

Approved: 3-26-08
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 21, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association
Neal Whitaker, Kansas Beer Wholesalers Association
Rebecca Rice, Kansas Beer Wholesalers Association
Amy Campbell Kansas Association of Beverage Retailers
Stacy Harlow, 2 Bags Brew
Brandon Plaschka, Plaschka Retail Liquor
Ken Volen, Bubba's Liquor
Jim Reitz, Pony Express Liquor

Others attending:

See attached list.

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

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

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, appeared in opposition to the bill. (Attachment 1) The proposal to redefine CMB imposes on communities which have either not approved retail liquor by the drink or it disenfranchises that vote by legislatively imposing a category of products they rejected at the ballot box.

Neal Whitaker, Kansas Beer Wholesalers Association, spoke in opposition to the bill. (Attachment 2) The bill appears to contain a severability clause that retains the changes to the CMB Act and Liquor Control Act embodied in the bill, even if the Court rules the legislature's new definitions violate the Constitution. A new requirement that distributors provide "services" to CMB retailers, and to levy a new tax, a 10% tax on gross receipts for on-premise CMB licensees.

Rebecca Rice, Kansas Beer Wholesalers Association, appeared in opposition to the bill. (Attachment 3) The bill raises the question: Is legislation that changes the constitutional definition of intoxicating liquor, from all alcoholic beverages containing measurable alcohol except for malt beverages containing no more than 3.2% alcohol to all alcoholic beverages containing alcohol except malt beverages containing no more than 5% alcohol, constitutional? The 1987 AG Opinion states that the Court has not found that classifying CMB as a non-intoxicating liquor is unconstitutional; neither has the court ruled that such classification is constitutional.

Ken Volen, Bubba's Liquor, Olathe, spoke in opposition to the bill. (Attachment 4) When cereal malt beverage is less than 5% of the big chains' business, and the liquor stores would be forced into an economic situation that would be crippling, losing between 30% to 50% of the current stores in the state if this legislation is passed.

Brandon Plaschka, Plaschka Retail Liquor, Princeton, appeared in opposition to the bill. (Attachment 5) The beer revenue for these stores usually runs between 55% - 70% of their gross receipts, so any redistribution of beer revenue will have a profoundly negative economic impact that reaches through their landlords' and bankers' pockets into the local economy. The study by the Distilled Spirits Council says retail liquor stores would lose 45% of their income and 217 liquor stores would close.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on February 21, 2008 in Room 526-S of the Capitol.

Jim Reitz, Pony Express Liquor, Seneca, spoke in opposition to the bill. (Attachment 6) The bill would cause a major change in the way alcohol is sold in Kansas.

Stacy Harlow, 2 Bags Brew, Satanta, appeared in opposition to the bill. (Attachment 7) This bill makes major changes to the way taverns are regulated and the taxes they pay.

Amy Campbell, Kansas Association of Beverage Retailers, (KABR) spoke in opposition to the bill. (Attachment 8) If the committee wishes to change how alcohol is sold in Kansas, KABR would respectfully request an amendment to the bill that would require all alcohol beverages and cereal malt beverages be sold by licensed retail liquor stores and simply delete all references to cereal malt beverage retailers and replace them with licensed retail liquor stores An article about alcohol being banned in supermarkets in Ireland was provided.

Whitney Damron, Distilled Spirits Council of the United States, provided written testimony in opposition to the bill. (Attachment 9)

Sandy Jacquot, General Counsel, League of Kansas Municipalities, provided written testimony in opposition to the bill. (Attachment 10) The two basic point of concern are eliminating the procedure for local licensing and conferring the regulatory power with the state, and the conversion of sales tax charged on CMB to a gallonage tax.

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

The meeting was adjourned at 11:35 am. The next scheduled meeting is February 26, 2008.

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST**

DATE 2-21-08

NAME	REPRESENTING
Amy Campbell	KABR
Ken Volew	Bubba's Liquor (ColaThe)
Brandon Plaschke	Plaschke + Kramer Liquor Store (Princeton)
Phil Welles	ABC
Nancy Doris	2 Bags Brew - Satanta
Stacey Harlow	2 Bags Brew - Satanta
Janet Ulise	Westside Liquor Store
John Seesh	AMCA of KS
Jim Reitz	Pony Express Liquor - Seneca
Spencer Duncan	Capital Connection
Sean Murphy	Murphy's Liquor Exchange
Neal Whitaker	KS Beer Wholesalers
Russell Rice	KS Beer Wholesalers Assn
John Peterson	Arkason Base 2
Austin Hayden	Hair Law Firm
Effie Swanson	Sen. D. Schmidt
Tom Palace	AMCA of KS
Bob Anderson	Casa's General Stores
Jack Duncan	KS wine & spirits wholesaler.
Kathy Wecker	Beck's Beer
David Kensingler	DFALFO North America
Sean Miller	Capitol Strategies
Hope Boyd	University of Kansas
Prue Bottworth	University of Kansas
Lucy Riddell	KU School of Social Welfare

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION

Statement of R.E. "Tuck" Duncan, General Counsel, February 21, 2008

The Kansas Wine and Spirits Wholesalers Association opposes SB622. [this testimony is based upon presentations by the author to the Kansas Legislature in 1993 and again in 2002 as revised for 2005 and 2007 and this most recent incarnation of the proposal].

INTRODUCTION

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

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

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

WHY WE HAVE THE LAWS WE HAVE

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

THE CURRENT SYSTEM SERVES KANSAS WELL

The current system is not confusing and has been working without disruption for 59 years. 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. Even in restaurants where there are 18 year old servers there must be a 21 year old manager to supervise those activities. This proposal to redefine CMB imposes on communities which have either not approved a retail liquor store, or rejected one, a higher strength product. And in those counties that rejected liquor by the drink it disenfranchises that vote by legislatively imposing a category of products they rejected at the ballot box.

PROTECTIONISM MYTH

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

SOCIAL RESPONSIBILITY

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

As a matter of public policy the creation of the new cereal malt beverage licensee selling a higher proof product is heading in the wrong direction.

This week, France did the following: Petrol stations are no longer allowed to sell alcohol. The goal of this is to reduce drunk driving. They were tired of fighting drinking and driving, while allowing the sale of alcohol at stations where people stopped because they were driving. The French Prime Minister, Francois Fillon, also noted the following in

approving the ban: 1) That underage individuals working the stations were selling product to underage individuals, which was increasing the drunk driving problem; 2) The majority of petrol stations (much like Kansas convenience stores) are corporately owned. This allowed them to sell their alcohol at lower prices than locally owned small businesses. These lower prices attracted minors looking to purchase beer and liquor more than they attracted traditional and responsible alcohol and wine buyers. Kansas, according to MADD, ranks in the bottom 20 in underage drunk driving accidents and deaths.

