

Approved: 2-21-06

Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 31, 2006 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
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Senator Betts
Whitney Damron
Bob Alderson, Casey's General Store
Tuck Duncan, KS Wine & Spirits Wholesalers Association
Amy Campbell, KS Association of Beverage Retailers
Larry Knackstedt
Garry Winget, Kansans for Addiction Prevention
Senator Steineger
Art Hall, Kansas University
Carissa Culling McKenzie

Others attending:

See attached list.

Senator Betts, appeared before the committee to request the introduction of legislation establishing the Racial Profiling Commission.

Senator Gilstrap made the motion that this request should be introduced as a committee bill. Senator Wilson seconded the motion. The motion carried

Whitney Damron, on behalf of the City of Topeka, appeared before the committee to request the introduction of legislation creating the Topeka/Shawnee County Riverfront Authority. (Attachment 1)

Senator Hensley made the motion that this request should be introduced as a committee bill. Senator Wilson seconded the motion. The motion carried.

SB 299 – Local option to increase maximum permitted alcohol content of cereal malt beverage

Chairman Brungardt opened the hearing on **SB 299**.

Bob Alderson, Casey's General Store, appeared as a proponent on the bill. (Attachment 2) A substitute bill was provided; the real issue involved with this bill is not a liquor issue, but an economic issue. The persistent misconception by consumers that Cereal Malt Beverage (CMB) is of less quality beer, have all combined to produce a dramatic reduction in sales of CMB. This proposed amendment would allow convenience stores to compete on an equal basis with the retail liquor dealers. Other changes include:

- Local option provision
- Only if city or county exercises the local option provision will grocery stores and convenience stores in such city or county be permitted to sell cereal malt beverage containing not more than 5% alcohol by weight

Tuck Duncan, Kansas Wine and spirits Wholesalers Association, spoke in opposition to the bill. (Attachment 3) Under the proposed amendments:

- the local option provision will apply to package sales only
- create another category of product call CMB/beer
- preserve the status quo for tax rates such that all sales of CMB/beer in liquor stores will be subject to an 8% enforcement tax and all sales of CMB/beer by convenience stores and grocery stores will be subject only to state and local sales taxes

- to conform to last year's Sunday sales law

The Association opposes the amendments.

Neal Whitaker, Kansas Beer Wholesalers Association, appeared in opposition to the bill. (Attachment 4) Under the proposed amendments, beer distributors will be required to keep their CMB (3.2%) and regular beer inventories separate and required to maintain four separate storage units for each kind and brands that distributors sell: maintenance of four separate inventories in four separate areas of a warehouse is extremely labor intensive. This legislation appears to be another attempt to deregulate the liquor industry.

Amy Campbell, Kansas Association of Beverage Retailers, spoke in opposition to the bill. (Attachment 5) This bill is written to achieve allowing the sale of strong beer by cereal malt beverage retailers.

Larry Knackstedt, spoke in opposition to the bill. (Attachment 6) Mr. Knackstedt felt that the bill takes primary business away from state licensed liquor store owners and gives it to large corporations.

Garry Winget, Kansas for Addiction Prevention appeared in opposition to the bill. (Attachment 7) The KAP takes the position that it is bad policy to sell alcohol for individuals to consume at the same store that sells gasoline and ethanol to propel automobiles and be able to purchase alcohol and get into their automobile and begin to drink.

Chairman Brungardt closed the hearing on **SB 299**.

SB 427 – Consolidation of Johnson and Wyandotte counties and political and taxing subdivisions

Chairman Brungardt opened the hearing on **SB 427**.

Senator Steineger, appeared in support of the bill. (Attachment 8) This bill is for a nine member Consolidation Study Commission appointed by the Governor to examine the costs and benefits of consolidating Johnson and Wyandotte Counties.

Art Hall, Center for Applied Economics, KU School of Business, provided statistical information on the bill. (Attachment 9)

Chairman Brungardt closed the hearing on **SB 427**

Chairman Brungardt called for possible action on:

SB 370 – Wine manufacturers permitted to sell wine directly to consumers subject to requirements to maintain three-tier distribution system

The Chairman brought a couple of topics to look at. First is the Gerring v. Grahnlhm making out of state and in state large wineries do the same thing. Second is continuing the exemption for Kansas Farm Wineries and counter parts out of state, through the permit process of ABC.

Information was provided by Carissa Culling McKenzie (Attachment 10) This included an example of a shipping notice for an "approved wine shipper" label.

The Chairman requested that suggested language be put into a balloon and be available to work later in the week.

The meeting was adjourned at noon. The next scheduled meeting is February 1, 2006.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE 1-31-06

Don Johnson	Wyldewood Cellars
Merry Bremer	Wyldewood Cellars
Tom Broddy	Wyldewood Cellars
Greg Sturis	Davenport Winery
Carissa McKenzie	Horse Creek Ranch
BOB ANDERSON	CASEY'S GENERAL STORES
Don Denney	United Govt. Wyco/KCK
Deborah Collins	Yolo. Govt - J.C. Developmental <small>Sept 2015</small>
John	KAAAC
Mempsey-Swope	KAAAC
Richard Fin	-
Dianne Rosell	Sen. Steingies - Intern
Lee Morris	Matrot Castle & Vineyards
Ed Carmona	matrot Castle & Vineyards, LLC
Art Hall	KU School of Business
Kevin Balone	Matrot Castle + Vineyards LLC
Tom Groneman	ABC
Jackson	ABC
Hall Johnson	ABC
TUCK DUNCAN	KWSWA
Wes Ashtu	Overland Park Chamber
Ron Secher	Humana Firm
John-Dan Dams	DISCHS
Amy Campbell	KABR
Larry H. Knackstedt	KABR
Thomas W. Jacobsen	KABR
Kathy Decker	Kansas Beverage Assoc
Larrie Ann Lower	Wine Institute

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BILL INTRODUCTION

TO: The Honorable Pete Brungardt, Chair
And Members Of The
Senate Committee on Federal and State Affairs

FROM: Whitney Damron
On Behalf Of
The City of Topeka

RE: Request for Bill Introduction:

Topeka/Shawnee County Riverfront Authority Act

DATE: January 31, 2006

Good morning Chairman Brungardt and Members of the Senate Committee on Federal and State Affairs. I am Whitney Damron and I appear before you this morning to request introduction of legislation creating the Topeka/Shawnee County Riverfront Authority.

This proposal is the work product of a Topeka mayoral committee that examined the feasibility of creating a riverfront authority to encourage economic development along the Kansas River that would include housing, recreation, retail and entertainment venues within a riverfront development district.

The mayoral task force was chaired by Secretary of Wildlife and Parks Mike Hayden.

The riverfront authority would be comprised of three appointees of the Mayor, subject to City Council approval and three appointees selected by the Shawnee County Commission.

The bill draft before you does not include any taxing authority nor does it include condemnation authority. As for the remainder of the bill, I will leave that for committee hearings unless the Committee would like further clarification of the proposal before you at this time.

I have attached a copy of our proposal for your review as well. On behalf of the City of Topeka, I thank you for your consideration of this request and would be pleased to stand for questions.

Sen Fed & State Affairs
1-31-06
Attachment \

Topeka/Shawnee County Riverfront Authority

Name and citation of act.

This act shall be known and may be cited as the "Topeka/Shawnee County riverfront authority act."

Definitions.

When used in this act:

- (a) "Riverfront" means all real estate, equipment, rights and property useful for the purpose of recreation, along the banks of the Kansas River that runs through the City of Topeka and Shawnee County.
- (b) "Authority" means the riverfront authority created by this act.
- (c) "Board" means the riverfront board created by this act.
- (d) "City" means the city of Topeka, Kansas.
- (e) "County" means Shawnee County, Kansas.
- (f) "Commission" means the County Commission of Shawnee County, Kansas.
- (g) "Council" means the City Council of Topeka, Kansas.
- (h) "Manager" means the City Manager of Topeka, Kansas.
- (i) "Mayor" means the mayor of Topeka, Kansas.
- (j) "Metropolitan area" includes the area within the corporate limits of the city of Topeka, Kansas

Actions by or against; seal.

The authority may sue and be sued in its corporate name but execution shall not in any case issue against any property of the authority. It may adopt a common seal and change the same at pleasure.

Purpose of authority.

The purpose of the authority is to promote the general welfare and encourage private capital investment by fostering the creation of recreational, retail, entertainment, economic development and housing within the river district.

General powers.

For the first three years of its existence, the authority shall engage in planning and design of the riverfront. At all times the authority shall have power to acquire, construct, own, operate and maintain for public service a riverfront system in the metropolitan area as herein defined, and all the powers necessary or convenient to accomplish the purposes of this act, including, without limiting the generality of the foregoing, the specific powers enumerated herein.

Acquisition of properties and rights.

The authority shall have power to acquire by purchase, lease, gift or otherwise all or any part of real property, property, rights in property, for the purpose of planning, development and creation of a riverfront within the metropolitan area as herein defined.

Same; sale, lease or exchange.

The authority shall have power to acquire by purchase, lease, gift or otherwise any property and rights useful for its purposes and to sell, lease, transfer or convey any property or rights when no longer useful or exchange the same for other property or rights which are useful for its purposes.

Purchase of equipment; trust certificates; payment; leases.

