of these classes of cereal malt products. As will be discussed subsequently, the truth of the matter is that there is not an appreciable difference in alcoholic content between these classes of cereal malt products. Notwithstanding, this distinction became translated into a perception that CMB was not of the same quality as beer.

Thus, when the drinking age for all alcoholic beverages was established at 21, not only did retailers of CMB lose a significant number of potential purchasers (i.e., persons who were 18, 19 and 20 years of age), persons who were 21 years of age and older began purchasing "beer" from retail liquor stores, rather than purchasing CMB from licensed CMB

retailers, because of the misconception that CMB is of lesser quality than beer.

Thus, the purpose of SB 299 is to provide an opportunity for local units of government to make applicable in their jurisdictions a statutory scheme which recognizes that there is no appreciable difference in alcoholic strength between CMB and beer. The application of this statutory scheme in a local community will eliminate the artificial distinction between CMB and beer, thereby providing consumers in such community a wider choice as to where to purchase cereal malt products.

**SENATE BILL NO. 299**

The coalition sponsoring SB 299 has previously sponsored similar legislation in several prior sessions. However, the coalition's prior bills have proposed to make the reclassification of CMB applicable statewide. It is now clear that such proposal does not present an acceptable legislative option. Thus, the coalition's proposal to reclassify CMB, as embodied by SB 299, requires the exercise of a "local option" by a city or county, in order for the bill's provisions to become operative.

The coalition recognizes 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 299 is so important. It will allow each community to decide for itself whether CMB should be reclassified to include malt products containing not more than 5% of alcohol by weight. Each community will be able to exercise the same right of self determination that has been afforded by many of the other state laws enabling the local sales of alcoholic beverages.

**Local Options.** SB 299 affords each city in which the sale of alcoholic liquor is currently authorized, to adopt a resolution providing that the Cereal Malt Beverage Retailers' Act (Sections 4 through 53 of SB 299) shall be applicable in such city. The adoption of such resolution is made subject to a protest petition and, if the petition is sufficient, an election to determine whether the resolution shall become effective. In addition, Section 2 of SB 299 also provides that the Cereal Malt Beverage Retailers' Act shall be applicable in any township in which alcoholic liquor may currently be sold, if the board of county commissioners of the county in which such township is located shall adopt a resolution making the act applicable.

Section 56 provides a local option to cities and counties in which alcoholic liquor currently may not be sold and in which CMB only may be sold. The governing body of any such city may adopt a resolution providing that the definition of cereal malt beverage in K.S.A. 41-2701 shall be re-defined to increase the alcoholic content of such beverage from 3.2% to 5.0%, for the purpose of applying cereal malt beverage statutes in that city. Such resolution is subject to protest and

election, if necessary, to become effective. Likewise, the board of county commissioners of any such county where alcoholic liquor can not be sold and only CMB may be sold may adopt the same resolution, re-defining cereal malt beverage as one which contains not more than 5% of alcohol by weight, for purposes of applying the cereal malt beverage statutes within such county and outside the incorporated limits of any city within such county.

**Cereal Malt Beverage Retailers' Act.** As noted previously, Sections 4 through 53 of SB 299 comprise the Cereal Malt Beverage Retailers' Act. Notable among these sections is Section 5, which contains definitions applicable to the new act. This section is patterned after K.S.A. 41-102, which contains the definitions applicable to the Kansas Liquor Control Act. However, in Section 5 of SB 299, "beer" is defined as a malt beverage having more than 5.0% alcohol by weight, while "cereal malt beverage" is defined as a malt beverage having not more than 5.0% alcohol by weight. The change in the alcohol content of these products will be addressed subsequently. However, suffice it to state these definitional changes are important because, when the definition of cereal malt beverage is changed to increase its alcohol content, the newly-defined cereal malt beverage includes products which are now sold in the original and unopened containers only by retail liquor dealers, and sold by the drink only by clubs, drinking establishments, caterers and temporary permit holders under the Club and Drinking Establishment Act.

Thus, the new act must necessarily permit these various licensees located in any city or township in which the Cereal Malt Beverage Retailers' Act is applicable to continue selling these products. However, it would be highly impractical to attempt amending the Kansas Liquor Control Act and the Club and Drinking Establishment Act to carve out exceptions for local units of government where the local option has been exercised. Therefore, the most expeditious approach for affording these local governments the opportunity to eliminate the somewhat meaningless distinction between 3.2 beer and most domestic beers, is to create a new act containing sections which are revised versions of statutes contained in the Kansas Liquor Control Act, the Club and Drinking Establishment Act and the cereal malt beverage statutes contained in K.S.A. 41-2701 et seq. The existing statutes, which will not be applicable to a city or township in which the Cereal Malt Beverage Retailers' Act is applicable, are set forth in Section 2(f). Correspondingly, the new sections comprising the Cereal Malt Beverage Retailers' Act are revised versions of those statutes, with such revisions being directed primarily at permitting the various licensees under the existing laws which manufacture, sell or distribute beer, to also be a manufacturer, distributor or retailer of the re-defined cereal malt beverage. Attached to this testimony as Attachment A is an explanation of the purpose of each of the new sections contained in SB 299, identifying the existing statute to which it corresponds.

Alcohol Content of Cereal Malt Beverage. As previously noted, Section 5 re-defines CMB as a malt beverage containing not more than 5.0% alcohol by weight, as contrasted to the existing definition in K.S.A. 41-2701 which limits CMB's alcohol strength to not more than 3.2% of alcohol by weight. However, as will be made clear, there is not an appreciable difference in alcohol content among major domestic brands of CMB and the corresponding brands of beers.

In October of 1985, Governor John Carlin convened the Kansas Liquor Law Review Commission, chaired by District Judge Herb Rohleder. The final report of the Commission, which was submitted to Governor Carlin in December of 1986, contained more than fifty recommendations for actions necessary to modernize and reform the state's alcoholic beverage control laws, as well as to implement the recently-adopted liquor-by-the drink amendment to the Kansas Constitution. Among these, though, was the Commission's recommendation that the distinction between "strong beer" and CMB ("weaker beer") should be perpetuated. However, Chairman Rohleder presented a separate, dissenting view of this issue, which appeared in the report. Chairman Rohleder stated as follows:

"The failure of the Commission to recommend elimination of the distinction between cereal malt beverage and so-called strong beer is disappointing. I disagree with the recommendation to maintain the hypocritical distinction. Maintaining the arbitrary distinction serves only to perpetuate a myth that is not grounded in reality. Current law is inconsistent in that it incorrectly defines 3.2 beer as non-intoxicating, and places many more restrictions on "strong" beer, despite the fact that tests prove there is little difference in the alcoholic content of 3.2 beer and "strong" beer. There should be no distinction made between strengths of beer. All strengths of beer should be permitted to be sold at current CMB outlets as well as retail liquor stores." (Emphasis added.)

The tests referenced in the above-quoted statement by Chairman Rohleder were available to the Commission. Attached to the Commission's report as Appendix A was a table showing a comparison of strong beer and CMB by alcohol content, as determined in a laboratory analysis by the Kansas Bureau of Investigation. A copy of that comparative test is attached to this testimony as Attachment B. That test was performed in 1986. Subsequently, the KBI prepared a similar comparative test in the early 1990's, showing substantially the same results. A copy of that later test also is attached as Attachment C.

These KBI laboratory tests reveal that the major domestic brands of beer sold in retail liquor stores have an alcoholic content of not more than 4.0% by weight. This substantiates the coalition's assertion that there is not an appreciable difference between the major domestic brands of CMB and their counterpart brands of beer sold in liquor stores.



One recent law journal author placed an interesting spin on the statutory distinction between CMB and liquor store beer. Kevin Wendell Swain, in his article, "Liquor by the Book in Kansas: The Ghost of Temperance Past," which appeared in the Spring 1996 issue of the Washburn Law Journal, addressed this statutory distinction as follows:

"The legislature should act to eliminate the currently meaningless statutory distinction between beers of different alcoholic strength. The law conveys to Kansas consumers the mistaken impression that cereal malt beverages are significantly less intoxicating than beer sold by liquor stores. Not only does the illusory distinction mislead, but to the extent that it succeeds in shifting consumer demand from liquor retailers to grocers and microbreweries, the law operates to indiscriminately harm legitimate businesses." 35 Washburn L.J. 322,340 (1996).

**Taxes..** There are two considerations which have complicated the coalition's efforts to develop legislation which is as revenue neutral as possible. First, the newly-defined cereal malt beverage includes products which currently are sold in the original and unopened containers only by retail liquor stores. Second, it is anticipated by the coalition that the application of the Cereal Malt Beverage Retailers' Act in any city or township will produce some shift in sales of these products from liquor stores to convenience stores and food dealers.