The following Study was printed in the July 2007 edition of the *American Journal of Preventive Medicine*: (1) Nearly 1 in 10 tobacco sales in US gas stations and convenience stores are to people under the age of 18. (2) This was a five year study. (3) There are more distractions in convenience stores than traditional liquor stores, so clerks fail to check identifications regularly.

A nationwide MADD study done 3 years ago showed underage individuals were able to procure alcohol 70 percent of the time in grocery and convenience stores, compared to 14 percent of the time in liquor stores.

In January of 2007, a study on underage access to alcohol was published in the journal *Prevention Science*. This was done by six researchers from California, North Carolina and Oregon. They came to several conclusions: 1) The more control on the sale of alcohol that exists, then less access is created to minors and less underage drinking exists; 2) Conducted research in the state of Oregon, and found that convenience stores sold to minors 38% of the time, grocery stores 36% of the time and liquor stores 14% of the time.

In 2006, 9 out of 10 minors in Indiana reported that access to alcohol was easy. The majority of those polled indicated they got their alcohol and convenience and grocery stores, not liquor stores. This study was conducted by the Indiana University Public Opinion Laboratory.

The Pacific Institute for Research and Evaluation did a study funded by the U.S. Department of Justice. This study focused on finding solutions to reducing underage drinking. Some of its conclusions: 1) The more controlled the environment for purchasing alcohol, the better. Underage drinking is reduced when purchasing environments are more controlled; 2) The more oversight on alcohol retailers the better. Any move to lessen restrictions is a step backwards; 3) Individuals who sell alcohol should be at least 21 years of age; 4) Convenience and grocery stores have a poorer underage sales compliance rate than liquor stores.

"Reducing Underage Drinking: A Collective Responsibility" was a report issued in 2004 by the National Research Council Institute of Medicine. In that report, it concluded that nationally as much as 70% of the time minors procure their alcohol from grocery and convenience stores.

A University of Minnesota Alcohol Epidemiology Program research project (2004) found that underage females who attempted to buy beer without an ID at grocery and

convenience stores were successful 50% of the time. That number was lower in liquor stores.

ALCOHOL CONTENT

See the attached chart for variance in beer alcohol content. Most U.S. beers contain between 4 and 5 percent by volume. 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.. Proponents of redefining or eliminating cereal malt beverages acknowledge there is a difference in the products, they suggest its not much. The difference is, nonetheless, more alcohol in one's system. (**See comparison chart attached**) 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.

ANOTHER CONSIDERATION: " ... 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

SUMMARY

It would be inappropriate for the Legislature to reestablish market share after 59 years wherein the current stakeholders have relied upon the existing system. Truly it would be poor public policy particularly if the only rationale for redefining or eliminating cereal malt beverages is to alter market share. Yes, there are historical accidents that have created the system we have in place today, a history that sets parameters; but, it is a history that needs to be respected to avoid economic dislocation the Kansas' retail liquor dealers and to maintain an orderly market. The current system provides access to strong beer, but it provides access in a manner that study after study after study has shown is more effective at keeping underage drinking down. The bill being proposed does not ensure that. In fact, the evidence suggests it will only create new problems for Kansas.

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

Calories, carbs and alcohol

This information about calories, carbohydrates and the alcohol content of the beers listed here comes from many sources. Send additions and corrections to editor@realbeer.com.

For purposes of consistency, calories and carbs are based on 12-ounce servings. Alcohol content is listed by volume (a beer that is 4.0% by volume is about 3.2% by weight).

A-L | M-Z

Brewery/Brand	Beer	Alcohol %	Calories	Carbs
Amstel Light	Amstel Light	3.5	95	5
<u>Alaskan Brewing</u>	Alaskan Amber	5.0		
<u>Alaskan Brewing</u>	Alaskan Pale Ale	4.6		
<u>Alaskan Brewing</u>	Alaskan Stout	5.7		
<u>Alaskan Brewing</u>	Alaskan ESB	5.0		
<u>Alaskan Brewing</u>	<u>Alaskan Smoked Porter</u>	6.1		
<u>Alaskan Brewing</u>	Alaskan Winter Ale	6.2		
Anchor	Anchor Steam	4.9	152	
Anchor	Liberty Ale	6.0	188	
Anchor	Anchor Porter	5.6	205	
Anchor	Old Foghorn	8-10		
Anchor	Anchor Small	3.3		
Anderson Valley	Boont Amber	5.8		
Anderson Valley	Hop Ottin'	7.0		
Anderson Valley	Poleeko Gold	5.5		
Anderson Valley	Belk's ESB	6.8		
Anderson Valley	Barney Flats Oatmeal	5.7		
Anderson Valley	Winter Solstice	6.9		
Anderson Valley	High Rollers Wheat	5.3		
Anderson Valley	Deep Enders Porter	5.5		
Beamish	Beamish Stout	3.8	131	
Beck's	Beck's	5.0	143	
Bell's/Kalamazoo	Two Hearted Ale	7.0		
Bell's/Kalamazoo	Amber Ale	5.5		
Bell's/Kalamazoo	Pale Ale	5.0		
Bell's/Kalamazoo	Kalamazoo Stout	6.5		
Bell's/Kalamazoo	Oberon	6.0		
Bell's/Kalamazoo	Double Cream Stout	7.5		
Bell's/Kalamazoo	Third Coast Old Ale	10.2		
Bell's/Kalamazoo	Expedition Stout	10.0		
Bell's/Kalamazoo	Best Brown Ale	5.8		
Bell's/Kalamazoo	Cherry Stout	8.0		
Blue Moon	Blue Moon White	5.4	171	12.9
Breckenridge	Avalanche Amber	5.4		
Breckenridge	Autumn Ale	6.7		
Breckenridge	Pale Ale	5.7		
Breckenridge	Christmas Ale	7.4		
Breckenridge	Oatmeal Stout	5.0		
Breckenridge	Pandora's Bock	5.8		
<u>BridgePort</u>	IPA	5.5		
<u>BridgePort</u>	Porter	5.5		
<u>BridgePort</u>	ESB	6.1		
<u>BridgePort</u>	Black Strap Stout	6.0		
<u>BridgePort</u>	<u>Blue Heron</u>	4.9		
<u>BridgePort</u>	Pintail Ale	5.2		
<u>BridgePort</u>	Ebenezer Ale	6.4		
<u>BridgePort</u>	Old Knucklehead	8.9		
Budweiser (U.S)	Budweiser	5.0	143	10.6
Budweiser	Bud Light	4.2	95	6.6
Budweiser	Bud Ice	5.5	148	8.9
Budweiser	Bud Ice Light	4.1	110	6.5
Budweiser <u>Budvar</u>	<u>Budvar</u>	5.0		

