



CASEY'S GENERAL STORES, INC.

P.O. Box 3001 • One Convenience Blvd., Ankeny, Iowa 50021-8045 • 515-965-6100

TESTIMONY OF BOB ALDERSON
ON BEHALF OF CASEY'S GENERAL STORES, INC.
BEFORE THE HOUSE COMMITTEE
ON COMMERCE, LABOR AND ECONOMIC DEVELOPMENT

FEBRUARY 13, 2017

Chairman Mason and Members of the Committee:

My name is Bob Alderson, and I am appearing on behalf of Casey's General Stores, Inc., in support of House Bill No. 2282 ("HB 2282"). Casey's is a member of a coalition of retail grocers and convenience stores which have incorporated their coalition as Uncork Kansas, Inc. ("Uncork"). Uncork is the sponsor of HB 2282. The other members of Uncork are QuikTrip, Hy-Vee, Inc., Dillon's, Wal-Mart and Petroleum Marketers and Convenience Store Association of Kansas, Inc.

Uncork's Economic Impact

In prior sessions, opponents of Uncork's legislation have criticized Uncork because a number of its members are out-of-state corporations, with the implication that these companies do not benefit Kansas economically. Quite the opposite is true. For example, Casey's operates 1,954 stores in 14 states, including 154 stores in Kansas. In its last fiscal year, Casey's employed 2,624 Kansans who were paid wages in the amount of \$38,632,647.46. During that fiscal year, Casey's sold 144,254,175 gallons of gasoline in Kansas for total gasoline sales of \$308,569,042. Total sales for all goods and services in Kansas were \$833,119,850.34, and Casey's paid property, sales and payroll taxes in the total amount of \$25,000,000.

The figures for other Uncork members are comparable. Collectively, the Uncork coalition of retail grocers and convenience stores has thousands of locations throughout Kansas; employs thousands of Kansans, with an annual payroll in the hundreds of millions of dollars; pays millions of dollars in Kansas property taxes; and also collects and remits millions of tax dollars to the State of Kansas.

Background

Currently, grocery stores and convenience stores may be licensed only to sell cereal malt beverage ("CMB") in the original and unopened containers for consumption off of the licensed premises. CMB is statutorily defined as a malt product containing not more than 3.2% alcohol by weight, and CMB is

commonly referred to as "3.2 beer." Substantially all other alcoholic malt beverages are defined as "beer" and may be sold by the package only in retail liquor stores.

Since there are a number of members of this Committee who are either new legislators or new to this Committee, I thought that a brief summary of the statutory history of the laws regulating the sale and consumption of CMB might be appropriate. That summary is attached as Exhibit A.

As stated in Exhibit A, an analysis by the KBI of major domestic brands of CMB and their counterpart brands of beer sold in liquor stores showed that there is no appreciable difference in alcohol content between the major domestic brands of CMB and their counterpart brands of beer sold in liquor stores. The KBI test results are attached as Appendix B. Regardless, the perception is that CMB is a weak, lesser quality product, which has caused retail grocers and convenience stores to lose a significant market share of the sales of cereal malt products since the drinking age was changed to 21 in 1985.

House Bill No. 2282

The principal provisions of HB 2282 are as follows:

- Although HB 2282 will take effect on July 1, 2017, the substantive provisions do not become effective until July 1, 2018. The 12-month delay is to afford the Secretary of Revenue sufficient time to adopt rules and regulations necessary to implement the bill.
- On July 1, 2018, convenience stores and grocery stores may apply for wine and beer retailer's licenses. The Director of ABC has the authority to limit the issuance of these licenses in any month to the number that can be reasonably processed by ABC's personnel
- The wine and beer retailer's license permits the licensee to sell at retail wine and full-strength beer in the original container for use or consumption off and away from the licensed premises. Such license does not permit the sale of spirits.
- A person owning more than one grocery store or convenience store must obtain a wine and beer retailer's license for each store.
- The license fee for a wine and beer retailer's license is \$1,500 for a two-year period. HB 2282 also increases the fee for a liquor retailer's license to \$1,000 for a two-year period.
- A liquor retailer licensee will have the right to sell all alcoholic liquor and will have the exclusive right to sell spirits.
- A person may obtain more than one liquor retailer's license, which is not permitted under current law, and HB 2282 permits a liquor retailer licensee to be incorporated, which is not allowed currently.