Currently, the sales of beer by retail liquor dealers licensed under the Kansas Liquor Control Act are subject to an 8% liquor enforcement tax on the gross receipts of such sales. On the other hand, sales of CMB pursuant to K.S.A. 41-2701 et seq. are subject to state and local sales taxes. Thus, if the tax structure is unaltered, the anticipated shift in sales of cereal malt beverage under the new act would likely result in the state's loss of some enforcement tax revenue. Also, if the lower tax imposed by convenience stores and grocers results in a tax-included price that is less than the tax-included price offered by retail liquor stores, this might provide convenience stores and grocers with a competitive advantage.

As another alternative, if sales of cereal malt beverage in the original and unopened containers, regardless of where they are sold, are made subject only to state and local sales taxes, the state also would be deprived of enforcement tax revenue. Likewise, if only the enforcement tax were applied to these sales, the state and local units of government would be deprived of sales tax revenues.

For these reasons, it was determined to make all sales of cereal malt beverage in the original and unopened package under the Cereal Malt Beverage Retailers' Act subject to both the liquor enforcement tax (Section 57) and the state and local sales taxes (Section 59). (Actually, because it would be very cumbersome to amend the liquor

enforcement tax statutes, K.S.A. 79-4101 et seq., to make them applicable to sales under the new act, Section 57 imposes an 8% tax on package sales under the new act, which is to be administered, collected and enforced identically to the liquor enforcement tax.) Thus, in cities and townships where the Cereal Malt Beverage Retailers' Act is applicable, the new act will likely produce state and local tax revenues in excess of the tax revenues currently produced in these jurisdictions from the sales of beer and CMB.

**Constitutionality.** In connection with the coalition's prior legislative proposals, the question of whether the legislature has the constitutional authority to re-define CMB has been raised. Anticipating that the same question may be raised in connection with SB 299, it should be noted that Attorney General Opinion No. 87-48 concluded that the Kansas Legislature has the power to define all beer containing less than 5% alcohol by weight as a cereal malt beverage (CMB). The sponsors of this proposal are unaware of any change in the opinion of that office. Since there are no opinions of any Kansas appellate courts on this specific issue, there can be no guarantee as to this proposal's constitutionality, which is the case with most proposed legislation. However, in the absence of such definitive case law, the above-referenced Attorney General Opinion provides credible authority.

#### **CONCLUSION**

In conclusion, we want to emphasize that the real issue involved in SB 299 is not a liquor issue. It is an economic issue. Raising the drinking age to 21, authorizing liquor by the drink and the persistent misconception by consumers that CMB is of a lesser quality than beer have all combined to produce a dramatic reduction in the sales of CMB. By allowing us to compete on an equal basis with retail liquor dealers, SB 299 provides CMB retailers that opportunity to regain the share of the cereal malt product market they lost over the past several years.

We appreciate the opportunity to appear before the Committee in support of SB 299, and I will attempt to answer any questions the Committee may have.

EXPLANATION OF NEW SECTIONS IN SENATE BILL NO. 299

**New Sec. 2.** (Page 1) This section authorizes the governing body of a city in which the sale of alcoholic liquor is authorized to adopt a resolution providing that the Cereal Malt Beverage Retailers' Act shall be applicable in such city. It provides for publication of the resolution, and the resolution shall be effective following at least thirty (30) days following the date of last publication, unless a petition requesting an election is filed in compliance with the section. In that event, an election must be held to determine whether the resolution shall take effect. This section also provides for the adoption of a similar resolution by a board of county commissioners, with respect to any township in such county in which alcoholic liquor may be sold. In subsection (f), this section also sets forth the statutes in the Kansas Liquor Control Act, the Club and Drinking Establishment Act and the Kansas Cereal Malt Beverage Act which shall not apply to any city or township in which the Cereal Malt Beverage Retailers' Act is applicable. Subsection (g) makes it clear that the keg registration act and the gallonage tax are applicable to the new act.

**New Sec. 3.** (Page 2) This section provides that when the Cereal Malt Beverage Retailers' Act becomes applicable in any city or township, the various licensees under the Kansas Liquor Control Act, the Club and Drinking Establishment Act and the cereal malt beverage statutes contained in K.S.A. 41-2701 et seq., shall be licensees for purposes of the Cereal Malt Beverage Retailers' Act.

**New Sec. 4.** (Page 3) Subsection (a) of this section denominates sections 4 through 53 of SB 299 as the Cereal Malt Beverage Retailers' Act. Subsection (b) provides that, for purposes of the new act, K.S.A. 41-2701 et seq. shall be referenced as the Kansas Cereal Malt Beverage Act, and it also provides that any reference to the Kansas Liquor Control Act, the Club and Drinking Establishment Act or the Kansas Cereal Malt Beverage Act shall be deemed a reference to those provisions of such acts which remain applicable to any city or township in which the new act is made applicable. (See subsection (f) of New Sec. 2.)

**New Sec. 5.** (Page 3) This section contains substantially all of the definitions contained in K.S.A. 41-102, except that "cereal malt beverage" has been defined so as to increase the alcoholic content to not to exceed 5% alcohol by weight. In

addition, several new definitions have been included, as well as pertinent definitions from K.S.A. 41-2701.

**New Sec. 6.** (Page 6) This section corresponds to K.S.A. 41-104, prohibiting various acts, unless they are authorized by the Cereal Malt Beverage Retailers' Act or the Kansas Liquor Control Act. The provisions include prohibited acts involving cereal malt beverage.

**New Sec. 7.** (Page 6) This section corresponds to K.S.A. 41-208, by vesting essentially the same regulatory powers in the Director of ABC as are vested in the Director by K.S.A. 41-208. But New Sec. 7 extends such regulatory authority over cereal malt beverage and the Cereal Malt Beverage Retailers' Act.

**New Sec. 8.** (Page 7) The Director's functions and duties set forth in K.S.A. 41-209 are extended to the Cereal Malt Beverage Retailers' Act.

**New Sec. 9.** (Page 8) This section corresponds to K.S.A. 41-210, and the power of the Director of ABC to propose rules and regulations for purposes of the Kansas Liquor Control Act has been extended to the Cereal Malt Beverage Retailers' Act. The section also provides that, to the extent that previously adopted rules and regulations under the Kansas Liquor Control Act carry out and implement the provisions of the Cereal Malt Beverage Retailers' Act, such rules and regulations shall be applicable to this new act.

**New Sec. 10.** (Page 8) This section corresponds to K.S.A. 41-211, and it sets forth the same purposes for rules and regulations adopted by the Secretary of Revenue to implement the Kansas Liquor Control Act, but includes cereal malt beverage within their scope.

**New Sec. 11.** (Page 10) This section defines what a beer distributor's license shall allow under the Cereal Malt Beverage Retailers' Act. It is substantially comparable to K.S.A. 41-307, except that it includes provisions applicable to the newly-defined cereal malt beverage in the Cereal Malt Beverage Retailers' Act.

**New Sec. 12.** (Page 11) For purposes of the Cereal Malt Beverage Retailers' Act, a "retailer" under the Kansas Liquor Control Act has been defined in New Sec. 5 as a "liquor retailer." New Sec. 12 sets forth what a liquor retailer's license will allow, and is substantially the same as the provisions of K.S.A. 41-308, with the notable exception that it permits the retail sale of the newly-defined cereal malt beverage. In addition, the section would permit a liquor retailer to sell soft drinks, mix and specified beverage-related, non-food items.



**New Sec. 13.** (Page 12) This section requires reports to the Director of ABC of manufacturers, distributors and microbreweries which sell any beer or cereal malt beverage to a beer distributor. Requirements of this section correspond to the requirements of K.S.A. 41-601.

**New Sec. 14.** (Page 12) Records required of manufacturers, distributors and microbreweries under the Cereal Malt Beverage Retailers' Act are the same as those required under the Kansas Liquor Control Act (41-602).

**New Sec. 15.** (Page 13) This section is comparable to K.S.A. 41-701 in setting forth limitations on various licensees under the Cereal Malt Beverage Retailers' Act.

**New Sec. 16.** (Page 14) The prohibitions on a retailer under the Kansas Liquor Control Act (41-708) with respect to alcoholic liquor, are applicable to liquor retailers under the Cereal Malt Beverage Retailers' Act and include cereal malt beverage, as well as alcoholic liquor.

**New Sec. 17.** (Page 14) This section is comparable to K.S.A. 41-712 in setting forth the days and hours when alcoholic liquor and cereal malt beverage cannot be sold.

**New Sec. 18.** (Page 14) This section extends the prohibitions of K.S.A. 41-717 regarding alcoholic liquor to also include cereal malt beverage.

**New Sec. 19.** (Page 15) This section includes the provisions of 41-718 regarding alcoholic liquor, but also includes cereal malt beverage within its scope.

**New Sec. 20.** (Page 15) The restrictions on transportation of alcoholic liquor in K.S.A. 41-724 are applicable to the transportation of cereal malt beverage for purposes of the Cereal Malt Beverage Retailers' Act.

