

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 20, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Melissa Doeblin, Revisor of Statutes Office
Theresa Kiernan, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Jarrold Forbes, United Health Care
Tom Groneman, Alcoholic Beverage Control
Philip Bradley, Kansas Licensed Beverage Association
Bob Alderson, Casey's General store
Chris Darrah, Darrah's Fast lane
Scott Anderson, Crescent Oil
Brenda Elsworth, Pump'N Petes
Tom Palace Petroleum Marketers & Convenience Store Assoc. Of Kansas

Others attending:

See attached list.

Jarrold Forbes requested a bill introduction pertaining to insurance contracts with health care providers, prohibiting certain types of provisions.

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

SB 622 - Cereal malt beverages; alcohol content, by ABC, retailers authorized to sale, taxation

Chairman Brungardt opened the hearing on **SB 622**

Tom Groneman, Director, Alcoholic Beverage Control, provided neutral information the bill. (Attachment 1) The bill makes extensive amendments to the Liquor Control act, Club and Drinking Establishment Act and the Retail sales Tax Act. The bill redefines cereal malt beverage (CMB) by increasing the maximum allowable alcohol content from 3.2% to 5% and redefines beer as malt beverages with an alcohol content in excess of 5%. The bill transfers licensing and enforcement of CMB retailers from cities and counties to the ABC, and results in the "new" CMB being sold in liquor stores, convenience stores, grocery stores, taverns and everywhere where it is now legal to sell CMB. The bill exempts CMB from sales tax that is currently collected and instead taxes CMB for off premise consumption at the liquor enforcement tax rate of 8% and CMB for on premise consumption at the liquor drink tax rate of 10%. There are several sections that ABC would ask for clarification and possible amendments

Philip Bradley, Kansas Licensed Beverage Control, (KLBC) provided neutral information on the bill. (Attachment 2) There are ten concerns that KLBC would like resolved before the bill advances:

1. There are "Dry" counties where no alcohol may be sold only CMB; will it then be illegal to sell this stronger beer in those counties?
2. Does a drinking establishment (DE) license allow sale of the new CMB?
3. The bill allows for opening at 6 am; should this be 9 am to be consistent with DE licenses?
4. Will a CMB retailer be allowed to obtain a federal wholesaler license and then sell to a DE as Liquor stores now do?
5. Why is the CMB bond different than DE licensees? Should it adjust as DE's do now?
6. Why is the license only 25% of a DE license? (\$250 vs. \$1,000)
7. Why is the word "domestic" added to pg 11, line 10 & 14? It has nothing to do with the CMB issue and is even in the Micro brewery statutes; we ask this to be deleted.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on February 20, 2008 in Room 526-S of the Capitol.

8. On page 41, lines 34-37 contains language that may cause conflict with the administrative actions against a licensee by the ABC; and why is this in the statute and why is it not also in the other alcohol acts?
9. Would CMB taverns pay the 8% enforcement tax on their purchases as do all other on-premise retailers? If not, why not?
10. On page 8, line 37 thru page 9, line 15, we change to whom a beer distributor may deliver to include temporary permit holders?

Bob Alderson, Casey's General Store, spoke in favor of the bill. (Attachment 3) Mr Alderson is authorized to present his testimony on behalf of the Petroleum Marketers and Convenience store Association of Kansas, Inc., QuickTrip, Hy-Vee, Inc., and the Kansas Food Dealers Association . These organizations and businesses have formed a coalition ("Coalition") for the purpose of supporting legislation which will enable Coalition members to regain an appropriate share of the market for cereal malt products lost over the past several years.

Chris Darrah, Darrah's Fast Lane, spoke in favor of the bill. (Attachment 4) Reasons of convenience would be that beer sales are currently 2 - 4% of the business for convenience stores; the age to buy beer at liquor stores and convenience stores is the same, and they would not have to carry double inventory.

Scott Anderson, Crescent Oil, spoke in favor of the bill. (Attachment 5) When the drinking age changed to 21, the industry lost over 25% of beer sales due to Consumer's perception that "liquor stores" have a better product. At this time there are five states: Kansas, Oklahoma, Colorado, Utah, and West Virginia that sell "liquor store" beer and CMB, and at present two states have pending legislation for single strength beer.

Brenda Elsworth, Pump'N Petes, appeared in favor of the bill. (Attachment 6) This is an economic issue, when the Federal drinking age was set at 21, CMB retailers lost 146% of their beer sales when compared to their own CMB beer category; the convenient store industry has experienced numerous tax increases on cigarettes, fuel, and gross sales over the past 20 years. The liquor industry has been protected from tax increases and competition; it is time to do away with CMB 3.2% beer and have only one strength.

