

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on March 17, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Bob Grant- excused  
Representative Mike Peterson- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes  
Jason Long, Office of the Revisor of Statutes  
Julian Efird, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Nikki Feuerborn, Committee Assistant

Conferees appearing before the Committee:

Whitney Damron, Lukas Liquor. (Attachment 1)  
Amy Campbell  
Subcommittee on HB 2537, (Attachment 2)  
Balloon amendment for HB 2444, (Attachment 3)  
Representative Brenda Landwehr, Legislator (Attachment 4)  
Ron Hein, Legislative Counsel, Kansas Restaurant and Hospitality Association (Attachment 5)  
Whitney Damron, Swisher, International (Attachment 6)  
Philip Bradley, Kansas Licensed Beverage Association (Attachment 7)  
Sheila Martin, Business Owner (written only) (Attachment 8)  
Father H. Setter, Chaplain, International Premium Cigar & Pipe Retailers Association (Attachment 9)  
Chris Masoner, American Cancer Association  
Mary Jayne Hellebust, Tobacco Free Coalition

Others attending:

See attached list.

Representative Kiegerl moved for the approval of the minutes of March 8, 9, 10, and 11. Motion was seconded by Representative Holmes. Motion carried.

**Hearing on SB 532 - Alcoholic beverages; issuance of farm winery license to spouse of retailer licensee**  
Jason Long, Office of the Revisor of Statutes, explained the bill which would allow the spouse of a retailer liquor licensee to obtain a farm winery license if the applicant was not a retail liquor store licensee..

Whitney Damron, speaking on behalf of Lukas Liquor Super Store, requested the passage of legislation which would allow his client's wife to apply for a farm winery license (Attachment 1). Mrs. Lukas' hobby of viticulture has developed to the extent she would like to develop her own winery rather than just selling her grapes to established wineries. Current law discourages marriage, allows for licensure for those who might cohabit and otherwise live as man and wife absent a marriage license. This creates an insurmountable conflict should such respective licenses seek to be married. The current law is a roadblock to the development of the wine industry in Kansas.

Committee members questioned what would be the outcome if one of the spouses died, therefore the remaining spouse would have both a license as a retailer and a farm winery license which would be in conflict with the current three-tier system in Kansas.

Amy Campbell, Kansas Association of Beverage Retailers, asked if the Alcohol and Beverage Control division would be required to check on such businesses to be sure the winery was not distributing to the liquor store(s) owned by the retail liquor licensed spouse as this would be a blending of the tiers.

Chairman Neufeld closed the hearing on SB 532.

## CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on March 17, 2010, in Room 346-S of the Capitol.

### **Subcommittee Report and Recommendations on HB 2537 - Cereal malt beverages; alcohol content, regulation by ABC, retailers authorized to sell, taxation**

Representative Knox presented copies of the Subcommittee report on HB 2537 which recommended the bill be reported adversely (Attachment 2).

Representative Knox moved the subcommittee's recommendations. Motion was seconded by Representative Holmes. Motion carried with a division vote of 8 yes and 7 no.

The Chair agreed to request an interim study of this proposal along with a broader range of alcohol-related bills.

### **Discussion and action on HB 2444 - Creating a division of the state fire marshal within the insurance department**

A balloon amendment was presented to the Committee which listed qualifications but did not include a mandatory advisory board as that choice would be left to the fire marshal (Attachment 3).

Representative Kiegerl moved to adopt the balloon amendment as presented. Motion was seconded by Representative Benlon. Motion carried.

Representative Kiegerl moved to report the bill favorable for passage as amended. Motion was seconded by Representative Benlon. Motion carried with a division vote of 12 yes and 4 no. Representative Ruiz requested to be recorded as a "no" vote.

### **Discussion and action on HB 2620 - Kansas firearms freedom act**

Representative Carlson moved to report the bill favorable for passage. Motion was seconded by Representative Brown.

Representative Loganbill made a substitute motion to table the bill until the method of payment for firearms with the logo "Made in Kansas" could be established. Motion was seconded by Representative Tietze. Motion failed on a division vote of 6 yes and 10 in opposition to the motion

The Committee discussed the possibility of purchase with credit cards or an outside of Kansas bank. If this were to be done, the question of whether it would constitute interstate commerce and thus be under the auspices of the federal government. Local bank checks are considered legal tender in Kansas.

Representative Benlon made a substitute motion requiring the sale of "Made in Kansas" labeled firearms to be in cash only. Motion was seconded by Representative Ruiz. Motion failed.

Representative Carlson renewed his motion to report the bill favorable for passage. Motion carried on a division vote of 11 yes and 6 in opposition.

### **Hearing on HB 2741 - Smoking regulation**

Jason Long, Office of the Revisor of Statutes, explained the changes that will occur with the passage of this described "trailer bill." Dates have been changed from the original smoking ban legislation HB 2221 to give persons an opportunity to comply with the new statute. The distribution of fines was also addressed.

Representative Landwehr presented testimony addressing the changes which include allowing businesses that sell lottery and Keno tickets and have gross food sales of less than 30% to choose to allow smoking in the facility (Attachment 4). Also the bill would provide for a bar or tavern that is not exempt from the smoking ban and does not have the ability to provide an outdoor patio to be able to allow smoking do so within a three foot radius of the business entrance. The bill allows for a charitable 501c3 to be exempt from the ban for fund raising purposes.

Ron Hein, Legislative Counsel for the Kansas Restaurant and Hospitality Association, pointed out to the Committee the expenses incurred by restaurants to provide ventilation systems and separate rooms in order to comply with local ordinances banning smoking (Attachment 5). He suggested that any statewide smoking

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on March 17, 2010, in Room 346-S of the Capitol.

ban should allow some sort of transition period, perhaps two years for such restaurants to attempt to recoup the expense of these facilities before the total ban goes into effect.

Whitney Damron, representing Swisher International, Inc., discussed the display rack issues and stated that often big companies pay for the display racks and for the best marketing space in the store (Attachment 6). Mr. Damron advised against the state becoming a co-conspirator with the large companies to squeeze out the smaller and value priced cigarette and tobacco companies. HB 2741 has rewritten the section to remove the definition of a "self service display" and also removes the prohibition from utilizing self-service displays.

Chris Masoner, representing the American Cancer Society, spoke in opposition to the bill which he said would weaken HB 2221 by allowing 501(c)3 organizations to conduct fund raisers in taverns and bars which do not sell lottery tickets. He reminded the Committee that one of the purposes of the smoking ban was to protect workers from second-hand smoke.

Mary Jayne Hellebust, representing the Tobacco Free Coalition, testified that the adoption of HB 2741 would be a step backwards. It adds to the complexity and confusion of the bill especially at the local level regarding allowing bars and taverns who do not have a patio area to allow smoking within three feet of the entrance rather than the original ten feet. In her opinion even with ventilation there is no safe environment for second hand smoke.

Chairman Neufeld closed the hearing on HB 2741.

Written testimony was received from:

Philip Bradley, Kansas Licensed Beverage Association (Attachment 7)

Sheila Martin, Business Owner (Attachment 8)

Father H Setter, Founder of the Setter Foundation (Attachment 9)

The next meeting is scheduled for March 18, 2010.

The meeting was adjourned at 3:30 p.m.

FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: March 17 2010

NAME	REPRESENTING
Whitney Jamison	Lukas L. Simon / Smithly Hill
Bill Sneed	Ks Entertainment
Joe Morrison	DACA of KS
Spencer Duncan	Capitol Connection
Kevin Brane	Cap Lab Group
Leigh Keck	Heinlaw firm
Chris Masoner	Am. Cancer Soc.
Anne Stess	American Cancer Society
Amy Campbell	KABR
Pat Lehman	ICFSA
R. J. Wilson	KOSÉ



**TESTIMONY**

**TO: The Honorable Melvin Neufeld, Chair  
And Members of the House Federal and State Affairs Committee**

**FROM: Whitney Damron  
On Behalf of Lukas Liquor Super Store**

**RE: SB 532 - An Act concerning alcoholic beverages; relating to licenses and  
eligibility.**

**DATE: March 17, 2010**

Good afternoon Chairman Neufeld and Members of the House Federal and State Affairs Committee. I am Whitney Damron and I appear before you this today on behalf of Harry Lukas and Lukas Liquor Super Store in support of SB 532 that would permit the spouse of a retail liquor store licensee to apply for a farm winery license if they are not themselves a retail liquor store licensee.

