



Nick Jordan, Secretary
Dean Reynoldson, Director

Sam Brownback, Governor

MEMORANDUM

TO: Representative Steve Brunk, Chairman, House Committee on Federal and State Affairs

FROM: Dean Reynoldson, Director of Kansas Alcoholic Beverage Control

DATE: 03 February 2015

SUBJECT: House Bill 2088

Mr. Chairman and members of the committee. Thank you for introducing this bill for consideration at our request. As we visited about during our annual briefing on January 20th, this proposal is a very high priority for the Kansas Alcoholic Beverage Control because of its impact on public safety.

House Bill 2088 would allow ABC to resume the practice of issuing administrative citations pursuant to liquor violations observed by a local law enforcement officer. A recent decision by the Kansas Court of Appeals prevents ABC from issuing administrative citations when an ABC agent is not present to issue the citation.

The Kansas Court of Appeals ruled in *Kite's Bar & Grill v. KDOR, Alcoholic Beverage Control Division*, Kansas Court of Appeals Case No. 110,315, that K.S.A. 41-106 requires that a citation be delivered to a liquor licensee at the time of the violation. This ruling is based on the language in the statute following an amendment made during the 2000 legislative session. The requirement of an immediate citation is not problematic when an ABC agent observes an alleged violation. However, the Court's ruling effectively prohibited what had been standard ABC policy for the past several years involving violations observed by a local law enforcement officer. Since the decision was issued in June 2014, ABC has been unable to issue administrative citations on

violations documented by local law enforcement agencies, and, in fact, was forced to dismiss dozens of pending citations and decline prosecution on dozens more.

The complex nature of this issue can best be examined through a common example: A bar that serves alcohol to a minor. When this happens, two violations essentially occur: 1.) A criminal violation, committed by the bartender who served the minor, and 2.) an administrative violation, committed by the licensee itself. In the past, if a local law enforcement officer encountered such a violation, he or she would issue a criminal citation to the bartender, then submit a copy of the report from that citation to ABC for review. If ABC found it appropriate, an administrative citation would then be mailed to the licensee within 30 days. This bill restores the agency's ability to do this, with one important distinction: Upon delivery of a criminal citation, the local law enforcement officer would be required to notify the licensee (or licensee's employee) that the violation would also be submitted to ABC for review administratively. The bill outlines what specific information must be included in such a notification, though no specific "form" is required, aside from the notification being written in some fashion.

Overall, the effect of the Court of Appeals' ruling is that ABC is prevented from regulating violations of Kansas liquor law unless an ABC agent is personally there to witness it. Given the number of agents currently working for ABC, which is small relative to the number of total licensees in the state, this creates a serious public safety concern since there are simply not enough ABC agents to properly monitor all licensees on a routine basis. We are confident the legislature does not intend to cut local law enforcement out of the picture when it comes to enforcing alcohol laws within the liquor industry. The agency believes the intent of the 2000 amendment was to give notice to the liquor licensee that action may be taken against the license following an alleged liquor law violation. Our legislative proposal provides such notice to licensees from local law enforcement officers at the time of the violation.

Thank you Mr. Chairman for the opportunity to testify in support of this critical bill.