

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 4, 2009, in Room 136-N of the Capitol.

All members were present except:

Senator Oletha Faust-Goudeau- excused
Senator Ralph Ostmeyer- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Dennis Hodgins, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Hal Hudson, Kansas Pest Control Association
Larrie Ann Lower, Wine Institute
Doug Mays, City of Olathe
Patricia Biggs, Kansas Parole Board
Bob Alderson, Casey's General Store
Terry Presta, Presto Convenience Stores/PMCA
Chris Darrah, Darrah's Fast Lane, Manhattan
Thomas Palace, Petroleum Marketers
Philip Bradley, Kansas Licensed Beverage Association
Diane Minear, Secretary of State
Thomas Groneman, Kansas Alcoholic Beverage Control

Others attending:

See attached list.

Introduction of Bills:

Hal Hudson, Kansas Pest Control Association, requested a bill introduction regarding pesticide safety and education fee. (Attachment 1)

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

Larrie Ann Lower, Wine Institute, requested a bill introduction that allows wineries to ship wine directly to Kansas consumers. (Attachment 2)

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

Doug Mays, representing the City of Olathe, requested a bill introduction regarding improvement by cities within unincorporated territory within three miles of corporate limits. (Attachment 3)

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

Patricia Biggs, Kansas Parole Board, requested a bill introduction that is a technical clean-up for KSA 21-4720. (Attachment 4)

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

SB 76 - Cereal malt beverages; alcohol content, regulation by ABC, retailers authorized to sell, taxation.

Chairman Brungardt opened the hearing on **SB 76**.

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on February 4, 2009, in Room 136-N of the Capitol.

Staff provided an overview of the bill. ([Attachment 5](#))

Bob Alderson, Casey's General Store, spoke in favor of the bill. ([Attachment 6](#)) Mr. Alderson is also authorized to present testimony on behalf of the Petroleum Marketers and Convenience Store Association of Kansas, Inc., QuikTrip and Hy-Vee, Inc.; and emphasized that the real issue involved with the bill is not a liquor issue, but an economic issue. By allowing Cereal Malt Beverage (CMB) retailers to compete on an equal basis with retail liquor dealers this would provide CMB retailers the opportunity to regain a share of the cereal malt product market that was lost over the past several years.

Terry Presta, Presto Convenience Stores/PMCA, appeared as a proponent of the bill. ([Attachment 7](#)) Mr. Presta felt that there is really no valid reason to have a dual system of beers in Kansas, it is cumbersome and creates a lot of distribution problems for the beer distributors and confuses the public.

Chris Darrah, Darrah's Fast Lane, Manhattan, spoke in favor of the bill. ([Attachment 8](#)) Mr. Darrah provided points on why the bill should pass.

Thomas Palace, Petroleum Marketers, appeared in favor of the bill. ([Attachment 9](#)) The bill will 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 today. The 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; and will pay the same licensing fees, the same taxes and hour of operation (when selling beer) will be the same as applied to liquor stores. Mr. Palace addressed several questions raised on the proposed change.

Jerry Davidson, Crescent Oil Company, Inc., Independence, Kansas, ([Attachment 10](#)) and Brenda Elsworth, Pump'n Pete's, Parsons, Kansas, provided written testimony in support of the bill. ([Attachment 11](#))

Philip Bradley, Kansas Licensed Beverage Association, (KLBA) provided testimony as neutral on the bill. ([Attachment 12](#)) The KLBA takes no position on the bill but did provide a list of 10 concerns that would ask to be resolved satisfactorily before the bill advances.

Diane Minear, Legal Counsel, Deputy Assistant Secretary of State, appeared to brief the committee, answer questions, and provide recommendations relating to the bill. ([Attachment 13](#))

Thomas Groneman, Kansas Alcoholic Beverage Control, appeared neutral, but addressed several provisions in the bill. ([Attachment 14](#)) Due to the extensive amendments to the numerous acts, ABC requests that the effective date be no earlier than July 1, 2010, to allow adequate time to implement the major changes provided for in the bill.

Chairman Brungardt closed the hearing on **SB 76**.

The next meeting is scheduled for February 5, 2009. The meeting was adjourned at 11:35 am

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

DATE 2/4/09

NAME	REPRESENTING
SEAN MILLER	CAPITOL STRATEGIES
Sandy Jacquot	LKM
Phil BRADLEY	KLBA
Nick Jordan	Capital Strategies
Bub Stogger	Dy-ke Inn
Paul Helmerick	Ks Parole Board
Robert Sanders	Parole Board
PATRICIA Biggs	PAROLE BOARD
Lance Vogel	ROGERS LIQUOR
Jennifer Vogel	Rogers Liquor
Stacey Harlow	2 Bags Brew
Brandon Plaschke	Seven Ce.Dan. LLC
Rodney Robson	KANSAS ASSOC. of Bev. Retailers Jo's Liquor Casey, KS
DAVE DVORAK	KABR FLINT HILLS WINE + SPIRITS
Stephanie Mickelsen	KS Sec of State
Diane Minear	Sec. of State
Kari Presley	Kearney & Associates
Amy Campbell	ICS Assoc. of Bev. Retailers
Whitney Jann	DISCU

PESTICIDE SAFETY AND EDUCATION FEE

New Section 1. There is hereby created the pesticide safety and education fee fund. The secretary of the Kansas department of agriculture shall remit all moneys received by or for the secretary under this act, and amendments thereto, to the pesticide safety and education fee fund. All moneys credited to the pesticide safety and education fee fund shall be expended for costs incurred by Kansas Cooperative Extension Services pursuant to K.S.A. 2-2459a, and amendments thereto. All expenditures from the pesticide safety and education fee fund shall be made in accordance with the provisions of appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the dean of the college of agriculture of Kansas state university or by a person or persons designated by the dean of the college of agriculture.