Harry Lukas owns and operates the largest liquor store in Kansas, located generally just west of the intersection of 119<sup>th</sup> Street and Metcalf in Overland Park, Kansas. He has similarly-sized stores in Missouri and Colorado as well.

Under K.S.A. 2009 Supp. 41-311, a retailer is not allowed to have a beneficial interest in a manufacturer, distributor, farm winery or microbrewery licensed under the Act. A "beneficial interest" is defined elsewhere in state law to include one's spouse, thereby precluding the spouse from having an interest in these aforementioned licenses.

However, under K.S.A. 2009 Supp. 41-311(b)(4), a spouse may own and hold a retailer's license for another retail establishment.

With SB 532, we are seeking a change that would allow a spouse of a retailer who chooses not to have their own retailer's license to obtain a farm winery license.

By way of history, in 2004, Nancy Lukas began developing a vineyard in Miami County, which is called Sunnye Ridge Winery.

Nancy has planted a wide variety of grapes on 22 acres, including:

- Chardonnay
- Cabernet Franc
- Riesling
- Frontenac
- Frontenac Gris
- Lacressant
- Brianna
- Marquette
- Cabernet Hybrid on Norton Rootstock
- Zinfandel Hybrid on Norton Rootstock

To date her investment in this project exceeds \$400,000.00 and should she be allowed to obtain a farm winery license, her investment will increase significantly.

Under current law, as the wife of Harry Lukas, a licensed retailer, Nancy is prohibited from obtaining a farm winery license, so she has been selling her produce to other Kansas farm wineries. In 2009, Nancy sold more than 47 tons of grapes to Somerset Ridge Vineyard and Winery of Somerset, Kansas, owned by Dennis and Cindy Reynolds.

Nancy's vineyard has reached a maturity where she is now interested in developing her own label and vineyard as many others in Kansas have done and developing a national brand making mainstream wines with Kansas grapes, which is why I am before you today requesting a change in state liquor licensing laws that would allow her to apply for a farm winery license with the Division of Alcohol Beverage Control of the State of Kansas.

We would respectfully suggest current law that prohibits a spouse of a retailer from obtaining a farm winery license is discriminatory in nature and application, unfair and perhaps a violation of the 14<sup>th</sup> Amendment to the U.S. Constitution requiring equal protection to all citizens.

Current law discourages marriage; allows for licensure for those who might cohabitate and otherwise live as man and wife absent a marriage license and creates an insurmountable conflict should such respective licenses seek to be married.

I have shared this legislation with representatives of both the Kansas Grape Growers and Winemakers Association and the Kansas Viticulture and Farm Winery Association. The former association has endorsed the contents of SB 532 and I understand Dr. Phil Bradley will provide comments to the Committee for the Viticulturists.

We do not believe allowing the spouse of a retailer to obtain a farm winery license will jeopardize the state's 3-tier alcohol system and will serve to remove a roadblock to further development of the farm winery industry in our state. We have narrowly drawn our proposed amendment to effectively require a spouse to make a choice – they can still seek a retailer's license or they can seek a farm winery license, but not both.

We believe this change will have no impact on ABC's ability to enforce liquor laws and regulate the liquor industry in our state.

In the case of Nancy Lukas, passage of this legislation will lead to the development of a new farm winery, create jobs and advance agri-tourism in our state. Perhaps its passage will create new opportunities for others in Kansas as well.

The Senate Committee on Federal and State Affairs amended the bill to allow the spouse of a retailer applicant to hold a microbrewery license in addition to a farm winery license.

The bill had no opponents in the Senate, has no fiscal note and was approved on a vote of 39-0.

We ask for your favorable consideration of SB 532 and I would be pleased to stand for questions at the appropriate time.

Thank you.

Whitney Damron

#### **14<sup>th</sup> Amendment to the U.S. Constitution**

*Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

# HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

## SUBCOMMITTEE REPORT

MARCH 16, 2010

HB 2537

### Members:

Representative Forrest Knox, Chairperson

Representative Steve Brunk

Representative Steve Huebert

Representative Judith Loganbill

Representative Michael Peterson

The Subcommittee met on March 11 and 15, 2010, in room 346-S of the Statehouse at 1:00 pm. The Subcommittee adopted the following recommendation on a 2-1 vote, with one member absent and the Chairperson not voting. The Subcommittee recommends that HB 2537 be reported adversely.

### Subcommittee Concerns and Considerations

- 1) Importance of business stability and the predictability of the regulatory environment. Possible need of advanced notice and/or a phase-in of changes.
- 2) Careful study needed of the complexities of the tax issues involved.
- 3) Importance of maintaining strong regulation of alcoholic beverages. Need of a study of the effectiveness of state/local regulation.
- 4) Importance of the perspective of an understanding of the history of alcohol regulation in Kansas; the three-tiered system.
- 5) Need for the appointment of an interim committee to study this topic.

House Fed & State Affairs

Date: 3-17-2010

Attachment

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## SUBCOMMITTEE DELIBERATIONS

The Subcommittee at its first meeting decided that members individually would review the proposed legislation and then would make their observations in individual reports for the Chairperson to assemble and present at the second meeting. The Revisor of Statutes Office was requested to provide a section by section summary of HB 2537 which is included in the **Background Information** section below. Staff also was requested to provide a summary of the Kansas Liquor Laws and a brief history of the major developments in those liquor laws. In addition, staff was asked to provide a summary of the taxes levied on cereal malt beverages and liquor. Both reports are included below in the **Background Information** section.

The Subcommittee Chairperson presented each of the members' written reports and asked them to comment at the second meeting. Those reports follow.

**Representative Brunk:** First, business must have stability in the law ... stability begets predictability which businesses absolutely must have if they are to plan for the future. We (governments) look at budgets from a year to year basis. Business does not. They have loans to repay, improvements to plan for, etc. We cannot change the rules on the private sector overnight without adverse consequences for them. If we are to move down the path of opening up this kind of product to be sold in broader markets, I believe that it should be phased in or done with some kind of multi-year advance notice to protect those existing businesses from an immediate change that would negatively affect their respective business.

Second, this product does have the ability to harm lives if not used properly. We have made it an age appropriate product and I believe that there must be some system in place to assure the public that underage individuals will not have a greater or easier access to this product.

Third, all entities that sell this product should have the exact same rules and regulations apply to them. Licensing, employee qualifications, etc. should be identical for all sellers.

**Representative Peterson:** Kansas has for well over a century had a gradual development of the liquor laws that govern the possession, sale, and consumption of alcoholic beverages in the State of Kansas. These laws were put together at various times reflecting social and economic conditions of

the times and also Federal law. There has developed, throughout the evolution of liquor laws in Kansas, a multi-tiered distribution structure that has been protected from careless amendment for generations. It has been pointed-out that disturbing one tier in this multi-tiered structure can send economic tremors throughout the rest of the tiers.

HB 2537 which creates the KANSAS CEREAL MALT BEVERAGE RETAILER'S ACT amends statutes in the LIQUOR CONTROL ACT and also indirectly repeals all local ordinances and/or resolutions of local units of government concerning the purchase, sale, and consumption of cereal malt beverage. (See fiscal note for HB 2537)

The proponents of HB 2537 want a single strength beer, and the reason for this a subjective feeling by them that purchasers do not buy their product because it is supposedly inferior to the "strong beer sold by liquor stores and other establishments."

Kansas has two beers of relatively the same strength; the difference is in the way the alcoholic content is measured, one by weight, and the other by volume. 3.2% beer was developed by Congress as a method of getting around Prohibition during that period of time long before any of us was born. It was not classified as an "intoxicating beverage" and remained so until very recently. Strong beer, or what is known as 5% beer, was a creature of the 1947 Liquor Control Act, and it was only to be sold by licensed liquor stores.

The licensing procedure for 3.2 % beer for generations was on the local level with fees and enforcement by local units of government. The price for a cereal malt beverage or CMB license, at this time in Wyandotte County, is \$ 250.00, and all the expenses of enforcement are placed upon the local units of government. HB 2537 changes the licensing and enforcement from local units to the state. This denies to local units a significant amount of revenue for which they have already budgeted funds for the enforcement agents that they currently employ. "Strong beer" or 5% beer can only be purchased in liquor stores, private clubs, and licensed drinking establishments or LDE(s). However, private clubs and LDE(s) can purchase a 3.2 % license for \$25.00 for specialty beers, which are of lower alcohol content. This license is purchased from the Alcohol Beverage Control Bureau, but the local unit would also get a CMB fee since 3.2 beers can be sold in private clubs or LDE(s).

