TESTIMONY

TO: The Honorable Mark Hutton, Chair
And Members of the House Commerce, Labor & Economic Development Committee

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

RE: HB 2718 – An Act concerning alcoholic beverages; dealing with beer and CMB

DATE: March 11, 2016

Good afternoon Chairman Hutton and Members of the Committee:

By way of reintroduction to the Committee, I am Whitney Damron and I represent the Kansas Association for Responsible Liquor Laws, an association of retail liquor stores from across Kansas. Attached to my testimony is a listing of our 2016 members.

Our members are opposed to HB 2718 as proposed by the Kansas Beer Wholesalers Association and I will enumerate their concerns:

The premise behind HB 2718 and its cousin in the Senate, SB 458, seems to be that based upon consideration of constitutional amendments and referendums on high point beer and wine in Oklahoma and Colorado that may or may not be placed on the ballot in November, 2016 in some unknown form, absent implementing legislation or confirmation of an effective date, Kansas should set in motion legislation to eliminate cereal malt beverage products in Kansas – because it is suggested cereal malt beverage will cease to exist in Kansas or anywhere else if either of these measures become law.

That is simply not true.

Cereal malt beverage products are currently sold in five states (CO, KS, MN, OK & UT) and certain other venues (e.g., major league ballparks). In addition, CMB is sold in other states where the law does not make a distinction between "High Point" and "Low Point" beer (3.2% or less alcohol volume by weight). For example, cereal malt beverage products are sold in Missouri, a so-called strong beer state. I have yet to see any public statement attributable to a major brewery even suggesting that if either Oklahoma or Colorado transition to high point beer they will cease to manufacture the product. And even if the manufacturers made a decision to stop production of cereal malt beverage products, it certainly would not happen overnight.

We are aware there are discussions in Oklahoma and Colorado to amend the locations where high point beer and wine can be sold. The most recent information we have seen is that on March 1, 2016 the Senate in Oklahoma passed SJR 68 relating to the sale of high point beer and wine on a vote of 28-16 and the constitutional amendment will now be considered in the Oklahoma House. The measure would alter how and where high point beer and wine is sold. If the measure is placed on the ballot as currently drafted, the changes to Oklahoma liquor laws would go into effect October 1, 2018 with enabling legislation considered by the Oklahoma Legislature in 2017.

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A 2016 initiative proposed by a Wal-Mart-led coalition, Oklahomans for Modern laws, would have implemented changes in 2017 (State Question #783). However, that petition question was subsequently withdrawn. We understand the coalition may be working on a new petition with the intent to have a fallback question for the voters to consider should SJR 68 falter. We also understand the implementation date for that question, if promoters can obtain the requisite 123,000 signatures and the measure is passed by the voters, would be October 1, 2018.

As for Colorado, it is anyone's guess as of now whether proponents for change in the sale of beer and liquor products will pursue a ballot initiative or if negotiations for statutory change will be successful. Many industry experts in Colorado question whether a ballot initiative would pass in Colorado, given the state's support for the craft beer industry, which relies on retailers to sell their products in ways that are unlikely to be replicated by big box retailers.

HB 2718 is uncharted territory for the State of Kansas. I won't suggest it has never happened, but suffice to say, it is out of the norm for Kansas to consider far-reaching legislation based on what another state may or may not pass into law. At the very least, the Kansas Legislature should wait and see what these states do and make an informed decision in 2017 as to whether changes in liquor laws in Oklahoma, Colorado or any other state should have any bearing on liquor laws in Kansas.

It is important to note the beer wholesaler's law is not triggered if the product is no longer manufactured, but rather it is written to become law if certain tax revenue benchmarks are met. That is an important distinction.

The legislation before you is ripe for manipulation and heavy-handed pressure from the proponents of one-strength beer, including the Uncork coalition. It is not lost on our members that the beer wholesaler's "trigger legislation" has been supported by Uncork representatives in social media.

HB 2718 would automatically change Kansas liquor laws if the state's actual or projected tax revenue from cereal malt beverage products falls 25% within a 12 month period. The implementation process itself would be delegated to the rule and regulation process with the Kansas Department of Revenue as well.

This "trigger" effectively takes the consideration process away from the Legislature and hands it to the breweries, who arguably are at the mercy of their largest customers – Wal-Mart, Kroger/Dillon's, Hy-Vee, Quick Trip, Casey's and others. It is certainly not beyond the realm of possibility that those who have failed to convince Kansas legislators to hand over the retail sale of liquor products to them would exert pressure on the breweries to reduce or otherwise restrict the sale of such products in our state to initiate this change without legislative oversight.

The bill makes no distinction in what "beer" products would be available for sale at current cereal malt beverage off-premise retailers. Current law limits the alcohol content to 3.2% by weight, which is approximately 4% by volume. Beer products currently only available in liquor stores can have an alcohol content of 8-10% or higher.

The bill is also silent as to what happens to cereal malt beverage on-premise retailers (3.2 taverns, Pizza Hut, Gambino's, etc.).

This legislation is not about tax revenues, as state gallonage and enforcement tax receipts have not dramatically increased or decreased in the past six years, according to the Kansas Department of Revenue's 2015 Annual Report. Cereal Malt Beverage sales have declined, but the loss in revenue is made up in the sale of strong beer. As a side note, it is not surprising cereal malt beverage sales have declined in recent years as the Uncork coalition has gone to great lengths for the past 4-5 years to suggest to the public that "CMB is not real beer." Perhaps if the members of Uncork and the beer wholesalers would support their CMB products, they wouldn't see such a dramatic decline in their sales numbers.

In closing, I would reiterate this legislation is premature, at best. Kansas should not be passing legislation based upon the view of the future the beer wholesalers are seeing in a cracked crystal ball. Moving Kansas to a one-strength beer state should be done with straight-forward legislation where all of the stakeholders, including legislators, the public and the state's 764 retail liquor store licensees can consider exactly what is being proposed, evaluate how such legislation might impact our state and make an informed vote that can be explained to the citizens of Kansas.

This legislation was drafted without the input of the beer wholesaler's customers, at least those who sell their products in retail liquor stores. There are many issues to be taken into consideration if the Legislature truly wants to consider a 1-strength beer bill. HB 2718 and SB 458 are smokescreens portrayed as needed legislation to protect Kansas cereal malt beverage retailers from a loss of a product, when in reality they are 1-strength beer implementation bills.

The Kansas Senate rejected Uncork's 1-strength beer amendment in 2015 on a vote of 11-26 (2 absent; 1 not voting) and we encourage this committee to reject HB 2718 as well.

On behalf of the Kansas Association for Responsible Liquor Laws, Inc., I thank you for your consideration of our comments and concerns.

WBD

Attachment

Kansas Association for
Responsible Liquor Laws, Inc.
(KARLL)
2016 Membership List
As of March, 2016

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Moonlight Liquor
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HAVEN

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HUTCHINSON

DJ Liquor
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Egbert Liquor
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Knipe Liquor
Stanley's Liquor
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KANSAS CITY (continued)

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OLATHE

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WICHITA

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