New Section 2. In addition to the examination fee as prescribed by K.S.A. 2-2443a, and amendments thereto, applicants shall submit with each examination application a pesticide safety and education fee in the amount of \$20.

New Section 3. In addition to the recertification-by-training fee as prescribed by K.S.A. 2-2446(b), and amendments thereto, commercial applicators shall submit with each renewal application a pesticide safety and education fee in the amount of \$20.

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LARRIE ANN LOWER
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Topeka KS 66603-3939
785-640-2747
785-232-3680 fax
larrie_ann@yahoo.com

I am Larrie Ann Lower, representing the Wine Institute. We would like to request introduction of a bill that allows wineries to ship wine directly to Kansas consumers. Thank you for your consideration and I'll be happy to answer any questions you may have.

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Attachment 2

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12-693

Chapter 12.--CITIES AND MUNICIPALITIES Article 6.--PUBLIC IMPROVEMENTS

12-693. Improvements by cities within unincorporated territory within three miles of corporate limits; financing and payment of cost of improvement; agreement with county to establish improvement district for road and street improvements. (a) All cities are hereby authorized to make improvements authorized by and in the manner provided for in the general improvement and assessment law as contained in chapter 12, article 6a of Kansas Statutes Annotated, in those unincorporated areas beyond their corporate limits and within three miles thereof. Before any such improvements shall be made, (1) the city shall have adopted, in the manner provided by law, regulations governing the subdivision of land in such unincorporated area or (2) the city shall have obtained the county's consent to making such improvements or (3) 100% of the property owners located outside the city limits and benefited by such improvements shall have signed a petition pursuant to K.S.A. 12-6a04 requesting that the city make such improvements.

(b) Such improvements may be located in a proposed improvement district which is wholly outside the corporate limits of the city or partially within the city limits. Improvements within such three mile area located in a proposed improvement district which is wholly outside the corporate limits of the city shall be commenced only upon a petition signed by both a majority of the owners of record of property and the owners of record of more than one-half of the area liable for special assessment under the proposal. Except as provided in subsection (b), improvements within such three mile area located in a proposed improvement district which is partially within the corporate limits of the city shall be commenced only upon a petition found sufficient by the provisions of K.S.A. 12-6a04, and amendments thereto, except that for the purpose of determining the sufficiency of the signatures to such petitions only, that area which is outside the corporate limits of the city shall be considered to constitute the proposed district. Financing of the improvements, including the levying of special assessments, shall be made in the same manner as if the improvements were made within the corporate limits of the city. In the event the improvements authorized hereunder are for water, storm water drain or sanitary sewer systems, the city is hereby authorized to impose upon the property served, user fees which may be based upon the cost of the operation and maintenance of such improvements and also the recovery of an equitable portion of the capital improvement costs of any of such improvements originally charged to or assessed against property within the corporate limits of such city. The user fees herein authorized shall be a lien against the property served and may be collected in the same manner as delinquent real estate taxes.

(c) If the area of a proposed improvement district is located partly within and partly outside the city, and the construction, reconstruction or other improvement to roads or streets which lie upon the corporate boundary limits of the city is proposed, the governing body of the city and the board of county commissioners of the county may enter into agreements whereby the city or county may initiate such improvements by the establishment of an improvement district by the city under the provisions of K.S.A. 12-6a04, and amendments thereto. For the purpose of determining the sufficiency of the signatures to such petition, that area which is both inside and outside the corporate limits of the city shall be considered to constitute the proposed district. Such agreement shall provide for the proportionate share of the total costs of the improvement which shall be paid by the city and by the county and the share to be paid by the levying of special assessments against the benefiting property within the improvement district. If the proposed boundary line road or street improvement involves a road under the jurisdiction of a township, the governing body

of the township also may enter into an agreement with the governing body of the city to contribute a share of the cost of the improvement. If the area of a proposed improvement district includes property within an industrial district, established by a charter resolution adopted pursuant to K.S.A. 19-101a, and amendments thereto, which effected changes in the provisions of K.S.A. 19-3801, *et seq.*, and amendments thereto, the board of directors of such industrial district shall have the right to approve or disapprove the agreement prior to the undertaking of any improvement. If the board disapproves the agreement, the industrial district shall not be liable for the cost of any improvement undertaken pursuant to such agreement.