The authority shall have power to purchase equipment such as land, riparian rights, dams and docks, recreational equipment and public improvements, and may execute agreements, leases and equipment trust certificates. All money required to be paid by the authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the revenue or income to be derived from the riverfront authority and from grants. Payment for such equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates payable solely from such revenue or income, and title to such equipment shall not vest in the authority until the equipment trust certificates are paid.

The agreement to purchase may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in the state of Kansas, as trustee, for the benefit and security of the equipment trust certificates and may direct the trustee to deliver the equipment to one or more designated officers of the authority and may authorize the trustee simultaneously therewith to execute and deliver a lease of the equipment to the authority.

The agreements and leases shall be duly acknowledged before some person authorized by law to take acknowledgments of deeds and in the form required for acknowledgment of deeds and such agreements, leases and equipment trust certificates shall be authorized by vote of the board and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust certificates from the revenue or income to be derived from the riverfront authority.

The covenants, conditions and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any trust agreement securing the payment of bonds or certificates of the authority.

An executed copy of each such agreement and lease shall be filed in the office of the city and county clerk of the city and county in which said authority is operating and such filing shall constitute notice to any subsequent judgment creditor or any subsequent purchaser.

Federal grants.

The authority shall have power to apply for and accept grants from the federal government or any agency or instrumentality thereof to be used for any of the purposes of the authority and to enter into any agreement with the federal government in relation to such grants; provided that such agreement does not conflict with any of the provisions of any trust agreement securing the payment of bonds or certificates of the authority.

Investment of authority reserve or sinking funds.

The authority shall have power to invest and reinvest any funds held in reserve or sinking funds not required for immediate disbursement, in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein or in bonds or notes of the United States, bonds of the state of Kansas or bonds of any county, unified school district or city of the first class in which said authority is operating a system or in bonds or certificates of the authority at not to exceed their par value or their call price and to sell these securities whenever the funds are needed for disbursement. Such investment or reinvestment of any funds shall not be in conflict with any provisions of any trust agreement securing the payment of bonds or certificates of the authority.

Insurance or indemnity contracts.

The authority shall have power to procure and enter into contracts for any type of insurance and indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employers' liability, against any act of any member, officer or employee of the board or of the authority in the performance of the duties of his or her office or employment or any other insurable risk.

Authority board; qualifications of members; expenses.

The governing and administrative body of the authority shall be a board consisting of six (6) members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

Riverfront board; appointment of board; terms.

Members of the board referred to in K.S.A. (the prior section), and amendments thereto, shall be appointed as follows:

Three (3) shall be appointed by the mayor with the approval of the Council and three (3) shall be appointed by the Commission. Of the first appointees, the Council and mayor shall designate one to serve a term of one year, one member to serve two years and the last to serve a three year term. The Commission shall designate the terms of its appointees likewise. Should the City and County consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

Upon the expiration of the term of any member, all successor board members shall be appointed and hold office for three years from the date of their appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

Same; resignations; removals; vacancies.

Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of Council and Commission, may remove any member of the board in case of incompetency, neglect of duty, or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10 days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime, involving moral turpitude or removal from office, the office of such member shall become vacant. Each vacancy shall be filled for the unexpired term by the mayor with the approval of the governing body.

Same; chairman and temporary secretary; qualification of chairman.

As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairman and a temporary secretary from its own number, and adopt bylaws, rules and regulations to govern its proceedings. The initial chairman and successors shall be elected by the board from time to time for the term of his or her office as a member of the board or for the term of three years, whichever is shorter.

Same; meetings; action by resolution; public records.

Regular meetings of the board shall be held at least once in each calendar month, the time and place of such meetings to be fixed by the board. Four members of the board shall constitute a quorum for the transaction of business. All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairman of the board, and if he or she shall approve thereof he or she shall sign the same, and such as he or she shall not approve the chairman shall return to the board with his or her objections thereto in writing at the next regular meeting of the board occurring after the passage thereof. But in case the chairman shall fail to return any resolution with the objections thereto by the time aforesaid, the chairman shall be deemed to have approved the same and it shall take effect accordingly.

Upon the return of any resolution by the chairman with his or her objections, the vote by which the same was passed shall be reconsidered by the board, and if upon such reconsideration said resolution is passed by the affirmative vote of at least five members, it shall go into effect notwithstanding the veto of the chairman. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use in negotiations, action or proceedings to which the authority is a party.

Same; secretary; treasurer; compensation; oaths; bond of treasurer.

The board shall appoint a secretary and a treasurer, who need not be members of the board, to hold office during the pleasure of the board, and fix their duties and compensation. Before entering upon the duties of their respective offices they shall take and subscribe the constitutional oath of office, and the treasurer shall execute a bond with corporate sureties to be approved by the board. The bond shall be payable to the authority in whatever penal sum may be directed by the board conditioned upon the faithful performance of the duties of the office and the payment of all money received by him or her according to law and the orders of the board. The board may, at any time, require a new bond from the treasurer in such penal sum as may then be determined by the board. The obligation of the sureties shall not extend to any loss sustained by the insolvency, failure or closing of any national or state bank wherein the treasurer has deposited funds if the bank has been approved by the board as a depository for these funds. The oaths of office and the treasurer's bond shall be filed in the principal office of the authority.

Funds of authority; deposits and expenditures.

All funds deposited by the treasurer in any bank shall be placed in the name of the authority and shall be withdrawn or paid out only by check or draft upon the bank, signed by the treasurer and countersigned by the chairman of the board, except that the board may designate any of its members or any officer or employee of the authority to affix the facsimile signature of the chairman and another to affix the facsimile signature of the treasurer to any check or draft.

Signatures of officers valid.

In case any officer whose signature appears upon any check, draft, bond, certificate or interest coupon, issued pursuant to this act, ceases to hold his or her office before the delivery thereof to the payee or the purchaser of any bond or certificate, the officer's signature nevertheless shall be valid and sufficient for all purposes with the same effect as if he or she had remained in office until delivery thereof.

Appointment of manager, attorney, engineer and other employees; duties; bonds; compensation.

The board may appoint a general manager and such other persons who are necessary to make the authority succeed. The general manager shall hold office during the pleasure of the board. The general manager shall manage the properties and business of the authority and the employees thereof, subject to the general control of the board, shall direct the enforcement of all resolutions, rules and regulations of the board, and shall perform such other duties as may be prescribed

by the board. No discrimination shall be made in any appointment or promotion because of race, creed, color, disability, religious or political affiliations.

Rules and regulations.

The board shall make all rules and regulations governing the operation of the Riverfront, its property and facilities, and to carry into effect the powers granted to the authority.

Fiscal year; budget.

The board shall establish a fiscal operating year. At least thirty days prior to the beginning of the first full fiscal year after the creation of the authority, and annually thereafter, the board shall cause to be prepared a tentative budget which shall include all operation and maintenance expense for the ensuing fiscal year. The tentative budget shall be considered by the board and, subject to any revision and amendments as may be determined, shall be adopted prior to the first day of the ensuing fiscal year as the budget for that year. No expenditures for operations and maintenance in excess of the budget shall be made during any fiscal year except by the affirmative vote of at least four members of the board. It shall not be necessary to include in the annual budget any statement of necessary expenditures for pensions or retirement annuities, or for interest or principal payments on bonds or certificates, or for capital outlays, but it shall be the duty of the board to make provisions for payment of same from appropriate funds.

Same; financial statements.

As soon after the end of each fiscal year as may be expedient, the board shall cause to be prepared and printed a complete and detailed report and financial statement of its operation and of its assets and liabilities. A reasonable sufficient number of copies of such report shall be printed for distribution to persons interested and copies of such report shall be filed with the city and county clerks of the governing bodies adopting this act after they have been presented to those governing bodies.

Operating expenses; damage reserve fund; liability insurance.

The board shall withdraw from the gross receipts of the authority and charge to operating expenses such an amount of money as in the opinion of the board shall be sufficient to provide for the adjustment, defense and satisfaction of all suits, claims, demands, rights and causes of action and the payment and satisfaction of all judgments entered against the authority for damage caused by injury to or death of any person and for damage to property resulting from the construction, maintenance and operation of the riverfront and the board shall deposit such moneys in a fund to be known and designated as the damage reserve fund.

The board shall use the moneys in the damage reserve fund to pay all expenses and costs arising from the adjustment, defense and satisfaction of all suits, claims, demands, rights and causes of action and the payment and satisfaction of all judgments entered against the authority for damages caused by injury to or death of

any person and for damage to property resulting from the construction, maintenance and operation of the authority. At any time and from time to time the board may obtain and maintain insurance coverage or protection partially or wholly insuring or indemnifying the authority against loss or liability on account of injury to or death of any person and for damage to property resulting from the construction, maintenance and operations of the authority. The cost of obtaining and maintaining such insurance shall be paid out of the moneys in the damage reserve fund. All moneys received from such insurance coverage or protection shall be paid into the damage reserve fund.

Special funds; creation; use.

The authority pursuant to resolutions adopted from time to time by the board may establish and create such other and additional special funds as may be found desirable by the board and in and by such ordinances may provide for payments into all special funds from specified sources with such preferences and priorities as may be deemed advisable and may also by any such resolution provide for the custody, disbursement and application of any moneys in any such special funds consistent with the provisions of this act.

Limitation of actions for injuries

The authority is a municipality as defined by the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* and entitled to avail itself of the protections therein. No civil action shall be commenced in any court against the authority by any person for any injury to his or her person unless it is commenced within two years from the date that the injury was received or the cause of action accrued.