Tom Palace, Petroleum Marketers & Convenience Store Association of Kansas, spoke in favor of the bill. (Attachment 7) This bill is not about alcohol, but rather about economic parity. Beer retailers will pay the 8% liquor enforcement tax when purchasing product from the wholesaler, and the 10% drink tax will be applied to all on premise sales of beer by beer retailers. Beer retailers, unlike liquor retailers, will not have the ability to sell 100 proof alcohol or wine.

Chairman Brungardt closed the hearing on SB 622

Senator Barnett spoke on the bill introduced in committee on mandatory server training, ABC has been working to develop a registry.

The meeting was adjourned at 11:55 am. The next scheduled meeting is February 21, 2008.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 2-20-08

NAME	REPRESENTING
Tom Groneman	ABC
Phil Wilkes	ABC
SEAN MILLER	CAPITOL STRATEGIES
David Kensington	DIALEO
Dave Achter	PMCA
Brandon Hausman	PMCA
D Mc Augay	PMCA
Brendan Edmond	PMCA / Pete's convenience stores
Curt Nytt	PMCA
Whitney Danna	Distilled Spirits Council of the US
Sisic Coleman	Carter Energy Corporation
Mar H Augustino	Triple H, Inc
Dusty Peters	Pete's Stores
Kathy Weston	Artis Corp
Jackie	CRESCENT OIL
Mark Parnow	Carter Energy
Bryan	Smithy's Express Thayer KS
Rebecca P	KBWA

Testimony on Senate Bill 622
to
The Senate Committee on Federal and State Affairs

by Tom Groneman
Director
Alcoholic Beverage Control

February 20, 2008

I am here today to discuss Senate Bill 622 and how it will effect the Alcoholic Beverage Control Division (ABC) and to try and answer any questions you may have in that regard.

Senate Bill 622 makes extensive amendments to the Liquor Control Act, Club and Drinking Establishment Act, Cereal Malt Beverage Act, Liquor Enforcement Tax Act, Liquor Drink Tax Act and the Retail Sales Tax Act. The bill redefines cereal malt beverage (CMB) by increasing the maximum allowable alcohol content from 3.2% to 5% and redefines beer as malt beverages with an alcohol content in excess of 5%. The bill transfers licensing and enforcement of CMB retailers from cities and counties to the ABC. The proposal will result in the "new" CMB being sold in liquor stores, convenience stores, grocery stores, taverns and everywhere where it is now legal to sell CMB. The bill exempts CMB from sales tax that is currently collected and instead taxes CMB for off premise consumption at the liquor enforcement tax rate of 8% and CMB for on premise consumption at the liquor drink tax rate of 10%.

Currently there are approximately 3,800 CMB retailers, on and off premise, in the state. We anticipate that to license and regulate these we will need to increase the licensing staff by eight additional FTE, increase the number of enforcement agents by an additional 10 FTE and the in-office administrative support staff by 5 FTE (background investigations and legal administration actions). I have not seen the final fiscal note however, salaries alone for the 23 new FTE will exceed \$1M. We will have to locate space for the additional 13 office staff and equip them with cubicles, computers, etc. Enforcement agents will need vehicles, laptop computers, radios and other equipment. These costs will be somewhat offset by license fees which will generate \$950,000 (3,800 X\$250.00) plus and additional \$190,000 in administrative fees the first year.

In reviewing the bill, there were several sections that we would ask for clarification and possible amendments.

New section 46 page 39, lines 36-38, (d) (2) refers to any townshipshall levy and collect an annual occupation or license tax...; this could be problematic in areas where there are not active townships and township boards.

New section 47, page 40, line 12, (a) When an application for a license to sell cereal malt beverage is filed with the director, the director shall notify the city clerk of the city or the township clerk of the township where such license is sought. Such notice shall state the date and place where a hearing will be held on such application. This is the same language that appears in the liquor control act K.S.A. 41-318, however, it is not practical to schedule a hearing on every application. At present, we notify cities and counties but do not automatically schedule hearings. We would ask that the language be amended to read like the comparable statute in the Club and Drinking Establishment Act K.S.A. 41-2651 which only requires that a hearing be scheduled if requested by a city or county.

Sec. 51 page 43, line 14-15, (e) each place of business shall be open to the public and to law enforcement officers at all times during business hours, We ask that this be amended to read like K.S.A. 41-2613.....Such right of immediate entry and inspection shall be at any time when the premises are occupied and is not limited to hours when theis open for business.

Sec. 51 page 43, line 32, (g) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club and drinking establishment.....We assume "in a place of business" means licensed CMB on premise establishment but, would like clarification in the statute.

