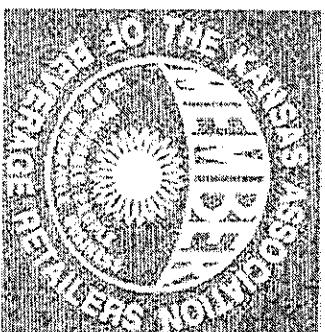




KANSAS ASSOCIATION OF BEVERAGE RETAILERS

We are Kansans working for Kansas.

February 12, 2015

Amy Campbell - KABR – P.O. Box 3842, Topeka, KS 66604 – 785-969-1617 – campbell1525@sbcglobal.net

Kansas Licensed Business

“It is a privilege, not a right, to have a Kansas Liquor License. The responsibilities of selling this highly regulated product were made clear to me when I invested in this business. It is according to this agreement – this contract with the State of Kansas that I have invested in the liquor store business and maintained those obligations in good faith.”

“Shouldn’t Kansas honor my investment by maintaining a stable and reliable business environment – instead of changing the rules mid-stream?”

Dennison Woods, Ken-Mar Liquor, Wichita

Contents of HB 2200

- Sets a cap on the number of liquor licenses at current levels. (approx 749)
To achieve any value for license purchases, a permanent cap is imperative. Kansas currently has an open private system that allows any qualified applicant to be licensed and open a liquor store in any properly zoned location. KABR believes that Kansas has met the market equilibrium with approximately 750 stores. These numbers have decreased in the past few years – a market correction from the growth that occurred when the Liquor Control Act was amended to allow local option Sunday sales and statewide uniformity. We anticipate this number may decrease under the proposed combined system of strong beer and liquor licensing. (Class A and Class B)
- Three year moratorium

KABR appreciates the inclusion of an actual moratorium – replacing former proposals that included artificial moratorium provisions. Whether or not three years is the proper number depends on the individual investment by current licensees.

Contents of HB 2200

- Creates procedure to license retail sales of strong beer, wine and spirits in Big Box and Grocery Stores that purchase an existing liquor license as of July 1, 2018.
License purchasing models are available in other states. If Kansas chooses to create this model, it should look to those models to provide for regulation of license purchasing and availability, prohibit licenses from being held and not used, and procedures for forfeited licenses.

- Creates procedure to license retail sales of strong beer at businesses specified in the bill as grocery and convenience stores (approximately 1528 of the 1775 current cmb licensees)

We should not assume that every business wants to sell strong beer. There are communities and dry counties that will prefer to stay 3.2. There are business owners who will prefer to avoid the cost, regulation and new tax structure associated with the sale of stronger products.

- Requires new license to be issued to a grocery or big box store based on definitions including NAICS codes that are not limited to typical grocery stores.

If Kansas chooses to carve out this license privilege, the underlying definition should be clear. Other states have already seen court challenges in this area.

Contents of HB 2200

- Includes background requirements for corporate applicants owning more than 25%, this is a significantly lesser standard than currently required for other corporate licensees in the Liquor Control Act that sell to the public (such as Drinking Establishments) at 5%.

25% standard is insufficient.

- Removes the 21 years of age requirement for employees and substitutes a minimum 18 years of age – with 21 year old on the premises.
- Continues to provide un-level playing field in terms of enforcement / penalties. *Penalties on the licensee should have equal impact.*
- Allows for purchasing liquor licenses (strong beer, wine and spirits) within a county limitation.

The limitation on license transfers within county lines is helpful for purposes of preventing the likely migration of licenses to urban areas. It does not accomplish the stated intent to create value for licensees and also will not prevent the proliferation of liquor licenses in areas that cause social, health and enforcement concerns. The public harm created by the “density” issue is well documented. If Kansas wishes to address license value as well as the public safety concerns, density and perimeter provisions should be included.

