

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 5, 2009, in Room 136-N of the Capitol.

All members were present except:

Senator Steve Morris- 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:

Sandy Jacquot, League of Kansas Municipalities
Mandy Miller, Staff, Majority Leader's Office
Patsy Congrove, Kansas Department of Revenue
Tuck Duncan, Kansas Wine & Spirits Wholesaler's Association
Rebecca Rice, Kansas Beer Wholesaler's Association
Amy Campbell, Kansas Association of Beverage Retailers
Stacy Harlow, 2 Bags Liquor, Satanta, KS
Brandon Plaschka, Plaschka & Kramer Liquor, Princeton, KS
Jim Reitz, Reitz Retail Liquor, Seneca, KS
Dave Dvorak, Flint Hills Retail Liquor
Jennifer Vogel, Roger's Liquor, Kansas City, KS

Others attending:

See attached list.

The Committee Minutes for January 13, 14, 21, and 22 distributed on January 30, 2009, with no changes stand approved.

Introduction of Bills:

Mandy Miller, Majority Leaders, requested a bill introduction that would make technical changes to SB 21 from the 2008 session with regards to the confirmations process. (Attachment 1)

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

Sandy Jacquot, League of Kansas Municipalities, requested a bill introduction that would make technical changes to SB 21 from the 2008 session with regards to the confirmations process. (Attachment 2)

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

SB 107 Bingo games; increasing the prize limits, time and location for conducting games.

Chairman Brungardt continued the hearing on SB 107.

Patsy Congrove, Kansas Department of Revenue, testified in favor of the bill. (Attachment 3) The majority of changes request by the organizations primarily allow for more flexibility in administering bingo and an update in the value of prize limits set in the mid 1970's.

Chairman Brungardt closed the hearing on SB 107.

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

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on February 5, 2009, in Room 136-N of the Capitol.

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

Opponents:

Sandy Jacquot, League of Kansas Municipalities, (LKM) testified in opposition to the bill. (Attachment 4) The LKM has no position on the single strength beer provisions of the bill, but does oppose other provisions. The bill would overturn many decades of regulation of cereal malt beverage (CMB) by municipalities, vesting such regulation in the State. The current system of regulation works well and has for many years, and LKM urges this committee to reject the approach being offered in **SB 76**.

Tuck Duncan, Kansas Wine & Spirits Wholesaler's Association, appeared as an opponent of the bill. (Attachment 5) Mr. Duncan stated that it would be inappropriate for the Legislature to reallocate market share after 60 years wherein the current stakeholders have relied upon the existing system; it would be poor public policy, if the only rationale for redefining cereal malt beverages is to alter market share. It is historical accidents that have created the system, but it is a history that needs to be respected to avoid economic dislocation to Kansas' retail liquor dealers who serve other state policies well and to maintain an orderly market. Also included are charts that:

- 1) Category of stores that benefit from the bill
- 2) Revenues - Public Companies
- 3) Map of Active Kansas Off-Premise Licenses

Rebecca Rice, Kansas Beer Wholesalers Association, spoke in opposition to the bill. (Attachment 6) Ms. Rice stated that while the 1987 Attorney General Opinion states that the Court has not ruled that classifying CMB as a non-intoxicating liquor is unconstitutional, of greater importance is that the court has not ruled that such classification *is* constitutional.

Amy Campbell, Kansas Association of Beverage Retailers, appeared in opposition to the bill. (Attachment 7) Ms. Campbell stated that the bill is complex and written to achieve one purpose: to allow the sale of strong beer by cereal malt beverage retailers, with the perception that strong beer legislation will modernize our state and promote positive change by eliminating an outdated product.

Stacy Harlow, 2 Bags Brew, Satanta, KS, spoke in opposition to the bill. (Attachment 8) As the Vice President for the Kansas Association of Beverage Retailers, Ms Harlow has been involved in staying on top of the laws and regulations that must be followed, and collaborating with ABC on offering training programs to licensees and their employees. Ms Harlow stated that by passing this bill, it would be taking business away from Kansas small businesses to give to chains and corporations, often sending those profits out of state. The loss of business would close her store.

Brandon Plaschka, Plaschka & Kramer Liquor, Princeton, KS, appeared as an opponent of the bill. (Attachment 9) The bill allows large corporations to sell strong beer, and it is an economic fact that large retail chains/corporations sell products at a lower cost. Mr. Plaschka stated that his family is active in their community and their small business is an important part of their community; and that he also owns and operates a convenience store. A study by the distilled Spirits Council states that retail liquor stores would lose 45% of their income and 217 liquor stores would close, and he urged the committee to vote no to allowing strong beer in any convenience or grocery store.

Jim Reitz, Reitz Retail Liquor, Seneca, KS, spoke in opposition to the bill. (Attachment 10) The bill would cause a major change in the way alcohol is sold in Kansas.

Dave Dvorak, Flint Hills Retail Liquor, appeared as an opponent of the bill. (Attachment 11) Mr. Dvorak stated that his primary goal in operating his business is the safe and legal sale of adult beverages; ABC does not send in agents for controlled buys and does not sit in their parking lot to observe potential illegal activities, and does not have statewide statistics to measure their performance. If local law enforcement should catch a violation at a CMB store, the beer cooler may be closed temporarily - but not the entire business. State law also requires that a retail liquor owner be an independent business owner.

Jennifer Vogel, Roger's Liquor, Kansas City, KS, spoke in opposition to the bill. (Attachment 12) Ms. Vogel

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on February 5, 2009, in Room 136-N of the Capitol.

stated by allowing strong beer to be sold by the grocery and convenience stores:

- Over 200 stores may go out of business
- Profits will go out of state
- Jobs will be lost
- Store fronts will be vacant
- Our youth will have more access

Michael Towne, Library Discount Liquor, Manhattan, Kansas, ([Attachment 13](#)) and Michael and Karen Heberger, Mike's Discount Liquor, Kansas City, and Heberger Retail Liquor, Olathe, ([Attachment 14](#)) provided written testimony in opposition to the bill.

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

John Ellis provided information for the Kansas Association of Private Investigators for **SB 116 - Private detectives; permit to carry a concealed firearm.** ([Attachment 15](#))

The next meeting is scheduled for February 10, 2009. The meeting was adjourned at 11:40 am

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 2-05-09

NAME	REPRESENTING
Sandy Jaquost	LKM
Tom PALACE	PMCA OF KS
Spencer Duncan	Capitol Connection ks
Patsy Congrove	KDOR
HOLLI JOHNSON	KDOR / ABC
Phil Bradley	KLBA
Dick Stoffen	Hy-Vee, Inc.
JEAN MILLER	CAPITOL STRATEGIES
Rebecca Rice	Kansas Beer Wholesalers
Amy Campbell	KABR
Stacey Harlow	2 Bags Brew / KABR
Jinet Wise	Westcott Lignin / KABR
DAVE DVORAK	FLINT HILLS WINE + SPIRITS / KABR
Jim Reetz	PONY EXPRESS LIQUOR / KABR
Brandon Plaszke	Seven Cedars LLC / KABR
Jennifer Vogel	Rogers Liquor / KCK KABR
Jenna Vogel	Rogers Liquor / KCK KABR
Lance Vogel	ROGERS LIQUOR / KABR
Rodney A. Robson	KANSAS Assn. Beverage Retailers Jo's Liquor - Caney, KS.
Leigh Keck	Hein Law Firm
Whitby Jany	DISCUS
TUCK DUNN	KS wine & spirits wholesaler

12-3007

12-3007. Publication; effective date. The city clerk shall cause all ordinances, except appropriation ordinances, as soon as practicable after they have been passed and signed, passed over the mayor's veto or will take effect without signature, to be published once in the official city newspaper, unless a statute requires more publications. Ordinances shall take effect the day of publication unless a different and later day is stated in the ordinance or otherwise specified by statute: *Provided*, That appropriation ordinances shall take effect upon passage. The publisher shall print in a line preceding the number of the ordinance a statement in parentheses as follows: (Published ____, 19__), giving the month, day and year. The manner of publication and effective date of codifications shall be as hereinafter provided.

In lieu of full publication of an ordinance pursuant to this section, a city may opt to publish a summary of the ordinance so long as : 1) the publication contains notice that the complete text of the ordinance may be obtained or viewed at the office of the city clerk and 2) the city attorney reviews the summary of the ordinance prior to publication to ensure that the summary is legally accurate and sufficient.

History: L. 1959, ch. 64, § 7; June 30.



KANSAS SENATE

Mandy Miller

*Legislative Assistant to the Senate Majority Leader
Senator Derek Schmidt*

This would make technical changes to last session's SB 21 re: the confirmations process. This was brought to the Confirmations Oversight Committee by the revisors.

SENATE BILL #107

TESTIMONY BY PATSY CONGROVE

ADMINISTRATOR OF CHARITABLE GAMING

KANSAS DEPARTMENT OF REVENUE

2009

In a family of over 318 bingo licensee's, there are those who struggle with bingo, those who do a good job and those who do a **really** good job of conducting bingo in their community. In observing these practices the department decided to conduct educational workshops that would provide an opportunity to share tips into what makes a successful bingo organization. Knowing there are some elements that can't be changes but there are some that can and could be.

The workshops this fall focused on "Revitalizing Bingo Across Kansas". This was done successfully in Michigan. We talked about best practices, marketing, recruitment and tried to clear up questions regarding the regulations. The need for changes in the industry became very apparent.