Invalidity of part.

If any provision of this act is held invalid such provision shall be deemed to be excised from this act and the invalidity thereof shall not affect any of the other provisions of this act. If the application of any provision of this act to any person or circumstance is held invalid it shall not affect the application of such provisions to persons or circumstances other than those as to which it is invalid.

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

January 31, 2006

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 retail grocers and convenience stores forming the coalition have thousands of locations throughout Kansas; employ thousands of Kansans, with an annual payroll in the hundreds of millions of dollars; pay millions of dollars in Kansas property taxes; and also collect and remit millions of tax dollars to the State of Kansas.

Background

As the Committee is aware, SB 299 was passed favorably out of this Committee near the end of the 2005 Legislative Session. During the Committee hearing on this bill, the Coalition presented considerable testimony in support of the bill. That testimony should be included in each member's Committee file, so I will not duplicate that testimony to any great extent. However, if any member of the Committee would like to have another copy of last year's testimony, please let me know and I will be happy to provide a copy.

Suffice it to state, by way of summary, however, that the following points were offered in support of the bill:

- Currently, grocery stores and convenience stores may sell only “3.2 beer,” i.e., beer containing not more than 3.25% alcohol by weight and statutorily referred to as “cereal malt beverage” (CMB).
- Currently, retail liquor stores may sell all other beers, and many of the cans or bottles of the “liquor store beers” reflect an alcohol content considerably higher than 3.2%, although many of these percentages are calculated on the basis of alcohol content by volume, rather than by weight.
- These differences in alcohol content create the perception that “grocery store beer” (3.2 beer) is weak and watered down, an inferior product.
- However, laboratory tests disclose that, when the alcohol content of grocery store beer and liquor store beer are determined and compared on the same basis (by weight, e.g.), there is not an appreciable difference between the major domestic brands of cereal malt beverage and their counterparts sold in liquor stores.
- The major domestic brands of beer sold in retail liquor stores have an alcohol content of not more than 4.0% by weight.
- Notwithstanding, the public misperception that CMB is an inferior product has resulted in the significant loss of market share by grocery and convenience stores from the time the drinking age for all alcoholic beverages was established at 21.
- Thus, the major purpose of SB 299 is to allow grocery and convenience stores in specified locations to sell cereal malt beverages having an alcohol content of not more than 5% by weight, thereby providing Coalition members an opportunity to recapture some of the lost market share.
- However, in recognition that there are a variety of viewpoints and perspectives throughout the state regarding the sale and consumption of alcoholic beverages, a local option provision is included, so that each community is accorded the right of self determination.
- Only if a city or county exercises the local option provision will grocery stores and convenience stores in such city or county be permitted to sell cereal malt beverage containing not more than 5% alcohol by weight.
- If a city or county exercises the local option provision of SB 299, it will adopt a new act, consisting of sections patterned after and replacing many of the current sections of the Liquor Control Act, the Club and Drinking Establishment Act and the Cereal Malt Beverage Act.
- In SB 299, the new act is referred to as the Cereal Malt Beverage Retailers’ Act.

Proposed Amendments

Since SB 299 remained on General Orders during the interim, Coalition members had an opportunity to visit with other members of the liquor industry regarding their concerns with the proposed legislation. Many offered suggested changes, and we have agreed to accept a number of the suggestions. To that end, a substitute bill (Substitute for Senate Bill No. 299) incorporating these changes has been prepared for your consideration. Attached to this testimony are pages from the substitute bill (Sub for SB 299)

that contain the substantive changes, which are highlighted in yellow. I have provided a copy of the entire bill to the Revisor of Statutes, and I will be happy to provide a complete draft to any member of the Committee who wants a copy. The substantive changes being proposed are as follows:

- In response to a concern that allowing sale of CMB for consumption on the premises competes unfairly with clubs and drinking establishments which must impose a 10% drink tax, Sub for SB 299 limits the new act to sales in the original and unopened containers for consumption off the premises. These changes appear on attached pages 4, 5, 8, 49, 50, 51, 53, 54, 55, 57, 58 and 59.
- By making the new act applicable only to package sales of CMB, a city or county which adopts the new provisions to allow sales of what SB 299 defines as “cereal malt beverage” also will have establishments selling 3.2% beer, i.e., “cereal malt beverage,” as defined in K.S.A. 41-2701, for on-premises consumption. Thus, we responded to the suggestion that having two different products, both being defined as “cereal malt beverage,” would be confusing, so we have changed the name of the product to be sold by the package under the new act to “CMB/Beer.” That definitional change fostered changes in terminology on almost every page of the bill. Some of those changes include instances where “cereal malt beverage” (meaning 3.2% beer) remains in the bill, because the statute after which the section is patterned references “cereal malt beverage” as meaning 3.2% beer.
- The tax provisions in the bill were the subject of other concerns. SB 299 applied both the 8% enforcement tax and the state and local sales taxes to sales of what is now termed “CMB/Beer,” irrespective of whether such sales occurred in a retail liquor store or a grocery or convenience store. The tax provisions would generate additional revenue for both the state and local units of government adopting the new act, but the fear expressed to us was that, in any border city adopting the new act, the tax provisions would substantially increase the price of the cereal malt beverage, to the point it would not be competitive with prices in neighboring states. Thus, the tax provisions in the bill (Sections 56 and 57 on attached pages 63 and 64, respectively) have been revised to reflect the current tax structure. That is, all liquor store sales of CMB/Beer will be subject only to an 8% tax identical in scope and administration to the liquor enforcement tax, and all sales of CMB/Beer by convenience stores and grocery stores will be subject only to state and local sales taxes.
- Changes have been made in Sections 8 and 9 of the substitute bill (pages 10 and 11, respectively), to accommodate concerns expressed by the Director of ABC as to the scope of his jurisdiction with respect to establishments selling CMB/Beer.
- Since SB 299 was drafted last session prior to enactment of the Sunday sales law, it was necessary to revise pertinent provisions of SB 299 to reflect that enactment. In addition, regardless of whether a city adopting the new act also has adopted a Sunday sales ordinance or resolution, the days and hours of sale of CMB/Beer by convenience and grocery stores have been made the same as the days and hours of sale for liquor retailers. These changes appear on attached pages 21 and 54.

There are the substantive amendments being proposed by the Coalition pursuant to Substitute for SB 299. We believe they permit competition among those who will sell CMB/Beer on an equitable basis.

Conclusion

In conclusion, we want to emphasize, as we did last year, 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, Substitute for SB 299 provides CMB retailers that opportunity to regain the share of the cereal malt product market they lost over the past several years.

Thus for the reason advanced last year, in support of SB 299, strengthened by the amendments embodied in the substitute bill, we respectfully request that the Committee adopt Substitute for Senate Bill No. 299 and recommend it favorably for passage. We appreciate the opportunity to appear before the Committee, and I will attempt to answer any questions the Committee may have.

SUBSTITUTE FOR SENATE BILL NO. 299

By Committee on Federal and State Affairs

AN ACT concerning alcoholic beverages; enacting the CMB/beer retailers' act; amending K.S.A. 41-103, 41-312 and 41-410 and repealing the existing sections.

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

Section 1. K.S.A. 41-103 is hereby amended to read as follows: 41-103. The legislature hereby declares the public policy of this state to be that, except as otherwise provided in the CMB/beer retailers' act: (a) Cereal malt beverage and CMB/beer shall be sold at retail separately from sales of alcoholic liquor at retail; (b) cereal malt beverage and CMB/beer shall be sold and dispensed at retail in rooms or premises separate and distinct from rooms or premises where alcoholic liquor is sold; and (c) no retailer's license for the sale of alcoholic liquor shall be granted to any applicant making application therefor if the premises sought to be licensed are located outside the corporate limits of any city within this state, except as provided in K.S.A. 41-303, and amendments thereto.

New Sec. 2. (a) The governing body of any city in which the sale of alcoholic liquor is authorized may adopt a resolution providing that the CMB/beer retailers' act, as set forth in sections 4 through 53, and amendments thereto, shall be applicable in such city. Such resolution shall be published at least once each week for two consecutive weeks in the official city newspaper. Such resolution shall not become effective until at least 30 days following the date of the last publication thereof. If within 30 days following the last publication of the resolution, a petition requesting that the proposition be submitted for approval by the voters is filed in accordance with subsection (b), such resolution shall not become effective until the proposition is submitted to and approved at an

(b) For purposes of the CMB/beer retailers' act:

(1) The provisions of K.S.A. 41-2701 et seq., and amendments thereto, shall be referred to as the Kansas cereal malt beverage act; and

(2) any reference to the Kansas liquor control act, the club and drinking establishment act or the Kansas CMB/beer act shall be deemed to be a reference to those provisions of such acts which remain applicable to any city or township in which the CMB/beer retailers' act is made applicable.

New Sec. 5. As used in the ^{200 C} CMB/beer retailers' act, unless the context clearly requires otherwise:

(a) "Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) "Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any CMB/beer.

(c) "Beer" means a beverage, containing more than 5% 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.

(d) "Caterer" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(e) "CMB/beer" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 5% alcohol by weight.

(f) "CMB/beer retailer" means any person who sells or offers for sale any CMB/beer in the

original and unopened containers for use or consumption off the licensed premises and not for resale in any form, but such term does not include a liquor retailer or any person licensed under the club and drinking establishment act.

