

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 February 13, 2007 in Room 231-N of the Capitol.

All members were present except:  
Senator Roger Reitz- excused

Committee staff present:  
Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Ken Wilke, Revisor of Statutes Office  
Connie Burns, Committee Assistant

Conferees appearing before the committee:  
Senator Steineger  
Bob Alderson, Casey's General Stores, Inc  
Thomas Groneman, Kansas Alcoholic Beverage Control  
Neal Whitaker, Kansas Beer Wholesalers Assoc.  
Philip Bradley, Kansas Licensed Beverage Assoc.  
Amy Campbell, Kansas Assoc. Beverage Retailers

Others attending:  
See attached list.

Senator Brownlee requested a bill introduction that concerns employment security law in filing income tax.

Senator Brownlee moved that this request should be introduced as a committee bill. Senator Lynn seconded the motion. The motion carried.

Philip Bradley requested introduction of three bills: 1) Relating to merchants; providing for access to certain credit and debit card rate information (Attachment 1) 2) Relating to merchants; prohibiting certain changes by credit or debit card issuers (Attachment 2) 3) Relating to merchants; prohibiting transaction charges on credit or debit cards (Attachment 3)

Senator Brownlee moved that these requests should be introduced as committee bills. Senator Barnett seconded the motion. The motion carried.

**SR 1804 - Increases in Congressional Salaries**

Chairman Brungardt opened the hearing on **SR 1804**.

Senator Steineger appeared in favor of the resolution. (Attachment 4) The resolution asks Congress to restrain their pay increases to that of the average family income. The annual salary of a member of congress in 2004 was \$158,000; a member's salary 25 years ago was \$30,000 resulting in an increase of 527% in the past 25 years.

Chairman Brungardt closed the hearing on **SR 1804**.

**SR 1805 - Balance federal budget by 2012**

Chairman Brungardt opened the hearing on **SR 1805**.

Senator Steineger spoke in favor of the resolution. (Attachment 5) This resolution requests that Congress balance the Federal Budget by 2012. In Fiscal Year 2006, the U.S. Government spent \$406 billion on interest payments to the holders of the National Debt.

Chairman Brungardt closed the hearing on **SR 1805**.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on February 13, 2007 in Room 231-N of the Capitol.

**SB 317 - Local option to increase maximum permitted alcohol content of cereal malt beverage.**

Chairman Brungardt opened the hearing on **SB 317**.

Bob Alderson, representing Casey's General Stores, Inc., spoke in favor of the bill. (Attachment 6) Mr. Alderson stated that he is authorized to present testimony on behalf of the Petroleum Marketers and Convenience Store Association of Kansas, Inc., QuickTrip, Hy-Vee, Inc, and the Kansas Food Dealers Association. This 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 bill would allow convince stores to compete on an equal basis with the retail liquor dealers.

Tom Groneman, Director, Kansas Alcoholic Beverage Control (ABC), appeared as a opponent of the bill. (Attachment 7) The retail sale of CMB to consumers is regulated by cities and counties under the CMB Act for both on and off-premises consumption; and Malt beverages with more than 3.2% alcohol by weight are defined as beer, and are regulated by the Director of ABC under the Liquor Control Act for off-premises consumption and under the Club and Drinking Establishment Act for on-premises consumption. The bill creates a fourth (4<sup>th</sup>) act, and asks if the legislature determines that there should be two strengths of CMB, ABC proposed that the intended purpose can best be accomplished by making amendments to the current acts by clearly defining the activities of the various licensees and the enforcement responsibilities of state verses local authorities.

Neal Whitaker, Kansas Beer Wholesalers Association, spoke in opposition of the bill. (Attachment 8) The bill creates two different definitions for what is essentially the same product; in the first section the act requires that cereal malt beverage must be kept and sold separately from alcoholic liquor. The bill exempts this new class of retailers from most of the liquor control act and adds 49 new sections that attempt to rewrite the liquor control act; there are a few things that need to be adjusted in the current liquor laws and creating a third category for selling malt beverages is not one of them.

Philip Bradley, Kansas Licensed Beverage Association, appeared in opposition to the bill. (Attachment 9) The bill if passed and a county opted in then the members of the association have questions and concerns and could not support the bill without the appropriate answers. Questions deal with:

- could you have both
- hours of operation
- who would the on premise businesses be able to purchase CMB from
- taxes - who and how much or pay all three taxes
- option to purchase and sell only strong beer
- would the CMBR be subject to the same penalties for violations and the same appeal process

Amy Campbell, Kansas Association of Beverage Retailers, (KABR) appeared as an opponent to the bill. (Attachment 10) This form of legislation has been brought up during the 2001 and 2002 session, was rejected in 1993-94 session, 1989 the Senate Fed and State Committee rejected again, and varied versions in 2005 and 2006. The bill is written to achieve one purpose and that is to allow the sale of strong beer by cereal malt beverage retailers. If the committee wishes to change how alcohol is sold in Kansas, KABR would respectfully request an amendment that would require all alcohol beverages and cereal malt beverages to be sold by licensed retail liquor stores.

Written testimony in opposition to the bill was provided by Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, (Attachment 11) Larry Knackstedt, President, Kansas Association of Beverage Retailers, (Attachment 12) Dave Dvorak, Flint Hills Wine & Spirits, (Attachment 13) and Brian Flanery, Top Sellers Wine & Spirits, (Attachment 14).

Chairman Brungardt closed the hearing on **SB 317**.

The meeting was adjourned at 11:45 am. The next scheduled meeting is February 14, 2007.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
GUEST LIST

DATE 2-13-07

NAME	REPRESENTING
Amy Campbell	KS Association of Beverage Retailers
<del>Bob</del> ANDERSON	Casey's
Tom Parker	
Philip Bradley	KLBN
Tom Gromman	ABC
Phil Wilkes	ABC
Neal Whitaker	KBWA
Rebecca Rice	KBWA
Ron Seebor	Den Law Firm

HOUSE BILL NO. \_\_\_\_\_

By

AN ACT relating to merchants; providing for access to certain credit and debit card rate information.