For those not familiar with bingo since playing with corn or beans as markers this is an example of the paper or faces – which is what we collect taxes on, daubers to mark with, hard cards only allowed with certain restrictions and a pull-tab or instant bingo as is referenced in statutes.

The majority of changes requested by the organizations primarily allow for more flexibility in administering bingo and an update in the value of prize limits set in the mid 70's.

79-4701 –(w)

Increased limits of regular game bingo prize money from \$25 to \$100. The \$1 charge for paper faces has been eliminated due to the increase of the cost in paper. This will allow the organizations to pass along costs as needed and the market will allow.

79-4706-

(b)Added "or of the beneficiary organization" - this creates a bigger volunteer pool which is especially important to those organizations that are unable to make by-law changes in their membership or organizations who merely have trouble recruiting volunteers.

(e) Added "Food offered in the course of a volunteer duty shift shall not be consider remuneration". This refers to allowing volunteers while helping with bingo to have something free from the snack bar or concession stand (if operated by the sponsoring volunteer group) This allows for more flexibility in to recruiting volunteers but is a decision made by each organization as to whether they want to administer this option.

(f) Increased aggregate value of all prizes including retail value of merchandise for prizes of regular and special bingo from \$1200 to \$1800.

(g) Increased the number of days an organization can play bingo from two to three days a week. Optional for organizations to administer the third day.

(p) (2) Increased from \$25 to \$500 value of prize for winner.

Increased the number of drawings from four to six per month.

(r) Eliminated the number of times a bingo premises can conduct bingo. This permits a business to operate 7 days a week with a 24 hour waiting period between bingo sessions. At the present time a parlor is only permitted to conduct bingo 3 days a week. The bingo building must pay for itself with three days of bingo. Generally there aren't any other activities going on in the building because of the equipment set up for that activity.

There are 28 licensed parlors in Kansas. There are a couple that are in the process of closing. The majority of the parlors are in SG with 15.

SA - 5	Ellis - 3	Reno - 2
Crawford - 1	Barton - 1	Shawnee - 1

70 organizations rely on parlors in order to play bingo.

SG county has 41 organizations playing at parlors.

Although the parlor may be able to operate more frequently they would be required to find additional organizations to host bingo. This bill only increases the organizations' ability to play 3 times a week. Finding additional organizations to sponsor bingo that meet the requirements for a license will present some problems.

It would be highly suspect that the majority of parlors will be able to increase bingo sessions to seven days a week.

But it does give them some flexibility to increase their revenue, better handle a cancellation due to weather and other unforeseen issues that arise. For example, in the last six months there were over 100 cancellations due to weather.

(t) Increased the timeframe from one hour to two to sell instant bingo. The one hour limit creates a hardship for volunteers with big crowds to sell pull-tabs and get organized for bingo.

(x) (3) Takes the \$250 limit off of starting progressive games. Currently an organization can't start their progressive at more than \$250. If they chose they could start it at for example \$500.00. They just have to payout within 20 consecutive sessions. Experience indicates that bigger prizes bring bigger crowds.

(z) Eliminates the rule of having only three games of instant bingo with the winning letter or symbol tied to a designated call bingo game. This will primarily impact the organizations experiencing bigger crowds.

(z) (aa) Increases the time limit for mini games to be played from one hour prior to the regular game to two hours and allows groups to play mini's after regular games if they can get it in within the timeframe. This appears to be advantageous to all bingo licensee's.

79-4717 - Broadens the employment background of the administrator of charitable gaming. This gives the Secretary of Revenue more flexibility in hiring.

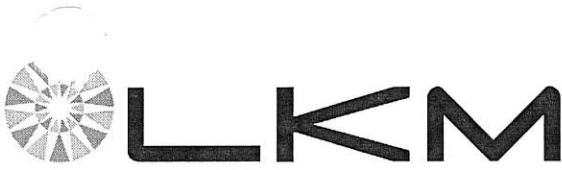
Explanation of relationship between organizations, parlors and distributors.

One organization not here today that has done an outstanding job with the money they raised from bingo is the Eagles Aux. in Junction City. They raised \$1000 to donate to their local food bank which translated into 1100 lbs. of food and provided many services to Chapman, Kansas. I hear stories of fraternal organizations sending care packages to soldiers overseas with the money from their bingo sales.

The industry seems to support this legislation and encourage it.

The fiscal notes are positive and the department suggests the proposal be amended to deposit all new revenue into the state general fund.

With 318 licensed organizations, 12 licensed distributors and 27 licensed parlors there is going to be a wide range of impact from these changes. After listening to special interest groups, the licensee's this proposal seems to best represents the industry as a whole.



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
Re: Opposition to SB 76
Date: February 4, 2009

Thank you for allowing the League of Kansas Municipalities to testify in opposition to SB 76. LKM has no position on the single strength beer provisions in SB 76, but does oppose other provisions. This bill would overturn many decades of regulation of cereal malt beverage (CMB) by municipalities, vesting such regulation in the State. The current system of regulation works well and has for many years, and LKM urges this committee to reject the approach being offered in SB 76.

For many years, municipalities have been the entity licensing and regulating cereal malt beverage, which would change with the adoption of this bill. The procedure under current law is that the application for licensure is made to the city or county, which charges a license fee within a range set by statute. The license is both for stores selling CMB in unopened containers for off-premise consumption and for establishments selling CMB for on-premise consumption, such as taverns and others that primarily sell food. The applicant is then to submit a copy of the application to the director of the division of Alcohol Beverage Control (ABC) along with \$25 for a stamp. Actually, the ABC has long requested that municipalities collect and remit this fee, which is a longstanding practice. Most of that money goes to the state general fund.

All of the enforcement occurs at the local level, and since the city is the entity that issues the CMB licenses, the city has the authority to suspend or revoke the CMB license of the establishment. Contrast that with clubs and drinking establishments or with liquor stores. Cities may not suspend or revoke the occupation license it issued and is currently limited to requesting a hearing on a liquor license at the time of the license renewal. Thus, the regulation is further removed and less effective than the regulation at the local level. There is no way to address a problem establishment at the local level. While cities would be able to address the director of ABC regarding granting a license or renewal of a license under this bill, cities would be in the same position as with liquor establishments, *i.e.* little authority to address problems.

The second issue has to do with the taxation provisions. Currently, CMB is subject to sales tax, which directly benefits the cities within which the CMB retailers are located. This bill would exempt CMB from sales tax and instead impose the liquor enforcement and the liquor drink tax on CMB. This would immediately subject cities to a loss of revenue with the loss of the sales tax. This is even more critical during the current budget crisis. A portion of the liquor taxes are supposed to be returned to cities and counties, but the Governor's proposed budget for 2010 removes all transfers to local government of the liquor money, \$27.2 million. During these very

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Sn Fed & State
Attachment 4

2-05-09

difficult economic times, cities cannot afford yet another loss of revenue. Section 64 of this bill purports to create a local CMB enforcement fund, but that money is subject to appropriation by the state. We seriously doubt that will be an acceptable replacement for local sales tax revenue.

For all of the above-stated reasons, the League of Kansas Municipalities urges this committee to reject SB 76. I will be happy to answer any questions the committee may have at the appropriate time.

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

February 5, 2009

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan
Kansas Wine & Spirits Wholesalers Association
Re: Senate Bill 76

Kansas retail liquor stores are our customers. Attached to this summary is detailed testimony on this subject, covering the history of cereal malt beverages and other issues. However, we have a few observations for your consideration:

First, don't break a fixed system. The current system is not broken. All liquor stores are locally owned, ensuring more dollars stay in Kansas. 3.2 beer is different from strong beer and should be treated accordingly.

In previous years convenience store owners have stated that beer totals 4 to 6% of their sales. For locally owned liquor stores, beer sales average more than 50% of sales. (Yesterday one proponent said it was less than 1% of their sales) Changing the law puts hundreds of locally owned liquor stores at risk of going out-of-business.

All Kansas liquor stores are locally owned. According to the studies in Appendix "A" locally owned businesses generate 70 percent more local economic impact per square foot than chain stores, three times as much money stays in the local economy when you buy goods and services from locally owned businesses instead of large chain stores, and local stores retain a much larger share of their profits within the local economy.

Many convenience and grocery stores use beer as a "loss leader." They do this because it accounts for a minimal amount of sales and they sell hundreds, if not thousands, of other products, to offset the lower priced beer. An increase of beer sales at outlets which sell beer cheaper could equate to a reduction in tax collections. Liquor store tax collection has steadily increased for the past 5 consecutive years.

Changing current law will significantly increase access to strong beer. Numerous regional and national studies prove the obvious: increased access leads to increased problems. Please consider the following:

All strong beer, wine and spirits in Kansas are sold in locally owned stores by clerks who are required, by law, to be 21 years of age or older. This law would allow clerks under the age of 21 to sell strong beer. Studies show individuals under 21 who sell alcohol tend to sell alcohol to their underage peers.

◆ The National Research Council Institute of Medicine found 70% of minors nationwide purchase their alcohol from grocery and convenience stores.

◆ A nationwide MADD study revealed the following: 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. <http://www.madd.org/Parents/UnderageDrinking.aspx>

◆ A recent study on sales to minors concluded convenience and grocery stores have a poorer underage sales compliance rate than liquor stores.*

Anyone claiming 3.2 beer is “practically” the same as strong beer is perpetuating a myth. By same brand, a can of strong beer has an average of 22% more alcohol than a can of 3.2 beer. The calculations supporting this conclusion are found on page 5 of the attached detailed testimony.

Please vote NO on SB 76. Thank you.

