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Senate Federal & State Affairs Committee  
SB 381

Testimony of  
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Director, Alcoholic Beverage Control

February 22, 2012

Good morning Mr. Chairman and members of the committee. I thank you for the opportunity to present neutral testimony on SB 381.

The separation of sales of cereal malt beverage and alcoholic liquor has been a policy decision by the state of Kansas and as such, is well within this body's authority to change. ABC does not support or oppose a decision to combine those sales. However, we do have concerns about this bill.

1. The language added in Section 5, amending K.S.A. 41-2708, subsection (b), on page 9, lines 3-6, is problematic. It would allow the mixing and consumption of alcoholic liquor and cereal malt beverage on retail premises, which is currently prohibited. Unless the committee intends a major shift in policy, that language must be amended. If the intent is merely to allow the sale and possession of both alcoholic liquor and cereal malt beverage on the same premises, there is a simpler fix.

Section 2 of the bill could be amended to allow a retailer to sell cereal malt beverage without having to acquire a cereal malt beverage license. The bill already makes the sale of cereal malt beverage subject to the provisions of the liquor control act, and it makes little sense to create a second level of regulation when ABC will have the enforcement authority over these sales.

Local governments would not lose any revenue by the removal of the cereal malt beverage license requirement in this limited circumstance, as the local governments do not currently issue cereal malt beverage licenses to these outlets anyway. The simplest solution for all parties is to simply allow a retailer licensed under the liquor control act to sell alcoholic liquor **and** cereal malt beverage.

2. Will the sales of cereal malt beverage by a liquor retailer be subject to the liquor enforcement tax or sales tax? If subject to the liquor enforcement tax, amendments will need to be made to the Kansas liquor enforcement tax act, K.S.A. 79-4101, et seq. to

include those sales. If subject to sales tax, retailers would be required to acquire a sales tax certificate and file separate returns on the cereal malt beverage sold.

3. Section 4 of the bill, subsection (h)(2), on page 8, lines 24-27, currently provides: "cereal malt beverages may be sold on premises which are licensed pursuant to both the cereal malt beverage act and the Kansas liquor control act at any time when alcoholic liquor is allowed by law to be served on the premises." Currently, no alcoholic liquor may be served on retail premises.

ABC feels the simplest way to allow a retailer to sell cereal malt beverage is to amend K.S.A. 41-308 to allow a retailer, under its existing state license, to sell and offer for sale, cereal malt beverage. The additional sections of this bill amending various provisions of the cereal malt beverage act could then be removed.

ABC therefore recommends that, if this committee votes to forward this bill to the floor, it be amended as follows:

Section 2 of the bill, beginning on page 4 would read: K.S.A. 41-308 is hereby amended to read as follows: 41-308. (a) A retailer's license shall allow the licensee to sell and offer for sale at retail and deliver in the original package, as therein prescribed, alcoholic liquor *and cereal malt beverage* for use or consumption off of and away from the premises specified in such license. A retailer's license shall permit sale and delivery of alcoholic liquor *and cereal malt beverage* only on the licensed premises and shall not permit sale of alcoholic liquor *or cereal malt beverage* for resale in any form, except that a licensed retailer may:...

(b) The holder of a retailer's license shall not sell, offer for sale, give away or permit to be sold, offered for sale or given way in or from the premises specified in such license any service or thing of value whatsoever except *the sale of alcoholic liquor and cereal malt beverage* in the original package, except that a licensed retailer may:...

(3) include in the sale of alcoholic liquor *or cereal malt beverage* any goods included by the manufacturer in packaging with the alcoholic liquor *or cereal malt beverage*, subject to the approval of the director...

(d) A retailer's license shall allow the licensee to store alcoholic liquor *and cereal malt beverage* in refrigerators, cold storage units, ice boxes or other cooling devices, and the licensee may sell such alcoholic liquor *and cereal malt beverage* to consumers in a chilled condition."

~~(e) If the licensee also holds a retailer's license to sell cereal malt beverage in accordance with the provisions of K.S.A. 41-2701 et seq., and amendments thereto, a retailer's license shall allow the licensee to sell and offer for sale at retail and deliver in the original package, cereal malt beverage for use or consumption off of and away from the premises specified in such license. The sale or resale of cereal malt beverage by the licensee shall be subject to the provisions of this section applicable to the sale or resale of alcoholic liquor.~~

Sections 3, 4, and 5 of the bill would be removed.

New sections would require retailers who sell cereal malt beverage to collect and remit liquor enforcement tax on those sales in the same manner as liquor sales:

K.S.A. 79-4101 amended to read: "(a). For the purpose of providing revenue which may be used by the state, counties and cities in the enforcement of the provisions of this act, from and after the effective date of this act, for the privilege of engaging in the business of selling alcoholic liquor *or cereal malt beverage* by retailers to consumers in this state, ~~or selling alcoholic liquor by farm wineries and microbreweries to consumers in this state,~~ or selling alcoholic liquor or cereal malt beverage by distributors to clubs, drinking establishments or caterers in this state, there is hereby levied and there shall be collected and paid at the rate of 8% upon the gross receipts received from: (1) The sale of alcoholic liquor *and cereal malt beverage* by retailers to consumers in this state; (2) the sale of alcoholic liquor by microbreweries or farm wineries to consumers in this state; and (2) (3) the sale of alcoholic liquor or cereal malt beverage by distributors to clubs, drinking establishments or caterers in this state."

K.S.A. 79-4103 amended to read: "On or before the 25<sup>th</sup> day of each calendar month, every person engaged in the business of selling alcoholic liquor *and cereal malt beverage* at retail, every microbrewery selling beer to consumers..."

A new section would be required to amend K.S.A. 41-103 to exempt sales of cereal malt beverage by a retailer from this provision.

This would allow a retailer to sell cereal malt beverage, which was the original intent of the bill, without compromising the integrity of the cereal malt beverage act, and without creating potential unintended consequences.

Thank you for considering these amendments.