**New Sec. 21.** (Page 15) The unlawful acts set forth in K.S.A. 41-725 regarding alcoholic liquor have been made applicable to cereal malt beverage under the Cereal Malt Beverage Retailers' Act.

**New Sec. 22.** (Page 15) This section is substantially identical to K.S.A. 41-726, except that it includes cereal malt beverage within its scope.

**New Sec. 23.** (Page 15) The retail sale prohibitions on alcoholic liquor in K.S.A. 41-729 have been expanded to include cereal malt beverage.

**New Sec. 24.** (Page 16) This section is substantially the same as K.S.A. 41-805, except that it includes cereal malt beverage within its scope.

**New Sec. 25.** (Page 18) This section replicates the provisions of K.S.A. 41-806 regarding prosecution of violations of the Kansas Liquor Control Act, but also includes violations regarding cereal malt beverage under the new act.

**New Sec. 26.** (Page 19) By this section, the provisions of K.S.A. 41-901, imposing restrictions on manufacturing, importation and distribution of alcoholic liquor under the Kansas Liquor Control Act, have been modified to include cereal malt beverage, as defined under the Cereal Malt Beverage Retailers' Act.

**New Sec. 27.** (Page 20) This section is comparable to K.S.A. 41-905, but also includes cereal malt beverage within the scope of its prohibitions.

**New Sec. 28.** (Page 21) This section includes provisions regarding the prosecution of violations of the Cereal Malt Beverage Retailers' Act comparable to those set forth in the Kansas Liquor Control Act (41-1001).

**New Sec. 29.** (Page 21) This section relates to the prosecution of violations of the Cereal Malt Beverage Retailers' Act, as well as the Kansas Liquor Control Act and the Club and Drinking Establishment Act. This section is comparable to K.S.A. 41-1002.

**New Sec. 30.** (Page 21) This section perpetuates the provisions of K.S.A. 41-1004, regarding the unlawful possession of a special tax stamp from the U.S. government authorizing the sale or manufacture of alcoholic liquor, and it includes cereal malt beverage for purposes of the new act.

**New Sec. 31.** (Page 21) This section incorporates the provisions of K.S.A. 41-1101 regarding the unlawful discrimination in sales, services or prices of alcoholic liquor and includes cereal malt beverage within its scope.

**New Sec. 32.** (Page 24) This section is substantially the same as K.S.A. 41-1102, except for the addition of cereal malt beverage.

**New Sec. 33.** (Page 25) The authority of the Director of ABC to sell alcoholic liquor at public or private sale pursuant to K.S.A. 41-1122 is expanded to include the sale of cereal malt beverage.

**New Sec. 34.** (Page 25) This section is comparable to K.S.A. 41-1123, regarding the custody of alcoholic liquor seized by the Director's agents, but cereal malt beverage is included within the scope of this section.

**New Sec. 35.** (Page 25) The authority of a sheriff under K.S.A. 41-1125 to possess alcoholic liquor on which there has

been levied execution, has been broadened to include cereal malt beverage.

**New Sec. 36.** (Page 25) The prohibition of the Club and Drinking Establishment Act (41-2604) regarding consumption of alcoholic liquor on licensed premises has been expanded to include cereal malt beverage.

**New Sec. 37.** (Page 26) Unlawful acts by a licensee or temporary permit holder under the Club and Drinking Establishment Act, with respect to the serving or dispensing of alcoholic liquor, has been expanded to include dispensing or serving of cereal malt beverage.

**New Sec. 38.** (Page 26) The authority of the Director of ABC to revoke or suspend any license under the Club and Drinking Establishment Act (41-2611) has been broadened by this section to include violations involving cereal malt beverage, as well as alcoholic liquor.

**New Sec. 39.** (Page 27) The hours for consuming and serving alcoholic liquor under the Club and Drinking Establishment Act (41-2614) has been perpetuated by this section, with the addition of cereal malt beverage.

**New Sec. 40.** (Page 28) Subsections (a) and (b) correspond to the provisions of subsections (b) and (c) of K.S.A. 41-2632, but cereal malt beverage has been included within the scope of this section.

**New Sec. 41.** (Page 28) Except for the addition of cereal malt beverage, this section is identical to K.S.A. 41-2637.

**New Sec. 42.** (Page 28) Except for the addition of cereal malt beverage, this section is identical to K.S.A. 41-2641.

**New Sec. 43.** (Page 30) Except for the addition of cereal malt beverage, this section is identical to K.S.A. 41-2642.

**New Sec. 44.** (Page 31) Except for the addition of cereal malt beverage, this section is identical to K.S.A. 41-2643.

**New Sec. 45.** (Page 32) Except for the addition of cereal malt beverage and correction of the title of the Club and Drinking Establishment Act in subsection (h), this section is identical to K.S.A. 2004 Supp. 41-2645.

**New Sec. 46.** (Page 33) Except for the addition of cereal malt beverage and one grammatical correction in subsection (g), this section is identical to K.S.A. 2004 Supp. 41-2702.

**New Sec. 47.** (Page 35) The licensing procedure for a cereal malt beverage retailer under this section is substantially the same as the procedure prescribed by K.S.A. 2004 Supp. 41-2703.

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**New Sec. 48.** (Page 36) This section corresponds to K.S.A. 41-2704, except that the hours of the day when cereal malt beverage may be sold in the original and unopened container have been established at the same hours when a retailer under the Kansas Liquor Control Act may sell alcoholic liquor. In addition, a cereal malt beverage retailer is prohibited from selling cereal malt beverage at less than the acquisition cost without permission from the Director of ABC, and the criteria for the granting of the Director's permission also are set forth.

**New Sec. 49.** (Page 38) The only substantive difference between this section and K.S.A. 41-2705 is the fact that the retailer under that statute is referred to as a cereal malt beverage retailer under the Cereal Malt Beverage Retailers' Act.

**New Sec. 50.** (Page 38) Other than the reference to cereal malt beverage retailer, rather than the term retailer, this section is substantially the same as K.S.A. 41-2707.

**New Sec. 51.** (Page 38) Other than the new terminology of cereal malt beverage retailer rather than retailer and omission of subsection (b) of K.S.A. 2004 Supp. 41-2708, this section is substantially the same as the current statute.

**New Sec. 52.** (Page 39) The enforcement of the Cereal Malt Beverage Retailers' Act by local authorities is provided by this section. It is comparable to K.S.A. 41-2709.

**New Sec. 53.** (Page 39) This is the last section of the Cereal Malt Beverage Retailers' Act. Except for the change in terminology from retailer to cereal malt beverage retailer and the elimination of subsection (g) of K.S.A. 41-2722, the new section is substantially the same as the existing statute.

**New Sec. 56.** (Page 42) The provisions of this section apply to cities and counties in which alcoholic liquor may not be sold and in which cereal malt beverage containing not more than 3.2% alcohol by weight is the only alcoholic beverage that can be sold. This section authorizes the governing body of any such city to adopt a resolution providing that, for the purposes of K.S.A. 41-2701 et seq., the definition of cereal malt beverage shall be changed so as to increase the alcoholic content from 3.2% to 5% by weight. The section provides for a protest petition and, if the petition is sufficient, an election to determine whether such resolution shall become effective. With respect to any such county, the board of county commissioners is authorized to adopt the same resolution.

**New Sec. 57.** (Page 43) Because of the difference in the definitions of cereal malt beverage in the Cereal Malt Beverage Retailers' Act and in K.S.A. 79-4101, the sales of cereal malt beverage under the Cereal Malt Beverage Retailers'



Act are exempted from the liquor enforcement tax provided by K.S.A. 79-4101, et seq. However, this new section imposes essentially the same tax on sales of cereal malt beverage to consumers and on sales of cereal malt beverage by distributors to clubs, drinking establishments, caterers and temporary permit holders, pursuant to the Cereal Malt Beverage Retailers' Act.

**New Sec. 58.** (Page 43) Because of the definitional differences between cereal malt beverage in the Cereal Malt Beverage Retailers' Act and in K.S.A. 79-41a02, the sales of cereal malt beverage by the drink under the Cereal Malt Beverage Retailers' Act are exempt from the Liquor Drink Tax provided by K.S.A. 79-41a01 et seq. However, New Section 58 imposes essentially the same tax on sales of cereal malt beverage for consumption on the premises under the Cereal Malt Beverage Retailers' Act.

**New Sec. 59.** (Page 44) This section makes all retail sales of cereal malt beverage under the Cereal Malt Beverage Retailers' Act subject to state and local sales taxes.