***Alcohol Outlet Sales**, Mallie J. Paschall, Joel W. Grube, Carol Black, Robert L. Flewelling, Christopher L. Ringwalt and Anthony Biglan Accepted: 21 December 2006 Published online: 23 January 2007 **Abstract** Reducing youth access to commercial sources of alcohol is recognized as a necessary component of a comprehensive strategy to reduce underage drinking and alcohol-related problems. ... The present study examines characteristics of off-premise alcohol outlets that may affect alcohol sales to youth. Random alcohol purchase surveys ($N = 385$) were conducted in 45 Oregon communities in 2005. **Underage-looking decoys not carrying IDs were able to purchase alcohol at 34% of the outlets approached. Purchase rates were highest at convenience (38%) and grocery (36%) stores but were relatively low (14%) at other types of outlets (e.g., liquor and drug stores).** Alcohol purchases were less likely at stores that were participating in the Oregon Liquor Control Commission’s Responsible Vendor Program (RVP), when salesclerks asked the decoys for their IDs, and at stores with a posted underage alcohol sale warning sign. Findings of this study suggest that more frequent compliance checks by law enforcement agents should target convenience and grocery stores, and owners of off-premise outlets should require training of all salesclerks to ensure reliable checks of young-looking patron IDs, and should post underage alcohol sales warning signs in clear view of patrons. <http://www.springerlink.com/content/m526083367655103/>, Prevention Research Center, Oregon Research Institute, Pacific Institute for Research and Evaluation

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

To: Senate Committee on Federal & State Affairs
From: R.E. "Tuck" Duncan
RE: SB 76

The KWSWA opposes SB 76.

INTRODUCTION

Proposals to create a new definition of cereal malt beverage and thus change a distinction that has existed since May 1, 1937, twelve years before the repeal of prohibition in Kansas on November 3, 1948, implemented by the 1949 Legislature, are not new. 3.2% Cereal Malt Beverage was re-legalized by Congress on April 7, 1933, under the Cullen-Harrison Act which declared it a non-intoxicating beverage and provided for its sale in states where it was not prohibited by law. This enactment by Congress preceded by 7 months the final ratification of the federal repeal amendment, the 21st 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 nearly 60 years. Currently criteria of K.S.A. 41-311 which apply to retail liquor stores do not apply to CMB retailers. For example, a liquor retailer may not have any felony convictions whereas a CMB retailer may not have been convicted of a felony within two years preceding the date of application. A liquor retailer must be 21 years old. A liquor retailer can't employ a person under 21. A CMB retailer can employ persons 18 and older to dispense or sell cereal malt beverage. If a liquor retailer's license is suspended the entire store is closed whereas the CMB retailer may still operate their non-CMB business if their license is suspended, for example, due to selling to a minor.

Kansas is not alone. Six states (Colorado, Kansas, Minnesota, Missouri, Oklahoma, and Utah) define beverages of 3.2% ABW (alcohol by weight) or less as cereal malt beverage.

IMPACT ON RETAIL LIQUOR STORES



The last authoritative study on the percent of sales by retail liquor stores conducted by the Kansas Department of Revenue in 1982 stated: **"Beer, constituting 45% of the total volume of liquor stores, cannot be ignored in analyzing the total profit picture... it has an average mark-up of 19% and ranks second only to spirits in contribution to profit... it is the largest single category in volume;"** (emphasis added)

The Daicoff study of the Kansas Retail Liquor Industry commissioned by the Department of Revenue, issued December 1985, found that within Kansas there are a small number of large stores and large number of small stores with yearly profits of 4.1% of sales; and which are less profitable than retail liquor stores nationally. Retailers located in interior counties are the least profitable. At the time of the study (based on tax year 1984) there were 1,078 retail liquor stores in Kansas as compared to the 742 stores operating today. (Source: ABC, <https://www.kdor.org/abc/licensee/LicenseeDb.aspx>)

Also, more of the dollar spent in a locally owned store stays in-state, then do the dollars spent at a chain store. **See Appendix "A" citing various studies.**

PROTECTIONISM and ANACHRONISM MYTHS

The state's public policy has been, and continues to be, to maintain an orderly market. "[T]he power to regulate all phases of the manufacture, distribution, sale, possession, transportation and traffic in alcoholic liquor and the manufacture of beer regardless of its alcoholic content, is vested exclusively in the state and shall be exercised as provided the Kansas liquor control act." K.S.A. 41-208. If there was any protectionism for the industry it was a by-product of the controls implemented pursuant to constitutional mandates. Most of the so-called "protections" have been eliminated while federal and state taxes have increased. There is no more price control, no affirmation, there is advertising, and increased competition among retailers (for consumer business, club/drinking establishment business and amongst brands).

3.2% cereal malt beverage is not an anachronism

The 18th Amendment (Prohibition) outlawed "intoxicating liquors for beverage purposes," but made no reference to alcohol content. The Volstead Act set the legal alcohol limit at one-half of 1 percent, apparently based on Internal Revenue Service distinctions made for the purpose of taxation. Under the Volstead Act, the only "beer" that could be sold legally in the United States was "near beer" (3.2 CMB is not near beer). Prohibition became a central issue in the Presidential election of 1932. Concerns with unemployment, the need for farm relief, and growing sentiment against Prohibition led Franklin Roosevelt to call at the Democratic National Convention for "*modification of the Volstead Act just as fast as the Lord will let us to authorize the manufacture and sale of beer.*" The New York Times of June 28, 1932, reported that Roosevelt's position on the Volstead Act "managed to draw the convention several times to its feet, and to start a real demonstration for prohibition repeal." After Roosevelt's election, "modification of the Volstead Act" focused on changing the level of alcohol content deemed "intoxicating." Efforts had been made during prohibition to raise the level from one-half of one percent to 2.75 percent by introducing scientific evidence that intoxication was physically impossible drinking beer of this alcohol content. These efforts, one of which reached the Supreme Court, failed. In 1933, similar scientific arguments were used to support enactment of the Cullen-Harrison bill, permitting the resumption of the manufacture and sale of 3.2 percent beer and light wines in the states that had already repealed their dry laws. On March 23, 1933, President Franklin Roosevelt signed into law an amendment to the Volstead Act known as the Cullen-Harrison bill allowing the manufacture and sale of "3.2 beer" (3.2 percent alcohol by weight - which is also 4% by volume) and light wines. The Eighteenth Amendment was repealed later in 1933 with ratification of the Twenty-first Amendment on December 5. Because "3.2 beer" became legal as a result of the new definition of intoxication in the Volstead Act instead of as a result of the repeal of the 18th Amendment, its distribution and sale in some states was not initially regulated under the State laws established after repeal to control commerce in "intoxicating liquors."

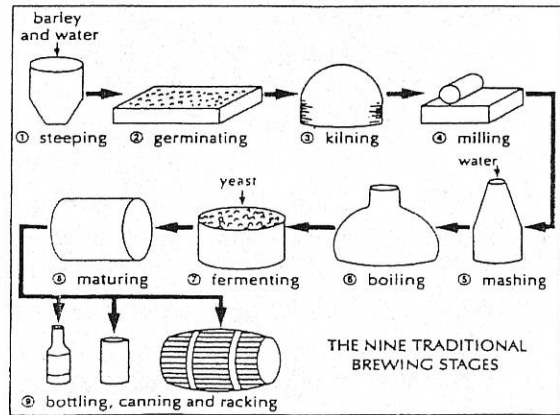
A separate uniform regulatory structure for 3.2% beer is most important in light of the fact that 25 Kansas counties still do not allow liquor by the drink. They are Barber , Cherokee, Clark, Clay, Comanche, Doniphan, Elk, Gove, Gray, Hamilton, Haskell, Jewell, Kiowa, Lane, Meade, Morton, Osborne, Rice, Scott, Sheridan, Stafford, Stanton, Stevens, Wallace, and Wichita. (Source: <http://www.ksrevenue.org/abcnoliq.htm>)

SOCIAL RESPONSIBILITY

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

ALCOHOL PRODUCTION AND CONTENT

People do not usually drink pure alcohol but a beverage containing alcohol, specifically ethyl alcohol. Alcoholic beverages include wines, beers, and spirits. Wines are fermented from the sugars in fruits or berries (most commonly grapes), from various plants or their saps and from honey. Beers are fermented from grains after the starch in them is first converted to sugar. Spirits are distilled. While wines and beers are usually a final product, spirits are most often considered a "concentrate."



The main ingredient that characterizes alcoholic beverages and the chief contributor of the effects sought by people who drink them is ethyl alcohol (hereafter referred to simply as alcohol). In beers the alcohol content varies from about 2 percent in some mild Scandinavian varieties to about 8 percent in especially strong types; most U.S. beers contain between 4 and 5 percent. These percentages are by volume (not by weight which is how Kansas defines CMB). This is the product that would be sold everywhere if the legislature redefines cereal malt beverages.

A can of strong beer has an average of 22% more alcohol than a can of 3.2 beer. **How do we know this? Mathematics.** Density of average beer is 1.050 g/cm³. Given 355ml of beer (can size) and density of EtOH (alcohol), which is 0.789g/ml— the total mass of EtOH contained within the each beer. CALCULATION: 5.5% beer has 355ml beer (5.5ml EtOH/100ml beer)(0.789g EtOH/1ml EtOH) = 15.405g EtOH. 3.2% alcohol by mass = 355ml beer (1.050g beer/1ml beer)(3.2gEtOH/100gbeer) = 11.928g EtOH. CONCLUSION: A 12 o.z. can of beer that contains 5.5% alcohol by volume has 15.405g of EtOH. A 12 o.z. can of beer that contains 3.2% alcohol by mass has only 11.928g of EtOH. Liquor store beer contains 22.6% more alcohol compared to beer from convenience and grocery stores. (Source: *National Institute on Alcohol Abuse and Alcoholism*)

Proponents of redefining cereal malt beverages acknowledge there is a difference in the products, they suggest its not much. The difference is, nonetheless, more alcohol in one's system. It is ironic that as this Legislature has reduced the threshold by which to determine impaired driving, it might at the same time consider increasing the alcohol levels in cereal malt beverages.