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

Section 1. As used in sections 1 through 4, and amendments thereto, the following terms have the following meanings:

(a) "Acquiring bank" means a financial institution licensed to do business in this state providing merchant accounts;

(b) "chargeback" means a credit card or debit card transaction that is either billed back to a merchant or deducted from a merchant's account;

(c) "credit card" means:

(1) Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder on a promise to pay in part or in full at a future time, whether or not all or any part of the indebtedness represented by this promise to make deferred payment is secured or unsecured;

(2) any stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the instrument or device; and

(3) the number assigned to an instrument or device described in paragraphs (1) or (2) even if the physical instrument or device is not used or presented;

(d) "debit card" means:

(1) Any instrument or device whether known as a debit card, ATM card, electronic benefit transfer card or any other access instrument or device, other than a check, that is signed by the holder or other authorized signatory on the deposit account that draws moneys from a deposit account in order to obtain money, goods, services or anything else of value; and

(2) the number assigned to an instrument or device described in paragraph (1) even if the physical instrument or device is not used or presented;

(e) "financial institution" means any bank, savings association, savings bank, credit union or industrial loan company;

(f) "interchange fee" means the fee that an acquiring bank pays to an issuing bank when a cardholder uses a credit card or debit card as payment during a retail transaction;

(g) "issuing bank" means a financial institution which issues credit cards to cardholders;

(h) "merchant account" means a bank account that allows a merchant to accept credit card or debit card payments; and

(i) "merchant" means a person or entity licensed to business in this state which offers goods or services for sale in this state.

Sec. 2. (a) Whenever a contract authorizing a merchant to accept a credit card or debit card specifies that the merchant is bound by the rules of a financial institution, the contracting financial institution must:

(1) Give the merchant access in this state to the complete rules referenced in the contract,

either individually or through an acquiring bank;

(2) notify the merchant when a referenced rule has been changed or new rule added; and

(3) provide a copy of the new or modified rule.

(b) A contract authorizing a merchant to accept a credit card must contain:

(1) The contracting financial institution's complete schedule of interchange fees, credit card and debit card transaction rates and any other fees that the financial institution charges to merchants; and

(2) an explanation of which rates apply to the merchant and the situations in which those rates apply.

(c) A contract authorizing a merchant to accept a credit card or debit card may not require a merchant to agree not to disclose the contracting financial institution's rules or rates as a condition of receiving access to the rules or rates.

Sec. 3. (a) If an issuing bank or credit card company fails to give a merchant access to its rules or rates as required by section 2, and amendments thereto, then:

(1) The merchant shall not be liable for any chargeback or fees associated with its credit card or debit card transactions from the time the contract was executed until the rules and rates are provided; and

(2) the issuing bank or credit card company will be liable for a civil penalty of \$10,000 per charge levied prior to providing the rules.

(b) Any merchant whose rights under this act have been violated may maintain a civil action for damages or equitable relief as provided for in this section.

Sec. 4. If any provision of this act or its application to any person or circumstance is held

invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL NO. \_\_\_\_

By

AN ACT relating to merchants; prohibiting certain changes by credit or debit card issuers.

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

Section 1. As used in sections 1 through 3, and amendments thereto, the following terms have the following meanings:

(a) "Credit card" means:

(1) Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder on a promise to pay in part or in full at a future time, whether or not all or any part of the indebtedness represented by this promise to make deferred payment is secured or unsecured;

(2) any stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the instrument or device; and

(3) the number assigned to an instrument or device described in paragraph (1) or (2) even if the physical instrument or device is not used or presented;

(b) "debit card" means:

(1) Any instrument or device whether known as a debit card, ATM card, electronic benefit



transfer card or any other access instrument or device, other than a check, that is signed by the holder or other authorized signatory on the deposit account that draws moneys from a deposit account in order to obtain money, goods, services or anything else of value; and

(2) the number assigned to an instrument or device described in paragraph (1) even if the physical instrument or device is not used or presented.

Sec. 2. Discount rates, transaction charges, interchange rates or any other charges or fees charged to merchants or deducted from credit card or debit card sales for processing credit card or debit card transactions shall not be applied to the tax portion of any credit card or debit card sales.

Sec. 3. (a) Right of action:

(1) Any merchant whose rights under this act have been violated may maintain a civil action for damages or equitable relief as provided for in this section; and

(b) The attorney general shall have the power to maintain an action to enforce the penalties provided for in this section.

(2) Any person who violates this section will be subject to a civil penalty of \$5,000 per violation.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL NO. \_\_\_\_\_

By

AN ACT relating to merchants; prohibiting transaction charges on credit or debit cards.

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

Section 1. As used in sections 1 through 3, and amendments thereto, the following terms have the following meanings:

(a) "Acquiring bank" means a financial institution licensed to do business in this state providing merchant accounts;

(b) "credit card" means:

(1) Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder on a promise to pay in part or in full at a future time, whether or not all or any part of the indebtedness represented by this promise to make deferred payment is secured or unsecured;

(2) any stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the instrument or device; and

(3) the number assigned to an instrument or device described in paragraphs (1) or (2) even if the physical instrument or device is not used or presented;

(c) "debit card" means:

(1) Any instrument or device whether known as a debit card, ATM card, electronic benefit transfer card or any other access instrument or device, other than a check, that is signed by the holder or other authorized signatory on the deposit account that draws moneys from a deposit account in order to obtain money, goods, services or anything else of value; and

(2) the number assigned to an instrument or device described in paragraph (1) even if the physical instrument or device is not used or presented;

(d) "financial institution" means any bank, savings association, savings bank, credit union or industrial loan company;

(e) "interchange fee" means the fee that an acquiring bank pays to an issuing bank when a cardholder uses a credit card or debit card as payment during a retail transaction;

(f) "issuing bank" means a financial institution which issues credit cards to cardholders;

(g) "merchant account" means a bank account that allows a merchant to accept credit card or debit card payments; and

(h) "merchant" means a person or entity licensed to business in this state which offers goods or services for sale in this state.

Sec. 2. A contract authorizing a merchant to accept a credit card or debit card may not:

(a) Give a financial institution the right to charge a merchant or deduct from the merchant's account the cost of a credit card or debit card transaction because the cost of the transaction exceeds a predetermined amount; or

(b) require a merchant to limit or waive its rights under this act.

Sec. 3. (a) Right of action:

(1) Any merchant whose rights under this act have been violated may maintain a civil action for damages or equitable relief as provided for in this section; and

(2) the attorney general shall have the power to maintain an action to enforce the penalties provided for in this section.