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*Appendix A*  
**Comparison of Strong Beer and Cereal Malt Beverage by Alcohol Content**

**RESULTS OF EXAMINATION**  
by K.B.I. LAB

	<b>% ETHANOL (Alcohol) BY WEIGHT</b>
1 - One 12 oz. can Bud Light (strong)	3.5
2 - One 12 oz. can Bud Light (3.2)	2.8
3 - One 12 oz. can Busch (strong)	3.9
4 - One 12 oz. can Busch (3.2)	3.2
5 - One 12 oz. can Budweiser (strong)	3.9
6 - One 12 oz. can Budweiser (3.2)	3.1
7 - One 12 oz. can Coors (strong)	3.8
8 - One 12 oz. can Coors (3.2)	3.2
9 - One 12 oz. bottle Miller (strong)	3.8
10 - One 12 oz. bottle Miller (3.2)	3.1
11 - One 12 oz. bottle Michelob (strong)	4.1
12 - One 12 oz. bottle Michelob (3.2)	3.2
13 - One 12 oz. can Old Milwaukee (strong)	3.9
14 - One 12 oz. bottle Wiedemann (strong)	3.7
15 - One 16 oz. can Colt 45 (strong)	4.1
16 - One 12 oz. bottle Corona (Mexican, strong)	3.6
17 - One 7 oz. bottle Little King (3.2)	3.2

K.S.A. 41-102 (C) defines "beer" when its meaning is not enlarged, modified, or limited by other words, means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

K.S.A. 41-2701 (a) defines "Cereal Malt Beverage" as any fermented but undistilled liquor brewed or made from malt or a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight.

10-15

## ALCOHOL CONTENT - SELECTED BEERS

PRODUCT	ALCOHOL %	BY WEIGHT	ADDITIONAL
	CMB	STRONG	ALCOHOL PER 12 OZ. CAN (STRONG VS. CMB)
BUDWEISER	<u>3.22</u>	<u>3.96</u>	<u>0.089 OZ.</u>
COORS	<u>3.15</u>	<u>3.56</u>	<u>0.049 OZ.</u>
MILLER	<u>3.01</u>	<u>3.6</u>	<u>0.071 OZ.</u>
BUD LIGHT	<u>3.13</u>	<u>3.33</u>	<u>0.024 OZ.</u>
COORS LIGHT	<u>3.14</u>	<u>3.29</u>	<u>0.018 OZ.</u>
MILLER LITE	<u>3.05</u>	<u>3.22</u>	<u>0.020 OZ.</u>
COLT 45 MALT LIQUOR	<u>N/A</u>	<u>4.58</u>	<u>N/A</u>
KING COBRA MALT LIQUOR	<u>N/A</u>	<u>4.81</u>	<u>N/A</u>
SCHLITZ MALT LIQUOR	<u>N/A</u>	<u>4.87</u>	<u>N/A</u>
CORONA EXTRA BEER	<u>N/A</u>	<u>3.58</u>	<u>N/A</u>
FOSTERS LAGER	<u>N/A</u>	<u>4.22</u>	<u>N/A</u>
HEINEKEN LAGER	<u>2.97</u>	<u>4.09</u>	<u>0.134 OZ.</u>
MOLSON CANADIAN BEER	<u>N/A</u>	<u>3.87</u>	<u>N/A</u>

ANALYSIS ACCURACY  $\pm$  .05%

10-16



MEMO TO: Senate Federal and State Affairs Committee  
FROM: Terry Presta, Governmental Affairs Chairman, PMCA of Kansas  
DATE: March 22, 2005  
RE: Senate Bill 299

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

My name is Terry Presta, President of Presto Convenience Stores. I am also the governmental affairs chairman of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 300 independent petroleum marketers, gasoline retailers and convenience store owners throughout Kansas.

I appreciate the opportunity to appear before you today as a proponent of SB 299.

Many people have the impression that convenience store beer, better known as cereal malt beverage (CMB), is an inferior product to that of liquor store beer. The reason: CMB has less alcohol (3.2% by weight) content than the "strong" (5% by volume) liquor store beer. But actually the alcohol content in both CMB and strong beer is very close when the alcohol is measured in the same way. Attached to my testimony is a report from the Kansas Bureau of Investigation (KBI) that compares the percentage of alcohol content of both beers when measured by weight. The KBI tested a number of common beers performing 17 tests for alcohol content. I think you will agree that the results prove that when comparing CMB to strong beer, there is very little difference in alcohol content.

### **PASSAGE OF SB 299 WILL PUT PEOPLE OUT OF BUSINESS**

You may hear from the liquor industry that passage of SB 299 will put liquor retailers out of business because of the high percentage of beer sales in their stores. The coalition we represent has proposed this legislation to recapture some of the market that was lost when the drinking age changed from 18 to 21. We don't know how much of an impact there will be if this legislation is passed, but we do anticipate a shift in purchasing habits.

PMCA is well aware of the fear that liquor retailers may feel if this legislation passes. We only have to look at our own industry to see what may occur. For example, in convenience stores, gasoline sales account for 65% of gross sales annually. Tobacco accounts for 23% of gross sales annually. If you were to drive down Wanamaker Road today, you could purchase gasoline and tobacco at any number of locations. Gasoline can be purchased at grocery stores and discount retailers. Tobacco, on the other hand, can be purchased over the Internet, Indian Casino's and at stand alone smoke shops. Convenience retailers compete in a very difficult and highly competitive environment.

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

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both the 8% liquor enforcement tax and state sales tax on each sale. This allows the state, cities, counties and beer retailers to be equal when pricing their product...no one has an advantage.

In closing Mr. Chairman, when the federal government changed the drinking age from 18-21, the CMB laws should have changed as well. If you look at the reports from Kansas ABC there is a huge disparity between the number of CMB sales compared to the number of liquor store beer sales. The perception that CMB is inferior is quite evident when you see that liquor stores sell approximately 78% of all beer sold in Kansas. SB 299 provides the tool to bring parity back to our industry.

We urge your support of SB 299.



11-3

Kansas Department of Revenue  
Office of Policy and Research  
Liquor Tax Receipts (Net of Refunds)  
Fiscal Year 2004

	Liquor Excise	Liquor Enforcement	Total Gallonge	Gallonge Beer	Gallonge Wine	Gallonge Alcohol & Spirits	Cereal Malt Beverage
Jul-03	\$ 2,260,418.51	\$ 3,360,863.96	\$ 1,401,942.98	\$ 754,125.22	\$ 53,875.29	\$ 593,942.47	\$ 231,279.97
Aug-03	\$ 2,333,537.14	\$ 3,382,858.34	\$ 1,719,898.71	\$ 748,556.38	\$ 123,971.73	\$ 847,370.60	\$ 241,510.44
Sep-03	\$ 2,349,958.72	\$ 3,475,913.79	\$ 1,231,731.33	\$ 679,875.78	\$ 47,628.33	\$ 504,227.22	\$ 198,570.99
Oct-03	\$ 2,392,293.83	\$ 3,275,232.74	\$ 1,349,678.30	\$ 720,530.48	\$ 63,117.72	\$ 566,030.10	\$ 199,009.01
Nov-03	\$ 1,968,211.77	\$ 2,462,432.83	\$ 1,238,695.83	\$ 601,392.19	\$ 54,292.07	\$ 583,011.57	\$ 151,622.76
Dec-03	\$ 2,927,346.07	\$ 4,146,553.07	\$ 1,841,914.29	\$ 647,933.62	\$ 152,046.62	\$ 1,041,934.05	\$ 139,481.75
Jan-04	\$ 2,476,150.03	\$ 3,844,785.30	\$ 1,178,945.01	\$ 603,294.54	\$ 68,090.65	\$ 507,559.82	\$ 167,222.13
Feb-04	\$ 2,058,195.48	\$ 2,873,220.51	\$ 1,085,810.98	\$ 613,199.16	\$ 49,661.37	\$ 422,950.45	\$ 149,945.97
Mar-04	\$ 2,662,304.74	\$ 3,394,340.02	\$ 1,203,914.23	\$ 516,512.44	\$ 69,695.67	\$ 617,706.12	\$ 145,259.93
Apr-04	\$ 2,359,294.00	\$ 3,183,631.04	\$ 1,387,561.39	\$ 667,397.85	\$ 73,932.87	\$ 646,230.67	\$ 167,229.32
May-04	\$ 2,369,165.36	\$ 2,896,509.25	\$ 1,514,066.21	\$ 709,009.66	\$ 94,535.53	\$ 710,521.02	\$ 179,966.78
Jun-04	\$ 2,457,134.33	\$ 3,960,125.01	\$ 1,460,633.09	\$ 712,737.30	\$ 73,541.32	\$ 674,354.47	\$ 193,732.87
FY 2004	\$ 28,614,009.98	\$ 40,256,465.86	\$ 16,614,792.35	<u>\$ 7,974,564.62</u>	\$ 924,389.17	\$ 7,715,838.56	<u>\$ 2,164,831.92</u>