The COST to Kansas

- Sales Tax Reduction \$1.9 million (from lost sales of CMB)
- Reduces revenue to local governments and to the State Highway Fund.
- State General Fund loss unless sales are increased = (\$1,845,000) 3% transfer to city/county each year. 3% local fund from enforcement tax is subject to appropriation and based on population
- \$657,967 FY 18 expenditure for ABC
- \$1,293.494 FY 19 expenditure for ABC, offset by license fees
- This does not include lost property taxes, payroll taxes and other direct revenue from the businesses that will close
- Indirect loss to the small businesses that serve current stores

2008 DISCUS Analysis of Strong Beer Impact

- “Currently, the 726 package stores allowed to sell full strength beer sell an estimated 17,600 cases per year. Accounting for both the new beer volumes and the new number of full strength beer licenses, the average number of cases sold per outlet will decline to around 4,480 cases per year.’
- For the new full strength beer licensees, most of the new volume will be incremental (except that volume which is replacing 3.2 beer sales). Thus, grocery and convenience stores will be able to sell comparatively low volumes of .. beer profitably. Obviously, this does not preclude large supermarkets from selling tremendous volumes. What it does mean, however, is that the 3,790 convenience and grocery stores in the state will be able to take sales away from traditional package stores.”
- “Accounting for both the lost spirits sales and lost beer sales, total package store revenues would decline from \$461.3 million to \$254.6 million – a 45% reduction.”
- “Clearly, not all businesses could withstand a 46% decline in revenues. As a result, we would expect a decline in the number of package stores.”
- “The \$254.6 million in total package sales would support a total of 509 package stores. Thus, 217 package stores are projected to go out of business. Naturally, as the number of package stores declines, the availability of spirits will decline as well.”
- (The analysis relies on Kansas sales statistics, market analysis by Gallup Organization, Sept. 29, 2006; and tax receipts by the Kansas Department of Revenue.)

Colorado Economic Impact Assessment by Summit Economics, LLC, 2011

- “The Colorado Liquor Stores will lose 50 percent of full-strength beer sales to supermarkets and convenience stores in the first year alone. They will lose 70 percent of beer sales within 3 to 5 years. It is estimated that 40 percent or 700 of the stores will be forced to close within the first 3 years. This will result in the loss of 4,830 wage and self-employment jobs. Overall the Colorado Liquor Stores will lose \$700 million in annual revenues, resulting in a permanent \$90 million loss in annual wages and proprietor income earnings. These losses will continue through the fifth year. After the fifth year the new market structure will stabilize with 900 fewer stores. There will be 5,500 fewer jobs in the industry, resulting in a loss of \$120 million annually in employee and proprietor earnings.”

Level Playing Field

- Enforcement – license the whole premises = whole premises suspension
- Tax abatements – tax increment financing districts
- Purchasing power – big box and grocery stores have the benefit of space and volume. This gives them an advantage relating to purchasing during sale periods and access to allocated products. They also use national purchasing contracts, sell shelf space and advertising.

“The proponents of this bill talk about level playing fields and say that liquor stores are “protected” by Kansas law. Last year, they even called liquor stores – who, by the way, are in direct competition with each other – a “monopoly”. This shows a lack of understanding in the Kansas retail liquor licensing system, which is already privatized and encourages competition. Even the cities can’t limit the number of liquor licenses issued in their borders.

In Manhattan, there has been a huge controversy about the downtown development project that helped to bring a Hy-Vee to our town. That project involved the city using eminent domain for the property, getting approval for the State of Kansas and the City of Manhattan to issue STAR bonds for public portions of the development, and using Tax Increment Financing for building the retail development. Tax Increment Financing means that the sales tax collected at the store is used to pay off the costs of the building project instead of going into the city and county sales tax fund or the State General Fund. Of course, at that time, Hy-Vee wasn’t going to be allowed to sell liquor. Can you imagine that Kansans would ever support using public funding to build a liquor store? Is this the free market they are talking about?” Michael Towne, The Library, Manhattan

What about Beer and Wine?

- Beer and Wine are defined in statute as alcoholic liquor.
- Many states that do allow strong beer or wine to be sold through corporate outlets have restrictions on alcohol content for the wine and the beer that can be sold.
- Every alcohol product is defined by alcohol content – whether the product is made from fruit or grain is irrelevant.
- Regardless of how often the lab tests comparing cmb Budweiser to strong Budweiser are repeated = strong beer is stronger than cereal malt beverage.
- Even with the differing units of measurement – alcohol by weight vs. alcohol by volume – strong beer is stronger than cereal malt beverage.
- Strong beer products include extensive product lines, with craft beers and newer beer/wine based products reaching must stronger alcohol content. 10% is not uncommon and there are stronger products as well.
- Economic analysis of simply moving the strong beer products to approximately 2300 additional outlets shows a loss of 217 retail liquor stores.
- Do not expect to save Kansas jobs and businesses by preserving spirits on their shelves. Any type of retailer can tell you that sales depend on traffic. Customer traffic will be reduced if their highest volume products are sold elsewhere.