(b) Any person who violates this section will be subject to a civil penalty of \$5,000 per violation.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS

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SENATE CHAMBER

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## Increases in Congressional Salaries SR - 1804

- In the past 25 years real median household income has increased a total of only 35%. In 2004 the median household income in the country was \$44,389. This amount was unchanged in real median household income from 2003 or 2002.
- The annual salary of a member of congress in 2004 was \$158,100; a member's salary 25 years ago was \$30,000 resulting in an increase of 527% in the past 25 years.
- The efforts of our elected representatives in maintaining two households, constant travel between home and Washington and the demands of their public positions justify a lofty salary; however, the increases in salary they have awarded themselves over the years bears little resemblance to the pay increases received by ordinary Americans.

Sen Fed & State

Attachment 4

2-13-07

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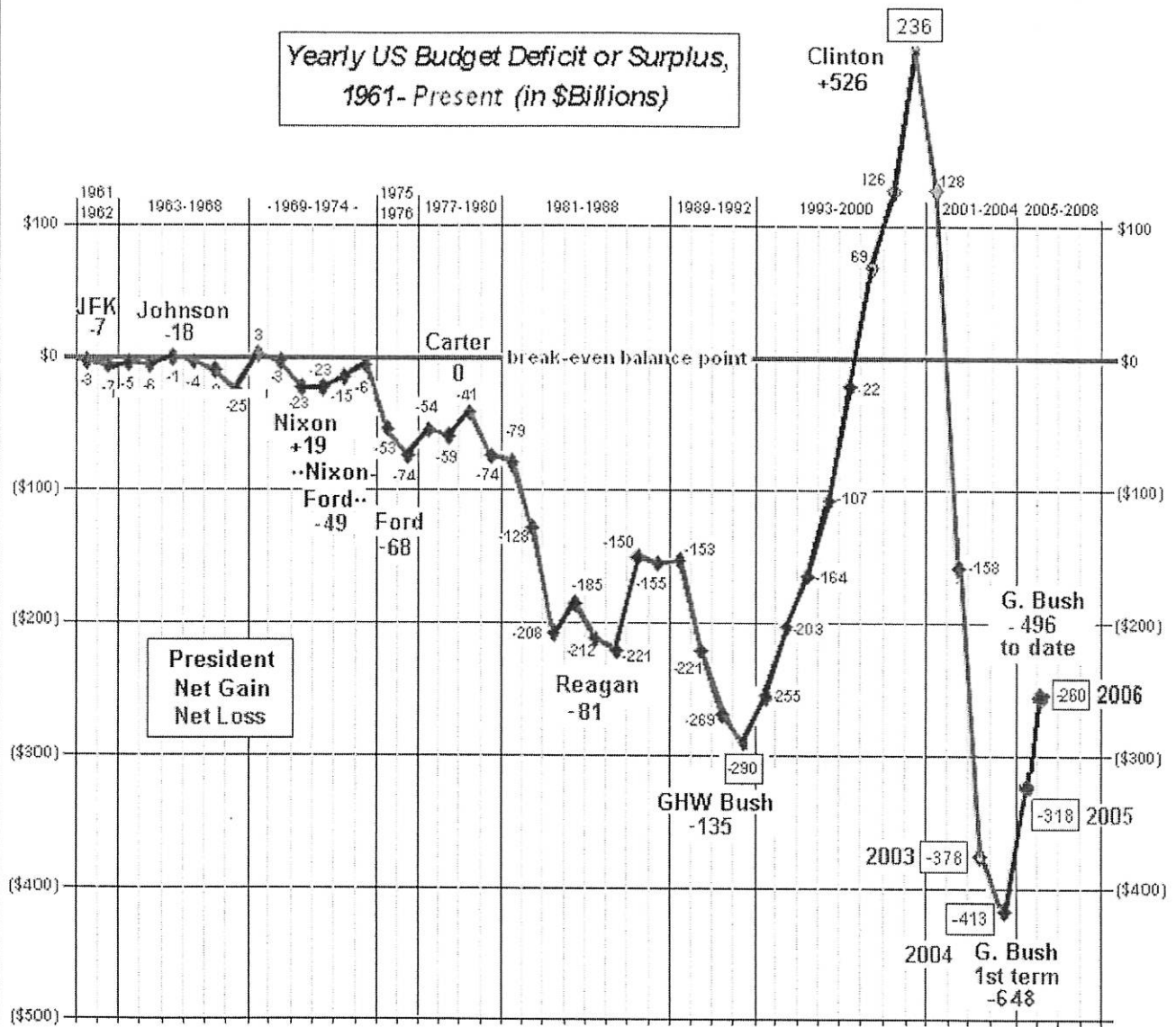
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## Balance Federal Budget by 2012 SR - 1805

- According to the current Federal Budget our budget deficit has reached 339 Billion dollars, which is 2.5% of our total GDP and 12% of our total Federal Budget for 2007.
- "We must balance the federal budget," said President Bush in his 2007 State of the Union Address. "In 2005 alone, the number of earmarks grew to over 13,000 and totaled nearly \$18 billion. Even worse, over 90 percent of the earmarks never make it to the floor of the House and the Senate; they're dropped into committee reports that are not even part of the bill that arrives on my desk."
- In Fiscal Year 2006, the U. S. Government spent \$406 Billion on interest payments to the holders of the National Debt.
- Our Federal Reserve Chairman Ben Bernanke has warned that if we keep spending at our current rate and do not balance the budget, "A vicious cycle may develop in which large deficits lead to rapid growth in debt and interest payments, which in turn adds to subsequent deficits."
- "If early and meaningful action is not taken, the U.S. economy could be seriously weakened, with future generations bearing much of the cost," he added, citing worrisome long-term projections on the cost of programs such as Social Security and Medicare.
- The estimated population of the United States is **300,807,851**, so each citizen's share of our **8 Trillion** debt is **\$28,864.12**.