21%



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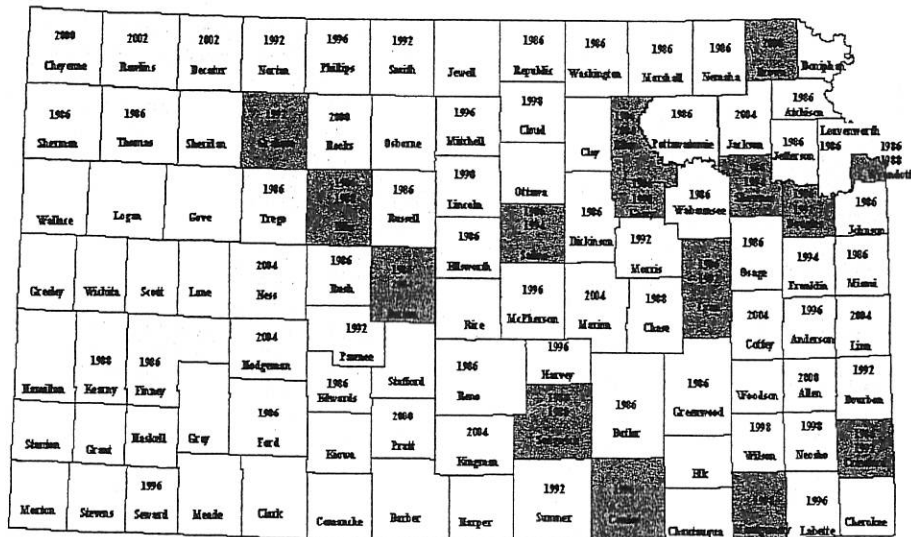
## Alcoholic Beverage Control Map of Wet and Dry Counties

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Kansas Liquor-by-the-Drink, November 2004. Click on the map for a larger image.

No liquor-by-the-drink    
  Liquor-by-the-drink allowed with 30% food requirement    
  Liquor-by-the-drink allowed with no food requirement



This map identifies the status of liquor by the drink in all Kansas counties. It includes the year the county voted for liquor-by-the-drink, and where applicable, the year the county removed the 30% food requirement.

This map identifies the status of liquor by the drink in all Kansas counties. It includes the year the county voted for liquor-by-the-drink, and where applicable, the year the county removed the 30% food requirement.

- Dry counties - Counties with No Liquor by the Drink
- Wet Counties - Counties with Liquor by the Drink with 30% Food Requirement
- Wet Counties - Counties with Liquor by the Drink and No Food Requirement

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*Appendix A*  
**Comparison of Strong Beer and Cereal Malt Beverage by Alcohol Content**

**RESULTS OF EXAMINATION**  
**by K.B.I. LAB**

	<b>% ETHANOL (Alcohol) BY WEIGHT</b>
1 - One 12 oz. can Bud Light (strong)	3.5
2 - One 12 oz. can Bud Light (3.2)	2.8
3 - One 12 oz. can Busch (strong)	3.9
4 - One 12 oz. can Busch (3.2)	3.2
5 - One 12 oz. can Budweiser (strong)	3.9
6 - One 12 oz. can Budweiser (3.2)	3.1
7 - One 12 oz. can Coors (strong)	3.8
8 - One 12 oz. can Coors (3.2)	3.2
9 - One 12 oz. bottle Miller (strong)	3.8
10 - One 12 oz. bottle Miller (3.2)	3.1
11 - One 12 oz. bottle Michelob (strong)	4.1
12 - One 12 oz. bottle Michelob (3.2)	3.2
13 - One 12 oz. can Old Milwaukee (strong)	3.9
14 - One 12 oz. bottle Wiedemann (strong)	3.7
15 - One 16 oz. can Colt 45 (strong)	4.1
16 - One 12 oz. bottle Corona (Mexican, strong)	3.6
17 - One 7 oz. bottle Little King (3.2)	3.2

K.S.A. 41-102 (C) defines "beer" when its meaning is not enlarged, modified, or limited by other words, means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

K.S.A. 41-2701 (a) defines "Cereal Malt Beverage" as any fermented but undistilled liquor brewed or made from malt or a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight.

11-5



March 22, 2005

Mr. Chairman and members of the committee:

My name is Mike Thornbrugh; I am the manager of public and government affairs for the QuikTrip Corporation.

QuikTrip, is a privately owned company that currently owns and operates 57 stores in the state of Kansas, primarily in the greater Kansas City metropolitan area and Wichita,

I am here to today to ask for your support in Senate Bill 299.

The passage of Senate Bill 299, will eliminate the myth of the alcohol content between so called strong beer and cereal malt beverage, and end the monopoly the liquor store industry has enjoyed.

It will level the playing field, and create competition with ultimate beneficiary being the adult consumer, who will be given choices on where they choose to make their purchase instead on the current legislative mandate.

Quiktrip is well known for its and leadership and reputation as a responsible retailer, and we respectfully asked for your support in the passage of Senate Bill 299.

Mike Thornbrugh  
Manager of Public and Government Affairs

Senate Federal & State Affairs  
Committee

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# The Kansas Association of Beverage Retailers

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

Phone 785-266-396.  
Fax 785-234-9718  
kabr@amycampbell.com

*Martin Platt, President*

*Amy A. Campbell, Executive Director*

## TESTIMONY PRESENTED TO THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

Re: SB 299

March 22, 2005

By Amy A. Campbell, Executive Director

Mr. Chairman and members of the committee, my name is Amy Campbell and I appear before you as an opponent to this legislation on behalf of the Kansas Association of Beverage Retailers. For those of you who were not members of the Legislature in 2001 and 2002, this request to raise the alcohol content of cereal malt beverages was raised during that session. It was also rejected by the Legislature during the 1993-94 session. In 1989, the same idea was rejected by the Senate Federal and State Affairs Committee. Kansas business owners of retail liquor stores are disappointed, but not surprised, to be addressing the same issue again.

The same basic arguments are being made by both sides.

Mr. Chairman, I have attempted to compile the comments of many of our members as I know that time is precious. However, we believe it is important to appear and state our case as succinctly as possible so this committee would not, in any manner, underestimate the depth of the opposition to this legislation felt by retail liquor store owners.

This is not about only a six pack of beer. The products involved include malt based coolers, which look like wine coolers, fruit flavored malt beverages that mimic liquor based products, mini-kegs, and kegs. The proliferation of flavored malt based products on the market has exploded in the past ten years and this law would encourage further expansion. But this isn't really about the product at all.

National statistics indicate that cereal malt beverage is a small and insignificant portion of most grocery and convenience stores total sales. Testimony in 2002 indicated that CMB made up less than 5% of total sales for the average convenience store -- and that the percentage was not expected to increase with the passage of Strong Beer legislation. These products are often used as a loss leader or promotional item to sell other merchandise. The sale of liquor store beer in all existing cereal malt beverage outlets would only move those sales from Kansas liquor stores to a multitude of other businesses. Liquor store beer constitutes anywhere from 40% to 60% of most liquor store sales.

And yet, statistics indicate that more than 20% of the product sold in Kansas by beer wholesalers is cereal malt beverage. This product does have a consumer base in Kansas. To replace cereal malt beverage with stronger beer is to remove that product with less alcohol content from the market altogether. (In cities and counties which adopt this Act.)

- SB 299 creates a fourth level of taxation for beer by adding sales tax to the enforcement tax, drink tax, and gallonage tax already paid on the product.
- The bill does not bring the Cereal Malt Beverage Retailers under the regulation of the State - although it appears to put the product under the regulation of the State.
- SB 299 appears to create a new Act which is non-uniform in its application to counties. If so, counties could simply opt out of this Act to change the law.

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- The new Act (Cereal Malt Beverage Retailers Act) would permit cities and counties to choose whether to be regulated by the CMB Act or the new CMBR Act. If the CMBR Act is adopted by that local government, the city or county would now be regulated by a pieces of the Liquor Control Act and the CMBR Act. Other cities and counties would continue to be regulated by the current Liquor Control Act and the CMB Act. For instance, an agent would have to enforce the new section 41-102 and 41-104 from the CMBR Act and the old 41-101, 41-103 from the Liquor Control Act
- SB 299 makes policy changes to the law regarding wholesaler sales to temporary permit holders. What is the purpose of this change to be applied differently from city to city?

Single store ownership minimizes the commercial pressures placed on wholesalers for special deals or bending the rules. If large grocery chains control the beer market in Kansas, rather than the smaller percentage they have now, imagine the increased pricing pressures on the wholesalers who supply the product. This could become a case of "the tail wagging the dog".

If the Committee wishes to change how alcohol is sold in Kansas, KABR would respectfully request this Committee consider an amendment to SB 299 that would require all alcohol beverages and cereal malt beverages be sold by licensed retail liquor stores.

We can not emphasize enough the negative impact this legislation will have upon the retail liquor stores' business throughout the state. Many may have the harsh opinion the number of retailers lost is an immaterial factor. However, I would submit that this is extremely important, as this Legislature established the business practices and structure under which approximately 720 retail liquor store owners must now operate. Therefore, we assert you should feel a type of fiduciary duty towards these individuals to protect their business from unfair competitive advantages enjoyed by the cereal malt beverage retailers.