Historically when the legislature has made major changes in the possession, purchase, and/or consumption of alcoholic beverages they have done so without affecting the status of the two (2) classes of beer that are available for sale in the State of Kansas. This should be taken as a warning not to disturb the multi-tiered system or the *balance*, as it now exists. The major changes were made in:

1947 with the LIQUOR CONTROL ACT

1964 with the PRIVATE CLUB ACT

1986-88 when Kansas approved a Constitutional Amendment allowing

LIQUOR BY THE DRINK, in licensed drinking establishments or LDE(s)

The laws concerning the 2 strength beers were not disturbed. This is reason alone for moving with caution on this matter.

Another fact that is not taken into consideration by the proponents is the fact that we have "dry counties" in Kansas where only 3.2 beer is allowed to be purchased. These merchants would be put out of business. The economic impact of one strength beer and the transfer of enforcement and revenues to the state would have an extremely strong impact upon the local economies.

It has been traditional that liquor bills be passed out of committee and put on General orders only if necessary because we know that there will be amendments aimed at changing whatever law, so it is necessary that we be careful that an amendment that upsets the multi-tiered system does not get attached to the bill.

Convenience stores, grocery stores, and cereal malt beverage establishments such as, pizza restaurants, etc. employ individuals under the age of 21 as sales persons. We all know that it is illegal for anyone under the age of 21 to purchase or to possession any type of intoxicating beverage. We all know the desire of young people to experiment with intoxicating liquors, and since people of their own age and probably schoolmates of theirs are working in these establishments, it becomes rather easy for them to find a way to obtain intoxicating liquors. In discussing this matter with clients over the past two weeks, all of them are extremely apprehensive that any change will alter their business in a negative manner. The most frequent answer that they would prefer that the laws and the enforcement remain the same and should not be disturbed.

**Representative Loganbill:** Sections 59 to 71 get into the sales tax exemption statute (59) and other tax issues that we need to understand better. I have gone though the entire bill, taken notes, looked at some of the affected statues. There is more here than just permitting convenience stores to sell a stronger strength beer.

**Representative Knox:** My questions about the bill:

What good does this do for the public?

Is there competition now? Between liquor stores?

Would this make alcohol more available to youth?

What are the tax implications/changes?

My ideas:

- 1) Have single strength beer; eliminate CMB; put all alcoholic beverages in liquor stores.
- 2) Move to all local regulation, licensing, & enforcement of all liquor laws.

- 3) Eliminate state ABC (Alcohol Beverage Control).
- 4) All local taxation stays local: retail liquor taxes, any liquor sales tax, licensing fees.
- 5) Statues/taxes/fees controlled by state with freedoms/flexibility of locals allowed.

**Representative Huebert.** I believe that HB 2537 would be a good topic for interim study. My biggest concern is that enforcement of the state liquor laws appears to not be uniform under this bill. I support free markets and competition. Current law allows convenience store owners to own and operate a liquor store. Finally, we need to study tax implications and possible cost savings that would be found if we change our state liquor laws.

## BACKGROUND INFORMATION

### Section Summary of HB 2537

Sec. 1. K.S.A. 2009 Supp. 41-102 - Provides definitions for the Kansas Liquor Control Act (KLCA). The bill amends "beer" to be more than 4% alcohol by weight and adds definitions for a "liquor retailer" and a "CMB retailer".

Sec. 2. K.S.A. 2009 Supp. 41-104 - provides general prohibitions against selling, furnishing, producing or possessing alcoholic beverages unless as provided in the KLCA, the Club and Drinking Establishment Act (C&D Act) or the Kansas Cereal Malt Beverage Act (CMB Act). The bill incorporates CMB and the CMB Act into the provisions of this section.

Sec. 3. K.S.A. 2009 Supp. 41-209 - Provides for the powers of Director of Alcoholic Beverage Control (Director). The bill incorporates CMB into the provisions of this section.

Sec. 4. K.S.A. 41-210 - Provides the Director may propose such rules and regulations to carry out the intent of the KLCA. The bill extends rule and regulation authority over the CMB Act.

Sec. 5. K.S.A. 41-211 - Provides the scope of the rules and regulations, including what regulations must be adopted. The bill incorporates CMB into the provisions of this section.

Sec. 6. K.S.A. 41-304 - Provides for the various classes of licenses. The bill adds a CMB retailer's license.

Sec. 7. K.S.A. 41-307 - Provides what is permitted by a beer distributor's license. The bill incorporates CMB into the provisions of this section.

Sec. 8. K.S.A. 41-308 - Provides what is permitted by a retailer's license. The bill clarifies that this is a liquor retailer license, and incorporates CMB into the provisions of this section. The bill also permits such licensees to sell any goods or services that may be sold by a CMB retailer except for motor-vehicle fuel and cigarettes and tobacco products.

Sec. 9. K.S.A. 2009 Supp. 41-308b - Provides what is permitted by a microbrewery license. The bill incorporates CMB into the provisions of this section.

Sec. 10. K.S.A. 41-601 - Provides that every manufacturer, distributor, microbrewery selling beer at wholesale, and winery selling wine at wholesale shall file a monthly report with the Director reporting the total amount of alcoholic liquor manufactured and sold in the preceding month. Distributors shall also report the total amount of liquor purchased in the preceding month and the retailers to whom the liquor was sold. The bill incorporates CMB into the provisions of this section.

Sec. 11. K.S.A. 41-602 - Provides that every manufacturer, distributor, microbrewery selling beer at wholesale, and winery selling wine at wholesale shall maintain accurate records of alcoholic liquor produced, imported and sold. Director may prescribe the method for recordkeeping. The bill incorporates CMB into the provisions of this section.

Sec. 12. K.S.A. 41-701 - Provides restrictions on who a distributor may sell alcoholic liquor to. The bill incorporates CMB into the provisions of this section. Sales by manufacturers and distributors prohibited.

Sec. 13. K.S.A. 41-708 - Provides that no licensed retailer shall purchase alcoholic liquor from any source other than a licensed distributor, except that a retailer may purchase confiscated liquor at sheriff's sale. The bill incorporates CMB into the provisions of this section.

Sec. 14. K.S.A. 2009 Supp. 41-712 - Provides restrictions on the days and hours of retail sales of alcoholic liquor. The bill incorporates CMB into the provisions of this section.

Sec. 15. K.S.A. 41-717 - Provides restrictions on sales of alcoholic liquor on credit or by check. The bill incorporates CMB into the provisions of this section.

Sec. 16. K.S.A. 41-718 - Provides restrictions against sales of alcoholic liquor other than in the original package. The bill incorporates CMB into the provisions of this section.

Sec. 17. K.S.A. 41-724 - Provides restrictions on transportation of alcoholic liquor in the state. The bill incorporates CMB into the provisions of this section.

Sec. 18. K.S.A. 41-725 - Provides restrictions on common carriers delivering alcoholic liquor to any person other than the designated consignee or the consignee's agent. The bill incorporates CMB into the provisions of this section.

Sec. 19. K.S.A. 41-726 - Provides it is unlawful for any person to make a false statement to a common carrier for the purpose of obtaining alcoholic liquor. The bill incorporates CMB into the provisions of this section.

Sec. 20. K.S.A. 41-729 - Provides restrictions on sales of alcoholic liquor at less than cost. The bill incorporates CMB into the provisions of this section.

Sec. 21. K.S.A. 2009 Supp. 41-805 - Provides that violations of the KLCA are declared a common nuisance and offenders are guilty of a misdemeanor. The bill incorporates CMB into the provisions of this section.

Sec. 22. K.S.A. 41-806 - Provides that the district or county attorney, or the assistant attorney general for the ABC may bring an action for an injunction to abate any common nuisance. The bill incorporates CMB into the provisions of this section.

Sec. 23. K.S.A. 41-901 - Provides for what constitutes a violation under the KLCA and the penalties therefor. The bill incorporates CMB into the provisions of this section.

Sec. 24. K.S.A. 41-905 - Provides that any person who knowingly possesses transports or sells alcoholic liquor under a false brand label shall forfeit such alcoholic liquor and be subject to such punishment as prescribed by law. The bill incorporates CMB into the provisions of this section.

Sec. 25. K.S.A. 41-1001 - Provides that any charge of unlawfully manufacturing, possessing or selling alcoholic liquor shall be sufficient without a specific description of such liquor, and proof of any kind of alcoholic liquor shall be sufficient proof as to the character or kind of alcoholic liquor. The bill incorporates CMB into the provisions of this section.