OTHER CONSIDERATIONS “...a need has been created [by the liquor-by-the-drink constitutional amendment] for cereal malt beverage for on-premise consumption in those establishments in liquor by the drink counties who do not choose to become food service establishments. And in those counties where liquor by the drink is not adopted. In conclusion, when the constitutional amendment's requirements are taken into consideration it would seem that as far as on-premise sales are concerned the present dual system of distribution will have to be maintained.” Liquor Law Review Commission, 1986 How the proposal to reclassify cereal malt beverage impacts this concern is unknown as this new Cereal Malt Beverage Retailer's Act is extremely complicated and its approach untested.

SUMMARY

It would be inappropriate for the Legislature to reallocate market share after 60 years wherein the current stakeholders have relied upon the existing system. Truly it would be poor public policy, particularly if the only rationale for redefining cereal malt beverages is to alter market share. Proponents of this legislation have stated in the past that their primary motive is financial ... well it is a poor rationale to establish new public policy to merely satisfy the proponents' financial thirst. Yes, there are historical accidents that have created the system we have in place today, a history that sets parameters; but, it is a history that needs to be respected to avoid economic dislocation to Kansas' retail liquor dealers who serve other state policies well and to maintain an orderly market.

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

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

[This testimony is based upon presentations by the author to the Kansas Legislature in 1993 and again in 2002 as revised for 2005 and this most recent incarnation of the proposal]. www.kwsa.org

APPENDIX "A"
ECONOMIC IMPACT OF LOCAL BUSINESSES VS. CHAINS

The following studies have found that locally owned stores generate much greater benefits for the local economy than national chains.

The Andersonville Study of Retail Economics
<http://www.civiceconomics.com/Andersonville>
By Civic Economics, October 2004

This compelling study, commissioned by the Andersonville Development Corporation, finds that **locally owned businesses generate 70 percent more local economic impact per square foot than chain stores.** The study's authors, Dan Houston and Matt Cunningham of Civic Economics, analyzed ten locally owned restaurants, retail stores, and service providers in the Andersonville neighborhood on Chicago's north side and compared them with ten national chains competing in the same categories. They found that spending \$100 at one of the neighborhood's independent businesses creates \$68 in additional local economic activity, while spending \$100 at a chain produces only \$43 worth of local impact. They also found that the local businesses generated slightly more sales per square foot compared to the chains (\$263 versus \$243). Because chains funnel more of this revenue out of the local economy, the study concluded that, for every square foot of space occupied by a chain, the local economic impact is \$105, compared to \$179 for every square foot occupied by an independent business.

The Economic Impact of Locally Owned Businesses vs. Chains: A Case Study in Midcoast Maine
<http://www.newrules.org/retail/midcoaststudy.pdf>

by the Institute for Local Self-Reliance and Friends of Midcoast Maine, September 2003. **Three times as much money stays in the local economy when you buy goods and services from locally owned businesses instead of large chain stores,** according to this analysis, which tracked the revenue and expenditures of eight locally owned businesses in Midcoast Maine. The survey found that the businesses, with had combined sales of \$5.7 million in 2002, spent 44.6 percent of their revenue within the surrounding two counties. Another 8.7 percent was spent elsewhere in the state of Maine. The four largest components of this local spending were: wages and benefits paid to local employees; goods and services purchased from other local businesses; profits that accrued to local owners; and taxes paid to local and state government. Using a variety of sources, the analysis estimates that a national big box retailer operating in Midcoast Maine returns just 14.1 percent of its revenue to the local economy, mostly in the form of payroll. The rest leaves the state, flowing to out-of-state suppliers or back to corporate headquarters. The survey also found that the local businesses contributed more to charity than national chains.

Economic Impact Analysis: A Case Study
<http://www.liveablecity.org/lcfullreport.pdf>
by Civic Economics , December 2002.

This study examines the local economic impact of two locally owned businesses in Austin, Texas--- Waterloo Records and Book People---and compares this with the economic return the community would receive from a Borders Books store. The study finds that spending \$100 at Borders creates \$13 worth of local economic activity, while spending \$100 at the local stores generates \$45 in local economic activity. The difference is attributed to three factors: a higher local payroll at the independent stores (because, unlike Borders, none of their operations are carried out in an out-of-town headquarters office); the local stores purchased more goods and services locally; and **the local stores retained a much larger share of their profits within the local economy.**

5

CATEGORY OF STORES THAT BENEFIT from SB76

NAICS CODE(S)

447110 (Gasoline Stations with Convenience Stores)

445110 (Supermarkets and Other Grocery (except Convenience) Stores)

452910 (Warehouse Clubs and Superstores)

445120 (Convenience)

REVENUES – PUBLIC COMPANIES – Source: Forbes

<u>Rank</u>	<u>Company</u>	<u>Country</u>	<u>Industry</u>	<u>Sales (\$bil)</u>	<u>Profits (\$bil)</u>	<u>Assets (\$bil)</u>	<u>Market Value (\$bil)</u>
323	<u>Kroger</u> Ohio	United States	Food Markets	69.86	1.24	21.90	16.38
458	<u>Safeway</u> California	United States	Food Markets	42.29	0.89	17.65	12.65
503	<u>Sysco</u>	United States	Food Markets	36.45	1.06	9.95	16.94
670	<u>Supervalu</u>	United States	Food Markets	43.96	0.56	21.36	5.55
1732	<u>Whole Foods Market</u>	United States	Food Markets	7.18	0.17	3.21	4.90
16	<u>Wal-Mart Stores</u> AR	United States	Retailing	378.80	12.73	163.38	198.60

Casey's General Stores, Rank: 588 (Previous rank: 624)

Address: 1 Convenience Blvd., Ankeny, IA 50021

(Source: Fortune, <http://money.cnn.com/magazines/fortune/fortune500/2008/snapshots/10182.html>)

In millions

Revenues	3,624.1
Profits	61.9
Assets	1,129.3
Stockholders' equity	572.3
Market value (3/28/2008)	1,129.8

TOTAL SALES ALL KANSAS RETAIL LIQUOR STORES: \$624,781,675

(based on FY08 enforcement tax collections)