In summary, I would respectfully as this Committee keep two things in mind as you hear testimony today and reflect on the testimony previously received. Ask yourself, what is the public policy being advanced by this legislation? I submit there is none. In addition, ask whether you are giving an unfair competitive advantage to large corporate entities at the expense of small businesses and, if so, what public policy is being advanced. If our projections are correct, and retail liquor store businesses are crippled by this legislation, will the same proponents be back in three years or in five years to ask this Legislature to allow them to sell other alcoholic liquor products because the retail liquor stores are so few and far between they can not serve the Kansas consumer? I submit we are headed down a road of vertical integration of the liquor industry through ownership of large corporations should you continue to erode the public policies upon which the liquor laws are now based.

Last, but not least, Mr. Chairman, is the situation we place those 18-21 year old clerks who are treated as adults under the Kansas Criminal Code but as underage for purposes of purchasing alcohol. Please consider the importance of not increasing availability to those individuals.

Thank you, Mr. Chairman, and members of the Committee for your kind attention.

Jim Scott  
Scotty's Wine and Spirits  
1624 S. National  
Fort Scott, KS 66701

Testimony to oppose Senate Bill 299

Mr. Chairman and members of the Committee, my name is Jim Scott. I am past president of the KABR, Kansas Association of Beverage Retailers. I am a retailer in Fort Scott, but when I stand before you it is representing the State licensed retail liquor stores from across Kansas. The directors on our board are all self employed business owners operating liquor stores in Kansas. They are dedicated individuals who work hard to support the cause of Kansas liquor retailers and take seriously our partnership with the State of Kansas in responsibly selling a highly regulated product. None receive any income or expenses for their volunteer work with the association, although their attendance requires travel from the far corners of the state. Many of them and other store owners have left their stores to be here today due to the seriousness of the proposal before you.

Regardless of where we are located, we have one thing in common – we're carrying on 54 years of Kansas history and tradition. Fifty-four years ago, legislators came together in this building and repealed prohibition. This was no small matter. Kansas began prohibition in 1881. At that time, there were 90 breweries in Kansas. Only 12 states had more breweries and their population was considerably higher than Kansas. What became known as the "noble experiment" began in Kansas 38 years before the rest of the United States. It ended in Kansas 16 years after the repeal of prohibition in America. Can you imagine what it took to put laws together governing an industry that was banned for 68 years? They were tough. They were high minded.

To some, those laws are a famous part of history. But to 720 state licensees, they are much more – a part of our daily lives. Those laws exist for a very serious reason, and that reason is the safe and regulated distribution of a legal, but necessarily government controlled product.

In past testimony, the Department of Revenue and Division of ABC has stated that amending the law to define cereal malt beverage as a malt product of up to 5.0% alcohol content **would shift up to 50% of liquor store package sales to grocery or convenience stores.**

The protection of the three tier distribution system for alcoholic products in the State of Kansas is important and necessary. To cripple any level of that system is to jeopardize the State's control of licensing and distribution. Why is that control important? Because of the lessons we learned during prohibition. It is necessary to control the marketing and sale of the product. It is necessary to keep the criminal element out of the business. It is necessary to assure the collection of taxes on the product. It is necessary to control the sale and keep the product away from children. We have faced facing court challenges to residency licensing requirements and State control of liquor distribution. This is one more step in a negative direction.

#### **ACCOUNTABILITY**

The Division of ABC visits our stores regularly. Agents conduct stings, assist with retailer education, and monitor premises for second party sales. Compliance agents conduct business and

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excise tax audits, as well as reviewing license compliance issues. My records must be ready and available to any agent that enters my store. **This is not the case in the convenience stores!**

Each and every liquor retailer is held accountable for every sale made from his/her store. We do not hide behind a corporate cloak. Liquor store retailers in Kansas are self employed, living in the community where we do business, paying local and state taxes, employing local adults and spending our profits within the community. We are not trying to put convenience stores and grocery stores out of business. But if it is time to evaluate where the product should be sold, then we would recommend placing all alcohol products in the regulated atmosphere of licensed retail liquor stores.

We do not feel that any place of business that sells alcohol products should employ 18 year olds to sell them, or 16 year olds to handle and stock them. Any alcohol product needs to be sold by responsible businesses held accountable to the State. If I sell to a minor, my store will be fined and closed for business for one or more days. A convenience store will only close the beer cooler for a day or more – is that accountability?

#### **BAT**

Our Association sponsors an education program called Beverage Alcohol Training. Members attend at no charge. This ABC certified program emphasizes responsible sales of our products. Hundreds of owners and employees completed this course and we have stepped up our seminar schedule for 2005 across the state. The detection and handling of intoxicated persons or minors is stressed repeatedly. How to deal with the situation, whether it be management or police intervention. KABR supplies ID checking guides to its members, as well as rules and regs from ABC (which we must pay for).

#### **MINORS**

The attempted purchase, by people under the age of 21, presents a large problem to any retail outlet. Minors have become so brave as to print their own driver's licenses or order them from the internet. They use cut away pictures or just apply for duplicates, with someone else's birth certificate, to acquire their picture on it. These are situations we deal with day in and day out. Our conventions feature anti-underage programs and free posters and materials from the Century Council. We cooperate with the Kansas Department of Transportation in their underage drinking prevention conferences and programs. What we have learned from the studies conducted by these groups is that underage drinkers do not get their alcohol from liquor stores. They get it from friends who have access, or from adults who are willing to purchase it for them.

I am amazed as a sole proprietor of a retail store, that the big chains who sell hundreds of items feel that they must take 50% of my beer business to show a profit ... when beer is such a small percentage of their total profit. The only winners in this picture are the out of state corporations, grocery stores, and convenience chains. The Kansas liquor industry would be forced into an economic situation that would be chaotic at best and most likely irreversible.

There is no way to "fix" this bill to protect the public interest in the sale of alcohol products ... or to level the playing field. No one should be able to sell any of these products unless they operate under the exact same statutes, rules and regulations we do.

14-2



Kansas Wine & Spirits  
Wholesalers Association

To: Senate Committee on Federal & State Affairs  
From: R.E. "Tuck" Duncan  
RE: SB 299

**The KWSWA opposes SB299.** [This testimony is based upon presentations by the author to the Kansas Legislature in 1993 and again in 2002 as revised for 2005 and this most recent incarnation of the proposal].

**INTRODUCTION**

Proposals to create a so-called "one-strength beer" change a distinction that has existed since May 1, 1937, twelve years before the repeal of prohibition on November 3, 1948, implemented by the 1949 Legislature. 3.2% Cereal Malt Beverage was re-legalized by Congress on April 7, 1933, under the Cullen-Harrison Act which declared it a non-intoxicating beverage and provided for its sale in an states where is was not prohibited by law. This enactment by Congress preceded by 7 months the final ratification of the federal repeal amendment, the 21 st Amendment to the United States Constitution, on November 7, 1933. Consequently, 3.2% cereal malt beverages historically have been understood by the electorate to be something other than an alcoholic liquor.

Proposals to change the distinction, reclassify same or eliminate CMB deny consumers the lighter alcohol content product. In 1985 the Kansas Legislature raised the drinking and debated at that time the question of redefining CMB. The Wichita Eagle in its January 24, 1985 editorial stated:

"...Kansans between 18 & 20 years of age by no means constitute the only market for 3.2 beer. Many an older Kansan prefers 3.2 beer because it has lighter alcohol content. To decide now whether strong beer should be redefined a cereal malt beverage - to get it out from under the constitution, and to get it into grocery and convenience stores, and restaurants and taverns - is potentially to deny this constituency a light-alcohol alternative..."

**WHY WE HAVE THE LAWS WE HAVE**

We have the laws we have because Kansas over the last half century has declared its public policy to be one of strictly regulating the beverage alcohol market in order to (1) restrict access by underage consumers (2) to collect needed state tax revenues and (3) to control vertical integration in the industry (what we refer to as the "three tier system"). Proposals to eliminate or redefine cereal malt beverage represent a significant structural alteration. As one former Secretary of Revenue used to state: the beverage alcohol industry is akin to a spider web and when you touch one gossamer thread the rest of the system experiences turbulence as the vibration waves across all the delicate threads spun throughout the years into an intricate pattern. Kansas has a fine reputation nationally in the beverage alcohol business. That is not an accident. It is

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due to the regulatory environment created by the legislature and the diligence of the ABC.