Sec. 26. K.S.A. 41-1002 - Provides that in any charge of a violation of the KLCA it is not necessary to prove the amount or kind of liquor, but only that it was alcoholic liquor. The bill incorporates CMB into the provisions of this section.

Sec. 27. K.S.A. 41-1004 - Provides that possession of a special tax stamp issued by the federal government authorizing the sale of alcoholic liquor which is held by a person not licensed to sell liquor in the state is prima facie evidence of selling in violation of the KLCA. The bill incorporates CMB into the provisions of this section.

Sec. 28. K.S.A. 41-1101 - Provides restrictions on sales by distributors of alcoholic liquor. The bill incorporates CMB into the provisions of this section.

Sec. 29. K.S.A. 41-1102 - Provides that upon termination of business, or suspension or revocation of license, any licensee may sell any alcoholic liquor in the licensee's possession in accordance with rules and regulations adopted by Director. The bill incorporates CMB into the provisions of this section.

Sec. 30. K.S.A. 41-1122 - Provides that the Director may sell seized liquor. The bill incorporates CMB into the provisions of this section.

Sec. 31. K.S.A. 41-1123 - Provides that upon final determination that seized alcoholic liquor was unlawfully manufactured, stored or sold, and upon order of the court, the Director may sell any seized alcoholic liquor that is fit for human consumption. Any unfit liquor must be destroyed. The bill incorporates CMB into the provisions of this section.

Sec. 32. K.S.A. 41-1125 - Provides that the sheriff upon order of execution may sell any alcoholic liquor seized in execution of a judgment by a creditor and the proceeds of such sale shall go to the costs, the judgment creditor and to the debtor, if any remains. The bill incorporates CMB into the provisions of this section.

Sec. 33. K.S.A. 41-2604 - Provides that no person shall allow the unlawful consumption of alcoholic liquor in violation of the C&D Act on any property owned, leased or controlled by such person. The bill expands this to include in violation of the KLCA and the CMB Act.



Sec. 34. K.S.A. 41-2610 - Provides for what constitutes an unlawful act of licensee under the C&D Act. The bill incorporates CMB into the provisions of this section.

Sec. 35. K.S.A. 2009 Supp. 41-2611 - Provides for when the Director may suspend or revoke a license under the C&D Act. The bill incorporates CMB into the provisions of this section.

Sec. 36. K.S.A. 41-2614 - Provides restrictions on the hours of operation of licensees under the C&D Act. The bill incorporates CMB into the provisions of this section.

Sec. 37. K.S.A. 41-2632 - Provides that no manufacturer or distributor shall influence or coerce any licensee to (1) Purchase any particular brand of liquor, except to provide the information permitted by K.S.A. 41-703(d); or (2) purchase from a particular retailer. The bill incorporates CMB into the provisions of this section.

Sec. 38. K.S.A. 2009 Supp. 41-2637 - Provides what is permitted by a Class A Club license. The bill incorporates CMB into the provisions of this section.

Sec. 39. K.S.A. 2009 Supp. 41-2641 - Provides what is permitted by a Class B Club license. The bill incorporates CMB into the provisions of this section.

Sec. 40. K.S.A. 2009 Supp. 41-2642 - Provides what is permitted by a drinking establishment license. The bill incorporates CMB into the provisions of this section.

Sec. 41. K.S.A. 41-2643 - Provides what is permitted by a caterer's license. The bill incorporates CMB into the provisions of this section.

Sec. 42. K.S.A. 2009 Supp. 41-2645 - Provides that the Director may issue a temporary permit for the sale of alcoholic liquor for consumption on unlicensed premises, and governs the use of such a permit. The bill incorporates CMB into the provisions of this section.

Sec. 43. K.S.A. 2009 Supp. 41-2701 - Provides definitions for the CMB Act. The bill amends "CMB" to be not more than 4% alcohol by weight.

New Sec. 44. - Provides for the licensure of CMB retailers by the Director.

New Sec. 45. Provides that any foreign business entity must appoint a resident agent for service of process prior to being issued a CMB retailer license.

New Sec. 46. Provides the application process for obtaining a CMB license from the Director.

New Sec. 47. Provides that prior to issuing a CMB retailer license the local governing body of the location where the licensee will conduct the business may request a hearing on the issuance of a CMB license to the applicant.

New Sec. 48. Provides that a CMB retailer license shall only apply to the premises specified in the application.

New Sec. 49. Provides restrictions against selling CMB at less than the cost of acquisition.

New Sec. 50. Provides for the revocation or suspension of a CMB retailer license and other penalties for violating the CMB Act.

Sec. 51. K.S.A. 2009 Supp. 41-2704 - Provides restrictions on the days and hours for the sale of CMB. The bill adds a restriction on the sale of CMB in the original package, and provides the Director with authority to enter and inspect licensed premises.

Sec. 52. K.S.A. 41-2705 - Provides that loans or gifts of any kind made to a CMB retailer by a distributor are prohibited. The bill adds "CMB" to the term "retailer".

Sec. 53. K.S.A. 41-2706 - Provides restrictions on certain sales at retail of CMB made on credit. The bill adds "CMB" to the term "retailer".

Sec. 54. K.S.A. 41-2707 - Provides restrictions on certain sales at wholesale of CMB made on credit. The bill adds "CMB" to the term "retailer".

Sec. 55. K.S.A. 41-2709 - Provides the attorney general, county or city attorney with authorization to seek an injunctions against any violators of the CMB Act. The bill cleans up the language of the statute.

Sec. 56. K.S.A. 41-2722 - Provides restrictions on certain sales practices. The bill adds "CMB" to the term "retailer".

Sec. 57. K.S.A. 41-2726 - Provides restrictions on sales of CMB at less than acquisition cost. The bill cleans up the language of the statute.

Sec. 58. K.S.A. 2009 Supp. 41-2728 - Provides that regulation of CMB is by the CMB Act and prohibits any local law to the contrary. The bill cleans up the language of the statute.

Sec. 59. K.S.A. 2009 Supp. 79-3606 - Provides sales tax exemptions. The bill exempts sales of CMB from the sales tax.

Sec. 60. K.S.A. 79-4101 - Imposes an 8% tax on the sales of alcoholic liquor in the unopened container. The bill would expand the applicable sales to include sales of CMB.

Sec. 61. K.S.A. 79-4102 - Provides that the 8% tax is to be paid by the consumer or user. The bill makes amendments to conform to the amendments to K.S.A. 79-4101.

Sec. 62. K.S.A. 79-4103 - Provides that every entity making sales subject to the 8% tax is required to file a monthly return with the Department of Revenue. The bill makes amendments to conform to the amendments to K.S.A. 79-4101.

Sec. 63. K.S.A. 79-4104 - Provides a system of notification between the Director and the Department of Revenue with respect to the status of licensees. The bill makes amendments to conform to the amendments to K.S.A. 79-4101.

Sec. 64. K.S.A. 2009 Supp. 79-4108 - Provides for how the taxes collected are to be credited in the state treasury. The bill allocates 75% of the revenues to SGF and the remaining 25% to the local CMB revenue fund which is to be distributed quarterly to the cities and counties that police the licensees.

Sec. 65. K.S.A. 79-41a01 - Provides definitions for K.S.A. 79-41a01 et seq. The bill adds a definition for "CMB retailer".

Sec. 66. K.S.A. 79-41a02 - Imposes a tax of 10% on sales of alcoholic liquor for consumption on the premises. The bill would expand the applicable sales to include sales of CMB.

Sec. 67. K.S.A. 2009 Supp. 79-41a03 - Provides for the collection and reporting of the tax imposed by K.S.A. 79-41a02. The bill makes amendments to conform to the amendments to K.S.A. 79-41a02.

Sec. 68. K.S.A. 79-41a04 - Provides for how the taxes collected are to be credited. The bill makes amendments to conform to the amendments to K.S.A. 79-41a02.

Sec. 69. K.S.A. 79-41a06 - Provides for the requirement of a registration certificate to sell alcoholic liquor. The bill makes amendments to conform to the amendments to K.S.A. 79-41a02.

Sec. 70. K.S.A. 79-41a07 - Provides the Director of Taxation may seek an injunction against any entity violating K.S.A. 79-41a01 et seq. to prevent such entity from operating. The bill makes amendments to conform to the amendments to K.S.A. 79-41a02.

Sec. 71. K.S.A. 79-41a08 - Provides that the tax imposed by K.S.A. 79-41a02 is considered a lien on the business and property of the licensee. The bill makes amendments to conform to the amendments to K.S.A. 79-41a02.