Paul Feleciano, Chairperson
Robert Sanders, Member
Patricia Biggs, Member

MEMORANDUM

**TO: MEMBERS OF SENATE FEDERAL AND STATE AFFAIRS COMMITTEE,
SENATOR BRUNGARDT, CHAIRPERSON**

FROM: KANSAS PAROLE BOARD

RE: REQUEST FOR TECHNICAL CLEAN-UP: K.S.A. 21-4720

DATE: FEBRUARY 4, 2009

Current Law

K.S.A. 21-4720 includes provisions indicating that when the court orders consecutive sentencing of indeterminate and determinate incarceration terms, the offender begins service of the determinate term after achieving a parole suitability decision by the Board on the indeterminate term (*subsection (b)(2)*).

Proposed Change

- a. The order of these consecutive sentences be reversed so that the offender serve the determinate sentence first and then begin service on the indeterminate sentence.

Advantages:

- Statutory language is easy to amend (relatively).

Challenges:

- Discussions with staff at Department of Correction indicate that there may be challenges with this potential solution as it creates troubles in the areas of goodtime award and forfeiture as well as computation of custody.
- There should be no conveyed "segments" to an aggregate sentence – it was ordered as a single, yet aggregated sentence and should therefore be served as such.

- b. Construct alternative statutory language similar to K.S.A. 21-4608 (g) which states:

21-4608 (g) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term. The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

We request this language be amended such that determinate sentences and indeterminate or off-grid sentences are referenced.

Advantages:

- Retains concept of a single, yet aggregate sentence.
- Reduces Department of Corrections' operational concerns.
- Attains same goal of parole eligibility at time of potential community release.

Challenges:

- May be more cumbersome to draft.

Rationale

By computing the sentence such that parole eligibility occurs near the time of potential imprisonment sentence completion, the Parole Board feels it can more accurately perform its duties in making determination of parole suitability. In current state, the Board is being asked to make a determination of "suitability for release" in some cases years prior the offender's anticipated prison release date due to the required service of the determinate sentence. As such, it is not possible for the Board to discharge its duties in making determination of community-suitability when the inmate still has a fix period of time to serve during which time many factors used as the basis of that suitability decision may change.

Magnitude

Of the 8653 offenders housed in a Kansas Department of Corrections facility on June 30, 2008, 359 (4.1%) appear to have a combination sentence of indeterminate-determinate structure.

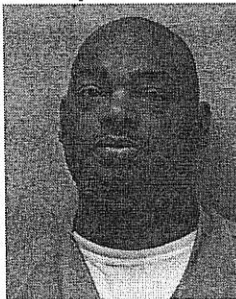
Of these 359:

- o 332 were, at their last admission, an admission with a new sentence or from court
- o 27 were admitted last as violators of conditions of post-incarceration supervision.

Of these 359:

- o 167 have a pre-guidelines & post-guidelines sentence structure
- o 192 have guidelines imposed off-grid and on-grid terms.

Examples



PENRICE, DARCEL L (KDOC # 0062367)

Mr. Penrice's first appearance before the Kansas Parole Board was October 8, 2008. At this hearing, the board must make a determination of suitability for parole despite the fact that Mr. Penrice is required to serve another 206 months of incarceration time. During this additional time of incarceration, any set of the dynamic factors for determination of parole suitability may change.

County	Case Number	Offense Date	Sentencing Date	ACS	Criminal Conviction Description	Counts	Crime Severity Level
Shawnee	93CR3145	Nov 14, 1993	Nov 29, 1995	N/A	Murder in the First Degree	1	Off-Grid "Life 15"
Shawnee	93CR3145	Nov 14, 1993	Nov 29, 1995	N/A	Aggravated Kidnapping	1	Non Drug Severity Level 1 206 months



CELLIER, LANCE C, (KDOC # 0061548)

Mr. Cellier's first appearance before the Kansas Parole Board was January 21, 2009. At this hearing, the board must make a determination of suitability for parole despite the fact that Mr. Cellier is required to serve another 97 months of incarceration time. During this additional time of incarceration, any set of the dynamic factors for determination of parole suitability may change.

County	Case Number	Offense Date	Sentencing Date	ACS	Criminal Conviction Description	Counts	Crime Severity Level
Lyon	94CR97	Feb 25, 1994	Jul 13, 1995	N/A	Murder in the First Degree	1	Off-Grid "Life 15"
Lyon	94CR97	Feb 28, 1994	Jul 13, 1995	N/A	Aggravated Kidnapping	1	Non Drug Severity Level 1 97 months



VINCENT, CARRIE L, (KDOC # 0058251)

Ms. Vincent first saw the parole board on July 24, 2008. At this hearing the board was charged with determining suitability for parole. After such determination, Ms. Vincent is required to serve another 49 months of incarceration time. During this additional time of incarceration, any set of the dynamic factors for determination of parole suitability may change.