## THE CURRENT SYSTEM SERVES KANSAS WELL

The current system is not confusing and has been working without disruption for 56 years. Currently criteria of K.S.A. 41-311 which apply to retail liquor stores do not apply to CMB retailers. For example, a liquor retailer may not have any felony convictions whereas a CMB retailer may not have been convicted of a felony within two years preceding the date of application. A liquor retailer must be 21 years old. A liquor retailer can't employ a person under 21. A CMB retailer can employ persons 18 and older to dispense or sell cereal malt beverage. If a liquor retailer's license is suspended the entire store is closed whereas the CMB retailer may still operate their non-CMB business if their license is suspended, for example, due to selling to a minor.

In the past some of the proposals to redefine CMB or eliminate same would have imposed on communities which have either not approved a retail liquor store, or rejected one, a higher strength product. Retail liquor stores can only be located in cities after an affirmative vote of the electorate of that municipality.

## IMPACT ON RETAIL LIQUOR STORES

The last authoritative study on the percent of sales by retail liquor stores conducted by the Kansas Department of Revenue in 1982 stated: "Beer, constituting 45% of the total volume of liquor stores, cannot be ignored in analyzing the total profit picture... it has an average mark-up of 19% and ranks second only to spirits in contribution to profit... *it is the largest single category in volume;*" (emphasis added)

In implementing the recommendations of the December 1982 Sunset Audit Report on the Alcoholic Beverage Control and the Governor's Liquor Law Review Commission, December 1986, the Legislature by codifying the elimination of price controls and affirmation, and by allowing certain advertising and trade practices, including sales of strong beer directly from beer wholesalers to clubs/drinking establishments instead of through retail liquor stores, has created market forces which have brought the number of Kansas retail liquor stores in line with the average in "license states." (Sunset Audit, page 38).



The Daicoff study of the Kansas Retail Liquor Industry commissioned by the Department of Revenue, issued December 1985, found that within Kansas there are a small number of large stores and large number of small stores with yearly profits of 4.1% of sales; and which are less profitable than retail liquor stores nationally. Retailers located in interior counties are the least profitable. At the time of the study (based on tax year 1984) there were 1,078 retail liquor stores in Kansas as compared to the 700 plus stores operating IN 2004. (Source: ABC)

## PROTECTIONISM MYTH

The state's public policy has been, and continues to be, to maintain an orderly market. If there was any protectionism for the industry it was a by-product of the controls implemented pursuant to constitutional mandates. Most of the so-called "protections" have been eliminated, while federal and state taxes have increased. There is no more price control, no affirmation, there is advertising, and increased competition among retailers (for consumer business, club/drinking establishment business and amongst brands). If there was still significant protection we would not have seen the reduction of 400 (38%) retail liquor stores in the past two decades.

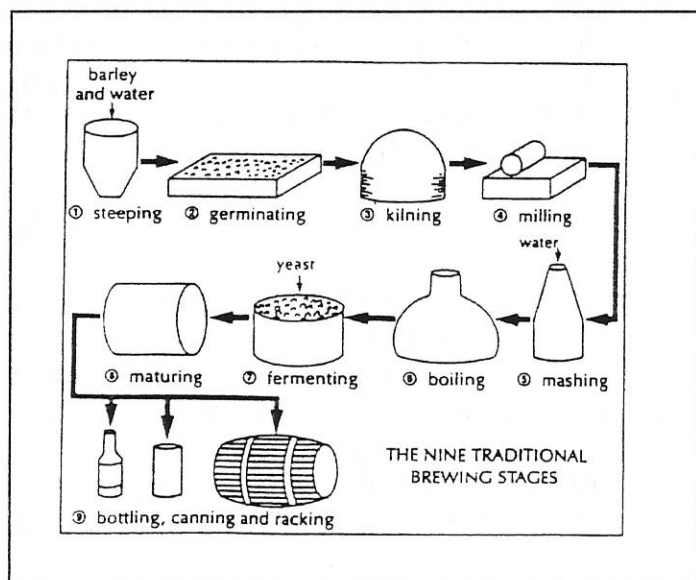
## SOCIAL RESPONSIBILITY

The beverage alcohol industry is concerned that if the legislature were to eliminate or redefine cereal malt beverage it would increase the availability of a stronger (no matter how slight) alcohol content product and that there is an increased potential for abuse. When abuse occurs it has negative effects on society and the industry. Long before the term "social responsibility" became fashionable in the lexicons of academia our industry has urged moderation, restraint and temperate use of its products as enjoined by President Roosevelt at the time of federal repeal. The beverage alcohol industry does extensive training and education to dissuade underage purchases. There can be no better assurance against sales to minors than a locally operated liquor retailer who knows the community and cares about its families. There is a less restrictive environment in the sale of CMB at convenience stores and grocery stores. Young cashiers do feel peer pressure to make the sale.

## ALCOHOL PRODUCTION AND CONTENT

People do not usually drink pure alcohol but a beverage containing alcohol, specifically ethyl alcohol. Alcoholic beverages include wines, beers, and spirits. Wines are fermented from the sugars in fruits or berries (most commonly grapes), from various plants or their saps and from honey. Beers are fermented from grains after the starch in them is first converted to sugar. Spirits are distilled. While wines and beers are usually a final product, spirits are most often considered a "concentrate."

The main ingredient that characterizes alcoholic beverages and the chief contributor of the effects sought by people who drink them is ethyl alcohol (hereafter referred to simply as alcohol).



In beers the alcohol content varies from about 2 percent in some mild

Scandinavian varieties to about 8 percent in especially strong types; most U.S. beers contain between 4 and 5 percent. Natural or unfortified wines (the so-called dry wines, such as burgundy, chianti, and sauterne) usually contain between 8 and 12 percent alcohol, although most U.S. varieties have a somewhat higher content, ranging from 12 to 14 percent. Vermouths and aperitif wines usually contain 18 percent, and dessert, sweet, and cocktail wines (such as sherry, port, and muscatel) contain 20 to 21 percent. These percentages are by volume; i.e., the proportion of alcohol in the fluid volume of an average American beer is 4.5 percent. This is the product that would be sold everywhere if the legislature redefines or eliminates cereal malt beverages. Since fermentation yields only 14 percent alcohol, the extra strength of fortified wines comes from the addition of alcohol or brandy. Spirits, including vodka, gin, and whiskeys (rye, Scotch, bourbon), rum (distilled from sugarcane or molasses), brandies (distilled from fruit wines), and liqueurs (flavored syrupy spirits) usually contain between 40 and 50 percent alcohol (80 to 90 American proof). Cordials, made of flavored spirits, such as anisette, blackberry, curacao, maraschino, and sloe gin usually contain between 25 and 40 percent.

Proponents of redefining or eliminating cereal malt beverages acknowledge there is a difference in the products, they suggest it's not much. The difference is, nonetheless, more alcohol in one's system. It is ironic that as this Legislature has reduced the threshold by which to determine impaired driving, it might at the same time consider increasing the alcohol levels in cereal malt beverages.



**OTHER CONSIDERATIONS** "...a need has been created [by the liquor-by-the-drink constitutional amendment] for cereal malt beverage for on-premise consumption in those establishments in liquor by the drink counties who do not choose to become food service establishments. And in those counties where liquor by the drink is not adopted. In conclusion, when

*the constitutional amendment's requirements are taken into consideration it would seem that as far as on-premise sales are concerned the present dual system of distribution will have to be maintained.*" Liquor Law Review Commission, 1986 How SB299 impacts this concern is unknown as this new Cereal Malt Beverage Retailer's Act is extremely complicated and its approach untested.

## SUMMARY

It would be inappropriate for the Legislature to reestablish market share after 56 years wherein the current stakeholders have relied upon the existing system. Truly it would be poor public policy particularly if the only rationale for redefining or eliminating cereal malt beverages is to alter market share. Yes, there are historical accidents that have created the system we have in place today, a history that sets parameters; but, it is a history that needs to be respected to avoid economic dislocation the Kansas' retail liquor dealers and to maintain an orderly market as described heretofore.

*Thank you for your attention to and consideration of these matters.*

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KWSWA - 212 SW 8<sup>th</sup> Avenue, Suite 202, Topeka, Kansas 66603

Testimony on Senate Bill No. 299

Concerning alcoholic beverages;  
Enacting the cereal malt beverage retailers' act

To  
The Senate Federal and State Affairs Committee  
By  
Tom Groneman, Director  
Alcoholic Beverage Control Division

March 22, 2005

---

Mr. Chairman, members of the committee, thank you for allowing me to appear before you today regarding Senate Bill 299.

This bill would create a new cereal malt beverage **retailers'** act. The new act would supercede various provisions of the liquor control act and cereal malt beverage act regarding both the on-premise and off-premise sale of cereal malt beverages in those cities and counties where the new act would be adopted.

The act establishes an additional class of licensee, the cereal malt beverage retailer. The bill provides that cereal malt beverage retailer licensees in cities or counties where the cereal malt beverage retailers' act is approved will collect sales tax and enforcement tax for off-premise sales and sales tax and liquor drink tax for on-premise sales. This will create a potential for an additional 3,000+ liquor tax accounts. Among other things, a system would have to be put in place to make sure the cereal malt beverage retailer licensee obtained the required bond to cover their liquor tax liability before the city or county would issue a license.