Sections repealed by the bill:

K.S.A. 41-103 - Provides the legislative declaration of public policy that CMB must be sold separately from alcoholic liquor.

K.S.A. 2009 Supp. 41-2702 - Provides for the licensure of a CMB retailer by the local governing body of the location where the licensed premises is to be located.

K.S.A. 2009 Supp. 41-2703 - Provides restrictions on who can be issued a CMB retailer license by the local governing body.

K.S.A. 2009 Supp. 41-2708 - Provides for the revocation or suspension of a CMB retailer license by the local governing body.

K.S.A. 41-2712 - Provides a severability provision for the CMB Act.

## Kansas Liquor Laws

**Brief History of Kansas Liquor Laws.** Some major dates and developments in the history of Kansas liquor laws are listed below.

1880	Voters approved a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors.
1917	The Legislature passed the "Bone Dry Law," prohibiting the possession of all liquor.
1937	The Legislature authorized the sale of cereal malt beverage (3.2 percent beer) for consumption both on- and off-premises.
1948	Voters approved a constitutional amendment authorizing the Legislature to "regulate, license, and tax the manufacture and sale of intoxicating liquor . . . ."
1949	The Legislature enacted the Liquor Control Act in response to the 1948 constitutional amendment.

1965	The Legislature enacted the Private Club Act providing for the sale of liquor in private clubs.
1979	Private clubs were statutorily authorized to sell liquor by the drink to members and guests. "Liquor Pools" were eliminated and a 10 percent "drink tax" was imposed.
1983	Farm wineries were authorized to sell table wine made from Kansas products.
1986	Voters approved a constitutional amendment permitting sale of liquor by the drink in establishments open to the public.
1987	Drinking establishments were created as a category of licenses permitted to sell liquor by the drink. Microbreweries were permitted to manufacture and sell beer.
1990	The Nonalcoholic Malt Beverages Act authorized the sale of malt beverages containing less than 0.5 percent alcohol.
1994	Election day sales legalized.
1995	Credit card sales authorized.

2002	The Beer and Cereal Malt Beverage Keg Registration Act required retailers to register all beer kegs.
2005	The Kansas Liquor Control Act and Cereal Malt Beverage Act are applied uniformly to all cities and counties. The state may issue licenses for retail liquor stores in any city unless the governing body of a city adopts an ordinance to prohibit retail liquor stores within the city. Sunday sales and holiday sales of liquor and cereal malt beverage for off-premise consumption is prohibited within a city or within the unincorporated area of a county unless the governing body adopts an ordinance or resolution authorizing Sunday and holiday sales.
2006	The Kansas Liquor Control Act allows direct shipment of wine from wine manufacturers to the consumer if such consumer is 21 years of age or older, purchases the wine while physically present on the premises of the wine manufacturer, uses the wine for personal consumption, and pays all applicable taxes. The Act allows in-state farm wineries and out-of-state wineries, manufacturing wine in quantities not exceeding 100,000 gallons, to ship wine to a licensed retailer designated by the consumer. In-state farm wineries and out-of-state wineries, manufacturing wine in quantities exceeding 100,000 gallons, to ship wine to a licensed distributor who would distribute it to a licensed retailer designated by the consumer. The Act permits Kansas wineries to ship wine to other states in conformity with other states' laws. Wine and beer, which is legally available in Kansas, is allowed to be sold and consumed at the Kansas State Fair. Legal patrons of drinking establishments are allowed to remove one or more opened containers of alcoholic liquor from a licensed premise if such containers are the original containers, securely resealed, placed in a tamper-proof transparent bag and possess a dated receipt for the unfinished container. The Act allows an unfinished container to be transported behind the last upright seat or in an area not normally occupied by the driver or the passenger, if the vehicle does not have a trunk.

2007	<p>The Kansas Liquor Control Act allows a licensed farm winery or a person who holds an interest in a licensed farm winery to hold a class B club license, a drinking establishment license, and a caterer's license. The Act makes the statutes consistent so that a farm winery also may be a caterer. The bill also allows microbreweries to have more than one microbrewery license. The Act exempts specified charitable and campaign fund raising activities from the requirement to have a liquor license or a temporary permit to serve alcohol at their events.</p>
2008	<p>The Kansas Liquor Contract Act was amended to allow a farm winery to sell wine, manufactured by the winery, to holders of temporary permits who sell and serve alcoholic liquor. The Act also allows the temporary permit holders at the State Fair to sell, in its original, unopened container, wine that is being sold by the glass. The Act eliminates the requirement that not less than 50.0 percent of agricultural products used in the manufacturing of domestic microbrewery beer be grown in Kansas. The Act permits consumption of alcoholic liquor on the premises of any Kansas National Guard Armory. In addition, a defendant who has served a minor under 21 years of age can use as evidence against the revocation, suspension, or imposition of a fine, that the driver's license or identification card presented by the minor reasonably appeared to contain a photograph of the minor purporting to establish that such minor was 21 years of age. The Act also requires a retailer, prior to selling a keg of beer or cereal malt beverage, to record what reasonably appears to contain a purchaser's picture and signature. Finally, the Act allows issuance of a license to sell retail alcoholic liquor in the original package on premises located in an unincorporated area of a county.</p>
2009	<p>The Kansas Liquor Control Act and Club and Drinking Establishment Act are amended to permit in-state and out-of-state wineries to directly ship wine to consumers in Kansas. Wineries would be limited to 12 cases of wine per consumer per calendar year, and the consumer must be 21 years or older. The Acts permits wine to be sold at a <i>bona fide</i> farmer's market. The Acts allow drinking establishments to store wine on the premise which has been sold to a customer for future consumption. The Acts permit consumption of alcoholic liquor at special events held on public streets, alleys, roads, sidewalks, or highways closed to motor traffic.</p>



## Kansas Liquor Taxes

Kansas has three levels of liquor taxation, each of which imposes different rates and provides for a different disposition of revenue, including:

Gallonage. The first level of taxation is the gallonage tax, which is imposed upon the person who first manufactures, sells, purchases, or receives the liquor or cereal malt beverage (CMB).

Enforcement or Sales. The second level of taxation is the enforcement or sales tax, which is imposed on the gross receipts from the sale of liquor or CMB to consumers by retail liquor dealers and grocery and convenience stores; and to clubs, drinking establishments, and caterers by distributors.

Drink Tax. A tertiary level of taxation is levied on the gross receipts from the sale of liquor by clubs, caterers, and drinking establishments.

### **Gallonage**

\* Since the tax is imposed upon the person who first manufactures, uses, sells, stores, purchases, or receives the alcoholic liquor or cereal malt beverage, the tax has already been paid by the time the product has reached the retail liquor store – or in the case of CMB, grocery or convenience store.

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

***So when the liquor store owner purchases a case of light wine from a distributor, the 30 cents per gallon tax has already been built in as part of that store owner's acquisition cost.***

\* Gallonage tax receipts in FY 2009 were approximately \$21.2 million. Of this amount, nearly \$10.9 million was attributable to the beer and CMB tax.

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

**Liquor gallonage tax rates have not been increased since 1977.**

***Enforcement and Sales***

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

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

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

Sales. CMB purchases in grocery or convenience stores are not subject to the enforcement tax, but rather are subject to state and local sales taxes. The state sales tax rate is 5.3 percent, and combined local sales tax rates range as high as 3.75 percent.

***CMB sales therefore are taxed at rates ranging from 5.3 to 9.05 percent.***

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

<b>Enforcement and Sales Tax – Disposition of Revenue</b>			
	SGF	State Highway Fund	Local Units
Enforcement (8 percent)	100.00%	---	---
State Sales (5.3 percent)	87.74%	12.26%	---
Local Sales (up to 3.0 percent)	---	---	100.00%

\*\* Enforcement tax receipts in FY 2009 were approximately \$53.8 million. Grocery and convenience store sales tax collections from CMB are unknown.

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

***Drink***

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

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

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

\*\*\* Liquor drink tax revenues in FY 2009 were about \$36.5 million, of which \$9.1 million were deposited in the SGF.