(g) "Club" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(h) "Director" means the director of alcoholic beverage control of the department of revenue.

(i) "Distributor" means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to liquor retailers or CMB/beer for sale or resale to CMB/beer retailers or persons licensed pursuant to K.S.A. 41-2702, and amendments thereto.

(j) "Domestic beer" means beer which contains not more than 8% alcohol by weight and which is manufactured from agricultural products grown in this state or CMB/beer which is manufactured from agricultural products grown in this state.

(k) "Domestic fortified wine" means wine which contains more than 14%, but not more than 20% alcohol by volume and which is manufactured from agricultural products grown in this state without rectification.

(l) "Domestic table wine" means wine which contains not more than 14% alcohol by volume and which is manufactured without rectification or fortification from agricultural products grown in this state.

(m) "Drinking establishment" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(n) "Farm winery" means a winery licensed by the director to manufacture, store and sell domestic table wine and domestic fortified wine.

holders of temporary permits.

(2) "Sell at retail" and "sale at retail" do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

(dd) "To sell" includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

(ee) "Sleeve" means a package of two or more 50-milliliter (3.2-fluid-ounce) containers of spirits.

(ff) "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(gg) "Supplier" means a manufacturer of alcoholic liquor or CMB/beer or an agent of such manufacturer, other than a salesperson.

(hh) "Temporary permit" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(ii) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

(jj) "Cereal malt beverage" has the meaning provided by K.S.A. 41-2701, and amendments thereto.

exclusively in the state and shall be exercised as provided in this act. No city in which the CMB/beer retailers' act is applicable shall enact any ordinance in conflict with or contrary to the provisions of this act and any ordinance of any such city in effect at the time this act takes effect or thereafter enacted which is in conflict with or contrary to the provisions of this act shall be null and void. Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty in any such ordinance shall not exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance exceed the maximum penalty prescribed by this act for the same violation.

New Sec. 8. The director shall have the following powers, functions and duties:

(a) To receive applications for, and to issue and revoke licenses to manufacturers, distributors, nonbeverage users and liquor retailers in accordance with the provisions of the Kansas liquor control act and the CMB/beer retailers' act;

(b) to call upon other administrative departments of the state, county and city governments, sheriffs, city police departments, city marshals, law enforcement officers and upon prosecuting officers for such information and assistance as the director deems necessary in the performance of the duties imposed upon the director by the Kansas liquor control act and the CMB/beer retailers' act;

(c) to inspect or cause to be inspected, any premises where alcoholic liquor or CMB/beer is manufactured, or distributed ~~or~~ and to inspect or cause to be inspected, the premises of a liquor retailer where alcoholic liquor or CMB/beer is sold;

(d) in the conduct of any hearing authorized to be held by the director, to examine, or cause

to be examined, under oath, any person, and to examine or cause to be examined books and records of any licensee; to hear testimony and take proof material for the information of the director in the discharge of such duties hereunder; to administer or cause to be administered oaths; and for any such purposes to issue subpoenas to require the attendance of witnesses and the production of books which shall be effective in any part of this state; and any district court or any judge of the district court, either in term time or vacation, may by order duly entered, require the attendance of witnesses and the production of relevant books subpoenaed by the director, and the court or judge may compel obedience to the order by proceedings for contempt;

(e) except as otherwise specifically provided in the CMB/beer retailers' act, to collect, receive, account for and turn over to the secretary of revenue all registration and license fees and taxes provided for in the Kansas liquor control act and the CMB/beer retailers' act and all other moneys received by the director by virtue of the director's office; and

(f) such other powers, functions and duties as are or may be imposed or conferred upon the director by law.

New Sec. 9. (a) The director shall propose such rules and regulations as necessary to carry out the intent and purposes of the Kansas liquor control act and the CMB/beer retailers' act, as it relates to the sale of CMB/beer by a liquor retailer. except that, to the extent that rules and regulations adopted by the secretary pursuant to K.S.A. 41-210, and amendments thereto, also carry out the intent and purposes of the CMB/beer retailers' act, as it relates to the sale of CMB/beer by a liquor retailer. they shall be applicable to the CMB/beer retailers' act. After the hearing on a proposed rule and regulation has been held as required by law, the director shall submit the proposed rule and regulation to the secretary of revenue who, if the secretary approves it, shall adopt the rule and

imprisonment for not more than six months, and the license of such licensee may be revoked as provided by law.

New Sec. 17. (a) Except as otherwise provided in subsections (c) and (d) of this section, no liquor retailer shall sell any alcoholic liquor or CMB/beer: (1) On Sunday; (2) on Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day; or (3) before 9 a.m. or after 11 p.m. on any day when the sale is permitted, except that the governing body of any city by ordinance may require closing prior to 11 p.m., but such ordinance shall not require closing prior to 8 p.m.

(b) Except as otherwise provided in subsections (c) and (d), no CMB/beer retailer shall sell any CMB/beer: (1) On Sunday; (2) on Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day; or (3) before 9 a.m. or after 11 p.m. on any day when the sale is permitted.

(c) In any city or township where the days of sale of alcoholic liquor in the original package have been expanded, as provided by K.S.A. 2005 Supp. 41-2911, and amendments thereto, and have not been subsequently restricted, as provided by K.S.A. 2005 Supp. 41-2911, and amendments thereto, no liquor retailer shall sell any alcoholic liquor or CMB/beer and no CMB/beer retailer shall sell any CMB/beer: (1) On Sunday before 12 noon or after 8 p.m.; (2) on Easter Sunday, Thanksgiving Day or Christmas Day; or (3) before 9 a. m. or after 11 p.m. on any day when the sale is permitted.

(d) The governing body of any city may require the closing of the premises of a liquor retailer prior to 11 p.m., but such ordinance shall not require closing prior to 8 p.m. The governing body of any city may provide by ordinance that a CMB/beer retailer may not sell CMB/beer prior to 11 p.m., but such ordinance may not provide that CMB/beer may not be sold prior to 8 p.m.

New Sec. 18. (a) (1) Except as provided by subsection (a)(2), no person shall sell or furnish

at retail and no microbrewery or farm winery shall sell to any consumer any alcoholic liquor or **CMB/beer** on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise; or in payment for any services rendered. If any person extends credit in violation of this subsection, the debt attempted to be created shall not be recoverable at law.

(2) A licensed liquor retailer may sell alcoholic liquor, **CMB/beer** and nonalcoholic malt beverage to a consumer, a licensed microbrewery may sell domestic beer to a consumer and a licensed farm winery may sell domestic wine to a consumer on credit pursuant to a credit card which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the credit card.

(b) No microbrewery, farm winery or liquor retailer shall accept a check for payment for alcoholic liquors or **CMB/beers** sold by the microbrewery, winery or liquor retailer to a consumer, other than the personal check of the person making the purchase.

New Sec. 19. (a) No person except a manufacturer, distributor, microbrewery, farm winery or wholesaler shall fill or refill, in whole or in part, any original package of alcoholic liquor or **CMB/beer** with the same or any other kind or quality of alcoholic liquor or **CMB/beer**.

(b) No person shall have in the person's possession for sale at retail any bottles, casks or other containers containing alcoholic liquor or **CMB/beer**, except in original packages.

New Sec. 20. No person or common carrier shall haul or transport alcoholic liquor or **CMB/beer** in or into this state, for sale, or for storage and sale in this state, upon which the required labeling or gauging fee, tax, duty or license has not been paid, except for delivery to distributors, distillers, manufacturers, importers, blenders, rectifiers, wholesalers or jobbers maintaining a bonded warehouse within this state.

at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.

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

(f) All proceeds from an event for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(g) A temporary permit shall not be transferable or assignable.

(h) The director may refuse to issue a temporary permit to any person or organization which has violated any provision of the Kansas liquor control act, the club and drinking establishment act, K.S.A. 79-41a01 et seq. or section 57, and amendments thereto.

New Sec. 46. (a) No CMB/beer retailer shall sell any CMB/beer without having first secured a license for each place of business as herein provided. If such place of business is located within the corporate limits of a city in which the CMB/beer retailers' act is applicable, the application for a license shall be made to the governing body of such city. A place of business, other than a railway ear, located outside the corporate limits of a city may be licensed only if the place of business is located in a township in which the CMB/beer retailers' act is applicable, and the application for a license for such place of business shall be made to the board of county commissioners in the county in which such place of business is to be located. The application for a license to sell on railway cars shall be made to the director as hereinafter provided.

(b) A board of county commissioners shall not issue or renew a CMB/beer retailer's license without giving the clerk of the township where the place of business is to be located written notice by registered mail of the filing of the application for licensure or renewal. The township board may

within 10 days file advisory recommendations as to the granting of such license or renewal and such advisory recommendations shall be considered by the board of county commissioners before such license is issued. If an original license is granted and issued, the board of county commissioners shall grant and issue renewals thereof upon application of the license holder, if the license holder is qualified to receive the same and the license has not been revoked as provided by law.