<u>Redhook</u>	<u>Redhook</u> Hefe-weizen	5.2	155	10.9
<u>Redhook</u>	<u>Redhook</u> Nut Brown	5.6	181	16
Rhinebecker	Rhinebecker	5	106	2.5
<u>St. Pauli Girl</u>	<u>St. Pauli Girl</u>	4.9	148	
<u>St. Pauli Girl</u>	<u>St. Pauli Girl</u> Dark	4.8	150	
<u>St. Pauli Girl</u>	<u>St. Pauli Girl</u> N.A.	<0.5	96	23
<u>Sam Adams</u>	<u>Sam Adams</u> Light	4.05	124	9.7
<u>Sam Adams</u>	<u>Sam Adams</u> Boston Lager	4.8	160	
<u>Sam Adams</u>	<u>Sam Adams</u> Golden Pilsner	4.6	145	
<u>Sam Adams</u>	<u>Sam Adams</u> Cream Stout	4.7	195	
<u>Sam Adams</u>	<u>Sam Adams</u> Boston Ale	4.9	160	
<u>Sam Adams</u>	<u>Sam Adams</u> Cherry Wheat	5.2	166	
<u>Sam Adams</u>	<u>Sam Adams</u> Spring Ale	5.2	170	
<u>Sam Adams</u>	<u>Sam Adams</u> Summer Ale	5.4	175	
<u>Sam Adams</u>	<u>Sam Adams</u> Pale Ale	5.3	145	
<u>Sam Adams</u>	<u>Sam Adams</u> Oktoberfest	5.7	165	
<u>Sam Adams</u>	<u>Sam Adams</u> IPA	5.9	175	
<u>Sam Adams</u>	<u>Sam Adams</u> Winter Lager	5.8	190	
<u>Sam Adams</u>	<u>Sam Adams</u> Double Bock	8.5	240	
<u>Sam Adams</u>	<u>Sam Adams</u> Triple Bock	17.5	340	
<u>Sapporo</u>	<u>Sapporo</u> Reserve	5.2		
<u>Shiner</u>	<u>Shiner</u> Bock	4.4	143	12.5
<u>Shiner</u>	<u>Shiner</u> Light	3.9	120	9
Sierra Nevada	Sierra Nevada Pale Ale	5.7	171	14.1
Sierra Nevada	Sierra Nevada Porter	5.7	194	18.4
Sierra Nevada	Sierra Nevada Stout	6.4	225	22.3
Sierra Nevada	Sierra Nevada Wheat	4.7	153	13.1
Sierra Nevada	Sierra Nevada Summerfest	4.9	158	13.7
Sierra Nevada	Sierra Nevada Celebration	6.6	214	19.4
Sierra Nevada	Sierra Nevada Bigfoot	9.9	330	30.3
Stone Brewing	<u>Arrogant Bastard Ale</u>	7.2		
Stone Brewing	Stone Pale Ale	5.4		
Stone Brewing	Stone Smoked Porter	5.9		
Stone Brewing	Stone IPA	6.9		
Stone Brewing	Ruinination IPA	7.7		
Stone Brewing	Double Bastard Ale	10		
Stone Brewing	Stone Old Guardian	9.9		
Tsingtao	Tsingtao	4.7	152	
<u>Widmer</u>	<u>Widmer</u> Hefeweizen	4.7	159	
<u>Widmer</u>	<u>Widmer</u> Pale Ale	5.0		
<u>Widmer</u>	<u>Widmer</u> Blonde Ale	4.3		
<u>Widmer</u>	<u>Widmer</u> Wildberry	4.6		
<u>Widmer</u>	<u>Widmer</u> Sommerbrä	4.8		
<u>Widmer</u>	<u>Widmer</u> Oktoberfest	5.0		
<u>Widmer</u>	<u>Widmer</u> Winternacht	7.0		
<u>Widmer</u>	Spring Run IPA	6.0		
<u>Widmer</u>	Drop Top Amber Ale	4.9		
Yuengling	Premium	4.4	135-140	12
Yuengling	Light	3.8	98	6.6
Yuengling	Ale	5.0	145-150	10
Yuengling	Porter	4.5	150-155	14
Yuengling	Lager	4.4	135-140	12
Yuengling	Black & Tan	4.5	150-155	14
Yuengling	Light Lager	3.6	96	8.5

Will Kansas require new labeling to ensure that product under 5% and over 5% are sold to the appropriate retailer?