**Yearly US Budget Deficit or Surplus,  
1961- Present (in \$Billions)**



**President  
Net Gain  
Net Loss**

Budget Data from **Congressional Budget Office** [www.cbo.gov](http://www.cbo.gov)

last update: 1/29/07



## CASEY'S GENERAL STORES, INC.

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P.O. Box 3001 • One Convenience Blvd., Ankeny, Iowa 50021-8045 • 515-965-6100

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

**FEBRUARY 13, 2007**

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. 317. I also am authorized to present this testimony on behalf of the Petroleum Marketers and Convenience Store Association of Kansas, Inc., QuikTrip, Hy-Vee, Inc. and the Kansas Food Dealers Association. These organizations and businesses have formed a coalition for the purpose of supporting legislation which will enable coalition members to regain an appropriate share of the market for cereal malt products.

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

### **BACKGROUND**

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

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

Sen Fed & State

Attachment 6

2-13-07



alcohol by weight was not regarded by law as an intoxicating liquor, while any such product containing more than 3.2% alcohol by weight was considered an intoxicating liquor.

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

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

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

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

Thus, the purpose of SB 317 is to provide an opportunity for local units of government to make applicable in their jurisdictions a statutory scheme which recognizes that there is no appreciable difference in alcoholic strength between CMB and beer. The application of this statutory scheme in a local community will eliminate the artificial distinction between CMB and beer, thereby providing consumers in such community a wider choice as to where to purchase cereal malt products.

### **SENATE BILL NO. 317**

The coalition sponsoring SB 317 has previously sponsored similar legislation in several prior sessions. However, until the 2005 session of the Legislature, the coalition's prior bills have proposed to make the reclassification of CMB applicable statewide. It is now clear that such proposal does not present an acceptable legislative option. Thus, the coalition's proposal to reclassify CMB, as embodied by SB 317,

requires the exercise of a "local option" by a city or county, in order for the bill's provisions to become operative. This was the approach taken in 2005 with SB 299, and this Committee recommended that bill favorably for passage. However, a vote was not taken on this bill by the full Senate.

The coalition recognizes that there are a variety of viewpoints and perspectives throughout our state, regarding the sale and consumption of alcoholic beverages. In many instances, geography can influence those attitudes. That is why the local option provision in SB 317 is so important. It will allow each community to decide for itself whether CMB should be reclassified to include malt products containing not more than 5% of alcohol by weight. Each community will be able to exercise the same right of self determination that has been afforded by many of the other state laws enabling the local sales of alcoholic beverages.

**Local Options.** SB 317 affords each city in which the sale of alcoholic liquor is currently authorized, to adopt a resolution providing that the Cereal Malt Beverage Retailers' Act (Sections 4 through 53 of SB 317) shall be applicable in such city. The adoption of such resolution is made subject to a protest petition and, if the petition is sufficient, an election to determine whether the resolution shall become effective. In addition, Section 2 of SB 317 also provides that the Cereal Malt Beverage Retailers' Act shall be applicable in any township in which alcoholic liquor may currently be sold, if the board of county commissioners of the county in which such township is located shall adopt a resolution making the act applicable.

Section 56 provides a local option to cities and counties in which alcoholic liquor currently may not be sold and in which CMB only may be sold. The governing body of any such city may adopt a resolution providing that the definition of cereal malt beverage in K.S.A. 41-2701 shall be re-defined to increase the alcoholic content of such beverage from 3.2% to 5.0%, for the purpose of applying cereal malt beverage statutes in that city. Such resolution is subject to protest and election, if necessary, to become effective. Likewise, the board of county commissioners of any such county where alcoholic liquor can not be sold and only CMB may be sold may adopt the same resolution, re-defining cereal malt beverage as one which contains not more than 5% of alcohol by weight, for purposes of applying the cereal malt beverage statutes within such county and outside the incorporated limits of any city within such county.

**Cereal Malt Beverage Retailers' Act.** As noted previously, Sections 4 through 53 of SB 317 comprise the Cereal Malt Beverage Retailers' Act. Notable among these sections is Section 5, which contains definitions applicable to the new act. This section is patterned after K.S.A. 41-102, which contains the definitions applicable to the Kansas Liquor Control Act. However, in Section 5 of SB 317, "beer" is defined as a malt beverage having more than 5.0% alcohol by weight, while "cereal malt beverage" is defined as a malt beverage having not more than 5.0% alcohol by weight. The change in the alcohol content of these products will be addressed subsequently. However, suffice it to state these definitional changes are important because, when the definition of cereal malt beverage is changed to increase its alcohol content, the newly-defined cereal malt beverage includes products which are now sold in the original and unopened containers only by retail liquor dealers, and sold by the drink only by clubs, drinking establishments, caterers and temporary permit holders under the Club and Drinking Establishment Act.

Thus, the new act must necessarily permit these various licensees located in any city or township in which the Cereal Malt Beverage Retailers' Act is applicable to continue selling these products. However, it would be highly impractical to attempt amending the Kansas Liquor Control Act and the Club and Drinking

Establishment Act to carve out exceptions for local units of government where the local option has been exercised. Therefore, the most expeditious approach for affording these local governments the opportunity to eliminate the somewhat meaningless distinction between 3.2 beer and most domestic beers, is to create a new act containing sections which are revised versions of statutes contained in the Kansas Liquor Control Act, the Club and Drinking Establishment Act and the Kansas Cereal Malt Beverage Act (K.S.A. 41-2701 *et seq.*). The existing statutes, which will not be applicable to a city or township in which the Cereal Malt Beverage Retailers' Act is applicable, are set forth in Section 2(f). Correspondingly, the new sections comprising the Cereal Malt Beverage Retailers' Act are revised versions of those statutes, with such revisions being directed primarily at permitting the various licensees under the existing laws which manufacture, sell or distribute beer, to also be a manufacturer, distributor or retailer of the re-defined cereal malt beverage. Attached to this testimony as Attachment A is an explanation of the purpose of each of the new sections contained in SB 317, identifying the existing statute to which it corresponds.