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

# HOUSE BILL No. 2444

By Committee on Federal and State Affairs

1-14

9 AN ACT concerning the transfer of the office of state fire marshal to the  
10 insurance department; amending K.S.A. 75-1511, 75-1515 and 75-  
11 1516 and K.S.A. 2009 Supp. 40-110 and repealing the existing sections;  
12 also repealing K.S.A. 2009 Supp. 75-1510.  
13

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

15 New Section 1. There is hereby established, within and as a part of  
16 the insurance department, a division of the state fire marshal, the head  
17 of which shall be the state fire marshal. Under the supervision of the  
18 insurance commissioner, the state fire marshal shall administer the divi-  
19 sion of the state fire marshal. The insurance commissioner shall appoint  
20 the state fire marshal, subject to confirmation by the senate as provided  
21 in K.S.A. 75-4315b, and amendments thereto, and the state fire marshal  
22 shall serve at the pleasure of the insurance commissioner. Except as pro-  
23 vided by K.S.A. 46-2601, and amendments thereto, no person appointed  
24 as state fire marshal shall exercise any power, duty or function as state  
25 fire marshal until confirmed by the senate. Any person appointed as state  
26 fire marshal shall have a knowledge of building construction and, at the  
27 time of appointment, shall have had not less than five years of experience  
28 in fire safety inspection and investigation. The state fire marshal shall  
29 maintain an office in the city of Topeka.

30 Sec. 2. K.S.A. 2009 Supp. 40-110 is hereby amended to read as fol-  
31 lows: 40-110. (a) The commissioner of insurance is hereby authorized to  
32 appoint an assistant commissioner of insurance, *the state fire marshal as*  
33 *provided by section 1, and amendments thereto*, actuaries, two special  
34 attorneys who shall have been regularly admitted to practice, an executive  
35 secretary, policy examiners, two field representatives, and a secretary to  
36 the commissioner. Such appointees shall each receive an annual salary to  
37 be determined by the commissioner of insurance, within the limits of  
38 available appropriations. The commissioner is also authorized to appoint,  
39 within the provisions of the civil service law, and available appropriations,  
40 other employees as necessary to administer the provisions of this act. The  
41 field representatives authorized by this section may be empowered to  
42 conduct inquiries, investigations or to receive complaints. Such field rep-  
43 resentatives shall not be empowered to make, or direct to be made, an

supervisory

in administration and

Sec. 2. Attached

Renumber remaining sections

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Attachment 3

3-2

1 examination of the affairs and financial condition of any insurance com-  
2 pany in the process of organization, or applying for admission or doing  
3 business in this state.

4 (b) The appointees authorized by this section shall take the proper  
5 official oath and shall be in no way interested, except as policyholders, in  
6 any insurance company. In the absence of the commissioner of insurance  
7 the assistant commissioner shall perform the duties of the commissioner  
8 of insurance, but shall in all cases execute papers in the name of the  
9 commissioner of insurance, as assistant. The commissioner of insurance  
10 shall be responsible for all acts of an official nature done and performed  
11 by the commissioner's assistant or any person employed in such office.  
12 All the appointees authorized by this section shall hold their office at the  
13 will and pleasure of the commissioner of insurance.

14 Sec. 3. K.S.A. 75-1511 is hereby amended to read as follows: 75-  
15 1511. All the jurisdiction, rights, powers, duties and authority now vested  
16 in or imposed upon the Kansas state department of inspections and reg-  
17 istration or the director thereof which were transferred to said depart-  
18 ment or the director thereof from the state fire marshal by the provisions  
19 of chapter 285 of the Laws of 1933, and including the jurisdiction, rights,  
20 powers, duties and authority conferred, imposed and provided in chapter  
21 31, section 72-4605, 75-1503 and 75-1505 to 75-1509, both sections in-  
22 clusive, of the General Statutes of 1935 and acts amendatory thereof and  
23 supplemental thereto are hereby transferred to, vested in and imposed  
24 upon the state fire marshal created in this act *and subject to the super-*  
25 *vision of the commissioner of insurance.*

26 Sec. 4. K.S.A. 75-1515 is hereby amended to read as follows: 75-  
27 1515. The attorney general shall appoint, with the approval of the state  
28 fire marshal *and the commissioner of insurance*, an assistant attorney gen-  
29 eral who shall be the attorney for the state fire marshal and the ~~office~~  
30 *division* of the state fire marshal. Such attorney shall receive an annual  
31 salary fixed by the attorney general with the approval of the state fire  
32 marshal *and the commissioner of insurance*. Such salary shall be paid from  
33 moneys appropriated for the *division of the state fire marshal*.

34 Sec. 5. K.S.A. 75-1516 is hereby amended to read as follows: 75-  
35 1516. The assistant attorney general appointed under K.S.A. 75-1515, *and*  
36 *amendments thereto*, shall be the legal advisor for the ~~office~~ *division* of  
37 the state fire marshal. The assistant attorney general appointed under  
38 K.S.A. 75-1515, *and amendments thereto*, shall appear for and on behalf  
39 of the state fire marshal, or any of the deputies of the state fire marshal,  
40 in any litigation that may arise in the discharge of the duties of the ~~office~~  
41 *division* of the state fire marshal.

42 Sec. 6. K.S.A. 75-1511, 75-1515 and 75-1516 and K.S.A. 2009 Supp.  
40-110 and 75-1510 are hereby repealed.

1 Sec. 7. This act shall take effect and be in force from and after its  
2 publication in the statute book.

B-3

H-E

Sec. 2. (a) The state fire marshal's office created by K.S.A.75-1510 through 75-1517, and amendments thereto, is hereby abolished.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the existing state fire marshal's office and the existing state fire marshal are hereby transferred to and conferred and imposed upon, the Kansas department of insurance and the division of state fire marshal and the state fire marshal established by this act.

(c) Except as otherwise provided by this act, the Kansas department of insurance and the state fire marshal established by this act shall be the successor in every way to the powers, duties and functions of the state fire marshal's office and the existing state fire marshal in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the department of insurance and the state fire marshal established by this act shall be deemed to have the same force and effect as if performed by the state fire marshal's office and the state fire marshal, respectively, in which such powers, duties and functions were vested prior to the effective date of this act.

(d) Except as otherwise provided by this act, whenever the state fire marshal's office or state fire marshal, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the division of state fire marshal within the Kansas department of insurance and the office of state fire marshal established by this act.

(e) Except as otherwise provided by this act, whenever the state fire marshal, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the state fire marshal established by this act.

(f) All rules and regulations of the state fire marshal's office or the state fire marshal in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the Kansas department of insurance, and the state fire marshal established by this act until revised, amended, revoked or nullified pursuant to law.

(g) All orders and directives of the office of state fire marshal or the state fire marshal in existence on the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the state fire marshal and the division of state fire marshal, Kansas department of insurance established by this act, until revised, amended or nullified pursuant to law.

(h) On the effective date of this act, the state fire marshal and Kansas department of insurance shall succeed to whatever right, title or interest the office of state fire marshal has acquired in any real property in this state, and the state fire marshal shall hold the same for and in the name of the state of Kansas. On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the office of state fire marshal or the state fire marshal to acquire, hold or dispose of real property or any interest



therein, the Kansas department of insurance and the state fire marshal shall succeed to such power or authority.

(i) The state fire marshal and the division of state fire marshal of the Kansas department of insurance, established by this act shall be continuations of the office of state fire marshal and the state fire marshal.

(j) On the effective date of this act , all officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the office of state fire marshal which are transferred by this act to the division of state fire marshal, Kansas department of insurance, and who, in the opinion of the commissioner of insurance and the state fire marshal, are necessary to perform the powers, duties and functions of the division of state fire marshal, shall be transferred to, and shall become officers and employees of the Kansas department of insurance.

(k) Officers and employees of the office of state fire marshal transferred by this act shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. All transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this act shall affect the classified status of any transferred person employed by the office of state fire marshal prior to the date of transfer.

Thank you, Chairman Neufeld and committee members, for allowing me the opportunity to appear before you today in support of HB2741, a trailer bill for HB2221. The items in this bill are to address some of the concerns I addressed on the house floor during the motion to concur on a bill that had not been heard or debated in a house committee.

1. Address dates in HB2221 – These will allow people an opportunity to comply with parts of HB2221 where the date has already passed. HB2221 does not go into effect until July 1, 2010, which does not allow some provisions of HB2221 to be complied with.
2. Removes the shelf space provision (Phillip Morris Amendment) that is currently in litigation on the federal level. The senate conference committee was not opposed to removing that last year when they did meet with the house.
3. Allows businesses that sell lottery and Keno tickets, and have gross food sales of less than 30%, to choose to allow smoking in their facility. This will be most beneficial for businesses that are in the area of the state owned casino's which were exempted from the smoking ban by the state in HB2221. It was an opinion that the wording in the lottery amendment meant gambling, and that is why we have state owned casinos today. We should treat private businesses that assist us with increasing gambling dollars to be on a level playing field with the state owned casinos or, as was said at a legislative forum in Wichita a few weeks ago, the state owned bars.
4. Provides for a bar or tavern, that is not exempt from the smoking ban and does not have the ability to provide an outdoor patio area because of space limitations, to be able to do so within a three foot radius of the business entrance.
5. Allows for a charitable 501c3 to be exempt from the ban for fundraising purposes. We currently have the Setter Foundation in Wichita, that has a cigar and wine fundraising dinner once a year, to provide funds for some small organizations that struggle to make ends meet while providing services to some of the most vulnerable. One of the organizations is Gerard House, which provides a home environment for unwed mothers, to assist them during their pregnancy. They are assisted with completing their education or at least a GED. These young women also participate in proper prenatal care and training on what to expect when the baby arrives and how to care for the baby as well. They are also taught skills that many of us take for granted on finances, work ethic, how to apply for a job etc.