- Another change in current law will permit a liquor retailer to sell other goods and services up to 20% of its total gross sales. This is patterned after the recently approved law in Oklahoma.
- The sale of CMB is subject to state and local sales taxes, while the sale of wine and beer is subject to the liquor enforcement tax. If CMB licensees become licensed by the ABC to sell wine and beer, rather than CMB, the state's loss of sales tax will be offset by liquor enforcement tax revenue. To offset the loss of local sales tax revenue from the sales of CMB, HB 2282 provides for the distribution of 3% of liquor enforcement tax revenue to local units of government.
- HB 2282 permits liquor retailer licensees and wine and beer retailer licensees to employ persons not less than 18 years of age to sell alcoholic liquor at the point of sale. This is consistent with the laws of the neighboring states of Missouri and Oklahoma.
- HB 2282 will enable grocery and convenience stores to respond to the requests by their customers to be able to purchase wine and full-strength beer in their stores.

Thank you for your attention to my remarks. I will be happy to respond to questions at the appropriate time.

EXHIBIT "A"

In 1937, during prohibition in Kansas, the Kansas legislature defined the terms "spirituous, malt, vinous, fermented or other intoxicating liquors" as meaning "all beverages which contain three and two tenths percent (3.2%) of alcohol by weight and all such beverages are hereby declared intoxicating liquors under the laws of this state." (L. 1937, Ch. 213, §1, amending §21-2109 G.S. 1935.) That same enactment also declared that, whenever the terms "intoxicating liquors" and "intoxicating liquor" were used in the statutes they were to be construed as meaning beverages containing more than 3.2% of alcohol by weight. That same year, the legislature enacted a cereal malt beverage law, which is the forerunner of the present statutes contained in the Kansas Cereal Malt Beverage Act (K.S.A. 41-2701 et seq.). Thus, an alcoholic malt product containing not more than 3.2% of alcohol by weight was not regarded by law as intoxicating liquor, while any such product containing more than 3.2% alcohol by weight was considered an intoxicating liquor.

The 1937 enactments were passed in the context of Article 15, Section 10 of the Kansas Constitution, which prohibited the manufacture and sale of intoxicating liquors. That prohibition remained until the further amendment of this section in 1948, allowing the legislature to regulate, license and tax the manufacture and sale of intoxicating liquor. Following that significant constitutional about face, the Kansas Liquor Control Act was enacted in 1949. However, the cereal malt beverage statutes were continued in existence, and the distinction between 3.2 beer and beer was perpetuated, with such distinction remaining today.

The law establishing the drinking age for all alcoholic beverages at 21 was passed in 1985. While the sale of beer by retail liquor stores has increased significantly since that time, there has been a corresponding decline in the sale of CMB by grocery stores and convenience stores. These trends in the sale of alcoholic malt beverages are primarily the result of a public misconception that CMB products are of a lesser quality than the alcoholic malt beverages sold in liquor stores.

This misconception originated with the 1937 enactments and the exclusion of CMB from the definition of "intoxicating liquor." This led to the conclusion that, since CMB was not an intoxicant, it must be of lesser quality than beer containing more than 3.2% alcohol by weight.