(c) An application for a CMB/beer retailer's license shall be verified and upon a form prepared by the attorney general of the state and shall contain:

- (1) The name and residence of the applicant;
- (2) the length of time that the applicant has resided within the state of Kansas;
- (3) the particular place of business for which a license is desired;
- (4) the name of the owner of the premises upon which the place of business is located; and
- (5) a statement that the applicant is a citizen of the United States and not less than 21 years of age and that the applicant has not within two years immediately preceding the date of making application been convicted of a felony, any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

~~(d) In addition to the fee provided by subsection (c), each application for a CMB/beer retailer's license to sell CMB/beers for consumption on the licensed premises shall be accompanied by a fee as follows:~~

- ~~(1) For licensure of a place of business other than a railway car, a fee of not less than \$25 nor more than \$200, as prescribed by the board of county commissioners or the governing body of the city, as the case may be; and~~

~~(2) for licensure to sell on railway cars, a fee of \$100.~~

(d) Each applicant for a CMB/beer retailer's license or renewal of such a license shall submit to the director a copy of the completed application for such license or license renewal, together with a fee of \$25. Upon receipt of such application, the director shall authorize a state stamp to be affixed to the license. No such stamp shall be affixed to any license except such stamps as provided by the director and no CMB/beer retailer's license shall be issued or renewed unless such stamp has first been affixed thereto.

(e) The director shall remit all fees collected by the director to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, except that the director may provide for the deposit in the CMB/beer tax refund fund of such amounts as necessary for the refund of any license fees collected hereunder.

(f) For any township or city in which the CMB/beer retailers' act is applicable, the board of county commissioners of the county in which the township is located or the governing body of the city, as the case may be, shall issue a license upon application duly made as otherwise provided for herein, to any CMB/beer retailer engaged in business in such township or city and qualified to receive such license, to sell only CMB/beers in original and unopened containers, and not for consumption on the premises. The annual license fee for such license, which shall be in addition to the fee provided by subsection (d), shall be not less than \$25 nor more than \$50.

(g) No license issued under the CMB/beer retailers' act shall be transferable.

New Sec. 47. (a) After examination and approval of an application for a CMB/beer retailer's license for a place of business located in a township in which the CMB/beer retailers' act is

(8) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which: (A) Has had a license revoked under K.S.A. 41-2708 or section 51, and amendments thereto; or (B) has been convicted of a violation of the CMB/beer retailers' act, the Kansas liquor control act, the club and drinking establishment act or K.S.A. 41-2701 et seq., and amendments thereto.

(9) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications of a licensee.

(10) A person whose spouse would be ineligible to receive a CMB/beer retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection (b)(10) shall not apply in determining eligibility for a renewal license.

(11) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license issued under this act or under K.S.A. 41-2702, and amendments thereto.

(c) ~~Each class of CMB/beer retailers' licenses~~ A CMB/beer retailer's license shall be issued either on an annual basis or for the calendar year. If such licenses are issued on an annual basis, the board of county commissioners or the governing body of the city shall notify the distributors supplying the county or city on or before April 1 of the calendar year if a CMB/beer retailer's license is not renewed.

New Sec. 48. (a) In addition to and consistent with the requirements of the CMB/beer retailers' act, the board of county commissioners of any county or the governing body of any city may

prescribe ~~hours of closing, standards of conduct and~~ rules and regulations concerning the moral, sanitary and health conditions of CMB/beer retailers pursuant to this act and may establish zones within which no such place may be located.

~~(b) No CMB/beers may be sold for consumption on the premises by a CMB/beer retailer:~~

~~(1) Between the hours of 12 midnight and 6 a.m.; or~~

~~(2) on Sunday, except in a place of business which is licensed to sell CMB/beer for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city.~~

~~(c) No cereal malt beverage may be sold in the original and unopened container by a cereal malt beverage retailer:~~

~~(1) Before 9 a.m. or after 11 p.m. on any day when the sale is permitted;~~

~~(2) on Sunday; or~~

~~(3) on Decoration or Memorial day, Independence Day, Labor day, Thanksgiving day or Christmas day.~~

~~(d) No private rooms or closed booths shall be operated in a CMB/beer retailer's place of business, but this provision shall not apply if the licensed premises are also currently licensed as a club pursuant to the club and drinking establishment act.~~

(b) Each CMB/beer retailer's place of business shall be open to the public and to law enforcement officers at all times during business hours.

(c) No CMB/beer retailer shall permit a minor to consume or purchase any CMB/beer in or about the CMB/beer retailer's place of business, and no CMB/beer retailer shall permit a minor to possess CMB/beer in or about the CMB/beer retailer's place of business, except that a CMB/beer retailer's employee who is not less than 18 years of age may dispense or sell CMB/beer, if:

~~(1) The CMB/beer retailer's place of business is licensed only to sell CMB/beer at retail in original and unopened containers and not for consumption on the premises; or~~

~~(2) the CMB/beer retailer's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the CMB/beer retailer's place of business is derived from the sale of food for consumption on the licensed premises of the CMB/beer retailer's place of business.~~

(d) No person shall have any alcoholic liquor in such person's possession while in a CMB/beer retailer's place of business.

(e) No CMB/beer retailer shall sell, directly or indirectly, any CMB/beer at less than the acquisition cost of such CMB/beer without first having obtained from the director a permit to do so. The director may issue to a licensed CMB/beer retailer a permit authorizing the CMB/beer retailer to sell CMB/beer at less than the acquisition cost of such CMB/beer if:

(1) The CMB/beer retailer is actually closing out the CMB/beer retailers' stock for the purpose of completely discontinuing the sale of the item of CMB/beer for a period of not less than 12 months;

(2) the item of CMB/beer is damaged or deteriorated in quality and notice is given to the public thereof; or

(3) the sale of the item of CMB/beer is by a law enforcement officer acting under the order

five days' notice to the persons holding a license as a CMB/beer retailer, shall revoke or suspend the license for any one of the following reasons:

- (1) The CMB/beer retailer has fraudulently obtained the license by giving false information in the application therefor;
- (2) the CMB/beer retailer has violated any of the provisions of the CMB/beer retailers' act, or any rules and regulations made by the board or the city, as the case may be;
- (3) the CMB/beer retailer has become ineligible to obtain a license;
- (4) drunkenness of the CMB/beer retailer or permitting any intoxicated person to remain in or upon the CMB/beer retailer's place of business;
- (5) the sale of CMB/beers to any minor;
- (6) the nonpayment of any license fees;
- (7) permitting any gambling in or upon the CMB/beer retailer's place of business;
- (8) permitting any person to mix drinks with materials purchased in or upon the CMB/beer retailer's place of business or brought in for that purpose;
- (9) the employment of persons under 18 years of age in dispensing or selling CMB/beers;
- (10) the employment or continuation in employment of a person in connection with the sale, ~~serving or dispensing~~ of CMB/beers if the CMB/beer retailer knows such person has been, within the preceding two years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States;
- (11) the sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor;
- (12) the CMB/beer retailer has been convicted of a violation of the beer and CMB/beer keg

registration act; or

(13) there has been a violation of K.S.A. 21-4106 or 21-4107, and amendments thereto, in or upon the CMB/beer retailer's place of business.

(b) Within 20 days after the order of the board revoking or suspending any CMB/beer retailer's license, the CMB/beer retailer may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal. In case of the revocation of the license of any CMB/beer retailer, no new license shall be issued to the former licensee, or to any person acting for or on the former licensee's behalf, for a period of six months thereafter.

New Sec. 52. The attorney general, any county or district attorney or any city attorney within their respective jurisdictions shall at all times have the power to enjoin any person from selling CMB/beers if it shall appear that the person has violated any provision of the CMB/beer retailers' act or any rules and regulations adopted thereunder. Injunction proceedings shall be the same as prescribed for the enjoining of intoxicating liquor nuisances.

~~New Sec. 53. (a) No CMB/beer retailer, or employee or agent of a CMB/beer retailer, licensed to sell CMB/beer for consumption on the licensed premises shall:~~

~~(1) Offer or serve any free CMB/beer to any person;~~

~~(2) offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the CMB/beer retailer;~~

~~(3) sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;~~

~~(4) sell, offer to sell or serve any drink to any person at any time at a price less than that charged the general public on that day, except at private functions not open to the general public;~~

~~(5) increase the size of a drink of CMB/beer without increasing proportionately the price regularly charged for the drink on that day;~~

~~(6) encourage or permit, on the licensed premises, any game or contest which involves drinking CMB/beer or the awarding of drinks as prizes; or~~

~~(7) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (6).~~

~~(b) Nothing in subsection (a) shall be construed to prohibit a CMB/beer retailer from offering free food or entertainment at any time.~~

~~(c) Violation of any provisions of this section is a misdemeanor punishable as provided by K.S.A. 41-2711, and amendments thereto.~~

~~(d) Violation of any provision of this section shall be grounds for suspension or revocation of the CMB/beer retailer's license as provided by section 51, and amendments thereto.~~

~~(e) Every CMB/beer retailer subject to the provisions of this section shall make available at any time upon request a price list showing the CMB/beer retailer's current prices for all CMB/beers.~~

~~(f) As used in this section, "drink" means an individual serving of CMB/beer.~~

Sec. 53. K.S.A. 41-312 is hereby amended to read as follows: 41-312. No person holding a manufacturer's or distributor's license shall be permitted to receive any retailer's license, microbrewery or license, farm winery license or CMB/beer retailer's license issued pursuant to the CMB/beer retailers' act. No person holding a retailer's, microbrewery or farm winery license shall be permitted to receive any manufacturer's or distributor's license or another retailer's, microbrewery or

of the county, for purposes of K.S.A. 41-2701 et seq., and amendments thereto, the definition of cereal malt beverage shall be as follows:

"Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 5% by weight.

The county clerk shall send a certified copy of such resolution to the director and to the township board of trustees for any township in the county in which the resolution shall be applicable.