Sec. 60 page 77, line 27, addresses collection of the 8% enforcement tax when distributors sell to clubs and drinking establishments and caterers but does not include temporary permit holders or cereal malt beverage retailers that sell "on premise" to consumers. If this was an oversight rather than intentional, temporary permit holders and cereal malt beverage retailers need to be included. They also need to be included on line 34.

Sec. 62 page 78, lines 10-14, addresses filing of the liquor enforcement tax return. If the tax is to be paid by temporary permit holders and cereal malt beverage retailers then they would need to be included on line 12.

Sec. 65 page 79, lines 11-15, addresses the 10% liquor drink tax assessed on gross receipts from the sale of alcoholic liquor. If the intent is to also collect drink tax on cereal malt beverage the section needs to be amended to read: (a) There is hereby imposed , for the privilege of selling alcoholic liquor *and cereal malt beverage*, a tax rate of 10% upon the gross receipts derived from the sale of alcoholic liquor *and cereal malt beverage* by any ~~cereal malt beverage retailer~~ club, caterer, drinking establishment or temporary permit holder *and for the sale of cereal malt beverage by any cereal malt beverage retailer.*

I will be happy to answer any questions at the appropriate time.



*Kansas
Licensed
Beverage
Association*

Testimony on
SB-622, February 20, 2008

Senate Federal & State Affairs Committee

Mr. Chairman, and Senators of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Association. The KLBA represents the interests of the men and women in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels, and restaurants. These are the places you frequent and enjoy with the tens of thousands of employees that are glad to serve you. Thank you for the opportunity to speak today and I will be brief.

Although this bill addresses an issue that we take no position on, we have 10 concerns we would ask to be resolved satisfactorily before this bill could advance.

In no particular order;

- 1- We now have "Dry" counties where no alcohol may be sold only CMB. Since this will now allow CMB to be "liquor store" beer, will it then be illegal to sell this stronger beer in those counties?
- 2- This bill allows for opening at 6 AM (pg 42 line 22 & 42) shouldn't this be 9 AM to be consistent with DE licenses?
- 3- Does a Drinking Establishment (DE) license allow sale of the new CMB?
- 4- Will a CMB retailer be allowed to obtain a federal wholesaler license and then sell to a DE as Liquor stores now do?
- 5- Why is the CMB bond different than DE licensees? And should not it adjust as DE's do now?
- 6- Why is the license only 25% of a DE license? (\$250 vs. \$1000)
- 7- Why is the word "domestic" added to pg 11, lines 10 & 14? It has nothing to do with the CMB issue and is even in the Microbrewery statutes. We ask this be deleted.
- 8- On pg 41, lines 34-37 are language that may cause a conflict with the administrative actions against a licensee by the ABC. Why is this in the statute and why is it not also in the other alcohol acts?
- 9- Also would the CMB taverns pay the 8% enforcement tax on their purchases as do all other on-premise retailers? And if not why not?
- 10- I am unclear as to why on pg 8, line 37 thru pg 9, line 15 we change to whom a beer distributor may deliver, to include temporary permit holders?

There are undoubtedly further issues that will arise as these are answered.

Again thank you for your attention and consideration. I am available for your questions.

Philip Bradley

*Philip Bradley
CEO*

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Sen Fed & State

Attachment 2

2-20-08



CASEY'S GENERAL STORES, INC.

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 20, 2008

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. 622. Casey's is located in Ankeny, Iowa, and it operates 1,462 convenience stores in nine Midwestern states, including 104 stores in Kansas.

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 ("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

Cereal Malt Beverage Laws. 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 the Kansas Cereal Malt Beverage Act (K.S.A. 41-2701 et seq.). Thus, from that point forward, an alcoholic malt product containing not more than 3.2% of alcohol by weight was not regarded by law as 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 misconception that CMB products are 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.

K.S.A. 2007 Supp. 41-2701 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 A. 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 B.

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.

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 622, 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. 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.

Prior Legislation. This Committee on several occasions has accommodated the Coalition's request to introduce legislation that would enable the Coalition to re-capture some of the market share of cereal malt sales that was lost when the drinking age was established at 21. Last session, the Committee introduced SB 317, which remains in the Committee. SB 317 would have provided a new statutory scheme, styled as the Cereal Malt Beverage Retailers' Act, which re-defined CMB as having not more than 5.0% alcohol by weight. Local units of government were to be afforded the option of making the new act applicable in their respective jurisdictions. At the hearing on SB 317, there were a number of legitimate criticisms of the new statutory scheme being proposed by the bill. Thus, during the interim, the Coalition determined to address

these legitimate concerns. However, to do so necessitated a totally different approach than that found in SB 317. Accordingly, rather than seek to amend SB 317, the Coalition requested the introduction of a new bill, SB 622.

