



**TESTIMONY**

**TO:** The Honorable Anthony Brown, Chair  
And Members of the House Commerce and Economic Development Committee

**FROM:** Whitney Damron  
On behalf of the Kansas Association for Responsible Liquor Laws, Inc.

**RE:** HB 2532 – An Act concerning alcoholic beverages; relating to retailer's licenses under the Kansas liquor control act.

**DATE:** February 8, 2012

Good afternoon Chairman Brown and Members of the Committee:

I am Whitney Damron and I appear before you today on behalf of the Kansas Association for Responsible Liquor Laws (KARLL) to register strong opposition to HB 2532 on behalf of its 20 members who are licensed retailers in Kansas.

Kansas has a long history of moving carefully and deliberately when it comes to allowing for the sale and manufacture of intoxicating liquors. Kansas was the first state to pass a prohibition on the sale and manufacture of liquor in 1880. And while the United States repealed the 18<sup>th</sup> amendment to the Constitution in 1933, which "prohibited the manufacturer, sale, transport, import or export of alcoholic beverages," it was not until 1948 that the voters of Kansas adopted an amendment to our Constitution authorizing the Legislature to "regulate, license and tax the manufacturer and sale of intoxicating liquor."

Liquor-by-the-drink did not occur until our Constitution was amended again in 1986 and today, 61 counties allow for liquor-by-the-drink with a 30% minimum food requirement; 25 counties allow for it with no minimum food requirement and 19 counties do not allow for liquor-by-the-drink whatsoever.

Critics of our state's 3-tier system for the sale of liquor products often complain they are archaic, hinder some or antiquated, as the proponents of HB 2532 would argue, but I would suggest that is exactly what the citizens of Kansas have wanted and they still do today. The Kansas Legislature has taken measured steps to regulate the sale of intoxicating liquors since our constitution granted them that authority in 1948 and legislators have created a regulatory framework that insures compliance with Federal, state and local laws and regulations relating to the manufacture and sale of these products.

- Kansas does not allow for multi-store ownership of retailers – no one retailer can be allowed to dominate the market (Exception: A husband and wife may each be licensed as a retailer).
- Owners are held personally responsible for their stores and adherence to Kansas laws and regulations.

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- Retailers cannot hide behind corporate entities and shield liability in effort to avoid regulation or evade prosecution.
- Felons and minors cannot be licensed as a retailer.
- All retailers have the right to purchase their products from a wholesaler at the same price.
- If a retailer violates liquor laws, they can be fined, forced to close their store for a period of days or lose their license altogether.
- The only products a retailer can sell are liquor products and lottery tickets. If they can't sell liquor products, they are out of business.

As a result of this carefully-crafted regulatory framework, ABC has a high compliance rate with retailers following state laws and their regulations. One can be assured if a retailer is cited for a violation of state liquor laws, they will give their complete attention to the ABC Director when called for an enforcement action, as their very livelihood is on the line.

Now, with this history as a backdrop, let's take a look at what the proponents of HB 2532 would have the state do after more than 50 years of strict regulation of intoxicating liquor sales:

- Allow corporations, partnerships and other business entities to be licensed as retailers. Partners and investors in such entities can be felons or otherwise ineligible to hold a retailer's license under current law, "as long as they own less than 25% of the licensing entity."
- Retailers will be allowed to hold multiple licenses in Kansas. Currently, if a licensee violates the Liquor Control Act, they can be forced to pay fines, close for a period of days or close permanently. Do the proponents of this legislation suggest they would be willing stop selling all products in their stores, if they are held in serious violation of state liquor laws? Or will they be required to only stop selling liquor in the store found to be in violation? If one store is found to be in violation, will all stores of the licensee be impacted?
- ~~Under Federal and State law, minors are not allowed to consume or purchase intoxicating liquors. The proponents of HB 2532 allow teenagers to sell such products.~~
- HB 2532 allows these new retailers to sell and deliver products to a caterer or the licensed premises of a club or drinking establishment. This authority would allow minors to be involved in the sale and delivery of such products to these off-site locations as well.
- Increase the potential number of retail locations from approximately 750 to more than 3,000 without any accompanying increase in revenues for state enforcement of liquor laws. The proponents do not suggest their legislation will increase sales, which means the state will not see an increase in its enforcement tax revenues. Given the pricing practices of the advocates for this legislation, we may very well see a reduction in state enforcement revenues, which will only exacerbate the regulatory challenges created by this legislation.