America's Largest Private Companies, Source: Forbes

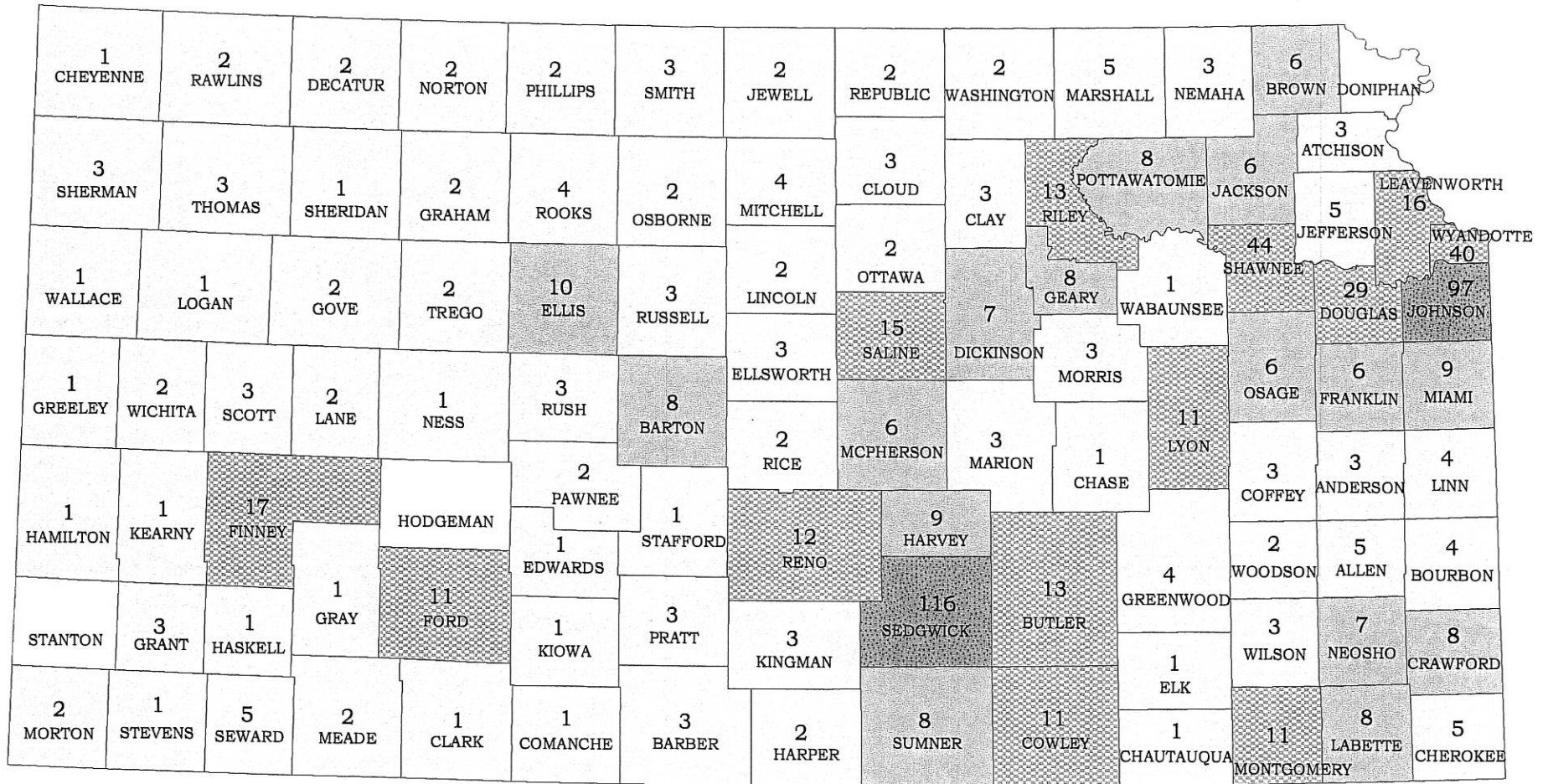
<u>Rank</u>	<u>Company</u>	<u>State</u>	<u>Industry</u>	<u>Revenue (\$bil)</u>	<u>Employees</u>
6	<u>Publix Super Markets</u>	FL	Grocery Stores	21.82	140,000
13	<u>Meijer</u>	MI	Grocery Stores	13.90 ^e	67,000
14	<u>HE Butt Grocery</u>	TX	Grocery Stores	13.50 ²	63,000
47	<u>Hy-Vee</u>	IA	Grocery Stores	5.84 ^e	52,000
33	<u>Giant Eagle</u>	PA	Grocery Stores	7.13	36,000
76	<u>Wegmans Food Markets</u>	NY	Grocery Stores	4.10	35,798
59	<u>Save Mart Supermarkets</u>	CA	Grocery Stores	5.00 ^e	25,000
89	<u>Bi-Lo Holdings</u>	SC	Grocery Stores	3.60 ^e	23,000
115	<u>Golub</u>	NY	Grocery Stores	3.01	22,970
92	<u>Stater Bros</u>	CA	Grocery Stores	3.57 ^e	17,500
64	<u>Wawa</u>	PA	Grocery Stores	4.67	16,866
105	<u>Raley's</u>	CA	Grocery Stores	3.20 ^e	15,500
162	<u>Schnuck Markets</u>	MO	Grocery Stores	2.40	15,000
201	<u>Bashas'</u>	AZ	Grocery Stores	2.08	14,299
183	<u>Demoulas Super Markets</u>	MA	Grocery Stores	2.20	13,000
242	<u>Marsh Supermarkets</u>	IN	Grocery Stores	1.73 ^e	12,600
197	<u>Brookshire Grocery</u>	TX	Grocery Stores	2.10	12,500
281	<u>K-VA-T Food Stores</u>	VA	Grocery Stores	1.57	11,500
98	<u>Sheetz</u>	PA	Grocery Stores	3.31	10,650
220	<u>Houchens Industries</u>	KY	Grocery Stores	1.89 ¹	10,500
40	<u>QuikTrip</u>	OK	Grocery Stores	6.74	10,062
121	<u>WinCo Foods</u>	ID	Grocery Stores	3.00	10,000
334	<u>Big Y Foods</u>	MA	Grocery Stores	1.30	9,200
344	<u>Foodarama Supermarkets</u>	NJ	Grocery Stores	1.26 ^e	6,850
35	<u>Cumberland Farms</u>	MA	Grocery Stores	7.00	6,500

TOTAL SALES ALL KANSAS RETAIL LIQUOR STORES:

\$624,781,675

(based on FY08 enforcement tax collections)

Active Kansas Off-Premise Licenses



# of Counties	# of Licenses Per County
(3)	0
(71)	1 - 5
(16)	6 - 10
(13)	11 - 50
(2)	51 - 120

January 14, 2009
Map #AC09-002

The data used for this map was derived from the Kansas Department of Revenue, Alcoholic Beverage Control Division, Liquor Licensing Database for January 2009

Total: 743 Active Off-Premise Licenses

To: Senate Federal & State Affairs Committee
By: Statement by Rebecca Rice, Legal Counsel
For: Kansas Beer Wholesalers Association
Date: February 5, 2009

The Kansas Beer Wholesalers Association is opposed to **SB 76** for one primary reason: The members are concerned that the Kansas Supreme Court might rule that CMB is illegally classified as non-intoxicating, violates §10 of the Kansas Constitution and remove the product from Kansas outlets.

"Intoxicating Liquors" is the title of §10 and the section both specifically prohibits and allows certain behavior and grants certain authorities in regard to *intoxicating liquors*. The term *intoxicating liquors*, however, is not defined by the Kansas Constitution.

It is the lack of constitutional definition that raises significant concerns about the range of possible consequences if *intoxicating liquors* is statutorily redefined and all malt beverages containing no more than 4% alcohol are declared *non-intoxicating*.

From 1937 to the present, all laws and constitutional amendments regarding alcoholic beverages have been adopted or rejected based upon one common understanding based upon statutory definition of the term *intoxicating liquors*: consumer beverages containing alcohol, except for malt beverages that contain no more than 3.2% alcohol.

The Supreme Court has never addressed the issue of whether legislation could narrow the definition of *intoxicating liquor* without amending the Constitution. Typically, however, the Court has not allowed the Legislature to change the Constitution by simply adopting statutory definitions that differ from the common meaning.¹

In 1987, then-Attorney General Stephan opined that expanding the definition of cereal malt beverages to include CMB 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 one law journal article.

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, as it surely will be - 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*

violate the Constitution but that the current legislative definition violates the Constitution.³ If the current definition of intoxicating liquor is ruled 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 ruled that classifying CMB as a non-intoxicating liquor is unconstitutional, of greater importance is that the court has not ruled that such classification *is* constitutional. Without more, current law should not be jeopardized.

³ "(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

Article 15. MISCELLANEOUS

§ 10: Intoxicating liquors.

(a) The legislature may provide for the prohibition of intoxicating liquors in certain areas.

(b) The legislature may regulate, license and tax the manufacture and sale of intoxicating liquors, and may regulate the possession and transportation of intoxicating liquors.

(c) The sale of intoxicating liquor by the individual drink in public places is prohibited, except that the legislature may permit, regulate, license and tax the sale of intoxicating liquor by the drink in public places in a county where the qualified electors of the county approve, by a majority vote of those voting on this proposition, to adopt this proposition, but such sales shall be limited to: (1) Public places where gross receipts from sales of food for consumption on the premises constitute not less than 30% of the gross receipts from all sales of food and beverages on such premises; or (2) public places for which a temporary permit has been issued as authorized by law.

At any subsequent general election, the legislature may provide by law for the submission of propositions to qualified electors of counties for: (1) The prohibition of sales of intoxicating liquor by the individual drink in public places within the county ; (2) the regulation, licensing, taxing and sale of intoxicating liquor by the drink in public places within the county without a requirement that any portion of their gross receipts be derived from the sale of food; or (3) the regulation, licensing, taxing and sale of intoxicating liquor by the drink in public places within the county which derive not less than 30% of their gross receipts from the sale of food for consumption on the premises. Temporary permits for the sale of intoxicating liquor may be issued in any county in which the regulation, licensing, taxation and sale of intoxicating liquor by the drink in public places is approved pursuant to this section, but no temporary permit shall be issued for the sale of intoxicating liquor by the drink within any county in which the regulation, licensing, taxation and sale of intoxicating liquor by the drink in public places is prohibited.



The Kansas Association of Beverage Retailers

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Brian Flanery, President

Amy A. Campbell, Executive Director

TESTIMONY PRESENTED TO THE FEDERAL AND STATE AFFAIRS COMMITTEE

February 5, 2009

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 strong beer legislation on behalf of the Kansas Association of Beverage Retailers. For those of you who were not members of the Legislature in 2001 and 2002, this request to raise the alcohol content of cereal malt beverages was raised during that session. It was also rejected by the Legislature during the 1993-94 session. In 1989, the same idea was rejected by the Senate Federal and State Affairs Committee. We also faced versions of this bill in 2005, 2006, 2007 and 2008. 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.

There is a perception that strong beer legislation will modernize our state and promote positive change by eliminating an outdated product. Many people look at Missouri as a positive example and suggest our alcohol distribution model should look more like our neighbors to the east. In fact, Missouri drunk driving statistics have exceeded the national averages. (Source: NHTSA, National Center for Statistics and Analysis (2003)

There are a wide variety of state policies relating to how liquor is sold, and they reveal both the priorities of that state and the history of how prohibition was repealed in that particular state. Kansas has a particular issue relating to its constitution which makes this legislation potentially unconstitutional as it changes the definition of alcoholic liquors / intoxicating liquors – a reference included in our constitution.

There are control states – which only allow the state to sell spirits and/or wine. This may be paired with the sale of beer through licensed outlets. Many states differentiate between the sale by packaged stores and convenience stores or grocery stores and the products they may carry. In fact, some actually differentiate whether or not the product sold may be refrigerated. It is not correct to paint Kansas as the most regulated of these states. It is also not true that states are rushing to open up their laws. Proposals have been defeated very recently in Massachusetts and Colorado, just to name two.

In fact, Kansas represents an excellent balance between the desires of those who would expand access and availability and those who would prefer a model closer to a return to prohibition.