SENATE BILL NO. 622

The principal provisions of SB 622 are as follows:

- CMB is re-defined as a malt beverage having not more than 5.0% alcohol by weight, and “beer” is defined accordingly as a malt beverage having more than 5.0% alcohol by weight.
- One of the concerns expressed last session regarding SB 317 was that its local option provisions would cause confusion by creating a fourth set of statutes governing the sale of intoxicating beverages. Thus, SB 622 amends existing regulatory statutes and is applicable statewide.
- SB 317 was criticized because cereal malt beverage retailers were not subject to regulation by the Division of Alcoholic Beverage Control (“ABC”), as are retail liquor stores. This disparity was seen as providing cereal malt beverage retailers an important advantage over liquor retailers. In response to that criticism, SB 622 provides for the licensing and regulation of cereal malt beverage retailers by the ABC. Cities and townships will have an advisory role in the licensing of CMB Retailers to the same extent they have an advisory role in the licensing of retailer liquor stores, and cities and counties will be able to regulate CMB Retailers through zoning laws, by prescribing hours of operations to the same extent they do so currently, by continuing to impose standards of conduct on CMB Retailers licensed for on-premises consumption of CMB and by continuing to regulate the moral, sanitary and health conditions of the licensed premises.
- Currently, the sales of beer by retailer 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 the Kansas Cereal Malt Beverage Act are subject to state and local sales taxes. SB 317 perpetuated that tax structure which was criticized by the bill’s opponents. Thus, SB 622 provides that all retail sales of CMB are subject to the 8% liquor enforcement tax and are not subject to state and local sales taxes. In addition, to respond to another criticism of SB 317, sales of CMB by cereal malt beverage retailers licensed for on-premises consumption will be subject to the 10% drink tax imposed by K.S.A. 79-41a01 *et. seq.* The Coalition believes that this tax structure will place the sales of CMB on equal footing with other sales of alcoholic beverages. Although there will be a loss of sales tax revenues by local units of government, there will be increased revenues from the imposition of the liquor enforcement tax and the 10% drink tax, creating the opportunity for monies to be distributed by the State to the local units of government where the tax revenues are derived. In addition, as is the case with retail liquor stores, local units of government will have the authority to impose an occupation license fee of not less than \$100 or more than \$300 on cereal malt beverage retailers.

- The days and hours when cereal malt beverage retailers may sell CMB in the original and unopened containers are identical to the days and hours of operation for retail liquor stores.
- Retail liquor stores will be authorized to sell CMB without the need for further licensing.

From the foregoing, it should be apparent that SB 622 will, to the greatest extent feasible, bring parity to the sales of CMB and the corresponding sales of other intoxicating beverages.

CONCLUSION

In conclusion, we want to emphasize that the real issue involved in SB 622 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 622 provides CMB retailers the 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 622, and I will attempt to answer any questions the Committee may have.

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

RESULTS OF EXAMINATION
by K.B.I. LAB

	% ETHANOL (Alcohol) BY WEIGHT
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 ± .05%

DARA'S FAST LANE

1115 Westport Drive
Suite B
Manhattan, Kansas 66502

Phone: 785-537-2882
Fax: 785-537-2990

February 20, 2008

CMB TALKING POINTS

Chris Darrah

Beer sales are currently 2-4% of our business.

The age to buy beer at liquor stores and convenience stores is the same.

Fair competition – no more beer will be sold in Kansas. Our focus is on economic parity.

If beer manufactures quit making 3.2 beer, we will be put out of the market.

What purpose does it serve to have two measurements of beer (by weight and by volume)?
There is very little difference in the end.

Distributors don't want to carry double inventory.

CRESCENT OIL COMPANY, INC.
CORPORATE OFFICE

February 20, 2008

RE: SB 622 – Single Strength Beer

Mr. Chairman and members of the Senate Federal & State Affairs Committee, my name is Jerry D. Davidson and I am the Vice President of Crescent Oil Company and I support Senate Bill 622.

Crescent Oil Company collected and paid over \$24 million in fuel taxes and \$660 thousand in tobacco and sales tax to the State of Kansas in 2007.

Crescent is diversified into retail, wholesale, and consignment operations. The Retail division consists of 20 convenience stores and over 250 employees, whereas the Wholesale/Distributor side supplies fuel to over 400 Branded Convenience stores. The Consignment Operation is very unique. Crescent partner's with the Operator of the convenience store and splits the profit on the fuel. Crescent maintains the fueling equipment and supplies the fuel while the Operator maintains and operates the C-store operation. At the present time there are 150 Consignment Operators. Therefore this bill will allow our Industry equality with retailing of single strength beer.