New Sec. 56. (a) From and after the effective date of the CMB/beer retailers' act in any city or county adopting its provisions, there is hereby imposed, for the privilege of engaging in the business of selling CMB/beer by liquor retailers ~~or CMB/beer retailers~~ to consumers, or selling CMB/beer by distributors to clubs, drinking establishments, caterers or temporary permit holders, a tax at the rate of 8% upon the gross receipts received from: (1) The sale of CMB/beer by liquor retailers ~~or CMB/beer retailers~~ to consumers; and (2) the sale of CMB/beer by distributors to clubs, drinking establishments, caterers or temporary permit holders.

(b) The tax imposed by this section shall be identical in its application, and exemptions therefrom, if any, to the tax imposed pursuant to K.S.A. 79-4101, and amendments thereto. All laws and administrative rules and regulations of the department of revenue relating to the tax imposed pursuant to K.S.A. 79-4101, and amendments thereto, shall apply to the tax imposed pursuant to this section, to the extent such laws and rules and regulations may be made applicable. The state director of taxation is hereby authorized to administer, enforce and collect the tax imposed pursuant to this section and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement thereof.

(c) As used in this section, terms have the meanings provided by section 5, and amendments thereto.

New Sec. 57. (a) There is hereby imposed, for the privilege of selling CMB/beer for consumption on the premises, a tax at the rate of 10% upon the gross receipts derived from the sale of CMB/beer by any club, caterer, drinking establishment, or temporary permit holder or CMB/beer retailer licensed to sell CMB/beer for consumption on the premises.

(b) The tax imposed by this section shall be identical in its application, and exemptions therefrom, if any, to the tax imposed pursuant to K.S.A. 79-41a02, and amendments thereto. All laws and administrative rules and regulations of the department of revenue relating to the tax imposed pursuant to K.S.A. 79-41a02, and amendments thereto, shall apply to the tax imposed pursuant to this section, to the extent such laws and rules and regulations may be made applicable. The state director of taxation is hereby authorized to administer, enforce and collect the tax imposed pursuant to this section and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement thereof.

(c) As used in this section, terms have the meanings provided by section 5, and amendments thereto.

New Sec. 58. (a) All sales of CMB/beer by a ~~liquor retailer or~~ CMB/beer retailer shall be subject to the tax imposed pursuant to the Kansas retailers' sales tax act, and also shall be subject to the retailers' sales tax imposed by any city or county in which such sales are made.

(b) As used in this section, terms have the meanings provided by section 5, and amendments thereto.

Sec. 59. K.S.A. 41-103, 41-312 and 41-410 are hereby repealed.

(3)

Kansas Wine & Spirits
Wholesalers Association

January 31, 2006

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

The KWSWA still opposes SB299.

Attached is a copy of our testimony from last session on this topic which is still relevant regarding the underlying bill. We are aware that certain amendments will be offered (1) so that the local option provisions will apply to package sales only (2) that create another category of product called CMB/beer (3) that preserve the *status quo* for tax rates such that all sales of CMB/beer in liquor stores will be subject to an 8% enforcement tax, and all sales of CMB/beer by convenience stores and grocery stores will be subject only to state and local sales taxes, and (4) to conform to last year's Sunday sales law.

Initially all-strength beer was touted as a means to achieve simplicity. With the proposed amendments the bill is more complicated than ever before.

"If it ain't broke, don't fix it" is something we often say when a system is working well and there is no reason to change it.

This system "ain't broke" *Please, don't fix it!*

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

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.

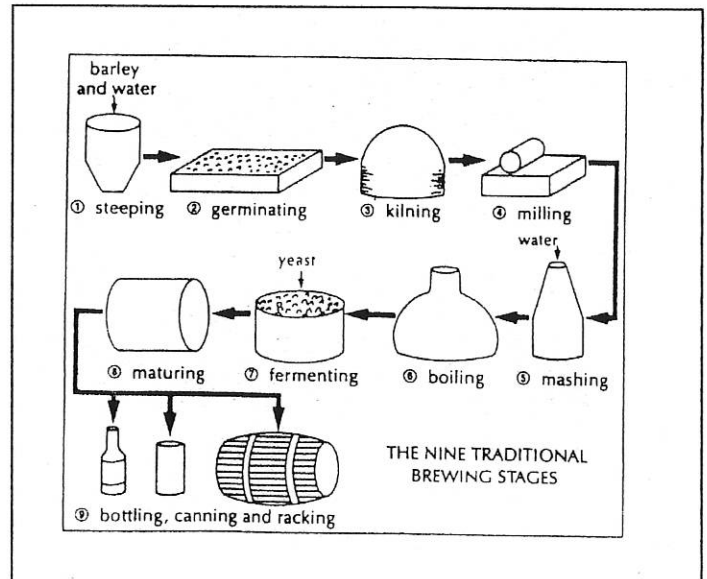
SOCIAL RESPONSIBILITY

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; Le., 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 its 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.

KWSWA - 212 SW 8th Avenue, Suite 202, Topeka, Kansas 66603



800 SW Jackson STE 1017, Topeka Kansas 66612

SB 299, Senate Federal and State Affairs Committee, January 31, 2006

For 70 years there has been 3.2 beer, also known as Cereal Malt Beverage in Kansas. That history began with passage of the CMB Act in 1937. Press reports from the day say that 10,000 people assembled below the South steps of the Statehouse to urge Governor Landon to call a special session to pass the 3.2 beer law. The rally was so large that it was moved to the grandstand at the Topeka State Fair Grounds before it was allowed to continue.

That passage in 1937 was not without long debate. Journals of both the Senate and House have detailed discussions of the proceedings. When the legislature adjourned Kansas had become the next to last state to allow even 3.2 beer. Amazing, that in this time of internet instant response to every request and trend, 3.2 beer remains 23% of the market place. This beer is sold in every county and city in Kansas. It is sold where strong beer cannot be sold. And it is the choice of 23% of the market place. **SB 299 is about removing consumer choice.** Large out of state grocery and convenience store corporations want the change the choices Kansans make every day.

It wasn't until 1949 that strong beer, wine and spirits could be sold in Kansas. And the legislature was very careful to separate lower alcohol 3.2 from those other products. **Why?** Because they knew it was a different product. The legislature of 1949 left the regulation of 3.2 to local units of government and kept the regulation of strong beer at the state level.

Beer Distributors are required to keep their CMB (3.2%) and regular beer inventories separate. Under the proposed amendments, beer distributors will be required to maintain 4 separate storage areas for each of the kinds and brands that distributors sell:

- Cereal Malt Beverage (i.e. <3.2%)
- CMB/Beer (< 5% by weight)
- Beer (> 5% by weight)
- Domestic Beer 8% or less by weight.

Maintenance of 4 separate inventories in 4 separate areas of a warehouse is extremely labor intensive.

Deregulation

There is turmoil among the States about the recent Supreme Court case concerning shipping and other discrimination issues in SB 370. This committee continues to struggle with the discrimination and its impact on Kansas law. Those issues are manifest in SB 299 as well. All liquor policy changes adopted by Kansas after December 6, 2004 will be tempered by the *Granholm* decision. This legislation appears to be another attempt to deregulate the liquor industry. We suggest these issues should be carefully studied and crafted to determine if the legislature wants the ramifications and changes that will occur with deregulation. If this legislature determines that the public is best served by deregulation of the liquor distribution system, then we urge this committee to study and discuss such deregulation in total rather than a checkerboard approach that may leave Kansas with an unworkable system.

Of specific concern is whether this committee has thoroughly reviewed the unintended consequences of the current legislation promoting deregulation of the industry. For example, if grocery and convenience stores gain license rights to sell malt products with an alcohol content exceeding 3.2 %, will federal courts require the State to allow sales of wine and hard liquor in those same stores using the Granholm case as the justification? You must know after all the information presented about the Granholm shipping case, that is a possible outcome of SB 299.

We urge a no vote on SB 299.

Thank you,

Neal Whitaker
Kansas Beer Wholesalers Association



The Kansas Association of Beverage Retailers

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Larry Knackstedt, President

Amy A. Campbell, Executive Director

TESTIMONY PRESENTED TO THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

Re: SB 299

January 31, 2006

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.

This is an extremely complex bill – written to achieve one purpose: to allow the sale of strong beer by cereal malt beverage retailers. What is the public purpose to be achieved by such a bill?

- Proponents say there is little difference between CMB and beer. Even for the average Bud Light – it would take four cans to equal the intake of three cans of average cereal malt beverage. For some individuals, this is the difference between driving under the influence and being under the legal limit.
- But what about after this bill passes? Now you are talking about Strong Beer – not only the light beers, but stronger imports and microbrews. The proponents can't say that there is no difference between a beer that is 5.0% alcohol and one that is less than 3.2% alcohol – especially when purchased by the case or keg.
- This will also put stronger flavored malt beverages in these stores – “wine coolers”, “hard lemonade”, the list of these fruit flavored beverages goes on and on. These products are exploding in the marketplace and appeal to a different purchaser than the typical beer drinker.
- SB 299 puts this stronger product in the hands of underage individuals: to stock it, to sell it, to resist the temptation to provide to their friends or to pick up for themselves.
- One out of five purchases in Kansas are cereal malt beverage. This is a market for the product. Are we to think that one out of five people does not know what he or she is buying? Cereal malt beverages are popular for softball teams and back yard barbecues.
- 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.)
- If liquor stores took over the sales of cereal malt beverages from the convenience stores and grocery stores, not one of them would lose their businesses. However, the reverse situation would cause irreparable damage to those stores whose sales of beer can be as low as 40% of their sales and as high as 80%. These sales statistics are common for liquor retailers. Is this the reward for liquor store owners who have built their businesses by working within a stringent licensing and regulation system?
- The original 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.
- Now it is suggested that the sellers of the new category of cereal malt beverage would only pay the sales tax on the product. What is the fiscal note to the State for this? What is the disadvantage to the liquor store?
- The bill does not bring the Cereal Malt Beverage Retailers under the licensing regulation of the ABC - although it appears to put the distribution of the product under the regulation of the State.