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

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

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

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

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

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

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

**Taxes.** Currently, the sales of beer by retail liquor dealers licensed under the Kansas Liquor Control Act are subject to an 8% liquor enforcement tax on the gross receipts of such sales. On the other hand, sales of CMB pursuant to K.S.A. 41-2701 *et seq.* are subject to state and local sales taxes. SB 317 perpetuates this tax structure. Thus, all sales of cereal malt beverage in the original and unopened package by cereal malt beverage retailers under the Cereal Malt Beverage Retailers' Act will be subject to state and local sales taxes (Section 59), and all sales of cereal malt beverage by liquor retailers under the Cereal Malt Beverage Retailers' Act will be subject to the liquor enforcement tax (Section 57). (Actually, because it would be very cumbersome to amend the liquor enforcement tax statutes, K.S.A. 79-4101 *et seq.*, to make them applicable to sales under the new act, Section 57 imposes an 8% tax on sales of cereal malt beverage by liquor retailers under the new act, which is to be administered, collected and enforced identically to the liquor enforcement tax.)

**Constitutionality.** In connection with the coalition's prior legislative proposals, the question of whether the legislature has the constitutional authority to re-define CMB has been raised. Anticipating that the same question may be raised in connection with SB 317, it should be noted that Attorney General Opinion No. 87-48 concluded that the Kansas Legislature has the power to define all beer containing less than 5% alcohol by weight as a cereal malt beverage (CMB). The sponsors of this proposal are unaware of any change in the opinion of that office. Since there are no opinions of any Kansas appellate courts on this specific issue, there can be no guarantee as to this proposal's constitutionality, which is the case with most proposed legislation. However, in the absence of such definitive case law, the above-referenced Attorney General Opinion provides credible authority.

## **CONCLUSION**

In conclusion, we want to emphasize that the real issue involved in SB 317 is not a liquor issue. It is an economic issue. Raising the drinking age to 21, authorizing liquor by the drink and the persistent misconception by consumers that CMB is of a lesser quality than beer have all combined to produce a

dramatic reduction in the sales of CMB. By allowing us to compete on an equal basis with retail liquor dealers, SB 317 provides CMB retailers that opportunity to regain the share of the cereal malt product market they lost over the past several years.

We appreciate the opportunity to appear before the Committee in support of SB 317, and I will attempt to answer any questions the Committee may have.

**EXPLANATION OF NEW SECTIONS IN SENATE BILL NO. 317**

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

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

**New Sec. 4.** (Page 3) Subsection (a) of this section denominates sections 4 through 53 of SB 317 as the Cereal Malt Beverage Retailers' Act. Subsection (b) provides that, for purposes of the new act, any reference to the Kansas Liquor Control Act, the Club and Drinking Establishment Act or the Kansas Cereal Malt Beverage Act shall be deemed a reference to those provisions of such acts which remain applicable to any city or township in which the new act is made applicable. (See subsection (f) of New Sec. 2.)

**New Sec. 5.** (Page 3) This section contains substantially all of the definitions contained in K.S.A. 41-102, except that "cereal malt beverage" has been defined so as to increase the alcoholic content to not to exceed 5% alcohol by weight. That definition also includes flavored malt beverage, as defined by K.S.A. 2006 Supp. 41-2729. In addition, several new definitions have been included in this section, as well as pertinent definitions from K.S.A. 41-2701.

**New Sec. 6.** (Page 6) This section corresponds to K.S.A. 2006 Supp. 41-104, prohibiting various acts, unless they are authorized by the Cereal Malt Beverage Retailers' Act or the Kansas Liquor Control Act. The provisions include prohibited acts involving cereal malt beverage.

**New Sec. 7.** (Page 7) This section corresponds to K.S.A. 2006 Supp. 41-208, by vesting essentially the same regulatory powers in the Director of ABC as are vested in the Director by K.S.A. 41-208. But New Sec. 7 extends such regulatory authority over cereal malt beverage and the Cereal Malt Beverage Retailers' Act.

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

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

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

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

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

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

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

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

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

**New Sec. 17.** (Page 14) As is the purpose of K.S.A. 2006 Supp. 41-712 this section sets forth the days and hours when alcoholic liquor and cereal malt beverage cannot be sold by liquor retailers.

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

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

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

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

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

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

**New Sec. 24.** (Page 16) This section is substantially the same as K.S.A. 2006 Supp. 41-805, except that it includes cereal malt beverage within its scope.

**New Sec. 25.** (Page 19) This section replicates the provisions of K.S.A. 41-806 regarding prosecution of violations of the Kansas Liquor Control Act, but also includes violations regarding cereal malt beverage under the new act.

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



**New Sec. 27.** (Page 21) This section is comparable to K.S.A. 41-905, but also includes cereal malt beverage within the scope of its prohibitions.

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

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

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

**New Sec. 31.** (Page 22) This section incorporates the provisions of K.S.A. 41-1101 regarding the unlawful discrimination in sales, services or prices of alcoholic liquor and includes cereal malt beverage within its scope.

**New Sec. 32.** (Page 25) This section is substantially the same as K.S.A. 41-1102, except for the addition of cereal malt beverage.

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

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

**New Sec. 35.** (Page 25) The authority of a sheriff under K.S.A. 41-1125 to possess alcoholic liquor on which there has been levied execution, has been broadened to include cereal malt beverage.

**New Sec. 36.** (Page 26) The prohibition of the Club and Drinking Establishment Act (41-2604) regarding consumption of alcoholic liquor on licensed premises has been expanded to include cereal malt beverage.

**New Sec. 37.** (Page 26) Unlawful acts by a licensee or temporary permit holder under the Club and Drinking Establishment Act (K.S.A. 41-2610), with respect to the serving or dispensing of alcoholic liquor, has been expanded to include dispensing or serving of cereal malt beverage.

**New Sec. 38.** (Page 27) The authority of the Director of ABC to revoke or suspend any license under the Club and Drinking Establishment Act (K.S.A. 2006 Supp.41-2611) has been broadened by this section to include violations involving cereal malt beverage, as well as alcoholic liquor.

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

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

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

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

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

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

**New Sec. 45.** (Page 32) Except for the addition of cereal malt beverage and correction of the title of the Club and Drinking Establishment Act in subsection (h), this section is identical to K.S.A. 2006 Supp. 41-2645.

**New Sec. 46.** (Page 33) Except for the addition of cereal malt beverage, one grammatical correction in subsection (g) and the elimination of licensure requirements for railway cars, this section is identical to K.S.A. 2006 Supp. 41-2702.

**New Sec. 47.** (Page 35) The licensing procedure for a cereal malt beverage retailer under this section is substantially the same as the procedure prescribed by K.S.A. 2006 Supp. 41-2703.