In Kansas, retail beer sales are our lowest inside category. While in Missouri, they do not have CMB and that is why Beer sales are our 2nd best inside sales category behind tobacco. This is why we are looking at this as strictly an **economic** issue and not a **liquor** issue. We feel that this will allow Kansas to collect more taxes, because we currently pay state sales tax and with this bill, taxes will increase to 8% on beer.

When the Drinking age was changed to 21, our industry lost over 25% of beer sales due to Consumer's perception that "liquor store" have a better product. However, the department of KBI conducted a study which proved that in actuality there is only tenths of percent difference between the "liquor beer" and CMB. Enclosed, please find the aforementioned study.

At this time, there are only 5 states; Kansas, Oklahoma, Colorado, Utah, and West Virginia that sell "liquor store" beer and CMB. However, at present, two other states have bills pending for single strength beer. In our bill, we are not asking to sell **HARD LIQUOR or restrict sells of non-alcoholic products**. We are only asking to sell Single Strength Beer.

Let's do what is fair for the industry, support Senate Bill 622. Thank you for your time.

Sincerely,

Scott Anderson

~~Jerry D. Davidson~~
VP Fuel Operations

ALCOHOL CONTENT -SELECTED BEERS

ATTACHMENT C
Page 1 of 1

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%

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

RESULTS OF EXAMINATION
by K.B.I. LAB

	% ETHANOL (Alcohol) BY WEIGHT
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.

Pump'n Pete's
1712 Broadway
Parsons, Kansas 67357
620-423-8142

- CMB is a residual label left from prohibition¹.
- Changing the acceptable alcohol content of CMB from 3.2% by weight to 5% by weight should have been addressed when the Federal drinking age was set at 21 in 1988.
- Currently CMB (Cereal Malt Beverage) and LSB (Liquor Store Beer) are the same beer. There is very little difference in the alcohol content of the two beers. When comparing a 12 pack of CMB to a 12 pack of LSB, there is less than 2 ounces difference.²
- We are currently selling the same product.
- There are only 5 states left that sell CMB 3.2%. Oklahoma and Colorado are 2 of the 5 states and they are putting single strength to the vote of their citizens. If the single strength bill passes in these 2 states, brewers may decide it is no longer profitable for them to produce 3.2% CMB.
- Since the Federal drinking age was put at 21 in 1988, the CMB retailer has lost 30% of the state's beer category market share.³
- If the proposed single strength bill passes, the consumer will begin purchasing beer from convenient stores or grocers. In doing so, they will not be tempted to pick up hard liquor, wine, or spirits.
- This is an economic issue. When the Federal drinking age was set at 21, CMB retailers lost 146% of their beer sales when compared to their own CMB beer category.⁴
- It is time to address an issue that has been allowed to continue for to many years.
- The liquor enforcement tax rate has not been increased since 1983.⁵
- The liquor drink tax rate has remained unchanged since imposition in 1979.⁶
- The convenient store industry has experienced numerous tax increases on cigarettes, fuel, and gross sales over the past 20 years. The liquor industry has been protected from tax increases and competition. It is time to do away with CMB 3.2% beer and have only one strength.
- CMB 3.2% beer and LSB is the same product when measured by the same measurement.

¹ Refer to Kansas liquor laws on page 2

² Refer to chart on page 3

³ Refer to chart on page 4

⁴ Refer to chart on page 5

⁵ Refer to Kansas legislative research on page 6

⁶ Refer to Kansas legislative research on page 6

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February 24, 2003

KANSAS LIQUOR LAWS

How Has Kansas Policy Regarding Regulation of Alcohol Evolved?

Some major events in the evolution of liquor policy in Kansas are listed below.