<u>Marin Brewing</u>	Breakout Stout	6.0		
<u>Marin Brewing</u>	Old Dipsea Barleywine	9.0		
<u>Marin Brewing</u>	India Pale Ale	6.0		
McMenamins	Hammerhead	5.8		
McMenamins	Terminator	6.4		
McMenamins	Ruby	4.1		
McMenamins	Black Rabbit Porter	5.5		
McMenamins	Dry Irish Stout	4.6		
<u>Michelob</u>	<u>Michelob</u>	5.0	155	13.3
<u>Michelob</u>	<u>Michelob</u> Light	4.3	113	6.7
<u>Michelob</u>	<u>Michelob</u> Amber Bock	5.2	166	15.0
<u>Michelob</u>	<u>Michelob</u> Hefeweizen	5.0	152	11.8
<u>Michelob</u>	<u>Michelob</u> Honey Lager	4.9	175	17.4
<u>Michelob</u>	<u>Michelob</u> Black & Tan	5.0	168	15.8
<u>Michelob</u>	<u>Michelob</u> Ultra	4.2	95	2.6
Mickey's	Mickey's	5.6	157	11.2
Mickey's	Mickey's Ice	5.9	165	11.8
Miller	Miller Genuine Draft	5	143	13.1
Miller	Miller Genuine Draft Lite	4.2	110	7
Miller	Miller High Life	5.5	156	11
Miller	Miller Lite	4.2	96	3.2
<u>Moosehead</u>	<u>Moosehead</u>	5.0	153	
Murphy's	Murphy's Irish Red	5.0	171	
Murphy's	Murphy's Stout	4.0	150	
O'Douls	O'Douls	0.4	70	13.3
O'Douls	O'Douls Amber	0.4	90	18
Odell's	<u>90 Shilling</u>	5.3		
Odell's	Easy Street Wheat	4.7		
Odell's	Cutthroat Porter	4.5		
Odell's	Cutthroat Pale Ale	5.1		
Odell's	Levity	5.0		
Odell's	Isolation	6.0		
Odell's	Bobby	4.6		
Olde English 800	Olde English 800	5.9	160	10.5
Olde English 800	Olde English 800 Ice	7.9	216	14.3
Old Milwaukee	Old Milwaukee	5.0	156	
Pabst	Pabst	5.0	152	
Paulaner	Paulaner Original Munich	5.5		
Paulaner	Salvator	7.5	251	
Paulaner	Paulaner Hefe-Weizen	5.5		
Pete's Brewing	Pete's Wicked Ale	5.3	174	17.7
Pete's Brewing	Pete's Oktoberfest	5.8	189	16.9
Pete's Brewing	Pete's Summer Brew	4.7	163	15.6
Pete's Brewing	Pete's Winter Brew	5.2	170	15.2
Pete's Brewing	Pete's Helles Lager	5.0	163	14.6
Pete's Brewing	Pete's Red Rush	5.3	170	14.8
Pete's Brewing	Pete's Strawberry Blonde	5.0	160	13.6
Pilsner Urquell	Pilsner Urquell	4.3	160	
Pittsburgh Brewing	I.C. Light	4.1	95	2.8
Pittsburgh Brewing	Iron City Lager	4.5	140	10
<u>Pyramid</u>	Hefeweizen	5.2		
<u>Pyramid</u>	Coastline Pilsner	5.0		
<u>Pyramid</u>	Apricot Ale	5.1		
<u>Pyramid</u>	India Pale Ale	6.7		
<u>Pyramid</u>	Pale Ale	5.1		
<u>Pyramid</u>	Curve Ball Kölsch	4.8		
<u>Pyramid</u>	Broken Rake	6.4		
<u>Pyramid</u>	Tilted Kilt	6.3		
<u>Pyramid</u>	Snow Cap Ale	7.0		
Red Dog	Red Dog	5.0	147	14.1
<u>Redhook</u>	<u>Redhook</u> ESB	5.8	179	14.2
<u>Redhook</u>	<u>Redhook</u> IPA	6.5	188	12.7
<u>Redhook</u>	<u>Redhook</u> Blonde Ale	5.4	166	13.1

Busch	Busch	4.6	133	10.2
Busch Light	Busch Light	4.2	110	6.7
Busch Ice	Busch Ice	5.9	173	13
<u>Clausthaler</u>	<u>Clausthaler</u>	0.4	96	5.8
Colt 45	Colt 45 Malt Liquor	6.0	172	
Coors	Coors Original	5.0	148	11.3
Coors	Coors Light	4.2	102	5.0
Coors	Coors Extra Gold	5.0	147	10.7
Coors	Coors NA	<0.5	73	14.2
Corona	Corona Light	4.5	109	5
Corona	Corona Extra	4.6	148	
<u>Czechvar</u>	<u>Czechvar</u>	5.0		
Deschutes	Cascade Ale	4.5	140	
Deschutes	Mirror Pond Pale	5.3	175	
Deschutes	Bachelor ESB	5.0	180	
Deschutes	Black Butte Porter	5.2	185	
Deschutes	Quail Springs IPA	5.8	200	
Deschutes	Obsidian Stout	6.7	220	
Deschutes	Jubelale	6.7		
Deschutes	Broken Top Bock	7.0	233	
Deschutes	Pine Mountain Pils	5.1	154	
Deschutes	Cinder Cone Red	5.8	180	
Dos Equis	Dos Equis XX	4.8	145	
Dragon Stout	Dragon Stout	6.8	220	
Edison Light	Edison Light	4.0	109	6.5
Foster's	Foster's Lager	5.1	156	
Fuller's	Fuller's ESB	5.9		
Fuller's	Fuller's London Pride	4.7	156	
Genesee/High Falls	Genesee 12 Horse	4.8	152	14
Genesee/High Falls	Genny Light	3.6	96	5.5
Genesee/High Falls	Kipling Light Lager	3.4	99	8.0
Grolsch	Grolsch	5.0	156	
<u>Gordon Biersch</u>	Märzen	5.7		
<u>Gordon Biersch</u>	Blonde Bock	7.0		
<u>Gordon Biersch</u>	Pilsner	5.3		
<u>Guinness</u>	<u>Guinness</u> Draught	4.0	125	10
<u>Guinness</u>	Foreign Extra Stout	7.5	176	14
Hamm's	Hamm's	4.7	144	12.1
Hamm's	Hamm's Light	4.1	110	7.3
Heineken	Heineken	5.4	166	9.8
Heineken	Heineken Light	3.5	99	6.8
Henry Weinhard's	Weinhard's Amber Ale	5.3	169	14
Henry Weinhard's	Weinhard's Dark	4.8	150	13.1
Henry Weinhard's	Weinhard's Hefeweizen	4.9	128	9.2
Henry Weinhard's	Private Reserve	4.5	128	9.2
Hoegaarden	Hoegaarden	5.0		
I.C. Light	I.C. Light	4.2	95	2.8
Icehouse	Icehouse 5.0	5.0	132	8.7
Icehouse	Icehouse 5.5	5.5	149	9.8
J.W. Dundee	Honey Brown	4.5	150	13.5
Keystone	Keystone Light	4.2	100	5.0
Killarney's	Killarney's Red Lager	5.0	197	22.8
Killian's	Killian's	4.9	163	13.8
Labatt	Labatt Blue	5.0	153	
Lowenbräu	Lowenbräu	5.2	160	

Brewery/Brand	Beer	Alcohol %	Calories	Carbs
<u>Marin Brewing</u>	Mt. Tam Pale Ale	5.0		
<u>Marin Brewing</u>	Bluebeery Ale	5.0		
<u>Marin Brewing</u>	Albion Amber	5.0		
<u>Marin Brewing</u>	Marin Weiss	5.0		
<u>Marin Brewing</u>	Point Reyes Porter	6.0		