County	Case Number	Offense Date	Sentencing Date	ACS	Criminal Conviction Description	Counts	Crime Severity Level
Atchison	93CR182	Jul 30, 1993	Dec 13, 1993	N/A	Murder in the First Degree	1	Off Grid "Life 15"
Atchison	93CR182	Jul 30, 1993	Dec 13, 1993	N/A	Aggravated Robbery	1	Non Drug Severity Level 3 49 months
Atchison	93CR182	Jul 30, 1993	Dec 13, 1993	Conspired	Robbery	1	Non Drug Severity Level 7 12 months 12 mon CC with 49 mon and CS to Life-15

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

Briefing on Senate Bill 76

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

February 4, 2009

This memorandum provides an overview of the significant policy changes contained in SB 76. The bill would amend numerous statutes regarding the Kansas Liquor Control Act, the Club and Drinking Establishment Act and the Kansas Cereal Malt Beverage Act.

First, the bill changes the definition of cereal malt beverages (CMB) by increasing the limit on the alcoholic content from 3.2% or less to 4.0% or less by weight. A similar change is made in the definition of beer increasing the alcoholic content from more than 3.2% to more than 4.0%.

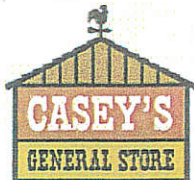
The bill allows CMB to be sold by liquor retailers under the same laws, rules and regulations as alcoholic liquor is sold. Sections 1 through 32 of the bill make various amendments to the Kansas Liquor Control Act to implement this policy change. Sections 33 through 42 of the bill make similar amendments to allow club and drinking establishments regulated under the Club and Drinking Establishment Act to sell CMB.

Currently CMB retailers are licensed and regulated by cities and counties under the Kansas Cereal Malt Beverage Act. Under SB 76 CMB retailers would be licensed by the division of alcoholic beverage control (ABC) in a manner similar to that provided for the licensure of liquor retailers under the Kansas Liquor Control Act. Sections 44 through 50 are new sections of law that provide for the licensure and regulation of CMB retailers by ABC. Under these provisions corporations and other business entities can hold CMB licenses. A CMB retailer would be required to pay an annual fee for the license and file a \$2,000 surety bond. Furthermore, cities and townships where the CMB retailer is located could impose a local license

and occupation fee on the retailer. Sections 51 through 58 of the bill make various amendments to the Kansas Cereal Malt Beverage Act so that it conforms to the new sections regulating CMB retailers.

The bill exempts sales of CMB from retail sales tax. However, such sales would be subject to the 8% liquor enforcement tax under K.S.A. 79-4101 et seq.. Additionally, CMB sold for consumption on the premises would be subject to the 10% drink tax under K.S.A. 79-41a01 et seq. Sections 59 through 71 makes the necessary amendments to current law to bring sales of CMB under these provisions.

Finally, the bill amends K.S.A. 79-4108 to create and fund a local cereal malt beverage enforcement fund. The state treasurer would credit 25% of the revenue collected from CMB retailers to this new fund. This revenue comes from the 8% liquor enforcement tax imposed by K.S.A. 79-4101. Moneys in the fund would then be distributed on a quarterly basis to cities and counties to assist those local governments in the enforcement of the provisions of the Kansas Cereal Malt Beverage Act. The moneys would be distributed in proportion to the amount of retailers' sales tax revenue collected in each city and county under the Kansas retailers' sales tax act.



CASEY'S GENERAL STORES, INC.

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

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

FEBRUARY 4, 2009

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. 76 ("SB 76"). 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 and Hy-Vee, Inc. 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 may be 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

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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 with the 1937 enactments and the exclusion of CMB from the definition of "intoxicating liquor." This led to the conclusion that, since CMB was not an intoxicant, it must be of lesser quality than beer containing more than 3.2% alcohol by weight.

The misconception was perpetuated 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. 2008 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 76, 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.

Moreover, it should be remembered that, during the time when the Kansas Constitution prohibited the sale and consumption of intoxicating liquor, "intoxicating liquor" was legislatively defined in 1937 (as noted previously) and CMB was legislatively excluded from that definition.

SENATE BILL NO. 76

The principal provisions of SB 76 are as follows:

- CMB is re-defined as a malt beverage having not more than 4.0% alcohol by weight, and “beer” is defined accordingly as a malt beverage having more than 4.0% alcohol by weight.
- SB 76 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 retail 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 76 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, 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. Section 64 of SB 76 (amending K.S.A. 2008 Supp. 79-4108) provides for the quarterly distribution to cities and counties of a portion of the liquor enforcement tax revenues received from cereal malt beverage retailers. We acknowledge that the amount of these revenues to be distributed may not be the appropriate amount, and we are hopeful that this Committee and other interested in the bill can be of assistance in determining the appropriate amount. 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 that \$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 76 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 76 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 76 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 76, and I will attempt to answer any questions members of 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%



February 4, 2009

RE: Senate Bill 76

Dear Mr. Chairman and members of the Committee:

My name is Terry Presta and I'm the President of Presto Convenience Stores and President of the Petroleum Marketers and Convenience Store Association (PMCA). I was also the Kansas State Representative from the 123rd district (Garden City) from 1995-1998.

I have been in the convenience store business almost 29 years. When I started in 1980 and until 1986 the age difference between CMB and so called strong Beer was 3 years. The legal age for CMB was 18 and the legal age for strong beer was 21. All this changed in 1986 when the legal drinking age for CMB was raised to 21.