- 1880 Voters approved (92,302 to 84,304) an amendment to the *Kansas Constitution* prohibiting the manufacture and sale of intoxicating liquors (Article 15, §10).
- 1934 Voters rejected (347,644 to 436,688) a proposed constitutional amendment to authorize the Legislature to regulate and tax liquor.
- *1937 The Legislature enacted the law that categorizes beer with an alcohol content of 3.2 percent or less alcohol by weight as cereal malt beverage (CMB) which was excluded from the definition of intoxicating liquor. The law authorized sale of CMB for both on- and off-premise consumption throughout the state.
- 1948 Voters approved (422,294 to 358,310) an amendment to the *Kansas Constitution* that authorized the Legislature to ". . . regulate, license and tax the manufacture and sale of intoxicating liquor . . . regulate the possession and transportation of intoxicating liquor." (Art. 15, §10) The amendment also "forever prohibited" the open saloon. The amendment meant that package liquor sales could be authorized and regulated, but that sale of liquor by the drink in public places was prohibited.
- 1949 The Legislature enacted the Liquor Control Act. The Act authorized package sale of liquor in counties in which the 1948 amendment had been approved. The Act created a system of regulating, licensing, and taxing those package sales. The Division of Alcoholic Beverage Control (ABC) was created to enforce the Act.
- 1959 The Legislature enacted the "minimum price law" which required manufacturers and suppliers to sell liquor to distributors in Kansas at the same price and without discrimination. Manufacturers' price lists were to be filed with the Director of ABC. Manufacturers also were required to file suggested wholesale and retail price lists with the Director. Distributors were required to file current price lists with the Director and were prohibited from selling liquor to retailers at any price other than that posted with the Director. The Director of ABC was authorized to promulgate rules and regulations prohibiting distributors and retailers from selling liquor below manufacturers' suggested case and bottle prices filed with the Director of ABC.

Prior to enactment of statutes regulating liquor pricing, prices were controlled by regulation. The regulation was overturned by the courts in 1958.

Alcohol Content Of Selected Beers And Cereal Malt Beverages

Comparison of Strong Beer and Cereal Malt Beverage by Alcohol Content	%Ethanol (Alcohol) by Weight
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
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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.

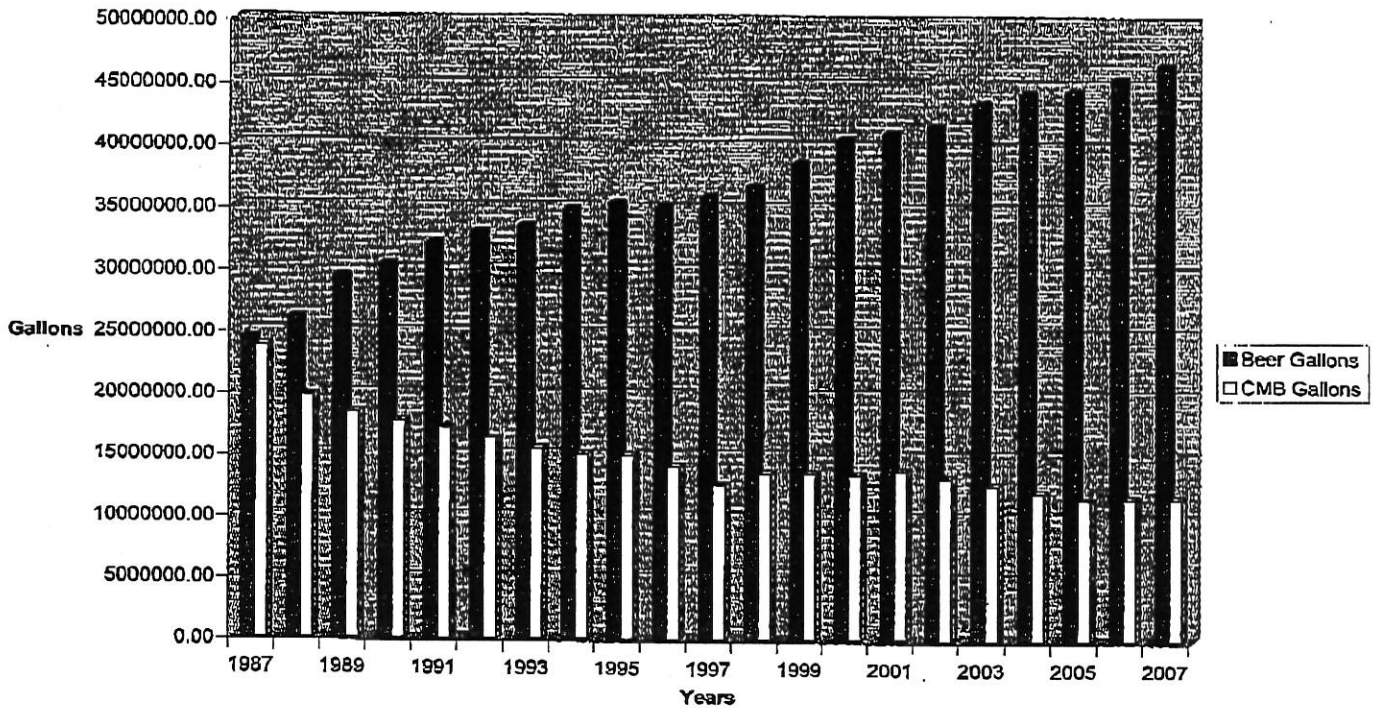
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Alcohol Content -- Selected Beers