State Regulatory Licensing –

There are a wide variety of state policies relating to how liquor is sold, and they reveal both the priorities of that state and the history of how prohibition was repealed in that particular state. Kansas has a particular issue relating to its constitution which makes changes to the definition of cereal malt beverage potentially unconstitutional as it changes the definition of alcoholic liquors / intoxicating liquors – a reference included in our constitution. Kansas represents an excellent balance between the desires of those who would expand access and availability and those who would prefer a more regulated model.

- There are 17 control states.
- Of those, 6 states have city owned retail liquor stores and rarely allow private providers. 10 states have only state owned retailers, which allow no one but the state to sell spirits and/or wine. This may be paired with the sale of beer through licensed outlets.
- Many states differentiate the sale by packaged stores and convenience stores or grocery stores and the products they may carry, whether it is allowing wine in grocery stores, or 3.2 cereal malt beverages only.
- 6 have separate licensing for 3.2 cereal malt beverage. In fact, some actually differentiate whether or not the product sold may be refrigerated. It is not correct to paint Kansas as the most strictly regulated of these states. In my research, one analysis painted New York as having very lenient liquor laws – and yet, New York does not allow wine or liquor sales in grocery stores.
- In fact, the majority of states do not have unrestricted licensing systems regarding allowing strong beer, wine and spirits to be sold by grocery and convenience stores and none have the system proposed in this bill.
- It is not true that states are rushing to open up their laws. The most recent major structural change was in Washington State – which privatized its retail sales. Typically state licensing structures haven't changed much since the eighties. South Dakota has been used as an example. That state, much like Missouri, already allowed grocery stores to get into the liquor business around 1986.
- Proposals for Strong Beer and Wine sales have been rejected in recent years in Massachusetts, New York, Oklahoma and Colorado. Oklahoma and Colorado have very similar systems to our own. Deregulation also failed in Oregon.
- New Mexico has a system that allows for the transfer/sale of licenses because it has only 1000 licenses for the sale of spirits, wine and beer (on AND off premise). There are no other types of off premise licenses available. That restriction hasn't changed for 25 to 30 years and the result is that it can cost \$300,000 to \$700,000 to buy one of these licenses. Recently, NIM created a restaurant license for selling wine and beer.
- Many states have distance or population restrictions for the number of liquor licenses issued. Kansas only has the restriction of prohibiting a liquor license within 200 feet of a church, school or college.

The Case for Compliance

- Kansas retail liquor stores have proven compliance rates in preventing underage sales – typically ranging from 80% to as high as 88%. There are no statewide compliance rates for grocery and convenience stores.
- Now, the proponents would have you believe that they are better than liquor stores at checking I.D.s. They use tobacco compliance numbers to make this case. National statistics show that convenience and grocery stores have a worse record than liquor stores as it relates to selling alcoholic beverages.
- Tobacco sales = inventory separate from other items for sale / 18 year olds selling to 18 year olds
- The Kansas ABC does not track underage alcohol-sale compliance in convenience and grocery stores. It only tracks underage alcohol-sale compliance for Kansas owned retail liquor stores. Anyone who makes this claim is comparing convenience and grocery store tobacco compliance rates to Kansas liquor store alcohol compliance rates. This is comparing apples to oranges.
- What is a fact is that convenience and grocery stores have a much higher failure rate nationally than liquor stores when it comes to selling alcohol to minors. The National Research Council Institute of Medicine found 70% of minors nationwide purchase their alcohol from grocery and convenience stores.
- It also took the state of Kansas hundreds of thousands of dollars in order to get convenience stores to reach a high compliance rate! In 2005, Kansas convenience stores had a tobacco sales compliance rate of 62%.
- At that time, this forced Kansas to choose between taking a \$5.4 million reduction in SRS block grant funds or pay a \$2.2 million penalty to be used to raise the compliance rate. Is Kansas prepared to make the same investment again to develop compliance rates for the new category of licensees? See costs attached.