According to the Substance Abuse Policy and Research Program, Investigators at Louisiana State University Health Sciences Center examined the relationship between regulatory practices of alcohol-control agencies and alcohol-related traffic deaths in 107 cities that participate in the National Highway and Traffic Safety Administration's Fatality Analysis Reporting System (FARS).

Investigators surveyed state Alcohol Beverage Control agencies and local city police departments in the 107 cities and interviewed staff from alcohol-enforcement agencies in 20 cities. The investigators reported their findings in an article in the February 2002 issue of *Preventive Medicine*:

- Lower rates of alcohol-related traffic fatalities, were found in states and communities that: Sn Fed & State
- Limit alcohol accessibility. (*limiting access includes limiting outlets that sell the product*) Attachment 7

2-05-09

- Require licensure of outlets selling alcohol.
- Provide for disciplinary actions against outlets that violate laws...
- Strong beer legislation 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.

According to Preventing Underage Alcohol Access: Essential Elements for Policy, Deterrence and Public Support, a public policy guide by the Prevention Research Center, recommends a number of methods to reduce underage access to alcohol with the first being “BEST PRACTICE: Require that all retail alcohol outlet employees who are engaged in the sale or service of alcohol be at least 21 years of age.”

- 26.4% (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.

What is the motivation for removing 3.2% beer from Kansas? 3.2% is an important product in our neighboring states, particularly Oklahoma and Colorado.

- 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?

What is the motivation to expand sales for these major corporations?

- It appears that strong beer legislation attempts to require all cmb retailers to no longer pay sales tax – which is divided between the State and local entities - pay the 8% enforcement tax now paid by liquor stores. We are unclear what effect this will have on the sales tax receipts shared by cities and counties.
- The bill brings liquor retailers (liquor stores) into the realm of selling cereal malt beverages. 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, if at all.
- **It is not true that this legislation provides a level playing field.** 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 sellers, and it continues to allow the cmb retailer to sell beer on Thanksgiving and Christmas. There may be other inequalities buried in the language.
- KABR is also concerned that this beer legislation makes policy changes to the law regarding wholesaler sales to temporary permit holders. What is the relevance to cereal malt beverage?
- 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 strong beer legislation 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, the cereal malt beverage act, and sell all products under the Liquor Control Act.

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 742 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.

The proponents say that they simply want to regain a share of the beer market that was lost when Kansas changed the drinking age – but that market is gone. Those 18 to 20 year olds are no longer in the market at all. What they are really proposing is to get a foothold into the Strong Beer market – the liquor market.

The proponents state that they doubt if any liquor stores would go out of business. According to the 2008 fiscal analysis developed by the Distilled Spirits Council of the United States:

"Currently, the 726 package stores allowed to sell full strength beer sell an estimated 17,600 cases per year. Accounting for both the new beer volumes and the new number of full strength beer licenses, the average number of cases sold per outlet will decline to around 4,480 cases per year.'

For the new full strength beer licensees, most of the new volume will be incremental (except that volume which is replacing 3.2 beer sales). Thus, grocery and convenience stores will be able to sell comparatively low volumes of .. beer profitably. Obviously, this does not preclude large supermarkets from selling tremendous volumes. What it does mean, however, is that the 3,790 convenience and grocery stores in the state will be able to take sales away from traditional package stores."

"Accounting for both the lost spirits sales and lost beer sales, total package store revenues would decline from \$461.3 million to \$254.6 million – a 45% reduction."

"Clearly, not all businesses could withstand a 46% decline in revenues. As a result, we would expect a decline in the number of package stores."

"The \$254.6 million in total package sales would support a total of 509 package stores. Thus, 217 package stores are projected to go out of business. Naturally, as the number of package stores declines, the availability of spirits will decline as well."

The analysis relies on Kansas sales statistics, market analysis by Gallup Organization, Sept. 29, 2006; and tax receipts by the Kansas Department of Revenue.

Last, but not least, Mr. Chairman, is the situation we place those 18-20 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 Strong Beer legislation.

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

Kansas Association of Beverage Retailers

P.O. Box 3842, Topeka, KS 66604

February 5, 2009

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.

Last 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. Our members take very seriously their role as licensed retailers of adult beverages and we spend a significant amount of time staying on top of the laws and regulations that we must follow.

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.

I have recently become a certified trainer for our Retailer Education Program. Most of this training is designed to prevent illegal sales, identify underage purchasers and the myriad of fake i.d.s on the market, and prevent sales to intoxicated persons. We must be attentive to safe sales and deal with people who will do their best to fool me or my clerks.

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 on the sales of wine and liquor? 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

Sn Fed & State
Attachment 8

2-05-09

Kansas Association of Beverage Retailers

P.O. Box 3842, Topeka, KS 66604

Senate Bill 76 and House Bill 2062 would put Strong Beer (now classified as alcoholic liquor) on the shelves of the convenience stores and grocery stores. The bills redefine some Strong Beer as cereal malt beverage. It 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 legislation is unconstitutional. Our Kansas constitution was amended to end prohibition and regulate the sale of intoxicating liquors – cereal malt beverage is considered a non-intoxicating product. If the Legislature increases the alcohol content of non-intoxicating cereal malt beverage, the court could rule that the definition of intoxicating liquor is unconstitutional and remove CMB from all CMB outlets.
- Strong beer sales make up approximately 55% of sales for Kansas licensed liquor stores – as high as 80% for some. 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.
- Cereal malt beverage sales are 26.4% of the beer sales in Kansas – increasing 6.6% in 2008. Customers buy lower alcohol beer because they choose to purchase a lower alcohol product. This legislation will remove that choice from Kansas altogether.
- 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 likely eliminates the sale of cereal malt beverage products offering a lower alcohol content.
- 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 4% alcohol content by weight – increasing alcohol content of the products they sell by 25%.
- The passage of the Strong Beer bill will expand the responsibilities of the Division of ABC to cover an additional 3790 businesses approximately.

Will the legacy of the 2009 Kansas Legislature be an unconstitutional law - increasing the alcohol content of beer in every tavern, grocery and convenience store in Kansas?

Please contact KABR for more information. Amy Campbell: 785-969-1617 campbell525@sbcglobal.net

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. I also own and operate a convenience store.

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 26% of the malt product being sold. It seems inefficient for the State to have to track an extra 3680 accounts to collect 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%-80% 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. 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 3.2% 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 5, 2009

Chairman Brungardt and Committee:

I am here today to share with you my perspective on Senate Bill 76 – 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 are currently efforts in Colorado and Oklahoma on behalf of the convenience stores and grocery stores. Both of these states still preserve the 3.2% product.

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 do we continue to hear issues in the Legislature that would lessen the responsibility of a cmb retailer regarding the actions of their employees. The Liquor Control Act says that I can be held criminally responsible for ANY violation that occurs on my licensed property. This is a responsibility that goes along with having the state license. I believe this is the reason why corporations should not be licensed to sell package alcohol. The responsibility is not there.

Thank you for your time.

Sn Fed & State
Attachment 10

2-05-09

11

Flint Hills Wine & Spirits
125 W Hwy 54, Andover, KS 67002
316-733-8333

Hello my name is Dave Dvorak, owner of a fine wine, beer and spirits store in Andover, Kansas. I believe that the difference in success or failure is not how you look, how you dress, or how well you're educated, it has a lot to do with unwavering passion and belief in the product and services offered by me in my community as a small business owner. This is how I feel about my business.

Please consider this perspective regarding Senate Bill 76 / House Bill 2062:

My primary goal in operating my business is the safe and legal sale of adult beverages. I and my employees bear the responsibility to see that only legal purchasers are sold beer, wine and liquor. Any time that we fail to meet the letter of the law – whether it is registering every employee and making certain they could pass the state's background check, or selling and recording proper documentation for a keg – there is a strike against my license.

My employees must be 21 years of age and they must be responsible and attentive enough to prevent illegal sales. This can be very difficult when kids are getting very creative with fake I.D.s and with the expanding number of immigrant I.D.s that we see. But if they make a mistake – they will receive a criminal misdemeanor charge and I will face civil penalties against my license. Those penalties begin at \$500, then jump to \$1000 plus closing the store for one or more days. By the way, ABC chooses the days for the store to close. So, it is important that we are all attentive to the sale at hand, and not distracted by other things, like operating gas pumps or fixing the soda dispenser.

This is not the case for convenience stores and grocery stores. The ABC does not send in agents for controlled buys and does not sit in their parking lot to observe potential illegal activities. We do not have statewide statistics to measure their performance. If local law enforcement should catch a violation at a cmb store, the beer cooler may be closed temporarily – but not the entire business.

State law also requires me to be an independent business owner.

Yes, these regulations are very strict – but it is worth it to me and it is worth it to our State. How will the State regulate almost 4000 new licenses? I think the bill charges them a license fee, but the Division of ABC does not get to keep their license fees. Those fees go to the State General Fund, along with the nearly \$50,000,000 of enforcement taxes paid by the liquor stores.

I have spoken to a lot of retailers in the past year or so about strong beer legislation. I learned that most retail liquor stores have several characteristics in common. Their location is often near a grocery store or a convenience-gas station. The store is typically their primary source of family income. They often have their entire life savings tied up in their business with the help of their local banker. By the way, did you know that you can't buy inventory on credit? Only cash.

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.

After hearing this small business owner, 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". It should remain in the hands of adults. Thank you.

Dave Dvorak

Sn Fed & State
Attachment !!

2-05-09

February 5, 2009

Senate Federal and State Affairs Committee
Kansas Legislature

Chairman Brungardt and Committee:

My name is Jennifer Vogel, my husband and I have liquor stores in Kansas City Kansas. We are third generation owners.