## Studies and Research.

- In 2011, the proponents of this legislation released a study commissioned by their association that was conducted by respected Kansas researcher, Dr. Art Hall, Director for the Center of Applied Economics with the University of Kansas School of Business. In Dr. Hall's study, *An Economic Case for Increased Competition in the Sale of Beer, Wine and Spirits in the State of Kansas*, he found that 82 grocery stores closed in rural Kansas between 2006 and 2010 and suggested the sale of liquor products could have saved some of them or create an opportunity for them to reopen. At the same time, Kansas State University has done extensive study on the disappearance of grocery stores in rural Kansas and they keep coming to the same conclusion; the small town grocers cannot compete with the big box retailers located in relative close proximity to rural Kansas. The K-State studies beg the question: "If the small grocers can't compete with Wal-Mart, Sam's, Dillon's and Hy-Vee when neither sells alcohol, what logic suggests they can compete if they both sell alcohol?" We know the answer to that; the small town grocers still won't be able to compete against the big box grocers, but they may be able to take market share away from their small town liquor stores.
- This same study by Dr. Hall also indicated that more than half of the state's retail liquor dealers would go out of business if the grocery and C-store bill were passed.
- The K-State Study, *USDA RBOG Project: Rural Grocery Sustainability Project*, conducted extensive research involving more than 200 rural grocery stores and included surveys of store owners and customers. Included with this document is a copy of Table 23, which lists the primary challenges identified by storeowners for remaining competitive in small towns. Nothing in this report suggests the sale of alcohol will improve the bottom line or make small town grocers more competitive. K-State Rural Grocery Initiative: [www.ruralgrocery.org](http://www.ruralgrocery.org)
- Perhaps the next study Dr. Hall or K-State would like to perform after the grocery and C-store legislation is adopted is a study as to where all the liquor retailers went and what they are to do with small stores that have been sized to sell only alcohol products. The advocates of this legislation suggest allowing retailers to sell other products will level the playing field. Kansas retailers sell liquor products. They do not have the product lines, shelf space or competitive locations for competing with grocers and convenience stores. A dramatic change in liquor sales practices will be devastating for hundreds of families in our state who find themselves in a business where there are unable to adapt and compete. If the rural grocers could not compete against the big box grocery retailers, why does anyone think the small liquor stores can compete against them? Furthermore, how exactly are small business owners, in this economy with the lack of available credit, going to secure the financing necessary to retrofit their stores to accommodate additional products even if that is feasible? One can just imagine what a retailer's banker will say when asked to increase a line of credit or make a loan so the retailer can "compete" against Wal-Mart, Dillon's, QuikTrip or Walgreen's.

## DUI, Social Hosting and Proper Regulation of Alcohol Products.

- Kansas passed the most comprehensive rewrite of its DUI laws ever in 2011 after two years of comprehensive study by a DUI Commission created in 2009. It is counterintuitive to now consider legislation that would increase the number of liquor retailers in our state by 3,000 locations or more. SB 6 was approved in 2011 on votes of 121-0 and 39-0.

- In addition to the DUI legislation, the Kansas Legislature has spent considerable time on “social hosting” legislation intended to discourage and punish parents and adults that provide alcohol to minors. Legislation to allow teenagers and minors to sell, deliver and work around alcohol products will not improve that situation.
- Industry experts suggest there may be some initial increase in liquor sales with the passage of the grocery and C-store proposal, most likely from capturing sales currently lost to Missouri. However, there has been no substantive evidence that Kansans are evading state liquor taxes by purchasing their liquor products in neighboring states. Accordingly, the fantastic job creation aspects of the grocery and C-store proposal are simply unbelievable. Moreover, absent any significant increase in sale and the addition of more than 3,000 retailers in which product must be delivered by wholesalers can only increase costs for the consumer and most likely have a negative impact on wholesaler-to-retailer service.
- Industry experts agree both pro and con that the passage of the grocery and C-store bill will not have a substantive impact on the volume of sales of alcohol products in our state. There has been no definitive study that market share taken away from existing retailers spread throughout another 3,000 outlets will produce sufficient revenues to pay for the regulatory oversight demanded by Kansans. Regulation of the liquor industry comes mainly from imposition of gallonage and enforcement taxes. If sales do not increase, there will not be any additional revenues (other than minimal licensure fees that generally cover license processing and ABC overhead costs). The negative results could be significant.

#### **Summary Comments.**

Kansas has a long history of strictly regulating the sale of alcohol products. It has enforced its regulatory system through tight controls through the 3-tier system of manufacturers, wholesalers and retailers, of which the retailers are the front line of defense to insure Kansas liquor laws are being followed. Grocers and C-stores are on an insatiable quest for greater profits and higher margins at the expense of Kansas retailers. Kansas’ 3-tier system has worked well and when incremental changes have been made in the past, the retailers have implemented them responsibly. Opening up the sale of alcohol products five-fold – to 3,000+ additional locations will turn the state’s existing regulatory system for liquor sales on its proverbial head.

Let’s take a step back and call this legislation what it is – a search for more and more profits at the expense of the consumer, public safety and current licensees for the benefit of out-of-state corporations who will send revenues to Arkansas, Ohio, Oklahoma, Iowa and beyond to the detriment of Kansas business men and women, their employees and the families that depend upon them.

The State of Kansas has taken an active, yet conservative role in the regulation of alcohol products. What the grocery and C-stores are asking the state to do is ignore 130 years of history of strict regulation of a product only available for purchase and consumption by those aged 21 and over. Turning liquor sales into nothing more than a commodity sales item like bread and butter will not serve the public well.

On behalf of the Kansas Association for Responsible Liquor Laws, Inc., I thank you for your consideration of the information contained in this document and am pleased to follow up with you if you have additional questions.

Whitney Damron

**Members of the Kansas Association for Responsible Liquor Laws, Inc.**

ABC Liquor	Wichita
Brooks Liquor	Salina
Brown Bag Liquor	Olathe
Burgardt Liquor Store	Wichita
Culver's Wine & Spirits	McPherson
Egbert Liquor	Hutchinson
Knipe's Liquor	Hutchinson
Meyer-Dick (DJ Liquor)	Hutchinson
Stanley Liquor	Hutchinson
Fridge Liquor	Manhattan
Jacob Liquor	Wichita
Kaiser Liquor	Hays
Lukas Liquor Super Store	Overland Park
MDL Wine & Spirits	Overland Park
Metcalf Discount Liquor	Olathe
On The Rocks Discount Liquor	Lawrence
Pairrott Head Liquor	Pittsburg
Rogers Liquor	Kansas City
Tipsy's	Mission
Top Cellars Wine & Spirits	Olathe