Examples

- A Lawrence Liquor Store spotted new state-of-the-art fake I.D.s when KU students returned to school. The new I.D.s featured holograms and an electronic strip on the back. The store rejected the sale and informed law enforcement of the new I.D.s.
- A clerk from a liquor store in Junction City called KABR to verify that she had done the right thing in denying a sale to a mother who brought her teenage son into the store to pick out the products he wanted for a party. It was obvious he was making the selections. When the clerk denied the sale, the mother was upset and yelled at her. But this clerk did the right thing and complied with current rules. If she hadn't, she would have been violating the law.
- A store in Topeka often has an ABC agent parked in their lot watching 21 year olds coming over from the parking lot across the street where young people like to hang out. According to the agent, he knows the liquor store cards people, but he is able to watch the 21 or 22 year olds go across the street and give their purchases to the underage kids who are hanging out there. He was able to issue more than one citation from this practice.

The Free Market

Kansas must offer a reliable and stable regulatory environment to encourage investment and growth.

No State operates a Free Market for the sale of alcoholic liquor

- No other state operates the deregulation system proposed by Uncork Kansas.
- Even the Missouri model offers more regulation – with local licensing in addition to state licensing.
- Many of the states that allow alcoholic liquor to be sold in the corporate chain model are “control” states with contract relationships and a variety of restrictions.
- States that are not control states, but do allow similar deregulation utilize other limitations such as perimeter laws (distance between licenses), limiting the number of off premise licenses on either a statewide or local regulatory framework and using local regulatory licensing boards.
- Example: New Mexico – allows grocery sales of alcoholic liquor but limits the total number of liquor licenses to 1000 for the entire state. This license is for on premise or off premise sales of beer, wine and spirits. Other types of on premise licenses are newly available.
- Minnesota is a private retail state, and allows corporate sales, but requires the licensee to set up a separate restricted space, requires municipal license and state license, as well as a document signed by law enforcement regarding criminal background qualifications.

Liquor should not be sold like bread and milk.

- The Hall study makes the assessment that grocery retail models are better than liquor stores and that grocery retail jobs are better than liquor stores. Not true. See Review.
- “Prohibition era” laws regulate the sale of alcoholic liquor products in every state, since virtually all states made the decision about how the products would be sold around the time of repeal.
- The most recent deregulation changes to retail sales systems involve states going from control states to private retail states. Kansas IS ALREADY a private retail state.
- There is no trend of states deregulating private retail markets.
- Many states include a required separation of liquor products from other products.

**Please oppose deregulation of
the Kansas retail liquor system.**

This is not what is best for Kansas.

Thank you for your time.

Amy A. Campbell

Executive Director

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Shawn Sullivan, Director of the Budget

Sam Brownback, Governor

February 11, 2015

The Honorable Mark Hutton, Chairperson
House Committee on Commerce, Labor and Economic Development
Statehouse, Room 521-E
Topeka, Kansas 66612

Dear Representative Hutton:

SUBJECT: Fiscal Note for HB 2200 by House Committee on Federal and State
Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2200 is respectfully submitted to your committee.

HB 2200 would amend the Kansas Liquor Control Act by allowing the issuance of Class A retail liquor store licenses to grocery stores and convenience stores beginning July 1, 2018. Class A licenses would allow retailers to sell strong beer for off-premise consumption, and any other good or service on the licensed premises. Existing retail liquor licenses would be classified as Class B licenses and the number of Class B licenses issued would be limited to the total number licensed by the Division of Alcoholic Beverage Control (ABC) on June 30, 2015. The bill would allow Class B liquor retail licenses to be transferred to any qualified person within the same county beginning July 1, 2018. The transferee would be required to pay a transfer fee of \$500 to ABC when the transfer has been approved. In addition, the two-year license fee for a retailer's Class A or Class B license, if engaged in business as a grocery store, would be \$1,500. For Class B licensees engaged in business as a liquor store, the license fee would be \$500. The bill includes definitions for grocery store, convenience store, liquor store and retailer's license.