We bought the family store in September 2000 and a second store in June of 2005. These were major purchases for us and we won't have them paid off until 2015. We are the owners of our stores, and we WORK our stores. We are not absentee owners that pull the strings from out of state.

We have two teenage daughters ages 16 and 14. our 16 year old will go and get her first job, outside of babysitting, this summer. We would love to hire her to work in the family business but she can't do that until she is 21. We understand why and certainly agree with the law.

A lot of the 16 year olds work in the surrounding grocery stores, Henhouse, Hyvee and Price Chopper. I feel that these businesses have been good community partners for our youth and I would not like to see them employ our youth to sell strong beer, let alone liquor. I would not want to put our youth in a position where they have to uphold the State Liquor Laws of Kansas. And, let's not kid ourselves; we are not just talking about Strong Beer.

The bottom line for me on changing the wording of the State Liquor Laws and allowing strong beer to be sold by the grocery and convenience stores is:

- (1) Over 200 stores may go out of business
- (2) Profits will go out of state
- (3) Jobs will be lost
- (4) Store fronts will be vacant
- (5) Our youth will have more access

In this economy, of ALL economies, self-inflicting more job losses and tax revenue losses are beyond my comprehension.

Thank you for your time.

Jennifer Vogel, 1717 N 38th St., Kansas City, KS 66102 913-371-7372

Mr. Chairman, members of the committee; my name is Michael Towne; I reside at 1009 Overhill Road in Manhattan, Kansas. I wanted to give testimony today, to insure that you would hear from someone that's directly affected by the legislation before you. I'm not a staffer or a lobbyist loaded with facts and figures and statistics to bolster my point of view. I simply find myself at age 52, a licensed liquor retailer.

State law currently allows for independent grocery store, convenience store, and gas station operators who want to sell alcoholic beverages, to do what I did, follow the existing regulations and open a retail liquor store. Therefore, Senate Bill 76 is simply a corporate bailout bill, designed to improve the bottom-line of corporations, taking money away from Kansans, like myself, and lining the pocket of out-of-state executives: a redistribution of wealth.

Proponents of the bill say they simply want to regain the market share they've lost, that this isn't about alcohol; it's about economics. They're wrong. Selling liquor is not like selling gasoline or groceries. It is a controlled substance and should continue to be in limited distribution available only to those 21 years of age or older.

Senate Bill 76 puts adding to the profits of the bill's proponents ahead of the health and welfare of Kansans. The bill would increase the availability of a stronger alcohol content product and lead to an increased potential for abuse. My nephew is an alcoholic so I know first hand, that when abuse occurs it has widespread negative affect on the health and welfare of Kansas families.

Proponents of this bill, ignoring the changes in the liquor industry over the last several years, infer that as a liquor retailer, I am seeking to avoid competition. That is a myth. Prior to operating a liquor store, I spent over six years working in the grocery and convenience store industry, then another 19 years working for Frito-Lay for most of the time as a District Sales Manager. The majority of my life has been spent working in and around those businesses that form the coalition in support of a "Strong Beer" bill.

My experience over the last six and a half years is that retail liquor storeowners face exactly the same competitive pressures that businesses in other industries do. I face the same challenges my Grandfather did running a mom and pop grocery store, or as my Dad did running a small town weekly newspaper, or as any of my previous employers did.

Finally, let's set aside, as the proponents do, the alcohol component of this issue and focus on the economic impact of this bill. If Senate Bill 76 is not passed how many Hy-Vee's, Casey's, Wal-Marts, Quik-Trips, or other coalition member businesses close? The answer is none. On the other hand let's say this bill is approved. How many independent Kansas liquor retailers are forced out of business? Past testimony puts at least 200 Kansans out of business, possibly more.

In closing Mr. Chairman, when the federal government changed the drinking age from 18 to 21, Kansas liquor laws should have been amended to require that all cereal malt beverages and all alcoholic beverages be only sold by licensed retail liquor stores. I would propose that it is in the long-term interests of the State of Kansas and its citizens to amend this bill to only allow licensed liquor retailers to sell cereal malt beverages and alcoholic beverages. Let's get cereal malt beverages out of the businesses our children frequent, often without parental supervision.

FEDERAL AND STATE AFFAIRS COMMITTEE

Our names are Michael and Karen Heberger. We each own a liquor store in Kansas-- Mike's Discount Liquors at 1320 Merriam Lane, Kansas City, KS, and Heberger Retail Liquor at 909 S. Chestnut, Olathe, KS.

I have been advised that the Kansas Legislature is once again considering legislation to allow convenience and grocery stores to sell strong beer at the instigation of these entities. I am writing to ask you to oppose any such legislation. My reasons are as follows:

1. There will be no increase in tax revenues for the cities/state by allowing the large corporations that own convenience/grocery stores to sell strong beer--all that will happen is sales will be taken away from local business owners and put into the coffers of the large, non-locally owned corporations.
2. The current retail liquor stores will see a decrease in sales, thereby necessitating the layoff of employees, resulting in:
 - a) additional tax burden on the state/county via unemployment and welfare payments made to those laid-off employees
 - b) loss of revenues for the state and localities from fewer license fees once retail liquor stores begin closing because of lack of business. The last thing anyone needs in these tough economic times is more people out of work.
3. The large corporations desiring the ability to sell strong beer currently sell a wide variety of items, from food to cigarettes to magazines. Under the current law, Kansas retail liquor stores are only allowed to sell beer and liquor. To allow the large out of town corporations to sell strong beer, along with the other variety of items they already sell (from food to cigarettes to magazines, etc.) makes for a totally uneven playing field for the retail liquor stores.
4. The large corporations that wish to sell strong beer have a large percentage of employees under the age of 21. Passage of such a bill as this would put stronger beer into a much less controlled environment, since liquor stores cannot employ anyone under the age of 21.
5. Kansas liquor retailers are currently under the strict direction of the State's Alcohol & Beverage Control commission, which routinely checks for compliance with state laws. These large corporations wishing to sell strong beer are not regulated by the ABC. Retail liquor stores are faced with stiff penalties for the sale of beer to minors and are therefore very cautious about who comes in their store--the large convenience/grocery stores sell a variety of goods to minors, therefore, the presence of minors in the store would not be unusual, leading to the increased possibility of sales to minors.

Thank you for considering our arguments above.

Mike and Karen Heberger

Sn Fed & State
Attachment 14

2-05-09

KANSAS ASSOCIATION OF PRIVATE INVESTIGATORS

**P.O. Box 2111
Shawnee Mission, KS 66201-1111**

*John W. Ellis, President, 913-596-6445
johnellis@pmokspd.com*



SERVICEMARK.
KAPI, S.M., KS 1996
www.kapi.org

February 4, 2009

Senate Federal and State Affairs Committee
State Capitol
Topeka, KS 66612

Re: Senate Bill 116

The Kansas Association of Private Investigators is a non-profit professional association for private detectives that was formed to establish and perpetuate high ethical and professional standards and excellence of professional service in the private investigative industry. KAPI monitors legislation affecting the industry. KAPI has reviewed the provisions of Senate Bill 116 which would amend parts of the Kansas Private Detective Licensing Act; we have also reviewed the comments provided at the hearing held on February 3, 2009. Our response on the specific issues is detailed below.

Section 3, Page 12 line 19. This section amends KSA 75-7b01, adding language pertaining to fugitive recovery by bail bond agents at line 31. *KAPI believes that this amendment is unnecessary; the existing language already covers this type of activity.*

- Fugitive recovery is essentially performed by locating the person on bond. The existing definition of detective business includes the term 'whereabouts' which obviously means determining the location of an individual. Therefore, this activity already requires either a private detective license in Kansas or meeting a specific exemption in paragraph 75-7b03 of the licensing act. Any bail bond agent currently performing fugitive recovery in Kansas without a private detective license is probably committing a violation of the private detective licensing act and is subject to legal enforcement by any state officer including any county sheriff.
- This interpretation is supported by an informal attorney general legal opinion rendered in the mid-1990s in a matter occurring in Wyandotte County. In that incident, a person engaged in fugitive recovery at a residence became involved in a dispute with the residents leading to a response by local police. The attorney general's office was asked by local authorities if such action required a private detective license; the exact question at issue in this amendment. The AG opinion was that fugitive recovery did require licensing as a private detective. The opinion was never formally published.
- This interpretation is also supported by a historical examination on two related points; the citation of KSA 22-2809 by bail bond agents as the authority statement for fugitive recovery in Kansas, and the series of events that prompted the legislature to enact the private detective licensing act. An examination of KSA 22-2809 and KSA 75-7b01

Establishing high ethical standards to provide excellent professional service to the public.

through 7b21 (the licensing act) shows that the former was originally passed in 1970 and the latter originally passed in 1972. This means that the legislature was aware of the cited authority statement for fugitive recovery when it adopted the language in question in the private detective licensing act. One could reasonably conclude that the legislative intention was to include fugitive recovery operations in the licensing requirement. Second, one of the events that prompted the adoption of the private detective licensing act in 1972 was the issuance of 'Special Deputy Sheriff Badges' for a fee by the Wyandotte County Sheriff. Persons receiving these badges were using them to perform a variety of private investigations including fugitive recovery. The current amendment proposed simply revives one of the issues present at the time of the initial adoption of the licensing act. The appropriate question is not whether to include fugitive recovery operations in the licensing act, the question is why aren't bail bond agents already complying with the statute and why aren't state officers enforcing any non-compliance?