Since this change there is really no valid reason to have a dual system of beers in Kansas. It is cumbersome and creates a lot of distribution problems for the beer distributors and confuses the public. The alcohol differences are miniscule. In fact the very creation of CMB was a deception. CMB beer was originally created in the 1920's to put forth the illusion that it was "non- intoxicating" and create a "legal loophole" that allowed beer sales in Kansas during prohibition.

PROHIBITION (1920-1933 R.I.P.) was known as The Noble Experiment. The results of the experiment are clear: innocent people suffered; organized crime grew into an empire; the police, courts, and politicians became increasingly corrupt; disrespect for the law grew; and the per capita consumption of the prohibited substance—alcohol—increased dramatically, year by year, for the thirteen years of this Noble Experiment, never to return to the pre-1920 levels. *

*from the book: Prohibition, a lesson in Futility

It is time to put to rest, once and for all, the last vestiges of Prohibition and have one beer in the State of Kansas. Please support SB 76.

Thank you.

Terry Presta
Presto Convenience Stores/ PMCA

Petroleum Marketers and Convenience Store Association of Kansas
115 SE 7th • Topeka, KS 66603
PO Box 678 • Topeka, KS 66601-0678
785-233-9655 • Fax: 785-354-4374

Sn Fed & State
Attachment 7

2-04-09

long as the cuts don't harm vulnerable citizens, and if the state can avoid contracting the work out at a greater cost to private vendors.

Nixon keeps a campaign promise by restoring Medicaid benefits to 35,000 low-income adults. Republicans correctly note, however, that Missouri's long-run financial health depends on a comprehensive plan for reducing health care costs while expanding access to care.

Nixon's budget gives elementary and secondary schools the full amount called for in the state's funding formula. It gives a healthy boost to a program that helps young children with developmental

Missouri Mental Health Center over to private operators.

It would be a tragedy if such a move decreased the already-limited options for indigent persons with severe psychiatric problems in the Kansas City area.

Nixon's budget includes more than \$53 million in biodiesel and ethanol subsidies — a 10 percent increase in a program that doesn't help consumers or the environment. The governor and the General Assembly should rethink that.

Overall, the positives in Nixon's proposed budget outweigh the negatives. He has provided a healthy financial framework for the legislature to work with.

Legislation would do away with 3.2 percent requirement

Bottoms up to Kansas beer bill

Already worn out from trying to balance the budget, some Kansas legislators are ready for a beer break.

Up for consideration in the House and Senate are bills calling for an end to the requirement that beer sold in supermarkets and liquor stores have an alcohol content no greater than 3.2 percent.

Here's hoisting a glass to those efforts. The lower-alcohol beer, also called "cereal malt beverage," is a holdover from the state's dry past, when it was sold legally to get around a longstanding ban on stronger alcohol. Later it was sold as an exception to the 21-year-old drinking age.

But Prohibition is long gone, and the state — to avoid the loss of federal high-

way funds — had to quit indulging the older teenagers.

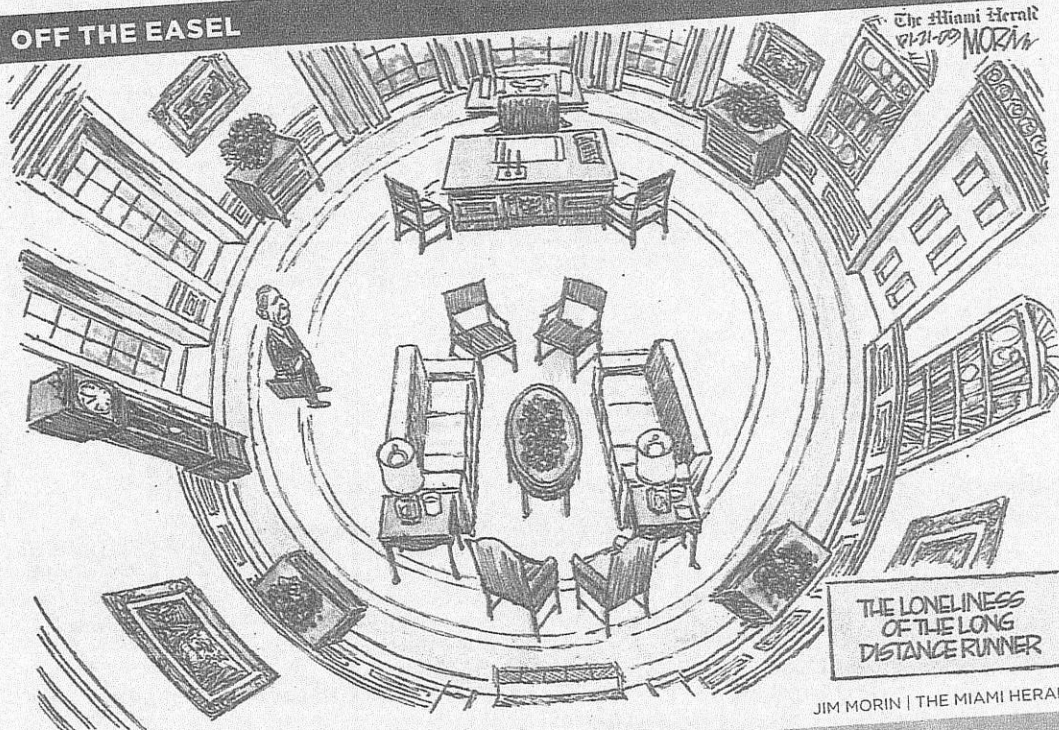
Now the only reason for the 3.2 beer requirement is to keep the liquor store owners happy.