It is my belief, along with many others, that Kansas should be willing to listen to all of their people and work with them and their business, to allow them to continue being able to provide for their families and the wants of their consumers.

Once again, thank you, Mr. Chairman and committee members, for allowing me this opportunity to appear before you today. I will be happy to stand

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**HEIN LAW FIRM, CHARTERED**

5845 SW 29<sup>th</sup> Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

Fax: (785) 273-9243

*Ronald R. Hein*

*Attorney-at-Law*

Email: rhein@heinlaw.com

**Testimony Re: HB 2741  
House Federal and State Affairs Committee  
Presented by Ronald R. Hein  
on behalf of  
Kansas Restaurant and Hospitality Association  
March 17, 2010**

Mr. Chair, Members of the Committee:

My name is Ron Hein, and I am Legislative Counsel for the Kansas Restaurant and Hospitality Association (KRHA). The Kansas Restaurant and Hospitality Association, founded in 1929, is the leading business association for restaurants, hotels, motels, country clubs, private clubs and allied business in Kansas. Along with the Kansas Restaurant and Hospitality Association Education Foundation, the association works to represent, educate and promote the rapidly growing industry of hospitality in Kansas.

KRHA is neutral on HB 2741 but wishes to make the following comments.

The KRHA believes that any smoking ban should exempt out door smoking areas, such as patios. Requiring seats and tables to be at least 10 foot radius from a door is problematic for many of our members, and we would like to see a total exemption for all outdoor areas.

Additionally, some of our members incurred significant expense to provide ventilation systems and separate rooms in order to comply with local ordinances banning smoking, and did so in good faith. Any statewide smoking ban should allow some sort of transition period, perhaps two years, for such restaurants to attempt to recoup the expense of these facilities before the total ban goes into effect.

Thank you very much for permitting me to testify with regards to HB 2741.

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Attachment 5



**TESTIMONY**

TO: The Honorable Melvin Neufeld, Chair  
And Members of the House Federal and State Affairs Committee

FROM: Whitney Damron  
On behalf of Swisher International, Inc.

RE: HB 2741 – An Act concerning crimes and punishment; smoking and cigarette sales.

DATE: March 17, 2010

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

On behalf of Swisher International, Inc., a leading manufacturer of cigars, moist snuff and other tobacco products, we offer our support for amendments to the state's smoking ban recently signed into law that are proposed in HB 2741. Specifically, we are in support of language to remove a prohibition on self-service displays that was included in the smoking ban bill.

By way of information, Swisher was started as a small tobacco store in 1861 when David Swisher received the tobacco company in settlement of a debt. Today, Swisher International is a leader in the tobacco business accounting for 1/3 of the nation's cigar sales and is one of the nation's largest cigar exporters.

Although Swisher is widely known for its popular Swisher Sweets and some of America's favorite cigars, the company manufactures and sells a wide variety of tobacco products, including premium cigars and smokeless products.

Shelf space restrictions are marketed to the public by its proponents as youth access measures designed to keep cigarettes and tobacco products out of the hands of shoplifting minors. In actuality, the self-service prohibitions are a carefully designed strategy by one of the largest tobacco companies in the world to stifle competition by requiring all cigarettes and tobacco products be placed beyond the customer's reach and in many instances, eyesight, which means the more popular brands will be on display and the less popular and value-priced brands will be stored under the counter or in the back of the store.

Most convenience stores have limited space behind the counter in which to store all of their tobacco products. This is why many smaller tobacco retailers have such items located in designated areas of their store which allows for display of all products for sale. If a store with limited display space is required to move all cigarettes and tobacco products behind the counter, it is a given that the more popular brands, such as Marlboro cigarettes and Skoal and Copenhagen smokeless products will get the premium shelf space and display racks. The rest of the store's products will be stored under the counter, in the back or dropped from their inventory altogether.

919 South Kansas Avenue ■ Topeka, Kansas 66612-1210

(785) 354-1354 (O) ■ (785) 354-8092 (F) ■ (785) 224-6661

www.wbdpa.com ■ wbdamron@aol.com

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Attachment 6

In many instances, these big companies pay for the display racks and even pay for the best marketing space in the store. It's a free country, so to speak and the retailers like the benefits provided by these big tobacco companies. We're not here to argue with that. But the State of Kansas should not become an active co-conspirator with one of the largest tobacco companies in the world and their efforts to squeeze the smaller and value priced cigarette and tobacco companies out of business. If you do, you will be doing a great disservice to the tobacco consuming public and ultimately lessen their options for these products, which will lead to even greater market power for these industry-dominating tobacco companies resulting in higher prices for consumers.

As I understand it, although HB 2221 has been signed into law, it has not been published in the Kansas Statutes, so to remove this prohibition from the changes enacted in the smoking ban bill, HB 2741 re-writes this section to remove the definition of a "self service display" and also removes the prohibition from utilizing self-service displays.

Language removed from the Act through this bill is as follows:

**HB 2221 (Enrolled Version):**

*Section 9. K.S.A. 2008 Supp 79-3301 is hereby amended to read as follows: 79-3301. As used in K.S.A. 79-3310 et. seq., and amendments thereto:*

*(t) "Self-service display" means a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer's consumers, and from which such consumers can readily access cigarettes or tobacco products without the assistance of a salesperson. A display case that holds cigarettes or tobacco products behind locked doors does not constitute a self-service display.*

(This definition is removed on page 11 of HB 2741, where "Self-service display" was previously inserted following subsection (s).

*Section 10. K.S.A. 2008 Supp. 79-3321 is hereby amended to read as follows: 79-3321. It shall be unlawful for any person:*

*(u) To sell cigarettes or tobacco products by means of a self-service display in any establishment, except that the provisions of this subsection shall not apply to:*

- (1) A vending machine that is permitted under subsection (t); or*
- (2) a self-service display that is located in a tobacco specialty store.*

(This prohibition is removed on page 14 of HB 2741, where restrictions on self-service displays were previously inserted following subsection (t).

In closing, I would note that the Federal government has enacted restrictions on self-service displays that are being challenged in Federal court by several of the affected parties. There may come a time when self-service displays are prohibited nationwide, but until such restrictions are upheld, we would respectfully request they not be enacted in our statutes.

On behalf of Swisher International, I thank you for your consideration of our comments.

Whitney Damron

## Nikki Feuerborn

---

**From:** Philip Bradley [phil@klba.org]  
**Sent:** Wednesday, March 17, 2010 10:47 AM  
**To:** Nikki Feuerborn  
**Subject:** HB 2741

The below organizations are in favor of HB 2741 and ask you to send it out favorably!

Thank you!

Phil

The more things change, the more they remain... insane.

Michael Fry and T. Lewis, *Over the Hedge*, 05-09-04

Philip Bradley, Ph.D.  
785-766-7492  
[phil@klba.org](mailto:phil@klba.org)

pbcc consulting  
representing;  
Kansas Licensed Beverage Association  
Kansas Viticulture & Farm Winery Association  
Craft Brewers Guild of Kansas  
Equal Entertainment Group

House Fed & State Affairs  
Date: 3-17-2010

Attachment 7

## Debbie Bartuccio

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**From:** sheila martin [anono1955@yahoo.com]  
**Sent:** Wednesday, March 17, 2010 12:41 PM  
**To:** Debbie Bartuccio  
**Subject:** Fw: Testimony in Support of House Bill 2741- Sheila Martin 29 year business owner in Hutchinson

--- On Wed, 3/17/10, sheila martin <anono1955@yahoo.com> wrote:

From: sheila martin <anono1955@yahoo.com>  
Subject: Testimony in Support of House Bill 2741- Sheila Martin 29 year business owner in Hutchinson  
To: debbie.bartuccio@house.ks.gov  
Date: Wednesday, March 17, 2010, 12:38 PM

Ladies and Gentlemen,

According to our Governor, this session was supposed to be about creating JOBS, JOBS, JOBS.