- An examination of the content of KSA 22-2809 shows that it authorizes arrest by surety agents, but does not place any restriction on any city, county or state agency from regulating the activity. Neither does it exempt the surety agents from any statute that generally apply to all citizens (other than the arrest-related statutes). The private detective licensing act contains provisions of general application; this includes engaging in detective business without a license or an exemption. The statute obviously applies to surety agents engaged in fugitive recovery operations.

Section 3, Page 12 line 19. This section amends KSA 75-7b01, adding language pertaining to fugitive recovery by bail bond agents at line 31. The essential issue here is whether bail bond agents should be required to license as private detectives in Kansas. *KAPI believes that regulation of bail bond fugitive recovery operations is in the best interest of the public.* Whether this regulation is performed by the Department of Insurance, the Attorney General or some other agency is of secondary concern. Here are some of the considerations that will need to be made in reaching the decision:

- The background screening criteria for surety agents found in KSA 22-2809a is not as extensive as the background screening requirements found in the Private Detective Licensing Act KSA 75-7b04. Regulation under the Private Detective Licensing Act would provide better protection for the public.
- KAPI is not aware of any specific training or education requirements for surety agents performing fugitive recovery operations. The firearm training currently specified for private detectives encompasses part of the topics needed for fugitive recovery operations; the private detective licensing act also has a continuing education requirement for licensees.
- The Department of Insurance is clearly better at regulating the insurance or bonding action involved in bail bond operations.
- The Attorney General/Kansas Bureau of Investigation is clearly better at regulating the use of force, search and seizure or privacy issues involved with the fugitive recovery aspects of bail bond operations.

- Regulating fugitive recovery operations under the provisions of the Private Detective Licensing Act will raise three significant problems which will have to be addressed:
 - *Bonding/Insurance requirements of KSA 75-7b11.* This section requires a bond or professional liability insurance of at least \$100,000. KAPI is not aware of anyone in the state that will actually write bonds in this amount for private detective operations. Insurers who cover the security industry generally are limited in number; it is a specialty line of insurance. Those insurers who do provide the insurance typically screen for high risk operations and usually decline to cover them. The two most frequent activities that they decline to cover are: Executive Protection and Bail Bond operations. In short, insurance will be difficult to find and will be very expensive if it can be located. The Department of Insurance has stated to KAPI that there is no legal mechanism for requiring insurers to accept private detectives as an 'assigned risk' in the manner used for some problem motor vehicle drivers. Consequently, this requirement could force some providers out of the business entirely. This has potentially serious ramifications. Since most private detectives in Kansas and many bail bond operators or subcontractors doing fugitive recovery are part-time, not full-time, excessive cost would limit the availability of bonds. This would likely increase the jail population throughout the state. If the inmates are released under other arrangements and subsequently flee, the fugitive apprehension would be entirely up to local law enforcement, not the bail bondsmen. Both would drive up local costs for law enforcement.
 - *Contingency fees prohibited under KSA 75-7b08.* This section prohibits private detectives from performing services on a contingent or percentage basis. Yet, this form of payment is typical in fugitive recovery operations when subcontractors are used. Some adjustment may be required.
 - *Exclusive regulation under KSA 75-7b18.* This section prohibits regulation of private detectives by anyone other than the Attorney General. While it is obviously directed at limiting city licensing, the language might have to be changed in view of the current regulation of bail bond operations by the Department of Insurance.

Possible solutions to the issue of licensing fugitive recovery operations under the Private Detective Licensing Act.

- *Exemption.* Adding an exemption to the Private Detective Licensing Act for bail bond business and fugitive recovery operations would clarify the licensing issue, but would not address the underlying problem that prompted the KBI to propose the amendment.
- *Partial Exemption.* One submission to the committee differentiated between operations by the actual agent writing the surety bond and a subcontractor for fugitive recovery (bounty hunter). This differentiation is important; the private detective licensing act only applies to people who are receiving 'consideration' for their service. It is somewhat debatable whether the actual surety agent is really receiving consideration for fugitive monitoring and recovery which is the part of the operation that fits the detective business

definition in the licensing act; a subcontractor clearly is receiving consideration (unless he works for the sheer fun and glory). Consequently, an exemption might be drafted to apply to the actual surety agent and not to subcontractors. This approach would also address the two agency regulatory problem allowing the Department of Insurance to regulate the surety agent and the Attorney General to regulate the subcontractors doing the fugitive recovery. Amendments to the licensing act to address the three problems cited above would also be necessary if this approach is adopted.

- *Requirement for a Private Detective Firearm Permit.* Another approach is to allow bail bond business operations to be regulated by the Department of Insurance, but require that those carrying firearms obtain a private detective firearm permit with the necessary initial and renewal training requirements. This would require limited amendments to the private detective licensing act and to the training requirements found in the pertinent administrative regulations. It addresses the essential public safety aspect that prompted the proposal and places it under the control of the state agency best prepared to deal with it effectively.
- *Reciprocity.* The KBI stated that this amendment was prompted, in part, by problems experienced with out-of-state bondsmen entering Kansas to apprehend fugitives. Part of the solution could be to implement licensing reciprocity with other states. This would allow the Kansas regulating agency to refer problems to the reciprocal state licensing agency for administrative action when there is inappropriate action. Reciprocity would require an amendment to the licensing act. This could be done by a general authority amendment which would allow the Attorney General to enter into reciprocal administrative agreements or by specifically granting reciprocity to certain categories of licensees, states, etc. without further review. The general authority approach is probably the best approach. *If private detective licensing of bail bond fugitive recovery operations is to be implemented, KAPI would recommend adoption of a reciprocity provision.*

KAPI recommends that the licensing issue be resolved; either exclude bail bond agents from licensing or make the necessary amendments to effectively regulate them. It is not in the interest of anyone to leave the issue unresolved. KAPI would also recommend that the action effectively addresses the public interest in the safety issues inherent in the current lesser screening, training, etc. of bail bond operations involving fugitive recovery.

Section 4, Page 13 line 37. This section amends KSA 75-7b17 altering the language for screening requirements for private detective firearm permits. *KAPI believes that these amendments are unnecessary. There is no indication that the current screening problems present any problems.*

- The private detective firearm permit has been in use for over 35 years. In that time period, KAPI is aware of only one serious incident in which a private detective unintentionally injured a citizen with a firearm. That incident occurred as a result of combined errors by both the private detective and the citizen involved. In contrast, two private detectives have been shot by citizens within the same time period; the private

detectives involved did not return fire. In one instance, the private detective was not armed, but an accompanying person was. In the second, the private detective was armed and did not return fire, in part because it was not legal to do so when he had the opportunity.

- The assertion that the private detective firearm permit is easier to obtain than a current Kansas concealed carry license is not accurate. Here is a quick comparison:

	Concealed Carry Handgun License - KSA75-7c01 et seq	Private Detective Firearm Permit KSA75-7b01 et seq
Initial Firearm Training	8 hours including qualification firing	16 hours including qualification firing
Renewal Training	Every 4 years - # hours not yet established	2 hours each year plus qualification firing
Qualification Firing	35 rounds at 10 yards or less with any handgun	50 rounds at up to 25 yards with each handgun to be carried by make, model and serial #
Testing	Initial written exam	Initial and annual written exam for firearm training & initial exam for private detective license
Bond or insurance	None	minimum \$100,000
Personal Interview	None	Required at the option of the licensing agency

This assertion may have been made on the basis that the Personal and Family Protection Act has more specific statutory authorizations for background checks included in it than the Private Detective Licensing Act does, but that is not equivalent to a 'lesser standard' for screening. If the regulating agency, for whatever bureaucratic reasons, is performing lesser steps, that does not automatically make private detectives less qualified to carry firearms nor does it make them a higher risk for licensing. As far as KAPI knows, the background screening currently being done is likely to identify those applicants who have a history of offenses or high risk behavior that would warrant denial of a license.

- *KAPI has reviewed the screening criteria in the proposed amendments; KAPI has no objection to any of them being used.* Frankly, it would be much easier to simply adopt them under administrative rules of the regulating agency rather than elaborating on them in the statutes.
- KAPI would prefer that any screening criteria adopted within statutes be incorporated into the private detective licensing act rather than simply being referenced in another act as has been proposed at page 15, line 4 of S116. This would prevent future conflicts of

interest between the two acts.

- *Elimination of the Private Detective Firearm Permit.* An alternate solution to the perceived problem is to eliminate the Private Detective Firearm Permit and allow private detectives to utilize the Personal and Family Protection Act to obtain a concealed carry license. This approach has some minor advantages for both the regulating agency and the private detectives, but also has some serious disadvantages. The primary disadvantage is the lesser training and qualification standards in the CCH license. *If this approach is taken, it is critical that the regulating agency retain the authority to specify the current higher training and qualification standards for carry while 'engaged in the performance of their duties' as a private detective.* That is in the public's best interest.

The Kansas Association of Private Investigators will be monitoring this issue, will appear at any future hearings, and is willing to informally discuss the issues and resolutions in meetings with the legislature, the regulating agency and other interested parties. Our association has a history of doing exactly that; KAPI was heavily involved in the major amendments to the Private Detective Licensing Act which were enacted in 1998 to update the requirements. KAPI is ready to do that again if it is needed.

I can be contacted at 816-830-1177 or JohnEllis@pmokspd.com with any questions.

John W. Ellis, B.S., M.A.J.
Licensed Private Detective
Certified Firearms Instructor

President
Kansas Association of Private Investigators

Major, Military Police, US Army Reserve (Retired)