- Liquor stores must hire 21 year olds, employees must pass a background check, employees can't have felonies on their records, days of sale are more restricted, license requirements are more restrictive.
- 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.
- It creates unequal taxation and regulation of an identical product. Is this constitutional?
- 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.
- Can the Division of ABC absorb the responsibilities of this bill? Do we really believe that cities and counties could comprehend the intricacies of applying the old Cereal Malt Beverage Act to taverns, the new Cereal Malt Beverage Act to Cereal Malt Beverage / Beer Retailers, and portions of the old Liquor Control Act and portions of the new Cereal Malt Beverage Retailers Act to liquor retailers?
- We currently have cities that are unable to enforce the hours of sale adopted in the Local Option Sunday Sales bill which included cereal malt beverage retailers.
- The amendments do nothing to relieve these complications. In fact, they make it worse.
- 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. Simply delete all references to cereal malt beverage retailers and replace them with licensed retail liquor stores.

Kansas retail liquor stores have proven compliance rates in preventing underage sales – as high as 83%. There are no statewide compliance rates for convenience stores.

We can not emphasize enough the negative impact this legislation will have upon the retail liquor stores' business throughout the state. According to the January issue of the Kansas Beverage News, "some industry experts estimate half of retail liquor stores would be forced out of business. 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 700 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.

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.

What is the public policy being advanced by this bill? Please oppose SB 299.

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



The Kansas Association of Beverage Retailers

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Larry Knackstedt, President

Amy A. Campbell, Executive Director

Mr. Chairman and members of the Committee, my name is Larry Knackstedt. I am the current president of the KABR, Kansas Association of Beverage Retailers. I own Knocky's Liquors, LLC, in Overland Park, Kansas.

Our members must meet a very high standard in order to earn a license to sell packaged liquor in the state of Kansas. Those laws exist to provide the safe and regulated distribution of a legal, but necessarily government controlled product. Why would you give a commercial advantage to another type of retailer?

Liquor store owners must be Kansas citizens. This bill takes primary business away from state licensed liquor store owners to give to large corporations.

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.

Each and every liquor retailer is held accountable for every sale made from his/her store. We can't hide behind a corporation or resident agent.

We are not trying to put convenience stores and grocery stores out of business. But if it is time for this Legislature 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?

The sponsors of SB 299 refuse to meet the same requirements and regulation as the liquor stores who now sell strong beer. I understand their new bill even lets them pay lower taxes on the product.

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 have completed this course. The detection and handling of intoxicated persons or minors is stressed repeatedly. KABR supplies ID checking guides to its members, as well as rules and regs from ABC (which

Sen Fed & State Affairs
1-31-06
Attachment 6

track our statistics. They do not do this for convenience stores and grocery stores. In fact they don't even have the names and locations of all the licensed cereal malt beverage retailers in the state.

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.

PLEASE OPPOSE SB 299

I do not understand why the big chains who sell hundreds of items feel that they must take my beer business to show a profit ... when cereal malt beverage is less than 5% of their business. Even with Strong Beer – they say it would be less than 5% of their business.

Do you believe that they will sell the product as responsibly as I do? My clerks are not distracted with gas pumps or hot dog grills. I expect to be checked by the ABC regularly. My taxes are reviewed every time I renew my license. ABC will not do this for the cereal malt beverage retailer. It is not in the bill and they probably couldn't afford it.

The only winners in this picture are the out of state corporations, grocery stores, and convenience chains. The Kansas liquor stores would be forced into an economic situation that would be crippling – especially in those areas where liquor stores are few and far between.

When the rural liquor stores can't make a profit any more, the convenience stores will come back to you and say that it is time to let them sell wine and liquor.

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.

Thank you for your time. I am happy to be in the retail liquor business. Please support me and my fellow licensed retailers for the work that we do.

Please contact me if I can answer any of your questions.

Larry Knackstedt
Knocky's Liquors, LLC
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KANSANS FOR ADDICTION PREVENTION
P.O. Box 16774, Wichita, Kansas 67216
Phone 316-681-0122

SUBJECT: Changing the Alcohol Content of Cereal Malt Beverages

The operators of convenience stores and grocery stores that sell beer have been anxious for yours to capture the market that includes stronger beer. They falsely contend that they are not being treated fairly. The obvious conclusion that should be reached is that the convenience stores and grocery stores would like to move step by step into the sales of all alcohol products, thus eliminating liquor stores in Kansas and making liquor more available to underage drinkers, and there would be far less enforcement of the Liquor Control Act.

1. We believe that there is already a disparity to the advantage of the convenience stores because they can use individuals that are only 16 years old to stock and manage alcohol products. They can employ persons that are only 18 years old to sell their alcohol products. Liquor stores must have staff that are 21 years of age.
2. There are currently strong controls, training, and penalties for violations of regulations by liquor stores (we wish they were even more strict). Convenience stores are weak in all of these areas.
3. Senate Bill 299 discusses tax issues. All alcohol in Kansas is under taxed. The concern is over the border counties with Missouri. Have you driven through Missouri lately? We do not want to be like Missouri with their failing infrastructure. They have the lowest taxes on alcohol on the planet. It is simply a risk of doing business next to a poorly governed state that must be accepted by stores in Kansas.
4. KAP takes the position that it is bad policy to sell alcohol for individuals to consume at the same store that sells gasoline and ethanol to propel automobiles. Kansas has a poor record on drunk driving. We do not want to make it easier to buy alcohol and get right into a car and begin to drink.

There are other basic flaws with the position of the grocery stores and the convenience stores as they present Senate Bill 299. Please once again vote against any bill that expands access to alcohol products in Kansas.

Garry Winget
President

CHRIS STEINEGER
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Jo - Dotte Consolidation Study Commission

SB 427 by Senator Chris Steineger

The strength of the whole is greater than the parts.

- **E Pluribus Unum** The consolidation of WY and JO Counties together with their municipalities would have the strength of 650,000 Kansans united with one political leadership. We would be the power player on the plains. Unified government leadership would give us a simplified, faster planning and decision making process, reduce redundant government, gain economics of scale, and have greater accountability. We would compete decisively with cities like Atlanta, Denver, Dallas, Indianapolis, and even Shanghai and Bangalore.
- **Diversified Strength** Our combined economic bases would have strengths in tourism, heavy industry, rail and trucking transportation, retail, financial services, and bio science research. We would share the resources of two major rivers, an interstate highway and local road system, and a series of local parks and trails. The strength of the whole is greater than the parts.
- **Business Model** Mergers and consolidations take place everyday in the private sector. The *Wall Street Journal* is full of examples. Indeed the history of Sprint, Yellow Freight, Burlington Northern Santa Fe, and Boeing are examples of mergers and consolidations. All have become industry leaders and global competitors.
- **Proven Method** SB 427 is patterned from a 1996 Bill which created the original Wyandotte County - Kansas City, Kansas Consolidation Study Commission. That five member commission developed our **Consolidation Plan**, which was **approved by the voters** in April, 1997. **Our Wyandotte County consolidation is a pioneering, unquestionable success!** SB 427 creates a 9 member **study commission** appointed by the Governor which would **meet in open** public forum, **study** the issues, **listen** to residents and the business community, and **develop** a consolidation plan. A **public vote** would be **required** before any consolidation could take place.
- This proposal DOES NOT affect public schools or community colleges in any way.

"I'm even more encouraged by our collective future and our ability to achieve truly ambitious objectives." Gary Forsee, Sprint Nextel President and CEO

"Imagination is more important than knowledge." Albert Einstein

Successful Mergers and Consolidations

Yellow/Roadway Corp merger has reported huge profits from it's merger.

[The Kansas City Star, May 17, 2005, *For Sprint, a year of mergers and market value*, by Julius A. Karash]

The market value of Overland Park-based **Yellow Roadway Corp** ., the country's biggest trucking company, grew 59 percent to \$2.7 billion. Last year marked Yellow's first full year since its \$966 million acquisition of Roadway Corp., which had been Yellow's biggest rival. **The merger has gone well.** Industry observers were impressed by Yellow Roadway's financial performance last year. The company earned \$184.3 million, or \$3.75 a share, on \$6.8 billion in revenues. In 2003 the company earned \$40.7 million, or \$1.33 a share, on revenues of \$3.1 billion. **Yellow's merger strategy has continued** into 2005. It announced in February a \$1.37 billion buyout of USF Corp., a Chicago-based regional carrier.

The Sprint/Nextel Merger have had nothing but success since their merge.