Without the approval of House Bill 2741, which allows businesses to legally acquire private club status, many businesses will be doomed to fail.

Businesses here in Hutchinson, AND our City Council, support the rights of business owners to allow smoking in adults only venues, which House Bill 2741 would allow. Without this trailer, three long term business owners have told me, they will close ON July 1, as they are not willing to operate at a %15 to %75 loss. The businesses which have closed in Salina and Emporia already, due to the smoking bans, are small family owned taverns and pool halls, who would have given anything to be allowed to go private, and in doing so, would still be in business, and paying their taxes and bills and supporting their families.

In Wichita, businesses fought hard and won the right to buy their \$250 per year, smoking allowed licenses from the City. These will all be thrown out without House Bill 2741.

I have spent almost two years fighting smoking bans, which I know, for a fact, KILL small businesses. They cause lost revenue, lost jobs, lost health insurance, lost homes, and broken hearts and dreams.

If someone wants to be non smoking, that's great. Restuarants in Hutchinson are, and several bars are by choice, as they want to appeal to that percentage of folks who go out in the evenings.

The smoking ban, without House Bill 2741, not only hurts small businesses whose customers, (with the owners permission) want to smoke, but also those non smoking businesses, who will lose the distinction of not allowing it.

The smoking ban without House Bill 2741 is a LOSE LOSE for Kansas business, for property rights, for personal responsibilty, and for people to use THEIR initiative and courage to ever open another small tavern or pool hall in Kansas. Why bother?

We small business owners have faces, and names, and bills to pay. We built Kansas and pay massive taxes for the priveledge of selling a \$2.75 pint of beer to working men and women in our communities.

Some of you must consider us pretty low, but I have yet to meet ONE small business owning Kansan who wasn't proud as punch for what they have achieved. And %10 of EVERY sale goes to Kansas. ( The last three years I paid in over \$38,000.00 just in Liquor Excise Tax to you. THAT does not include the %8 of everything I bought so I could sell it.) Multiply my little tavern by 1,500 small businesses.

In the first year of the Ohio State ban, 380 small businesses closed.

In Hawaii, they have lost 20% of their Japanese tourism business, due to the ban there.

Please listen to a TAX PAYER for a change??? Not to the lobbyists from Johnson and JOhnson and Pfizer, and not to the tax PAID lobbyists who, amazingly, work for the State of Kansas non profits. (Who also receive grant funding from pharma.) They know THEI grants depend on demonizing smokers onto nicotine replacement products. NO

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tobacco. Which, as far as I'm concerned makes them huge hypocrites!

Putting people outside to smoke, puts them in the public eye, especially to children in vehicles driving by.

Let every business who agrees to hire and serve only those over 21, and to places that sell a smaller percentage of food, decide for themselves, based on THEIR business knowledge in THEIR own business, whether to allow smoking or not. If it is true that no one wants to be in a business that allows it, then the free market will decide, and they will close.

Without House Bill 2741, many of us will fail in the first year. Some will drag on, and spend their life savings until that is gone, then they will close. The State will have more unemployed and more lost revenue.

I have access to many studies concerning business losses due to smoking bans. People are driving to liquor stores, buying thier beer, and going home, when yiou throw them out of their neighborhood tavern. The State does NOT get Liquor Excise Tax for that.

Any information or testimony that I can give, that would help shed some light on this situation, I would be glad to give. My number is below. And, unlike the pro ban lobbyists, I am willing to swear on a stack of bibles, that I will tell the truth! They never have to.

My tavern, that I have run for 29 years, is exempt from the current State ban. I will fight this, as long as I can stand, for those small business people who own their property, and wish to allow the use of a legal, licensed by the State product, on their property.

Praying for your help in this matter

Sincerely,

Sheila Martin

12 Countryside Dr.

Hutchinson Kansas 67502

620 664 3242

SEE BELOW- article from Kirkwood Missouri (I have information from many sources on business losses)

"Kirkwood Ice and Fuel Co. reports that their overall business is down 15 percent due to the smoking ban. They also cautioned that one Kirkwood bar mentioned in the Post article is avoiding losses by simply ignoring the ban.

Mike Duffy's Pub & Grill reports that their late night bar business is down due to the smoking ban.

Graham's Grill and Bayou Bar told me that they were considering discontinuing their late night live music starting next week due to the smoking ban. They said they would "hold on" and stay open as long as they could. They report a 12 percent overall loss due to the smoking ban. They report their food sales are up somewhat but their alcohol sales are way, way down due to the ban. They report that bar customers still show up but don't stay nearly as long.

Van's Tavern in Kirkwood is down 35-40 percent due to the ban. The manager said her tips dropped from \$800-1000 per week to \$300. The manager said Van's is so badly hurt because it is a real bar that serves no food. It is a place people go to have a drink and a smoke after they have been to a restaurant. This is the sort of place County Councilman Barbara Fraser sought to protect by exempting drinking establishments that serve less the 25 percent food."



Mr. Chairman and members of the Committee on Federal and State Affairs,

My name is Father H Setter. I am a priest in Wichita and the Founder of The Setter Foundation, a 501(c)(3) organization. In addition, I am the Chaplain of the International Premium Cigar and Pipe Retailers Association or IPCPR. Because of my unique relationship with the Premium Cigar Industry I am able to rely on them to support me in an effort that I began 14 years ago hosting an Annual Benefit Cigar Dinner for Local Charity. Since my first of 13 consecutive years of hosting this annual dinner I have been able to raise over \$191,000.00 that I have given to local charities that depend on private support to continue their efforts in assisting those less fortunate.

An attachment includes the details about my charity event.

I am asking you to support HB2741 because it includes an exemption for my annual benefit dinner. The current smoking ban that the state has adopted basically eliminates my charity event. I am asking you to support me on this especially since the "ban" does include some exemptions already. Unfortunately my exemption was removed for consideration when the Senate passed their version of the smoking ban last year. Ironically two years ago there was an exemption when the first Senate bill came from committee. The problem I have with this is in the fact that the state has exempted its State owned casinos, private clubs and even nursing homes. My charity event is in place to raise money to give away. Additionally, my event only takes place once a year for about five (5) hours. If exemptions can be included for private clubs, casinos, and nursing homes year round, then why can't I have an exemption that's once a year for about 5 hours total? How much money are these casinos, and private clubs, and nursing homes giving back to the local communities because of their right to smoke? I have given back \$191,000.00 and would like the opportunity to give back more. I assure you I won't be able to without my Annual Benefit Cigar Dinner for Local Charity.

Therefore, I would kindly ask that you support this bill since it does include my much needed and hoped for exemption. I personally have a difficulty with an exemption for the State owned casinos in order to keep revenue up and denying my charity event an exemption when I'm trying to help the less fortunate of our local communities by giving them monies to sustain what governments are not able to give such agencies.

I thank you for your time and consideration.

Father H Setter

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Attachment

9

House Committee on Federal and State Affairs attachment

Father H's Annual Benefit Cigar Dinner Beneficiaries

- 1997 Orpheum Theater Renovation Effort \$3,600
- 1998 Guadalupe Clinic \$8,000
- 1999 Kansas Foodbank \$20,000
- 2000 Anthony Family Shelter \$18,000
- 2001 Literacy Resources of the Metropolitan Area \$21,000
- 2002 Lord's Diner \$18,000
- 2003 Center of Hope \$18,000
- 2004 A.C.P./Dodge House \$16,000
- 2005 Shelter the Heart Campaign \$20,000
- 2006 Gerard House, Cigar Family Foundation, Center of Hope & Several Donations to area charities \$10,500
- 2007 Mother Mary Anne Clinic, Union Rescue Mission Men's Homeless Shelter, The Lord's Diner, Center of Hope, Gerard House for Unwed Mothers, The ARC (Wichita Association for Retarded Children) \$13,000
- 2008 Cigar Family Foundation, Center of Hope, ARC of Sedgwick County, Girard House for Unwed Mothers, The Lord's Diner, Mother Mary Anne Clinic, Union Rescue Mission \$15,000
- 2009 Cigar Family Foundation, Mother Mary Anne Clinic, ARC of Sedgwick County, Union Rescue Mission, Girard House for Unwed Mothers, The Lord's Diner, Center of Hope, Independent Living Resource Center Medical Equipment Recycling Network, Shoes and Socks for Wichitans:  
\$10,000

**Total To Date: \$191,100.00**