



Nick Jordan, Secretary
Dean Reynoldson, Director

Sam Brownback, Governor

MEMORANDUM

TO: Senator Ralph Ostmeyer, Chairman, Senate Committee on Federal and State Affairs

FROM: Dean Reynoldson, Director of Kansas Alcoholic Beverage Control

DATE: 24 March 2015

SUBJECT: House Bill 2089

Mr. Chairman and members of the committee. Thank you for allowing us to testify in support of this bill.

House Bill 2089 would make a person who has previously owned a liquor business without being on the license ineligible to hold a liquor license in the future.

K.S.A 41-311 provides a general list of “disqualifying factors” that render an applicant for a liquor license ineligible. One of these is a previous license revocation. Liquor license revocations are essentially a permanent bar to ever receiving a future license. With this in mind, an issue that ABC occasionally comes across is “hidden ownership.” In these instances, an individual will wish to hold a license, but will be ineligible for one of the currently-existing reasons. To get around this fact, these individuals will utilize “straw persons” on the application for a liquor license. These “straw people” are typically not actually involved with the license or business in any way, but are merely “clean” names on the application so it goes through the process unscathed. When these hidden ownership situations are discovered after a license has been issued, ABC will initiate proceedings to revoke the license. As mentioned above, if the license is eventually revoked, that revocation serves as a permanent disqualifier for future licensure, but the problem is that it is a disqualifier for the *licensee*, who in cases of hidden ownership is the

straw person and not the actual “hidden owner.” Therefore, the hidden owner is essentially free to repeat the process, finding a new straw person and applying again.

House Bill 2089 would make the hidden owner ineligible to hold a liquor license as well. This would be accomplished by adding a new disqualifying factor: A finding of hidden ownership during a hearing before the Director. Hidden ownership is a growing problem, and severely hinders ABC’s ability to provide sufficient regulation of the industry by preventing unqualified licensure. ABC believes that this bill is an important and necessary step to diminish its impact in future instances and is consistent with ABC’s charge of maintaining a clean liquor industry.

The agency respectfully requests an amendment to HB 2089 to allow ABC to resume issuing administrative citations against liquor licensees when violations are observed by local law enforcement agencies. 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.

Because the impact on public safety, the Kansas Association of Chiefs of Police and the Kansas Sheriff's Association testified in support of the HB 2088 when it was introduced in the House Federal and State Affairs Committee.

Below is the language from HB 2088:

Section 1. K.S.A. 41-106 is hereby amended to read as follows: 41-106. (a) Any citation issued by an agent of the division of alcoholic beverage control for a violation of the liquor control act or the club and drinking establishment act shall be delivered to the person allegedly committing the violation licensee or licensee's agent or employee at the time of the alleged violation. A copy of such citation also shall be delivered by United States mail to the licensee within 30 days of the alleged violation. If such citation and copy are not so delivered, the citation shall be void and unenforceable.

(b) Any duly authorized law enforcement officer who observes a violation of the liquor control act or the club and drinking establishment act may, after serving notice to the licensee or licensee's agent or employee, submit a report of such violation to the division of alcoholic

beverage control for review. Upon receipt of such report, the director shall review the report and determine if administrative action will be taken against the licensee. If the director determines that administrative action will be taken, an administrative citation and notice of administrative action shall be delivered by United States mail to the licensee within 30 days of the date of the alleged violation.

(c) The notice required to be served to the licensee at the time of the alleged violation pursuant to subsection (b) shall be in writing and shall contain the following:

(1) The name of the licensee;

(2) the date and time of the alleged violation;

(3) a description of the alleged violation; and

(4) a statement that a report of the alleged violation will be submitted to the division of alcoholic beverage control for review.

(d) Any citations not issued in accordance with the provisions of this section shall be void and unenforceable.

Sec. 2. K.S.A. 41-106 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its
123456789

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