	DRINKS											
Body weight	1	2	3	4	5	6	7	8	9	10	11	12
100 lb.	.038	.075	.113	.150	.188	.225	.263	.300	.338	.375	.413	.450
110 lb.	.034	.066	.103	.137	.172	.207	.241	.275	.309	.344	.379	.412
120 lb.	.031	.063	.094	.125	.156	.188	.219	.250	.281	.313	.344	.375
130 lb.	.029	.058	.087	.116	.145	.174	.203	.232	.261	.290	.320	.348
140 lb.	.027	.054	.080	.107	.134	.161	.188	.214	.241	.268	.295	.321
150 lb.	.025	.050	.075	.100	.125	.151	.176	.201	.226	.251	.276	.301
160 lb.	.023	.047	.070	.094	.117	.141	.164	.188	.211	.234	.258	.281
170 lb.	.022	.045	.066	.088	.110	.132	.155	.178	.200	.221	.244	.265
180 lb.	.021	.042	.063	.083	.104	.125	.146	.167	.188	.208	.229	.250
190 lb.	.020	.040	.059	.079	.099	.119	.138	.158	.179	.198	.217	.237
200 lb.	.019	.038	.056	.075	.094	.113	.131	.150	.169	.188	.206	.225
210 lb.	.018	.036	.053	.071	.090	.107	.125	.143	.161	.179	.197	.215
220 lb.	.017	.034	.051	.068	.085	.102	.119	.136	.153	.170	.188	.205
230 lb.	.016	.032	.049	.065	.081	.098	.115	.130	.147	.163	.180	.196
240 lb.	.016	.031	.047	.063	.078	.094	.109	.125	.141	.156	.172	.188

Percent Alcohol Conversion Calculator

Enter an alcohol percentage in either percent alcohol by volume or percent alcohol by weight and click **Calculate** (or hit the TAB key) to see the conversion.

Alcohol By Volume	Alcohol By Weight
4.054 % alc/vol	3.2 % alc/weight

Alcohol By Volume	Alcohol By Weight
6.322 % alc/vol	4.99 % alc/weight

Source: <http://www.probrewer.com/>

Difference:

2.268

1.79

2.268

1.79

4.054 55% increase by volume

3.2 = 55% increase in alcohol by weight



800 SW JACKSON, SUITE 1017, TOPEKA, KANSAS 66612

Testimony by Neal Whitaker for
Kansas Beer Wholesalers Association
SB 622 Senate Federal & State Affairs Committee
February 21, 2008

Mr. Chairman and members of the committee:

The KBWA is not taking a position on what licensees should be licensed to sell strong beer. Rather we appear in opposition to SB 622 because of the method the proponents are utilizing to change what licensees have that authority.

The Kansas Liquor Control Act is a delicate balance between the courts, the constitution, and the electorate. SB 622 will – if enacted - unbalance the Act as it is unveiled for what it is: an attempt to hoodwink the courts and the electorate.

We have grave concerns that the organizations who support this bill have not fully considered the unintended consequences if SB 622 were to be adopted. We have addressed our most serious concern in the document attached to this testimony. That concern is: if the change in definition proposed by SB 622 is ruled unconstitutional, will the Supreme Court take the opportunity to also strike the current definition of CMB.

Other concerns include:

- SB 622 appears to contain a severability clause that retains the changes to the CMB Act and the Liquor Control Act embodied in SB 622 even if the Court rules the legislature's new definitions violate the Constitution.
- The bill includes a new requirement that distributors provide "services" to CMB retailers. This is – and has been - specifically prohibited for all other licensees for sound public policy reasons. That policy should not be altered. Of equal concern is that the term "services" is not defined. We believe this may be an effort to force distributor employees to become *de facto* employees of the CMB retailer without the expense or liability.
- We are concerned that SB 622 appears to levy a new tax: a 10% tax on gross receipts for on-premise CMB licensees.

We suggest that if the legislature wants to change the definition for "intoxicating liquor" contained in Art. 15, §10 of the Constitution, it would be best to put the question before the electorate rather than attempting to change the definition by legislation.

Thank you.

Sen Fed & State

Attachment 2

2-21-08

TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
FROM: REBECCA RICE, LEGISLATIVE COUNSEL, KBWA
DATE: FEBRUARY 21, 2008

Question: Is legislation that changes the constitutional definition of intoxicating liquor, from all alcoholic beverages containing measureable alcohol except for malt beverages containing no more than 3.2% alcohol to all alcoholic beverages containing alcohol except malt beverages containing no more than 5% alcohol, constitutional?

Relevant Dates

- 1880 – The Kansas Constitution was amended to prohibit the sale and manufacture of intoxicating liquors.
- 1934 – A constitutional amendment to authorize the Legislature to regulate and tax intoxicating liquor was rejected by Kansas voters.
- 1937 – Legislation was adopted to exclude cereal malt beverage (CMB – malt beverages with an alcohol content of not more than 3.2 percent by weight) from the definition of intoxicating liquors thereby allowing the sale of CMB at both on and off premise licensed facility.
- 1948 – The Kansas Constitution was amended to allow the Legislature to regulate, license and tax the manufacture and sale of intoxicating liquors and regulate its possession and transportation. The amendment also “forever prohibited” the open saloon. However, this amendment did not affect the sale of CMB by the drink because it was not included in the by-then, common meaning of the term “intoxicating liquor”.
- 1965 – Legislation was adopted to allow the sale of liquor in private clubs because the facilities were not open to the public and therefore did not violate the “open saloon” prohibition. Again, the public continued to consume CMB by the glass in establishments open to the public.
- 1970 – A constitutional amendment to remove the prohibition against “open saloons” was rejected by Kansas voters.
- 1979 – A 10% drink tax was imposed on liquor in lieu of sales tax. CMB on-premise sales were not affected because CMB was excluded from the definition of intoxicating liquor. The difference in taxing structure remains today.

1986 – The Kansas Constitution was amended to allow the sale of intoxicating liquors by the drink. Intoxicating liquor was defined by statute then and now as beverages containing alcohol except malt beverage containing not more than 3.2% alcohol.

From 1937 to the present, all laws and constitutional amendments regarding alcoholic beverages have been adopted or rejected based upon one common understanding of the term “intoxicating liquors”: beverages containing alcohol except malt beverages containing not more than 3.2% alcohol.

Typically, the Legislature is not allowed to change the Constitution by simply adopting statutory definitions that differ from the common meaning. Usually, the courts have prohibited those attempts and have ruled that to define constitutional terms outside the common understanding of the term requires specific constitutional allowance.¹

In 1987, then Attorney General Stephan opined that changing the definition of intoxicating liquors to exclude cereal malt beverages containing no more than 5% alcohol would be acceptable to the Supreme Court.² However, the opinion relied primarily on Kansas Supreme Court decisions rendered prior to 1935, and a law journal article.

The opinion states – but provides no citation for the claim – that the legislature had the authority to define “intoxicating liquors” before and after both the 1948 amendment and the 1986 amendment.³ However, the Supreme Court has never addressed the issue directly as to whether the legislature could further narrow the definition of intoxicating liquors without amending the Constitution. What did remain constant and unchanged before and after both constitutional amendments were the definitions for *intoxicating liquor* and *cereal malt beverage*.