[Wireless Week, October 26, 2005]

Sprint Nextel passed its first financial test as a merged company, reporting a profit during its first quarter as a combined entity. The No. 3 U.S. wireless carrier posted third-quarter income of \$516 million, or 23 cents a share, which reversed a year-ago loss of \$1.91 billion, or \$1.32 a share. Revenue came in at \$9.33 billion, up 35 percent year-over-year when compared to stand-alone Sprint. The company's wireless revenue increased 12 percent to \$8.07 billion. "I'm even more encouraged by our collective future and our ability to achieve truly ambitious business objectives," Gary Forsee, Sprint Nextel president and CEO, said.

Bank of America has proven that mergers can succeed!

[Boston Globe, April 4, 2004]

Allan Steinmetz, founder and chief executive of Inward Strategic Consulting, a Newton company that helps companies manage change, said **megamergers are usually done for strategic purposes.** "When done well a merged company can cut costs and efficiencies to create "a new culture from the ashes." Steinmetz said Bank of America's 1998 acquisition of NationsBank is an example of the successful integration of two firms.

WY - JO Local Government Spending

2005 Annual Expenditures

Wyandotte County, Cities, & Special Districts

Wyandotte County	94,489,959.00
Kansas City, KS	184,059,118.00
Bonner Springs	14,644,425.00
Edwardsville	4,559,338.00
Kaw Valley Drainage District	2,276,942.00
Fairfax Drainage District	1,976,800.00
Wolcott Drainage District	2,426.00
Total	\$302,009,008.00

Johnson County, Cities, & Special Districts

Johnson County	451,393,363.00
Overland Park	225,274,000.00
Olathe	218,086,275.00
Lenexa	88,296,592.00
Leawood	71,293,500.00
Shawnee	61,667,213.00
Gardner	51,256,878.00
Merriam	37,497,823.00
Prairie Village	25,592,300.00
Mission	17,813,679.00
Roeland Park	14,476,850.00
Spring Hill	8,596,809.00
Mission Hill	8,067,280.00
De Soto	6,663,711.00
Fairway	4,363,612.00
Westwood	2,057,268.00
Edgerton	2,028,773.00
Lake Quivira	1,010,850.00
Mission Woods	621,735.00
Westwood Hills	378,934.00
Gardner Township	41,800.00
Lexington Township	23,676.73
Aubry Township	19,100.00
Oxford Township	4,612.00
McCamish Township	2,542.00
Aubry Cemetery District	67,648.00
Pleasant Valley Cemetery District	37,000.00
De Soto Cemetery District	27,549.00
Monticello Cemetery District	25,960.00
Prairie Center Cemetery District	11,195.00
Pleasant Ridge Cemetery District	1,163.00
Merriam Drainage District	387,690.00
Monticello Drainage District	147,320.00
Consolidated Fire District Northeast	8,561,440.00
Fire District #2	5,972,944.00
Fire District #1	1,619,282.00
Rural Fire District #3	880,910.00
Total	\$1,314,203,800.00

Source: County Municipal Budget Summaries
Department of Administration, Division of Accounts and Reports

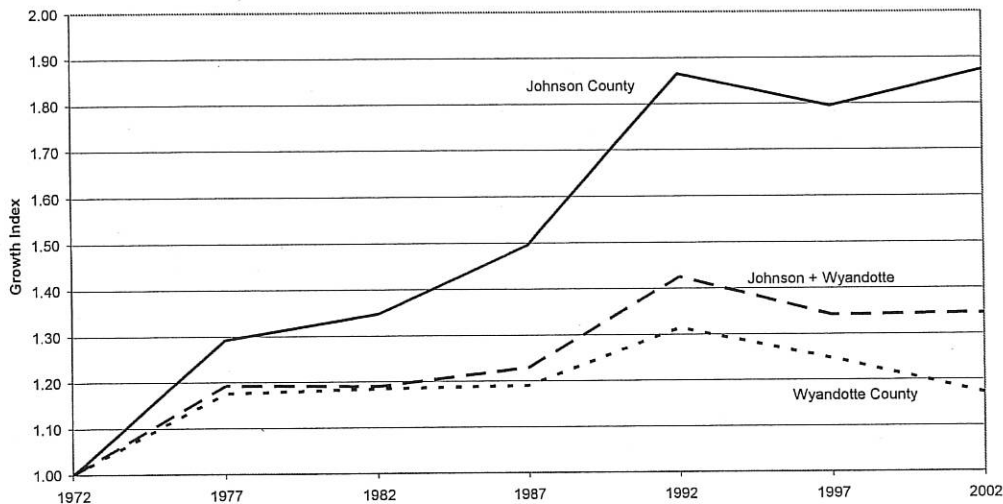
Comparative Statistics on Local Government Employment: Johnson and Wyandotte Counties

9

Non-Education Local Government FTEs as a Share of Population

	1972	1977	1982	1987	1992	1997	2002
Wyandotte	1.60%	1.88%	1.89%	1.90%	2.10%	1.99%	1.87%
Johnson	0.76%	0.98%	1.02%	1.13%	1.41%	1.36%	1.42%
Combined	1.14%	1.36%	1.36%	1.40%	1.63%	1.53%	1.54%

Relative Growth Trends:
Ratio of Non-Education Local Government FTEs to Population



County Comparisons (Non-Education Local Government FTEs)

County Name	Affiliated Metro Area	County Population	Local Government FTEs	FTEs Per 100 Population	
Gwinnett, GA	Atlanta	588,448	5,314	0.90	Potential Savings: \$164 Million Per Year
Collin, TX	Dallas	491,675	5,203	1.06	
Cobb, GA	Atlanta	607,751	6,522	1.07	
DuPage, IL	Chicago	904,161	11,761	1.30	
Lake, IL	Chicago	644,356	8,719	1.35	
El Paso, TX	El Paso	679,622	10,640	1.57	
Jackson, MO	Kansas City	654,880	12,725	1.94	
Douglas, NE	Omaha	463,585	9,023	1.95	
DeKalb, GA	Atlanta	665,865	13,154	1.98	
Travis, TX	Austin	812,280	19,529	2.40	
Johnson, KS	Kansas City	451,086	6,411	1.42	
Wyandotte, KS	Kansas City	157,780	2,949	1.87	
Johnson + Wyandotte	Kansas City	608,866	9,360	1.54	

10

TESTIMONY OF CARISSA MCKENZIE

**IN REGARD TO LEGISLATION PROVIDING FOR DIRECT SHIPMENT OF
WINE TO RESIDENT OF LEGAL AGE**

**Kansas Senate
Federal and State Affairs
Senator Pete Brungardt, Chairman
31 January 2006**

**Carissa Culling McKenzie
Horse Creek Ranch
29584 Old K-4 Road
Alta Vista, KS 66834
620.767.7858**

**TESTIMONY OF CARISSA MCKENZIE
a Wabaunsee County resident.**

DIRECT SHIPMENT OF WINE TO A RESIDENT OF LEGAL AGE

Mr. Chairman, thank you for the opportunity to speak in regard to the issue of direct shipment of wine. This testimony is not about opposition to or support for any particular bill, but addresses concern legislators and others may have for shipment of wine to only persons of legal age.

Currently, Kansas allows for the direct shipment of controlled substances to individuals. Shipment of pharmaceuticals requires signature of the recipient if that person be 21 years or older. Other arrangements are made if the patient is a minor.

Today, I provide an "APPROVED WINE SHIPPER" label as evidence that alcoholic beverages cannot be ordered and merely "left on a porch" for interception by minors. The UPS label clearly requires an adult signature-minimum of 21 years. The bar code contains a number with automatic designation as shipment of wine. Furthermore, a distinct tone issues from the device used by UPS to log deliveries, as reminder that an adult signature is required for completion of delivery.

A package sent to me did not contain alcohol of any kind, but was shipped from a winery, thus requiring signature of an adult-minimum 21 years. Verification is required for receipt from an approved wine shipper. Kansas farm wineries could be approved wine shippers. In addition, the package must be delivered to the shipping address, thus providing traceability and accountability.

I hope this information has assuaged concerns you may have in regard to shipment of wine to only persons of legal age. Thank you for your time.

LD
28

APPROVED WINE SHIPPER

3-73
APD

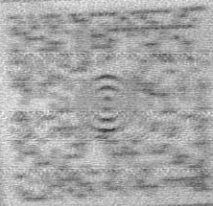
STACY WAINLEY
17071 263-8463
1285 S CREEK WINERY
1285 DEARY LN OYD PKWY
1892 OR 94559-9706

5 LBS

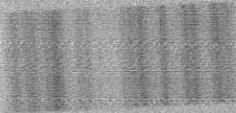
1 OF 1

SHIP TO:

~~XXXXXXXXXX~~
18 S. WOOD
COUNCIL GROVE KS 66846



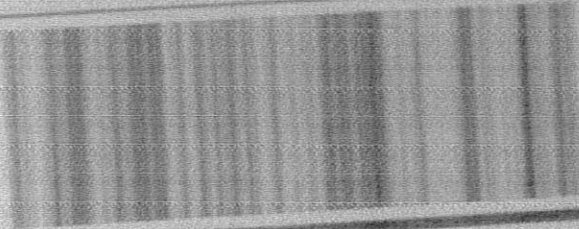
KS 668 0-01



LPS 3 DAY SELECT

3

TRACKING # 12 170 886 47 4000 4000



ADULT SIGNATURE REQUIRED FOR DELIVERY

SHIP NO. 12345
SERIAL NO.

DATE: 12/12/2000

HOR

CH

COUN

66846