The bill would specify that a Class A retail license could not be issued to a person who is not a convenience store or grocery store though the person could become eligible if they changed their business type to a convenience store or grocery store upon licensure. Likewise, it would specify that a Class B retail license could not be issued to a person who is not a liquor store or grocery store though the person could become eligible if they changed their business type to a liquor store or grocery store upon licensure. The bill lists the requirements that corporations and individuals must meet in order to obtain a license and the circumstances under which no license could be issued. Further, the bill outlines the requirements expected of retailers licensed under these provisions and would require the Department of Revenue to adopt the rules and regulations necessary to carry out those provisions.

HB 2200 would reduce the minimum age a person must be in order to sell liquor from 21 to 18 years of age. It would require an employee who is under the age of 21 to be supervised by the licensee or an employee of the licensee who is at least 21 years of age. The bill would remove prohibitions against a retailer owning a beneficial interest in another retail license and against a corporation holding a retailer's license. The bill also would provide that a corporation would be ineligible for a retailer's license if any officer, manager or director, or any stockholder owning more than 25.0 percent of the stock is ineligible to hold a license for any reason other than citizenship or residency. Finally, HB 2200 would create the Local Cereal Malt Beverage Sales Tax Fund and would require 3.0 percent of liquor enforcement remittances to be deposited in this fund with quarterly distributions to each city and county which levied a local sales tax. The amount distributed would be determined based on a weighted population average.

The Department of Revenue indicates the enactment of HB 2200 would require the hiring of additional staff in FY 2018 to conduct liquor licensing functions for as many as 1,528 new licenses; oversee the transfer of up to 247 retail licenses; administer prosecution relating to liquor law violations; enforce liquor laws to maintain the current level of enforcement among liquor retailers; and process the liquor enforcement tax. The Department indicates it would begin hiring in the fourth quarter of FY 2018 to prepare for when these convenience stores and grocery stores get the ability to apply for a Class A license to sell strong beer in FY 2019.

For FY 2018, the Department estimates expenditures would increase by \$657,967, which includes \$200,440 for 12.00 additional positions; \$403,655 for contractual services and one-time costs such as office equipment, vehicle purchases, and system upgrades to the ABC computer processing system; and \$53,872 to modify forms, processes and the liquor tax processing system. The new positions would include 9.00 Enforcement Agents to enforce liquor laws throughout the state, 2.00 Revenue Customer Representative Senior positions to process the transfer of licensees, and 1.00 Administrative Specialist for support. The Department estimates expenditures would increase to \$1,293,494 in FY 2019, which includes \$1,202,631 to maintain the 12.00 positions added in FY 2018 in addition to 2.00 Special Investigator II positions, 1.00 Revenue Customer Representative Senior position, 1.00 Administrative Specialist, 1.00 Assistant Attorney General, and 1.00 Legal Assistant; and \$90,863 for contractual costs, office supplies, and background checks.

The Department of Revenue indicates it is unknown how many licenses would be issued or transferred; however, assuming all 1,528 grocery stores and conveniences stores obtain a Class A license, the fees from those licenses would increase state revenues by approximately \$2.3 million in FY 2019. Additional revenues would be generated from the \$500 fee paid by liquor and cereal malt beverage licensees who transfer their existing license to a Class A license.

Currently, the Department indicates the sale of cereal malt beverages generates approximately \$7.5 million in state sales tax and approximately \$1.9 million in local sales tax. The Department indicates the switch from cereal malt beverage sales to beer would decrease sales tax revenue and increase liquor enforcement tax revenue in FY 2018. Since the bill would provide 3.0 percent of liquor enforcement remittances credited to the Local Cereal Malt

The Honorable Mark Hutton, Chairperson
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Beverage Sales Tax Fund, distributions to cities and counties would increase to help recoup the loss of local sales tax. The Department for Aging and Disability Services indicates this bill could increase consumption of alcohol and tobacco, requiring greater levels of enforcement and service for substance abuse treatment. Any fiscal effect associated with HB 2200 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,

A handwritten signature in dark ink, appearing to read "Shawn Sullivan", followed by a horizontal line.

Shawn Sullivan,
Director of the Budget

cc: Jack Smith, Department of Revenue