Of greater importance, is the “aside” comment contained in the AG opinion that – should the legislature’s authority to redefine the constitutional term *intoxicating liquors* be challenged – the Court *could rule* that not only does the new definition

¹ Any legislative definition of a term used in the constitution must be within reason and must conform to the commonly understood meaning of the term, as intended by the framers of the constitutional provision and the people adopting it. *Board of County Commissioners of Wyandotte County v. Kansas Ave. Properties*, 246 Kan. 161 (1990)

² *AG Opin. 87-48*

³ *AG Opin 87-48* at page 6

violate the Constitution but that the current legislative definition violates the Constitution.⁴ If the court declared the current definition of intoxicating liquor unconstitutional, the result would likely be that CMB would be removed from all CMB outlets – on and off premise – until (if) the Legislature chose to re-write the Liquor Control Act to change licensing classifications and requirements for both on and off premise beer sales. Within that extremely difficult effort, would be the necessity to protect retail liquor dealers’ right to equal protection.

So, while the 1987 AG Opinion states that the Court has not found that classifying CMB as a non-intoxicating liquor is unconstitutional, *neither* has the court ruled that such classification *is* constitutional. That possibility should be of great concern.

Additionally, any challenge to this change in definition – regardless of the current definition – will require the state to argue that CMB containing 5% or less alcohol is not an intoxicating liquor. That will be a difficult theory and one I would not want to defend.

⁴ “(It should be noted that if a 5% CMB definition is challenged, the Court could set aside its earlier line of reasoning due to current societal concerns with driving under the influence, etc. If this were to happen, the legislature may lose the 3.2% definition as well.)” *AG Opin. 87-48* at page 5

Note: While the AG Opinion states the court could “abandon its previous line of reasoning”, there is no court decision that states the legislature can define intoxicating liquor as not including malt beverages containing not more than 3.2% alcohol.

Please Oppose Senate Bill 622

Mr. Chairman and members of the Committee, my name is Ken Volen. Four years ago, I purchased Bubba's in Olathe where I have three employees. I speak from the point of view of the 91 liquor stores in Johnson County and 37 in Wyandotte County.

We face serious competition from Missouri, where liquor is taxed at a much lower rate. It is common for retailers in Missouri to offer products at cheaper prices than I can buy it to sell in my store. So, I sympathize with the convenience stores who must also deal with Kansas' high tax rates on fuel and cigarettes. However, this is not a reason to turn over the sale of strong beer products to them.

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 corporations – many of which are owned out of state.

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? Nothing in this bill will change that situation.

I understand that this bill will license the cmb retailer under the ABC – I think that they should be licensed under the ABC right now for the privilege of selling 3.2 cmb. Then, we would have some picture of their ability to monitor beer sales on top of paying attention to the gas pumps and the soda machine and the sale of cigarettes.

I have to work very hard to be certain that my employees are not diverted from their duties by their other responsibilities, but they do not face these other distractions.

Further, my employees are all 21 years old. I provide incentives for them to be sure they check I.D.s regularly – and everyone in our business knows that it just not a question of IF the ABC will come into our store to check on how we are doing. It is only a question of WHEN.

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 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 622

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. They have testified to the Legislature that fuel and cigarettes make up 95% of their sales.**

Do you believe that they will sell the product as responsibly as I do? I expect to be checked by the ABC regularly. My taxes are reviewed every time I renew my license.

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 – losing between 30% to 50% of the current stores in the state - especially in those areas where liquor stores are few and far between.

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.

Ken Volen – Bubba's LLC, Olathe, Kansas; moviemoguls@hotmail.com

Plaschka & Kramer Retail Liquor
1455 Hwy 59
Princeton, KS 66078

Hello my name is Brandon Plaschka. I own a retail liquor store and am a board member of the Kansas Association of Beverage Retailers. I live in Princeton, Kansas. My family is active in our community and my small business is an important part of our community.

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 750+ liquor stores or cereal malt beverage with 3680 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 groceries, coffee, donuts, you get the picture. It is common practice in states where large retail chains sell strong beer for the stores to advertise beer at cost in order to get customers in the door.

If overall volumes of beer sold in Kansas are sold cheaply – this will affect the amount of enforcement tax paid on the beer. (Beer is changed to cmb in the bill, but I will refer to it as beer in my testimony.)

Currently, cereal malt beverage retailers pay sales tax – not the 8% enforcement tax. I do not know what it will cost my city and county to lose that sales tax. The State would gain the enforcement tax for the cmb that is now being sold. State reports indicate that cmb is currently 20-27% of the malt product being sold. It seems inefficient for the State to have to track an extra 3600 accounts to collect 20% more enforcement tax. Do we think that a lot more people will start drinking beer if this bill passes? Surely, you would have to expand the customers in order to make this change worthwhile...otherwise you are simply having to regulate a lot more retailers.

Our association collects information from our retailers. The vast majority of retail liquor stores 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.

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. We have read the study by the Distilled Spirits Council that says retail liquor stores would lose 45% of their income and 217 liquor stores would close.

Surely, the Kansas Legislature would not want to do this to Kansas families unless there was some very important reason. As far as I can tell, the only major impact this bill will have is to put stronger beer in taverns, stronger beer in grocery and convenience stores, and eliminate light alcohol beer. Then, we would change the name to cereal malt beverage. This bill does not promote any positive public policy - except to make stronger beer more available.

After hearing this small business owner and 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.

**Pony Express Liquor
603 North St
Seneca, KS 66538**

Jim and Anita Reitz, owners

February 21, 2008

Chairman Brungardt and Committee:

I am here today to share with you my perspective on Senate Bill 622 – which would cause a major change in the way alcohol is sold in Kansas.

The bill is written to give gas stations and grocery stores the sale of strong beer. But it will do much more than that. The changes that will come to Kansas will completely alter the way that Kansans purchase their alcohol.

We know that the national association for convenience stores is promoting this type of legislation across the country. There is currently a bill in Colorado which would give the convenience stores and grocery stores the ability to sell both strong beer and wine.

We also know that when such changes were made in other states, like Missouri, it resulted with the sale of all alcohol and liquor products going to the big chains and wiping out a lot of the independently owned liquor stores.

My wife and I perform a service with our small business. We collect taxes for the State, we track keg sales for the State, and we work hard to keep strong beer and alcohol out of the hands of underage kids. We are very highly regulated and we knew that when we bought our business. We consider ourselves partners with the State for selling our products safely and legally. We also work to be important partners in our community. We sponsor a wine tasting for our local charity and help to plan many events and weddings for our customers, who are our friends and neighbors.