The misconception was perpetuated during the time when there was a difference in the legal drinking age. Persons between the ages of 18 and 21 were allowed to purchase CMB, but were not allowed to purchase beer or alcoholic liquor. Presumably, when the enactment of the Kansas Liquor Control Act perpetuated the separate classifications of alcoholic malt beverages, the purpose was to make available only to "adults" the "strong beer," based on a belief that there was a significant difference in alcoholic content of these classes of cereal malt products. As will be discussed subsequently, the truth of the matter is that there is not an appreciable difference in alcoholic content between these classes of domestic cereal malt products. Notwithstanding, this distinction became translated into a perception that CMB was not of the same quality as beer.

Thus, when the drinking age for all alcoholic beverages was established at 21, not only did retailers of CMB lose a significant number of potential purchasers (i.e., persons who were 18, 19 and 20 years of age), persons who were 21 years of age and older began purchasing "beer" from retail liquor stores, rather than purchasing CMB from licensed CMB retailers, because of the misconception that CMB is of lesser quality than beer.

K.S.A. 2016 Supp. 41-2701 limits CMB's alcohol strength to not more than 3.2% of alcohol by weight. However, as will be made clear, there is not an appreciable difference in alcohol content among major domestic brands of CMB and the corresponding brands of beer.

In October of 1985, Governor John Carlin convened the Kansas Liquor Law Review Commission, chaired by District Judge Herb Rohleder. The final report of the Commission, which was submitted to Governor Carlin in December of 1986, contained more than fifty recommendations for actions necessary to modernize and reform the state's alcoholic beverage control laws, as well as to implement the recently-adopted liquor-by-the drink amendment to the Kansas Constitution. Among these, though, was the Commission's recommendation that the distinction between "strong beer" and CMB ("weaker beer") should be perpetuated. However, Chairman Rohleder presented a separate, dissenting view of this issue, which appeared in the report. Chairman Rohleder stated as follows:

"The failure of the Commission to recommend elimination of the distinction between cereal malt beverage and so-called strong beer is disappointing. I disagree with the recommendation to maintain the hypocritical distinction. Maintaining the arbitrary distinction serves only to perpetuate a myth that is not grounded in reality. Current law is inconsistent in that it incorrectly defines 3.2 beer as non-intoxicating, and places many more restrictions on "strong" beer, despite the fact that tests prove there is little difference in the alcoholic content of 3.2 beer and "strong" beer. There should be no distinction made between strengths of beer. All strengths of beer should be permitted to be sold at current CMB outlets as well as retail liquor stores." (Emphasis added.)

The tests referenced in the above-quoted statement by Chairman Rohleder were available to the Commission. Attached to the Commission's report as Appendix A was a table showing a comparison of strong beer and CMB by alcohol content, as determined in a laboratory analysis by the Kansas Bureau of Investigation. A copy of that comparative test is attached to this testimony as Attachment A. That test was performed in 1986. Subsequently, the KBI prepared a similar comparative test in the early 1990's, showing substantially the same results.

These KBI laboratory tests reveal that the major domestic brands of beer sold in retail liquor stores have an alcoholic content of not more than 4.0% by weight. This substantiates the Coalition's assertion that there is not an appreciable difference between the major domestic brands of CMB and their counterpart brands of beer sold in liquor stores.

ALCOHOLIC CONTENT - SELECTED BEERS

EXHIBIT B

PRODUCT	ALCOHOL% BY WEIGHT	
	CMB	STRONG
BUDWEISER	3.22	3.96
COORS	3.15	3.56
MILLER	3.01	3.6
BUD LIGHT	3.13	3.33
COORS LIGHT	3.14	3.29
MILLER LITE	3.05	3.22
COLT 45 MALT LIQUOR	N/A	4.58
KING COBRA MALT LIQUOR	N/A	4.81
SCHLITZ MALT LIQUOR	N/A	4.87
CORONA EXTRA BEER	N/A	3.58
FOSTERS LAGER	N/A	4.22
HEINEKEN LAGER	2.97	4.09
MOLSON CANADIAN BEER	N/A	3.87

ANALYSIS ACCURACY \pm .05%