Product	Alcohol% CMB	By Weight	Additional Alcohol Per 12 Oz. Can (Strong vs CMB)
Budweiser	3.22	3.96	0.098 oz
Coors	3.15	3.56	0.049 oz
Miller	3.01	3.6	0.071 oz
Bud Light	3.13	3.33	0.024 oz
Coors Light	3.14	3.29	0.018 oz
Miller Lite	3.05	3.22	0.020 oz
Colt 45 Malt Liquor	N/A	4.58	N/A
King Cobra Malt Liquor	N/A	4.81	N/A
Schlitz Malt Liquor	N/A	4.87	N/A
Corona Extra Beer	N/A	3.58	N/A
Fosters Lager	N/A	4.22	N/A
Heineken Lager	2.97	4.09	0.134 oz
Molson Canadian Beer	N/A	3.87	N/A

Analysis Accuracy ± .05%

**Kansas Beer Vs CMB Tax Receipts
converted to gallons**



KS TAX RECEIPTS CONVERTED TO GALLONS

Year	Beer Gallons	CMB Gallons	Total	CMB Percentage of Total Gallons
1987	24534916.00	23799929.00	48334845.00	49.24% *
1988	26092762.00	19833758.00	45926520.00	43.19%
1989	29492634.00	18445885.00	47938519.00	38.48%
1990	30432503.56	17708076.00	48140579.56	36.78%
1991	32082818.33	17211140.06	49293958.39	34.92%
1992	33099054.56	16367010.44	49466065.00	33.09%
1993	33550014.67	15521967.56	49071982.22	31.63%
1994	34927952.17	15137728.00	50065680.17	30.24%
1995	35384300.67	15005851.06	50390151.72	29.78%
1996	35044045.78	14084984.56	49129030.33	28.67%
1997	35931112.06	12671581.83	48602693.89	26.07%
1998	36815655.06	13549795.78	50365450.83	26.90%
1999	38656029.17	13597789.28	52253818.44	26.02%
2000	40512970.94	13504492.39	54017463.33	25.00%
2001	41011885.67	13826011.11	54837896.78	25.21%
2002	41626409.28	13222117.28	54848526.56	24.11%
2003	43492079.50	12627279.83	56119359.33	22.50%
2004	44303136.78	12026844.00	56329980.78	21.35%
2005	44505973.89	11538481.61	56044455.50	20.59%
2006	45530921.11	11609219.83	57140140.94	20.32%
2007	46594574.72	11616623.11	58211197.83	19.96% *

Current total KS tax receipts converted to gallons for 2007 year.	58,211,197.83		
CMB gallons at 49.24% market share		28,663,193.81	
Actual CMB gallons for 2007		11,616,623.11	
CMB gallons lost in 2007 when compared to 1987 49.24% market share		17,046,570.70	146.74%

PA5
6-5

Besides the rate differential between sales of strong beer (and other alcohol) by liquor stores and CMB by grocery and convenience stores, there is a major difference in the disposition of revenue.

Enforcement and Sales Tax – Disposition of Revenue			
	<u>SGF</u>	<u>State Highway Fund</u>	<u>Local Units</u>
Enforcement (8 percent)	100.00%	—	—
State Sales (5.3 percent) – FY 2007	92.83%	7.17%	—
State Sales (5.3 percent) – FY 2008 and thereafter	87.74%	12.26%	—
Local Sales (up to 3.0 percent)	—	—	100.00%

** Enforcement tax receipts in FY 2006 were approximately \$44.2 million. Grocery and convenience store sales tax collections from CMB are unknown.

The liquor enforcement tax rate has not been increased since 1983.

Drink

***The liquor drink tax is imposed at the rate of 10 percent on the gross receipts from the sale of alcoholic liquor by clubs, caterers, and drinking establishments.

The club owner (who had previously effectively paid the gallonage tax and then the enforcement tax when he acquired the case of wine) next is required to charge the drink tax on sales to its customers. Assuming the club charged \$4.00 for a glass of wine, the drink tax on such a transaction would be 40 cents.

Drink Tax – Disposition of Revenue			
	<u>SGF</u>	<u>CAIPF</u>	<u>Local Alcoholic Liquor Fund</u>
Drink Tax (10%)	25%	5%	70%

*** Liquor drink tax revenues in FY 2006 were about \$32.0 million, of which \$8.0 million were deposited in the SGF.

The liquor drink tax rate has remained unchanged since imposition in 1979.

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6-6

Memo To: Senate Federal and State Affairs Committee
From: Thomas M. Palace
Date: February 20, 2008
Re: Testimony in Favor of SB 622

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

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store owners throughout Kansas.