If the bill passes, the division asks that the effective date be extended until January 1, 2006, to permit the department to make the necessary changes to existing systems and procedures and to work with local governments to put in place the needed business processes.

I would be glad to answer any questions.

Senate Federal & State Affairs  
Committee  
3-22-05  
Attachment 16

STATE OF KANSAS



TOPEKA  
SENATE CHAMBER

PAT APPLE  
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COUNTIES  
ANDERSON, FRANKLIN,  
LINN & MIAMI  
COMMITTEE ASSIGNMENTS  
VICE CHAIR: UTILITIES  
MEMBER: ASSESSMENT AND TAXATION  
EDUCATION  
JOINT COMMITTEE ON STATE  
BUILDING CONSTRUCTION  
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March 22, 2005

Senate Committee on Federal and State Affairs  
Senator Pete Brungardt-Chairman  
Senator Roger Reitz-Vice Chairman  
Senator James Barnett  
Senator Karin Brownlee  
Senator Kay O'Connor  
Senator Ralph Ostmeyer  
Senator John Vratil

Re: House Bill 2309

Dear Chairman Brungardt and Committee Members:

Current law allows counties with population in excess of 100,000 people to establish a special court docket for code enforcement.

House Bill 2309 will extend the code court option to Miami, Franklin and Douglas counties. A copy of House Bill 2309 as amended and the supplemental note, prior to amendment, are enclosed.

In summary, House Bill 2309 will give an additional three counties the option of code enforcement that four counties in our state currently have. Filing suit in District Court is the current method of code enforcement in Miami, Franklin and Douglas counties. House Bill 2309 will provide an interim step and will allow citizens to appeal the code court ruling to District Court.

The pressures of growth are evident in Miami, Franklin and Douglas counties and House Bill 2309 will provide a means to address many of their issues in a timely and more efficient manner.

Please let me know if you have any concerns, this is an important bill to our locally elected officials

Sincerely,

Pat Apple  
Kansas Senate  
District 12

PA:ab

cc: Senator Steve Morris  
Senator Derek Schmidt

Senate Federal & State Affairs  
Committee  
3-22-05  
Attachment 17



17-2

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2309

By Representative Sloan

2-4

12 AN ACT concerning counties; relating to enforcement of county codes  
 13 ~~in counties with populations in excess of 100,000 and resolutions;~~  
 14 amending K.S.A. 2004 Supp. 19-101d and repealing the existing  
 15 section.  
 16

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

18 Section 1. K.S.A. 2004 Supp. 19-101d is hereby amended to read as  
 19 follows: 19-101d. (a) (1) The board of county commissioners of any county  
 20 shall have the power to enforce all resolutions passed pursuant to county  
 21 home rule powers, as designated by K.S.A. 19-101c, and amendments  
 22 thereto. ~~Such~~ Resolutions may be enforced by enjoining violations thereof  
 23 ~~or, by prescribing penalties for violations of such resolutions, either by~~  
 24 ~~fine, or by confinement in the county jail; or by both such fine and con-~~  
 25 ~~finement. Unless otherwise provided by the resolution that defines and~~  
 26 ~~makes punishable the violation of such resolution, the penalty imposed~~  
 27 ~~shall be in accordance with the penalties established by law for conviction~~  
 28 ~~of a class C misdemeanor. In no event shall the penalty imposed for the~~  
 29 ~~violation of a resolution exceed the penalties established by law for con-~~  
 30 ~~viction of a class B misdemeanor.~~

31 (2) Prosecution for any ~~such~~ violation shall be commenced in the  
 32 district court in the name of the county and, except as provided in sub-  
 33 section (b), shall be conducted in the manner provided by law for the  
 34 prosecution of misdemeanor violations of state laws. Writs and process  
 35 necessary for the prosecution of such violations shall be in the form pre-  
 36 scribed by the judge or judges of the courts vested with jurisdiction of  
 37 such violations by this act, and shall be substantially in the form of writs  
 38 and process issued for the prosecution of misdemeanor violations of state  
 39 laws. Each county shall provide all necessary supplies, forms and records  
 40 at its own expense.

41 (b) (1) In addition to all other procedures authorized for the enforce-  
 42 ment of county codes and resolutions, ~~in any county with a population in~~  
 43 ~~excess of 150,000 100,000, [in Douglas, Franklin, Johnson, Miami,~~

1 **Sedgwick, Shawnee and Wyandotte counties,**] the prosecution for  
 2 violation of codes and resolutions adopted by the board of county com-  
 3 missioners may be commenced in the district court in the name of the  
 4 county and may be conducted, except as otherwise provided in this sec-  
 5 tion, in the manner provided for and in accordance with the provisions  
 6 of the code for the enforcement of county codes and resolutions.

7 (2) For the purposes of aiding in the enforcement of county codes  
 8 and resolutions, the board of county commissioners may employ or ap-  
 9 point code enforcement officers for the county who shall have power to  
 10 sign, issue and execute notices to appear and uniform citations or uniform  
 11 complaints and notices to appear, as provided in the appendix of forms  
 12 of the code contained in this act to enforce violations of county codes and  
 13 resolutions, but shall have no power to issue warrants or make arrests.  
 14 All warrants shall be issued and arrests made by law enforcement officers  
 15 pursuant to and in the manner provided in chapter 21 of the Kansas  
 16 Statutes Annotated.

17 (3) The board of county commissioners may employ or appoint at-  
 18 torneys for the purpose of prosecuting actions for the enforcement of  
 19 county codes and resolutions, ~~and such~~. The attorneys shall have the du-  
 20 ties, powers and authorities provided by the board ~~as that are necessary~~  
 21 to prosecute actions under the code.

22 (4) All costs for the enforcement and prosecution of violations of  
 23 county codes and resolutions, except for compensation and expenses of  
 24 the district court judge, shall be paid from the revenues of the county  
 25 ~~and~~. The board of county commissioners may establish a special law  
 26 enforcement fund for the purpose of paying for the costs of code enforce-  
 27 ment within the county. In addition, the board of county commissioners  
 28 is hereby authorized to levy a tax of not to exceed ½ mill upon all taxable  
 29 tangible property within ~~such the~~ county to pay the costs of code  
 30 enforcement.

31 (c) Notwithstanding the provisions of subsection (b), any action com-  
 32 menced in the district court for the enforcement of county codes and  
 33 resolutions, ~~wherein in which~~ a person may be subject to detention or  
 34 arrest or ~~wherein in which~~ an accused person, if found guilty, would or  
 35 might be deprived of ~~such the~~ person's liberty, shall be conducted in the  
 36 manner provided by law for the prosecution of misdemeanor violations  
 37 of state laws under the Kansas code of criminal procedure and not under  
 38 the code for the enforcement of county codes and resolutions.

39 Sec. 2. K.S.A. 2004 Supp. 19-101d is hereby repealed.

40 Sec. 3. This act shall take effect and be in force from and after its  
 41 publication in the statute book.

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2309**

As Amended by House Committee on  
Federal and State Affairs

**Brief**

HB 2309 would extend to all counties the ability to opt for the enforcement of county codes and resolutions in a special court docket within the district court. Currently, only counties with a population in excess of 150,000 may use such procedures and prosecute code violations.

**Background**

Representatives from Douglas County, Franklin County, Miami County, and the Kansas Association of Counties testified in support of the bill. There was no testimony in opposition of the bill.

The bill, as introduced, would allow cities with a population of more than 100,000 to establish a special court docket for code enforcement. The Committee amended the bill to strike the limitation to cities with a population of more than 100,000. With this provision stricken, the bill would allow all counties to establish a special court docket for code enforcement.

The Code for the Enforcement of County Codes and Resolutions has been utilized in the district courts in Johnson, Sedgwick, and Wyandotte counties. The Code applies to cases involving violations of county codes and resolutions, but does not apply to traffic offenses, nor in situations where violation of a county code provision could result in arrest, detention, or deprivation of a person's liberty.

The law authorizes counties to appoint code enforcement officers who have the power to issue citations and notices to appear but who do

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

not have arrest powers. Costs (except for district judge salaries), including costs of judges pro tem appointed by the administrative district judge, are borne by the county. Counties are authorized to levy not to exceed one-half mill for this purpose. Prosecution is by the county counselor or other attorney as designated by the board of county commissioners. All fines and penalties collected under the code are paid over for deposit in the county general fund or in the special law enforcement fund.

Actual procedures under the new code parallel for the most part the Kansas Code of Procedure for Municipal Courts. Appeals shall be tried *de novo* before a district judge other than a judge from which the appeal is taken. See KSA 19-4701 *et seq.*

The fiscal note states the passage of the bill is not expected to have a fiscal effect on the budget of any state agency. The fiscal note was prepared for the original version of the bill.

17-3