My store can not survive a 45% cut in revenue. I can not afford to sell my products at cost to compete with big chains.

If the Legislature wants to change the way that beer and liquor are sold in Kansas, you should not seek to eliminate the low alcohol content products from the state. Cereal malt beverage is an important part of our market in Kansas. It is the legal product chosen to be sold in dry counties. I understand that this bill will change that and put strong beer in all the dry counties.

Finally – why does this bill include language in new section 50 that states “A conviction of an employee of a corporation, which is licensed as a cereal malt beverage retailer, for violating any provision of the Kansas cereal malt beverage act shall not be construed as a conviction of the cereal malt beverage retailer.” The Liquor Control Act says that I can be held criminally responsible for ANY violation that occurs on my licensed property. I believe this is the reason why corporation should not be licensed to sell alcohol at all. The responsibility is not there.

Thank you for your time.

Sen Fed & State

Attachment 6
2-21-08

Kansas Association of Beverage Retailers

P.O. Box 3842, Topeka, KS 66604

785-266-3963 kabr@amycampbell.com

February 21, 2008

Chairman Brungardt and Senate Federal and State Affairs Committee,

My name is Stacey Harlow and I have driven to Topeka today to visit with you from Satanta, Kansas. Nancy Doris, my business partner, is also here.

This past year, I was elected to serve as 3rd Vice President for the Kansas Association of Beverage Retailers. Since taking a leadership role, I have learned a great deal about the work of our association and the services we provide to the state licensed retail liquor stores.

We work very closely with the ABC – collaborating with them to offer training programs to licensees and their employees. We have recently amended our training program to include new information relating to new Kansas I.D.s, new state laws, and policy changes at the ABC. We also cooperate with ABC to send out important information to our members about issues important to the State – including their new penalty guidelines, new rules about keg registration and wine sales, and where they may be seeing problems in the industry.

The retailers who serve in our organization and on our board are extremely involved and are very attentive to the laws of Kansas. They do not get paid extra for this work, but consider it an important part of being a retail liquor licensee in Kansas. Why? Because owning and operating a retail liquor store is not only a full time job in itself, but it includes extra responsibilities to our community and to the State.

There are advantages to working for a corporation rather than owning your own business – but I do not believe that it entails the same level of commitment.

I come from a part of the state that includes many dry counties. Many of our communities have 3.2 taverns instead of drinking establishments. This bill makes major changes to the way taverns are regulated and the taxes they pay. Do they know about it?

Please refer to the attached fact sheet.

For my community – the closing of my store would mean that people will face a greatly reduced variety of wine and spirits products. The availability of some brands of wine and spirits is very limited in our area already. Can you imagine the impact of closing 30% to 50% of the liquor stores. I am sure the cmb retailers will be happy to sell that for us, too.

Please support your Kansas owned retail liquor stores. And please feel free to contact us if we can work with you on other issues as well.

Stacey Harlow – 2 Bags Brew, 204 W Nez Perce, Satanta, KS 67870 620-649-3460

Sen Fed & State

Attachment 7
2-21-08

Kansas Association of Beverage Retailers

P.O. Box 3842, Topeka, KS 66604
785-266-3963 kabr@amycampbell.com

Senate Bill 622 would put Strong Beer (now classified as alcoholic liquor) on the shelves of the convenience stores and grocery stores. This legislation – which has been defeated many times in the past – serves no positive public purpose and will seriously harm Kansas owned & licensed small businesses.

Please oppose “single strength beer” or “strong beer” legislation.

- Liquor store owners must be Kansas citizens and independent businesses – this legislation takes primary business away from Kansas small businesses to give to chains and corporations – often sending those profits out of state.
- Liquor stores must hire adults OVER 21 years of age. This legislation puts stronger alcohol in the hands of underage convenience store and grocery clerks – to stock it, to sell it, and to resist the temptation to provide to their friends.
- Strong beer sales make up approximately 55% of sales for Kansas licensed liquor stores. This legislation could close as many as 50% of the state licensed stores (according to past testimony by the Division of ABC) – especially in the less populated areas of the state. This analysis was based on the experience of other states which expanded Strong Beer sales to grocery and convenience stores.
- Financial analysis of the Kansas market predicts the loss of at least 217 Kansas licensed liquor stores (30%). This will significantly reduce the availability of wine & spirits – then, you will see the grocery & convenience stores come back to the Legislature to ask to sell those products as well.
- Beer sales make up an estimated 55% of total package store revenues – they are a core part of package store business. The reduction in beer sales, along with lost spirits sales will, initially, reduce average package store revenues by 45%.
- The ABC does not conduct audits on cmb retailers, as they do regularly in retail liquor stores.
- The ABC does not include cmb retailers in their controlled buy (sting) programs and licensee inspections. Retail liquor stores may receive multiple visits from an agent in a single year.
- FY 2008 statistics indicate that cereal malt beverage sales are 27% of the sales in Kansas. Customers buy lower alcohol beer because they choose to purchase a lower alcohol product. This legislation will remove that choice from Kansas altogether.
- Strong beer legislation has constitutional problems. Our Kansas constitution speaks to alcoholic liquors and gave the counties a choice. This legislation will automatically increase the alcohol content of all products sold in the taverns and stores in “dry” counties – without a public vote.
- Strong beer legislation increases the availability of Strong Beer by 500% and completely eliminates the sale of reduced alcohol content cereal malt beverage.
- Convenience and Grocery Stores say that there is no appreciable difference between 3.2% cmb and regular beer. But their legislation will allow them to sell all beer up to 5% alcohol content – not just brands that are only “a little bit different”. This will put hundreds of additional brands on their shelves – including imports and higher alcohol flavored malt beverages. 3.2% cereal malt beverage will be eliminated altogether.
- The passage of the Strong Beer bill will expand the responsibilities of the Division of ABC to cover an additional 3790 businesses.

Will the legacy of the 2008 Kansas Legislature be increasing the alcohol content of beer in every tavern, grocery and convenience store in Kansas?

Please feel free to contact KABR for more information. Amy Campbell, executive director: 785-969-1617.



The Kansas Association of Beverage Retailers

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

Phone 785-266-3963
Fax 785-234-9718
kabr@amycampbell.com

Martin Platt, President

Amy A. Campbell, Executive Director

TESTIMONY PRESENTED TO THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

Re: SB 622

February 21, 2008

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 SB 622 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 versions of this bill in 2005, 2006, and 2007. Kansas retail liquor store owners are disappointed, but not surprised, to be addressing the same issue again.