**New Sec. 48.** (Page 36) This section corresponds to K.S.A. 2006 Supp. 41-2704 in setting the days and hours when a cereal malt beverage retailer may sell cereal malt beverage, and are the same days and hours when a liquor retailer under the Kansas Liquor Control Act and the Cereal Malt Beverage Retailers' Act may sell alcoholic liquor and cereal malt beverage. In addition, a cereal malt beverage retailer is prohibited from selling cereal malt beverage at less than the acquisition cost without permission from the Director of ABC, and the criteria for the granting of the Director's permission also are set forth.

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

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

**New Sec. 51.** (Page 38) Other than the new terminology of cereal malt beverage retailer rather than retailer and omission of subsection (b) of K.S.A. 2006 Supp. 41-2708, this section is substantially the same as the current statute.

**New Sec. 52.** (Page 40) The enforcement of the Cereal Malt Beverage Retailers' Act by local authorities is provided by this section. It is comparable to K.S.A. 41-2709.

**New Sec. 53.** (Page 40) This is the last section of the Cereal Malt Beverage Retailers' Act. Except for the change in terminology from retailer to cereal malt beverage retailer and the elimination of subsection (g) of K.S.A. 41-2722, the new section is substantially the same as the existing statute.

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

**New Sec. 57.** (Page 43) Because of the difference in the definitions of cereal malt beverage in the Cereal Malt Beverage Retailers' Act and in K.S.A. 79-4101, the sales of cereal malt beverage under the Cereal Malt Beverage Retailers' Act are exempted from the liquor enforcement tax provided by K.S.A. 79-4101, et seq. However, this new section imposes essentially the same tax on sales of cereal malt beverage by liquor retailers to consumers and on sales of cereal malt beverage by distributors to clubs, drinking establishments, caterers and temporary permit holders, pursuant to the Cereal Malt Beverage Retailers' Act.

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

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

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

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

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

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

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

## ALCOHOL CONTENT - SELECTED BEERS

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

ANALYSIS ACCURACY  $\pm .05\%$



7  
Kathleen Sebelius, Governor  
Joan Wagnon, Secretary

www.ksrevenue.org

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Testimony on Senate Bill 317  
to  
The Senate Committee on Federal and State Affairs

by Tom Groneman  
Director  
Alcoholic Beverage Control

February 13, 2007

Mr. Chairman, members of the committee, thank you for allowing me to appear before you today regarding Senate Bill 317.

Malt beverages with no more than 3.2% alcohol by weight are defined as cereal malt beverage (CMB). The retail sale of CMB to consumers is regulated by cities and counties under the CMB Act for both on and off-premises consumption.

Malt beverages with more than 3.2% alcohol by weight are defined as beer. The retail sale of beer to consumers is regulated by the Director of Alcoholic Beverage Control (ABC) under the Liquor Control Act for off-premises consumption and under the Club and Drinking Establishment Act for on-premises consumption.

The manufacture, importation and distribution within Kansas of both beer and CMB to retailers are regulated by the Director of ABC under the Liquor Control Act.

The dividing line of 3.2% alcohol by weight between beer and CMB is defined for beer by subsection (c) of K.S.A. 41-102 in the Liquor Control Act and for CMB by subsection (a) of K.S.A. 41-2701 in the CMB Act. These two definitions control all references to beer and CMB in the three existing acts.

SB317 creates a 4<sup>th</sup> Act, the Cereal Malt Beverage Retailer's Act (CMBR). The CMBR act proposes, in cities and townships that adopt the act, to move the line between CMB and beer from 3.2% to 5%. This is accomplished by creating a 2<sup>nd</sup> definition of CMB. The CMBR act is supposed to coexist with the existing 3 acts. We believe that it will cause confusion and duplicated effort on the part of both the state and local authorities responsible for the regulation of beer and CMB products.

If the legislature determines that there should be two strengths of CMB we propose that the intended purpose can best be accomplished by making amendments to the current acts by clearly defining the activities of the various licensees and the enforcement responsibilities of state versus local authorities.

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Sen Fed & State

Attachment 7

2-13-07



800 SW Jackson, Suite 1017, Topeka, Kansas 66612

Testimony by Neal Whitaker, Kansas Beer Wholesalers Association on Senate Bill 317  
February 13, 2007

In the 1930's the Topeka newspaper reported 10,000 people gathered on the statehouse grounds demanding that then Governor Alf Landon call a special session of the legislature to pass a cereal malt beverage act allowing for the sale of 3.2 beer. The rally was moved to the Topeka fair grounds grandstand because it became so large.

Governor Landon did not call a special session but in 1937 the legislature passed the cereal malt beverage act, and became the next to last state in the union to pass a 3.2 law. It would be another 12 years before the constitution was amended to allow for liquor stores that would sell strong beer and other alcoholic beverages. But these stores could only be in cities that voted to allow them.

Since 1948 the system has remained virtually unchanged. Cities and counties license cereal malt beverage establishments, and the state licenses liquor retailers. The system works.

SB 317 blurs the well defined line between the liquor control act and the CMB act. The state will license some establishments that sell the new 5% by weight product and local units will license others.

The bill exempts this new class of retailers from most of the liquor control act,

The following statutes, and amendments thereto, shall not apply in any city or township in which the cereal malt beverage retailers' act is applicable: K.S.A. 41-102, 41-104, 41-208, 41-209, 41-210, 41-211, 41-307, 41-308, 41-308b, 41-601, 41-602, 41-701, 41-708, 41-712, 41-717, 41-718, 41-724, 41-725, 41-726, 41-729, 41-805, 41-806, 41-901, 41-905, 41-1001, 41-1002, 41-1004, 41-1101, 41-1102, 41-1122, 41-1123, 41-1125, 41-2604, 41-2610, 41-2611, 41-2614, 41-2632, 41-2637, 41-2641, 41-2642, 41-2643, 41-2645, 41-2701, 41-2702, 41-2703, 41-2704, 41-2705, 41-2707, 41-2708, 41-2709, 79-4101, 79-4102, 79-4103, 79-4104, 79-4105, 79-4106, 79-4107, 79-4108, 79-41a01, 79-41a02, 79-41a03, 79-41a03a, 79-41a04, 79-41a05, 79-41a06, 79-41a07, 79-41a08 and 79-41a09, and amendments thereto.

and adds 49 new sections that attempt to rewrite the liquor control act. But if you look closely at the new sections you will see that some of the language has been changed from the original act.