But that rationale, like Kansas supermarket beer, is a tad weak. Laws generally shouldn't favor one type of legal business at the expense of another.

Lawmakers are understandably sympathetic to mom-and-pop liquor stores. But many liquor stores are chain-owned. Some are even owned by supermarket chains.

There's really no good reason to keep the archaic law on the books. It's a wasteful hassle for consumers to have to make separate trips to buy full-strength beer.

OFF THE EASEL



THE LONELINESS OF THE LONG DISTANCE RUNNER

JIM MORIN | THE MIAMI HERALD

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DARA'S FAST LANE

1115 Westport Drive
Suite B
Manhattan, Kansas 66502

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

1. Why is alcohol percentage by weight for one venue and by volume for the other? The amount of actual alcohol difference in a can of beer is a few drops, clearly not enough to see a significant difference when consumed. What is the reason the government in Kansas still wants to see CMB around when 47 other states have moved on? In these rough economic times it makes sense to consolidate these beers into one so the distributors and the agencies that govern beer can make these cut backs work.
2. It is not an even playing field for doing business as it stands now. Beer sales don't amount to 3% of our sales which I'm sure is not the same for liquor stores.
3. Liquor stores claim that this would put them out of business but we know that they were in good standing even when we were able to sell to the 18, 19, and 20 year olds when they could not. There is no logical reason that Kansas can't make this move now and level the selling field.

Thank you,

Chris Darrah
Owner

Sn Fed & State
Attachment 8

2-24-09



Memo To: Senate Federal and State Affairs Committee
From: Thomas M. Palace
Date: February 4, 2009
Re: Testimony in Favor of SB 76

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 76.

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 76 keeps in place state statutes that prohibit a convenience store from selling anything, with alcohol, but beer.

What SB 76 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 76 are as follows:

- SB 76 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 6% alcohol measured by volume. The Kansas Bureau of Investigation have tested the alcohol content comparing CMB to Liquor Store Beer. Test show that there is very little difference in alcohol content...less than 5/10's of a percent. The definition of CMB will permit convenience stores and grocery stores to sell beer that has 4% or less alcohol measured by weight.
- **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.

Petroleum Marketers and Convenience Store Association of Kansas
115 SE 7th • Topeka, KS 66603
PO Box 678 • Topeka, KS 66601-0678
785-233-9655 • Fax: 785-354-4374

Sn Fed & State
Attachment 9

2-04-09

- **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 76 put liquor stores out of business?

A. No. However, we have already stated that SB 76 is an economic issue and not a beer issue. If passed, we hope to increase our market share, and by doing so, will 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 legislation 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 76 if enacted will have devastating effects on the liquor industry. It is true that if passed, SB 76 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 76 does not give convenience stores an advantage over liquor stores that sell beer. We will pay the same licensing fees, the same taxes and our hours of operation (when selling beer) will be the same as applied to liquor stores.

We urge you to pass SB 76.

Crescent Oil Company, Inc.
Corporate Office

Memo To: Senate Federal and State Affairs Committee
From: Jerry D. Davidson
Date: February 4, 2009
Re: Testimony in Favor of SB 76

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

My name is Jerry Davidson. I am the Vice President of Fuel Operations for Crescent Oil Company and we are a proponent of SB 76.

Crescent is a diversified company that distributes fuel to three types of retail channels. Our company distributes fuel through 400 Branded Wholesale Dealer sites, operates 61 retail sites, and supply equipment and fuel at 150 sites. We know how it impacts our industry and this bill will bring parity within this sector of our business.

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 76 keeps in place state statutes that prohibit a convenience store from selling anything but beer.

What SB 76 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 76 are as follows:

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Crescent Oil Company, Inc.
Corporate Office

- 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.**

As you debate this bill, you will probably hear over and over that if SB 76 is enacted will have devastating effects on the liquor industry. It is true that if passed, SB 76 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, Wal-Mart's, etc)? That is exactly what the liquor industry will ask for while opposing this bill.

Another issue that should be considered is the consumer. With the economic times that our nation is facing, why do we want to force the consumer inconvenience, time, and money going to another destination to buy the same product when they could have the choice to purchase at a convenience or liquor store?

Mr. Chairman, we have tried to make sure that what we seek in SB 76 does not give convenience stores an advantage over liquor stores that sell beer. We will pay the same licensing fees, the same taxes and our hours of operation (when selling beer) will be the same as applied to liquor stores.

We urge you to pass SB 76.