This is a 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, 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 by weight and one that is less than 3.2% alcohol by weight – 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 622 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.
- 20% (2007) to 27% (2008) of “beer” purchases in Kansas are cereal malt beverage. There is a market for the lower alcohol 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 and are very important to dry counties, taverns, and many local fundraising events.
- 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
- 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?
- It appears that SB 622 attempts to equalize the tax payments on beer products. There are two sections that are not clear. Where drink taxes are applied to taverns, the bill indicates that the drink

tax shall be paid “for the privilege of selling alcoholic liquor”. Taverns do not sell alcoholic liquor, so, will the drink tax apply?

- Additionally, the bill does not seem to require the taverns to pay the 8% enforcement tax on the cereal malt beverage they buy from their distributor. This tax is paid by drinking establishments and clubs now. Is this distinction intentional?
- The bill does attempt to bring cmb licensing under the State’s control. I am curious how this is going to affect the local cities and counties who now manage that licensing.
- The bill does not exempt liquor retailers (liquor stores) from needing to have a cereal malt beverage license, although the liquor license will allow them to sell cereal malt beverage. Several sections combine the liquor retailers and the cereal malt beverage retailers and include them both under the jurisdiction of the Liquor Control Act and the Cereal Malt Beverage Act. It is not clear just how the Cereal Malt Beverage Act might apply to the liquor licensees.
- 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. Although this bill attempts to equalize many of the licensing differences, it does not prohibit corporations, it does not require 21 year old employees, it continues to allow the cmb retailer to sell beer on Thanksgiving and Christmas and seems to apply a different criminal standard of responsibility to corporations vs. individual licensees. (New Section 50.)?
- SB 622 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 622 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 88%. 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 622.

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

Ireland: Doctors seek supermarket alcohol ban

Source: Irish Times

Feb 18th

Doctors have called for a ban on the sale of drink in supermarkets, small shops and petrol stations.

The Irish Medical Organization (IMO) said licences allowing the sale of alcohol in these shops should be phased out.

The group said that Minister for Justice Brian Lenihan had "correctly identified the off licence sector as the major source of our continuing alcohol problem".

"Attempts at a voluntary code have rightly been seen as a futile exercise", said former IMO president Prof Joe Barry.

"Increasing concerns about home drinking have their root in the manner in which supermarkets in particular have marketed alcohol over the past number of years," he added.

He said "profit-seeking behaviour" by supermarkets had taken no account of the health and social consequences of drinking alcohol.

"Off-trade sales should be through specialist off-licences, where issues such as staff training and responsible server programs, as advocated by the Government's Strategic Task Force on Alcohol, would have more effect."

**DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES**

February 20, 2008

The Honorable Pete Brungardt
Chairman
Federal and State Affairs Committee
300 SW 10th Street, Room 526-S
Topeka, Kansas 66612

Re: SB 622 – Cereal Malt Beverage Alcohol Content.

Dear Chairman Brungardt:

On behalf of the Distilled Spirits Council of the United States, a national trade association representing producers and marketers of distilled spirits sold in the United States, we thank you for the opportunity to express our opposition to SB 622. This legislation would change the definition of *cereal malt beverage* to allow convenience and grocery stores to sell full strength beer. This change would bankrupt hundreds of small, Kansas-based businesses by diverting a large portion of beer sales to large national chain retailers. The inevitable reduction in package store customer traffic would also significantly reduce spirits and wine purchasing opportunities, thereby damaging spirits and wine wholesalers and producers, as well. Furthermore, the difficulty in policing such a dramatic increase in the number of strong beer licensees could risk the advancements that have been made in the fight against underage drinking.

Beer sales account for an estimated 55 percent of total package store business. By opening the door to convenience and groceries stores, SB 622 would increase the number of licensees eligible to sell strong beer by 500 percent. Since 70 percent of spirits buyers are also beer buyers, the Distilled Spirits Council estimates that package stores would experience a revenue reduction from lost beer and spirits sales of 45 percent. As a result, 217 package stores are projected to go out of business – financially ruining hundreds of small business owners who have invested in the current system and played by the rules ever since prohibition was repealed. With small businesses facing a soft economy and increased operating costs, the legislature would be making a serious mistake to tilt the playing field in favor of large national chains at the expense of Kansas package stores.

SB 622 would also risk the advancements that have been made in the fight against illegal underage drinking. Since cereal malt beverage licensees are not subject to licensing and regulation of the Division of Alcoholic Beverage Control, they will not be subject to the same high standards of responsible retailing, such as the employee age requirement of 21 years old and the strict enforcement scrutiny of ABC audits. Despite significant progress over the past 20 years, underage drinking is a complex, societal problem that persists in communities across the nation. It would be a grave mistake to risk undoing any progress on this important issue.

In keeping with the Distilled Spirits Council's dedication to socially responsible and economically healthy retail practices, I urge you to reject SB 622.

Sincerely,

Courtney J. Armour
State Government Relations Manager

Whitney B. Damron, P.A.
919 SOUTH KANSAS AVENUE
TOPEKA, KANSAS 66612-1210
(785) 354-1354 • (785) 354-8092 (Fax)
E-Mail: wbdamron@aol.com





League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: Senate Federal and State Affairs Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: February 25, 2008

RE: Opposition to SB 622

On behalf of the League of Kansas Municipalities and its 585 member cities, I would like to submit this written testimony on SB 622. Briefly, this bill in its 80 plus pages, totally revises the cereal malt beverage (CMB) regulatory scheme. Cities for decades have regulated and licensed the sale, both general and limited retailers, of CMB in their communities. Under SB 622, however, the state would take over the licensing of these establishments. There has been no showing of necessity to justify upsetting decades of a procedure that has worked well in our cities. When there is a problem with a retailer, whether it is a convenience store selling to minors or a tavern where illegal activities occur, the enforcement and licensing control is local where it needs to be. Enforcement occurs at the local, not the state level. The municipality is able to handle the problem and immediately address the issue with the hammer of suspending or withdrawing the CMB license. This option is not available when the state is the licensing entity. The municipality would have no authority to suspend or revoke the establishment's license. This is a major concern to cities.

In addition, LKM opposes the shift from charging sales tax on CMB sales to imposing a gallonage tax. Again, the process has worked well for decades and there simply is no showing that the current process needs to be upset to impose new procedures and taxing methods. It appears that this is an attempt to make CMB look like alcoholic liquor without actually labeling it alcohol. If it is alcoholic liquor, then perhaps it is time to totally do away with the dichotomy, rather than maintaining the legal fiction.

The League of Kansas Municipalities urges the committee not to report SB 622 favorably for passage.

www.lkm.org

Sen Fed & State
Attachment 10
2-21-08