The bill creates two different definitions for what is essentially the same product. In the first section the act requires that cereal malt beverage must be kept and sold separately from alcoholic liquor. Does that mean that a liquor retailer must store and sell most of the beer it sells now (and other malt products) in a separate building?

Finally, for 70 years the courts have recognized that 3.2 cereal malt beverage is a different product than strong beer and has allowed the state to regulate it differently. Overturning 70 years of case law and tradition causes concern as to the outcome of the inevitable litigation this legislation will cause.

There are a few things that need to be adjusted in the current liquor laws. Creating yet a third category for selling malt beverages is not one of them.



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February 13, 2007  
Senate Federal and State Affairs Committee  
SB 317

Thank you for the opportunity to speak. I recognize your time constraints and will be brief.

If this bill passed and a County "Opted IN" then our members have these concerns/questions and could not support this change without the appropriate answers:

1. Could you have both?
2. Who would the on premise Businesses be able to purchase CMB from?
3. Hours of operation?
4. Taxes- The thousands of small businesses and service organizations now serving beverage alcohol pay an 8% Enforcement Tax when they purchase products for resale. They are not exempt as other businesses are for their "raw" products. They collect and remit an additional 10% Drink Tax on the beverage alcohol they sell. These taxes are greater than the state and local sales taxes and the net revenues to the state are greater as well. This bill would impose the sales tax *in addition* to the Enforcement and Drink Tax and would raise taxes on CMB. If a licensee is located in a local that "opts in" would they then pay (collect and remit) all three taxes on CMB.
5. Could they chose to purchase and sell only Strong beer? We would not object to having the same sales taxes and opportunities as other businesses instead of the 8 % and 10 % compounded as we now do.
6. Why would CMB Retailiers not have the same licenseing fee's, bonds, standards and application process? Since there would only be one strength beverage it should require the same application and licensing procedures to the same agency
7. Why would they be granted by cities and Counties instead of the State? Would we have to apply to both bodies? We would hope that equal treatment would also be afforded all who sell such products.
8. Would the CMBR be subject to the same penalties for violations? And the same appeal process?

There are undoubtably further issues that will arise as these are answered. Thank you for your time.

Philip Bradley

**Drink Responsibly.**  
**Drive Responsibly.**

Sen Fed & Sta

Attachment

2-13-07



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

Re: SB 317

February 13, 2007

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. We also faced varied versions of this bill in 2005 and 2006. 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 317 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 317 creates unequal taxation for beer by allowing cereal malt beverage retailers to pay sales tax on beer up to 5% alcohol content while liquor retailers will pay the enforcement tax at 8%. 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 continues 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 317 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?
- SB 317 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 317 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. 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 750 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 317.**

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

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**WINE & SPIRITS**  

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WHOLESALE ASSOCIATION

To: Senate Committee on Federal & State Affairs  
From: R.E. "Tuck" Duncan  
RE: SB 317

**The KWSWA opposes SB317.** [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 in Kansas 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.

Just a few years ago the Legislature determined to formulate a consistent statewide beverage alcohol policy with a uniform Liquor Control Act. SB317 proposes to have county option for the alcohol content of a specific class of a product. This is truly guiding public policy in the wrong direction of decentralization rather than the right direction of uniformity.

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 58 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.

**Kansas is not alone, several surrounding states: Oklahoma and Colorado, also have 3.2 cereal malt beverage.**

### 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 and ANACHRONISM MYTHs**

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).

#### **3.2% cereal malt beverage is not an anachronism**

The 18th Amendment (Prohibition) outlawed "intoxicating liquors for beverage purposes," but made no reference to alcohol content. The Volstead Act set the legal alcohol limit at one-half of 1 percent, apparently based on Internal Revenue Service distinctions made for the purpose of taxation. Under the Volstead Act, the only "beer" that could be sold legally in the United States was "near beer" (3.2 CMB is not near beer). Prohibition became a central issue in the Presidential election of 1932. Concerns with unemployment, the need for farm relief, and growing sentiment against Prohibition led Franklin Roosevelt to call at the Democratic National Convention for "modification of the Volstead Act just as fast as the Lord will let us to authorize the manufacture and sale of beer." The New York Times of June 28, 1932, reported that Roosevelt's position on the Volstead act "managed to draw the convention several times to its feet, and to start a real demonstration for prohibition repeal." After Roosevelt's election, "modification of the Volstead Act" focused on changing the level of alcohol content deemed "intoxicating." Efforts had been made during prohibition to raise the level from one-half of one percent to 2.75 percent by introducing scientific evidence that intoxication was physically impossible drinking beer of this alcohol content. These efforts, one of which reached the Supreme Court, failed. In 1933, similar scientific arguments were used to support enactment of the Cullen-Harrison bill, permitting the resumption of the manufacture and sale of 3.2 percent beer and light wines in the states that had already repealed their dry laws. On March 23, 1933, President Franklin Roosevelt signed into law an amendment to the Volstead Act known as the Cullen-Harrison bill allowing the manufacture and sale of "3.2 beer" (3.2 percent alcohol by volume) and light wines. The Eighteenth Amendment was repealed later in 1933 with ratification of the Twenty-first Amendment

on December 5 Because "3.2 beer" became legal as a result of the new definition of intoxication in the Volstead Act instead of as a result of the repeal of the 18th Amendment, its distribution and sale in some states was not initially regulated under the State laws established after repeal to control commerce in "intoxicating liquors." **A separate uniform regulatory structure for 3.2 beer is most important in light of the fact that 32 Kansas counties still do not allow liquor by the drink.**