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%.
- 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.
- Liquor gallonage tax rate has not been increased since 1977.⁵
- The liquor enforcement tax rate has not been increased since 1983.⁶
- The liquor drink tax rate has remained unchanged since imposition in 1979.⁷

¹Refer to Kansas liquor laws on page 2

²Refer to chart on page 3

³Refer to chart on page 4

⁴Refer to chart on page 5

⁵Refer to Kansas legislative research on page 7

⁶Refer to Kansas legislative research on page 6

⁷Refer to Kansas legislative research on page 6

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

- 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.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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<http://skyways.lib.ks.us/ksleg/KLRD/klrd.html>

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
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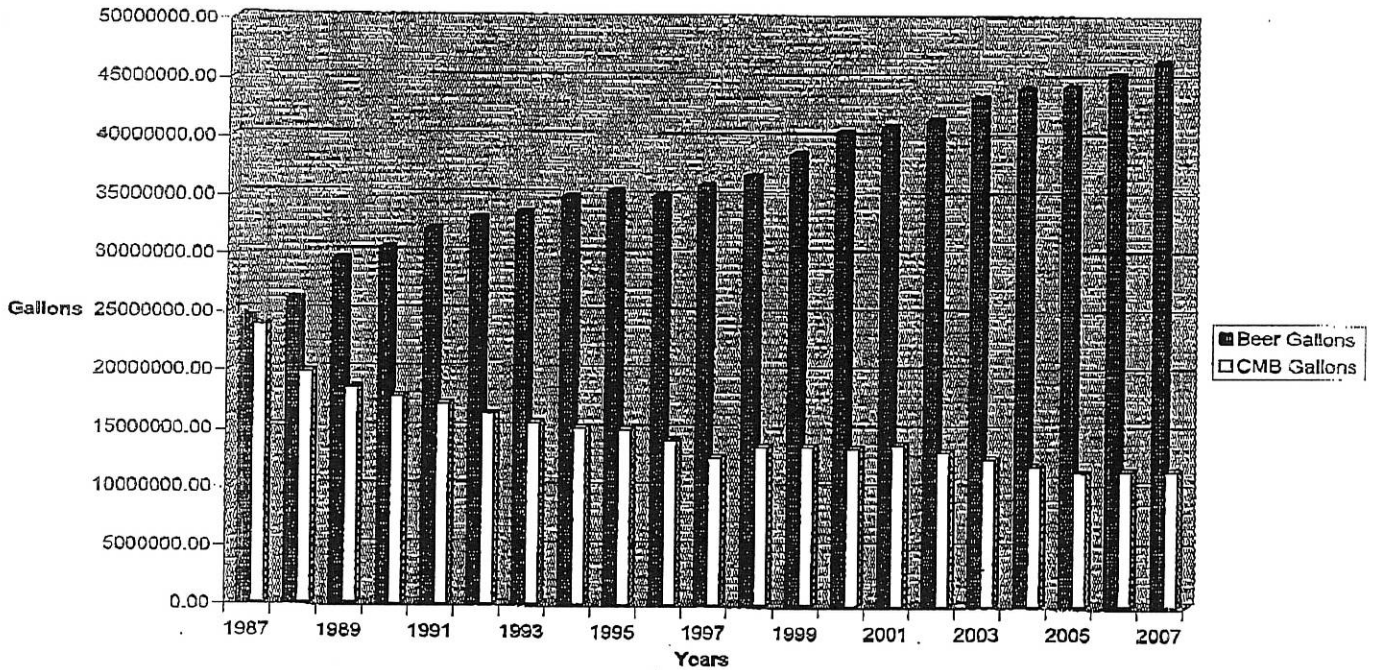
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Alcohol Content - Selected Beers

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	15058510.60	50390151.72	29.78%
1996	35044045.78	14084984.56	49129030.33	28.67%
1997	359311112.06	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	4101885.67	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	4530921.11	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%

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>CAIPE</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.

Rates	
	<u>Per Gallon</u>
Beer and CMB	\$0.18
Light Wine	\$0.30
Fortified Wine	\$0.75
Alcohol and Spirits	\$2.50

* Gallonage tax receipts in FY 2007 were approximately \$20.0 million. Of this amount, over \$10.5 million was attributable to the beer and CMB tax.

Gallonage Tax – Disposition of Revenue		
	<u>State General Fund</u>	Community Alcoholism and Intoxication Programs Fund <u>(CAIPF)</u>
Alcohol and Spirits	90%	10%
All Other Gallonage Taxes	100%	--

Liquor gallonage tax rates have not been increased since 1977.

Enforcement and Sales

Enforcement. Enforcement Tax is an in-lieu-of sales tax imposed at the rate of 8 percent on the gross receipts of the sale of liquor to consumers and on the gross receipts from the sale of liquor and CMB to clubs, drinking establishments, and caterers by distributors.

** So a consumer purchasing a \$10 bottle of wine at a liquor store is going to pay 80 cents in enforcement tax.

The club owner buying the case of wine (who already had paid the 30 cents per gallon gallonage tax as part of his acquisition cost) also would now pay the 8 percent enforcement tax.

Sales. CMB purchases in grocery or convenience stores are not subject to the enforcement tax, but rather are subject to state and local sales taxes. The state sales tax rate is 5.3 percent, and combined local sales tax rates range as high as 3.625 percent.