We stand before you as a proponent of SB 622.

By Kansas law, convenience store retailers may sell only cereal malt beverage (CMB) beer, which is known as 3.2 beer. Convenience store retailers only sell beer, and SB 622 keeps in place state statutes that prohibit a convenience store from selling anything but beer.

What SB 622 will do is allow CMB retailers to recoup market share that was lost when the federal laws changed the drinking age from 18 years of age to 21 years of age. Prior to the change in the drinking age to purchase beer, CMB retailers had a market share of almost 50%, compared to the 19-20% market share they have today.

The major provisions of Senate Bill 622 are as follows:

- SB 622 changes the definition of Cereal Malt Beverage (CMB) sold by convenience store retailers and grocery stores.
- CMB contains 3.2% alcohol by weight. Liquor store beer (LSB) contains 5% alcohol measured by volume. The alcohol content, if measured by the same standard, indicates that CMB and LSB alcohol levels are comparable... within tenths of a percent.
- The definition of CMB will permit convenience stores and grocery stores to sell beer that has 5% or less alcohol measured by weight.
- The current alcohol level of CMB is comparable to LSB as confirmed by the Kansas Bureau of Investigation.
- **This bill is not about alcohol, but rather about economic parity.**
- The Alcoholic Beverage Control Division will enforce CMB retail sales.
- CMB retailers will be open the same hours as liquor retailers (9:00 am-11:00 pm). They will pay the same local and state licensing fees as liquor retailers, but they will sell ONLY beer.

- Beer retailers will pay the 8% liquor enforcement tax when purchasing product from the wholesaler. In addition, the 10% drink tax will be applied to all on-premise sales of beer by beer retailers.
- **BEER retailers, unlike liquor retailers, will not have the ability to sell 100 proof alcohol or wine.**
- **Changing the CMB definition is an economic issue...not an alcohol issue.**

Mr. Chairman, I would like to direct my comments today to questions that committee members may have:

Q. Will passage of SB 622 put liquor stores out of business?

A. No. However, we have already stated that SB 622 is an economic issue and not a beer issue. If passed, we hope to increase our market share, and by doing so, impact the sales of beer in liquor stores.

Q. Will CMB retailers have a competitive advantage over liquor stores?

A. NO. CMB retailers will pay the same 8% excise tax; on premise sellers of CMB will be required to pay the 10% drink tax; all sellers of beer will pay state and local licensing fees, and the hours of service will be identical - 9:00 am - 11:00 pm as compared to 6:00am - 12 midnight.

Q. Why should CMB retailers be allowed to employ 18 year-old clerks when liquor stores must employ 21 year-old clerks?

A. First, you must realize that tests show that there is very little difference (alcohol content) in the beer we sell compared to liquor store beer. **WE DO NOT SELL 40-100 PROOF ALCOHOL PRODUCTS.** We employ many young people who take advantage of the employment opportunities we offer to get through school. If the liquor store industry wants to change legislation to allow 18 year-old clerks, they should propose a bill to do so.

Q. Will CMB retailers come under the enforcement arm of the Alcohol Beverage Control Division?

A. YES.

Q. Why change the system?

A. Kansas is one of only a few states that sell CMB. With only 19% of the market share for beer sales, we don't understand why beer wholesalers would argue that this is a bad idea? Also, consumers view CMB as an inferior product compared to liquor store beer. We can't increase our market share if the consumer's perception is that we sell an inferior product.

Q. If a CMB retailer fails a compliance visit, will they be required to close their store for a day?

A. NO. Unlike liquor stores that must close for a day, if a CMB retailer fails a compliance visit, they will be forced to stop selling beer to comply with enforcement, but may continue to sell other grocery-related products.

As you debate this bill, you will probably hear over and over that if SB 622 is enacted, it will have devastating effects on the liquor industry. It is true that if passed, SB 622 will allow CMB retailers to gain market share. But it is doubtful that it will force people out of business. I compare the beer sales to that of gas retailers. Gasoline sales are 64% of gross sales at a convenience store, an amount similar to the beer sales of some liquor store owners. If you drive down the street today, you will notice that many grocery stores or hypermarket chains sell gasoline. Should the convenience store industry ask for legislative protection to protect gas sales from non-traditional retailers (i.e. grocery store chains)? That is exactly what the liquor industry will ask for while opposing this bill.

Mr. Chairman, we have tried to make sure that what we seek in SB 622 does not give convenience stores an advantage over liquor stores that sell beer. We will pay the same licensing fees, the same taxes and have identical hours of service for beer sales.

We urge you to pass SB 622.