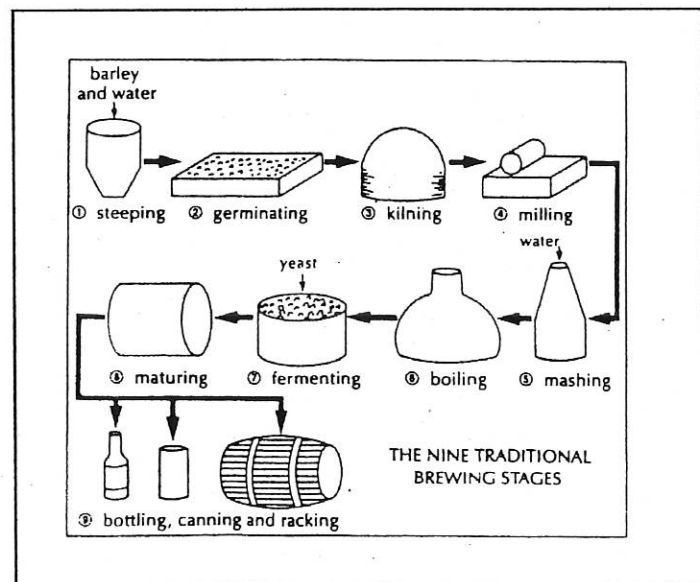
### SOCIAL RESPONSIBILITY

The beverage alcohol industry is concerned that if the legislature were to allow the redefinition of 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 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 SB317 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 reallocate market share after 58 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 cereal malt beverages is to alter market share. Proponents of this legislation have stated in the past that their primary motive is financial ... well it is a poor rationale to establish new public policy to merely satisfy the proponents' financial thirst. 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 to Kansas' retail liquor dealers who serve other state policies well and to maintain an orderly market.

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

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913-341-5054; [lknackstedt@kc.rr.com](mailto:lknackstedt@kc.rr.com)

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 317 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 we must pay for). The ABC sends in underage kids to try to buy from me – and they track our statistics. They do not do this for convenience stores and grocery stores. In fact

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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 317**

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  
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Opposition to SB 317

Reminder: AOL will never ask you to send us your password or credit card number in an email.

This message has been scanned for known viruses.

**From:** fleamandave@sbcglobal.net  
**To:** palmer@senate.state.ks.us, dcdvorak@msn.com  
**Cc:** reppalmer@aol.com  
**Subject:** Opposition to SB 317  
**Date:** Mon, 12 Feb 2007 3:40 PM

Dear Senator Palmer,

Hello from Andover Kansas! It's me again, Dave Dvorak from Flint Hills Wine & Spirits!

SB 317 is up for vote again and I would like to remind you why I am opposed to it.

SB 317 would allow Grocery Stores and Convenience Stores to sell Strong Beer. There are three main reasons why it is a bad idea to allow this to happen:

- 1- They are not always owned by KS residents as Liquor stores are and have to be. The CMB corporations will not ever have to risk losing license as we liquor store owners could.
- 2- They are not going to be regulated by the ABC nor will they have enough manpower or money to enforce an additional amount of licensees!
- 3- They employ under 21 yr olds to ring out the sale of 21 yr old product.

Also, this is a foothold by which they may soon be asking for the ability to sell Wine and Spirits in the future.

The manner in which we sell Adult Beverages now, to me, is the safest and best manner of control of the sale of our products.

Call me at any time, for any questions! Regards,

Dave Dvorak  
 Flint Hills Wine & Spirits  
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 cell#316-641-5690  
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## The Kansas Association of Beverage Retailers

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Larry Knackstedt, President

Amy A. Campbell, Executive Director

**Hello my name is Brian Flanery, owner of a fine wine, beer and spirits store and Secretary-Treasurer of the Kansas Association of Beverage Retailers. I live in Overland Park, I've been an entrepreneur for over 25 years, and I've come to realize that the difference in success or failure is not how you look, how you dress, or how well you're educated, it has a lot to do with unwavering passion and belief in the product and services offered by me in my community as a small business owner. Please consider this perspective regarding Senate Bill 317:**

**I believe allowing Grocery/Convenience stores to sell strong beer will lower the overall tax collected on this product, therefore lowering the amount of money generated for the state of Kansas. This is simple economics.**

**By allowing convenience/grocery stores to sell this product, consumption itself will not go up. There is no lack of access to beer now with 751 liquor stores or cereal malt beverage with 3500 licensed CMB outlets, so passing this law does not create new drinkers.**

**What this law does do, however, is allow large corporations to sell strong beer. It's an economic fact that large retail chains/corporations sell products at a lower cost because they can afford to do so for an assortment of reasons, among them that they have other products they can sell like coffee, donuts, you get the picture.**

**Additionally, cereal malt beverage retailers pay sales tax – not the 8% enforcement tax. In most areas, sales taxes are slightly lower than the enforcement tax paid by liquor stores. Even if we ignore the idea that the CMB retailer will pay lower taxes – you must recognize that the State receives a smaller share of sales taxes than enforcement taxes. All of the enforcement tax goes to the State General Fund - \$44,264,770 in 2006.**

**Convenience/Grocery stores may sell strong beer at a lower cost than retail liquor stores, and it could be at cost or as much as 15% lower. So let's apply simple math:**

**If the price drops on a product, then the amount of tax collected on that product also drops. If the amount of tax collected on the product drops, then the state collects less revenue.**

**I spoke with a dozen retailers in the past week and 11 of the 12 retail liquor stores I spoke with have several characteristics in common. Their location is next to a corporate owned grocery store or a convenience-gas station. They may have their entire life savings tied up in their business with the help of their local banker and many lease the building.**

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Attachment 14  
2-13-07

**The beer revenue for these stores usually runs between 55%-70% of their gross receipts. So any re-distribution of beer revenue will have a profoundly negative economic impact that reaches through their landlords' and bankers' pockets into the local economy.**

**I am located next to a convenience store. By the way, on many occasions, I have walked over to the owner and informed him that he is not to be selling cereal malt beverage on Christmas or before and after hours set by the municipality / City.**

**CMB retailers are not licensed or regulated by the State ABC. ABC does not even know who has a CMB license in Kansas. There is no money in this bill to assist with additional regulation.**

**This bill does not provide that the ABC will regulate CMB retailers. Retail Liquor Stores are owned by Kansans - CMB retail stores are often out of state corporations. This bill does not promote any positive public policy - except to make stronger beer more available.**

**After hearing this small business owner and 20+ year Kansas resident, I ask you for your support and to vote NO to allowing strong beer in any convenience or grocery store.**

**Liquor should never be a "convenience".**

**Thank you.**

**Brian Flanery  
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