CMB sales therefore are taxed at rates ranging from 5.3 to 8.925 percent.

Besides the rate differential between sales of strong beer (and other alcohol) by liquor stores and



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Testimony on SB-76
February 4, 2009

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 or legal to sell all alcohol?
- 2- This bill requires for closing at Midnight (pg 43 line 1 & 2) shouldn't this be 2 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 14, 18, 20 & 22? It has nothing to do with the CMB issue and is not 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?
- 11- And on pg 10 the bill then doesn't expand whom may be charged a delivery fee for delivery to include those 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

Sn Fed & State
Attachment 12

2-04-09

TESTIMONY OF THE SECRETARY OF STATE
ON SB 76
FEBRUARY 4, 2009

Mr. Chairman and Members of the Committee:

The secretary of state appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 76, a bill regarding the Kansas Liquor Control Act.

We have five recommendations for New Section 45, paragraph (a):

This section requires that:

1. A **corporation** follow the requirements of this section.

As proposed, the language is unclear regarding whether this act is limited to corporations only, or if other business entities are entitled to the provisions of this act, we recommend changing the term to "business entity."

2. A **Certificate of Authority** be procured from the secretary of state.

The secretary of state does not have the statutory authority to provide such a document. If the intent is to require the corporation or business entity to file a formation document with us, we recommend changing the language to "file a formation document".

3. The corporation to choose a **citizen** and **Kansas resident** to be its resident agent.

There are existing provisions in Kansas law for corporations and other entity types regarding who can be resident agents, and on the formation document, the entity is required to name the resident agent. Because the secretary of state has existing laws and filing procedures for this, we recommend following existing law, and eliminating this language.

4. The corporation to file a **power of attorney** with the secretary of state and a copy with the director, authorizing the resident agent to accept service of process from the director and courts

The function of the resident agent is to accept service of process, therefore we believe a power of attorney is not necessary and may confuse the applicant.

5. The foreign corporation to file a **power of attorney** with the secretary of state authorizing the secretary of state to function as the resident agent and accept service of process.

Under current law, foreign corporations file formation documents with the secretary of state, authorizing the foreign corporation to do business in Kansas. A requirement of that filing, like the filing for domestic corporations, includes naming a resident agent. Also, under Kansas law, the secretary of state acts as resident agent in the event the named resident agent does not perform its duties of accepting service of process. We recommend the power of attorney requirement be eliminated from the bill.

Also, the secretary of state has provisions for entities that are not required to file formation documents with our office. The Service Agent filing provides a mechanism for corporations, that otherwise would not file documents with the secretary of state, to provide a resident agent and comply with the provisions of the bill.

We are happy to work with you or others involved with this bill, to craft language that may simplify and clarify the filing process.

Again, we appreciate the opportunity to share our suggestions today, and I am happy to stand for questions.

Mary Diane Minear, Legal Counsel
Deputy Assistant Secretary of State

Testimony on Senate Bill 76
To
The Senate Committee on Federal and State Affairs
By Tom Groneman
Director
Alcoholic Beverage Control

February 4, 2009

Mr. Chairman and members of the committee, the Alcoholic Beverage Control (ABC) takes a neutral position on SB 76. However, there are several provisions in the bill which we would like to address.

Currently there are approximately 3,900 cereal malt beverage (CMB) retailers, on and off premise, in the state. This bill transfers the licensing and regulation of CMB retailers from cities and counties to the ABC. We anticipate that to license and regulate CMB retailers we will need to increase the licensing staff by an additional 8 FTE, increase the enforcement agents by an additional 10 FTE and office administrative staff by 5 FTE (background investigations and legal administrative actions) for a total of 23 FTE.

The bill is scheduled to take effect and be in force from and after its publication in the statute book. For the following reasons we would ask that implementation of the bill be extended to July 1, 2010 (fy2011). Our fy2010 budget has already been submitted and there is no money available for the large fiscal impact this bill will have on our budget. The bill provides that a current CMB licensee will be deemed a licensed CMB retailer for a period of 90 days, thereafter such person must be licensed by the director. It would not be possible to license 3,900 CMB retailers within 90 days; therefore we would like the additional time to create a plan to switch these licensees over. In addition, beer manufacturers would need time to re-register the approximately 2,500 labels which would switch from beer to CMB.

Before Proposal			After Proposal		
Product Type	Alcohol %	Count	Product Type	Alcohol %	Count
CMB	up to 3.2%ABW	541	CMB	up to 4% ABW	2,701
FMB - Weak	up to 4% ABV	145	FMB - Weak	up to 5.06% ABV	501
Beer	3.3% ABW and greater	3,275	Beer	4.1% ABW and greater	1,115
FMB - Strong	4.1% ABV and greater	440	FMB - Strong	5.07% ABV and greater	84
Total Labels		4,401	Total Labels		4,401

KANSAS

DEPARTMENT OF REVENUE

*Kathleen Sebelius, Governor
Joan Wagnon, Secretary*

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Therefore, due to the extensive amendments to the numerous acts, we request that the effective date be no earlier than July 1, 2010, to allow adequate time to implement the major changes provided for in this bill.

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