

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on February 4, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Judy Loganbill- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes  
Jason Long, Office of the Revisor of Statutes  
Julian Efird, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Nikki Feuerborn, Committee Assistant

Conferees appearing before the Committee:

Jason Long, Office of the Revisor of Statutes (Attachment 1)  
Representative Scott Schwab, citizen and legislator (Attachment 2)  
Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas, Inc. (Attachment 3)  
Brenda Elsworth, Pump 'n Pete's, Parsons (Attachment 4)  
Bob Alderson, Casey's General Stores (Attachment 5)  
Alison Lieszler, Short Stop Convenience Store, Clay Center (Attachment 6)  
Garry Wingett, Kansans for Addiction Prevention (Attachment 7)  
Rebecca Rice, Kansas Beer Wholesalers (Attachment 8)  
Amy Campbell, Kansas Association of Beverage Retailers  
Rodney Roberson, Kansas Association of Beverage Retailers (Attachment 9)  
Stacey Harlow, Kansas Association of Beverage Retailers, Santanta (Attachment 10)  
Brandon Plaschka, Liquor Store owner, Princeton (Attachment 11)  
Kelly Jennings, Liquor Store Owner, Mission (Attachment 12)  
Dave Dvorak, Liquor Store Owner, Andover (Attachment 13)  
John Davis, Liquor Store Owner, Wichita (Attachment 14)  
Tuck Duncan, Kansas Wine and Spirits Wholesalers Association (Attachment 15)

Others attending:

See attached list

Representative Kiegerl moved for the introduction of legislation regarding the Quality Care Assessment Act at the request of Representative Bethell. Motion was seconded by representative Peterson. Motion carried.

Representative moved for the approval of the minutes of January 13, 19, and 20. Motion was seconded by Representative Brunk. Motion carried.

**Hearing on HB 2537 - Cereal malt beverages; alcohol content, regulation by ABC, retailers authorized to sell, taxation**

Jason Long, Office of Revisor of Statutes, explained this bill changes the definition of cereal malt beverages (CMB) by increasing the limit on the alcoholic content from 3.2% or less to 4.0% or less by weight (Attachment 1). The definition of beer also increases the alcoholic content from more than 3.2% to more than 5%. This would allow CMB licensed retailers to sell strong beer and the usual convenience store items but would disallow liquor stores from selling motor vehicle fuel or cigarettes and other tobacco products. The bill exempts sales of CMB from retail sales tax. However, the sales would be subject to the 8% liquor enforcement tax which would be distributed on a quarterly basis to cities and counties to assist in enforcement.

Representative Scott Schwab spoke in favor of the bill which would expand the free market and encourage free enterprise (Attachment 2). He told the Committee that it was not a moral issue but just a matter of distribution.

Tom Palace, Executive Director of Petroleum Marketers and Convenience Store Association of Kansas,



## CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 4, 2010, in Room 346-S of the Capitol.

reported that CMB contains 3.2% alcohol by weight while liquor store beer contains alcohol levels higher than 3.2% measured by volume (Attachment 3). There is less than .5% difference in the beer. The bill contains a provision that allows liquor stores to sell grocery items. CMB retailers would be allowed to sell CMB the same hours as liquor stores and pay the same local and state licensing fees as liquor retailers. Liquor items and wine could not be sold by CMB retailers. CMB licenses currently cost up to \$250 from the city or county. State Liquor licenses are \$250. Petroleum and convenience stores number in the 1200 range and there are 740 liquor stores in Kansas. Forty-five other states allow one strength beer and Mr. Palace urged the updating of the current liquor laws in Kansas.

Bob Alderson, representing Casey's General Stores, gave the history of alcohol related legislation from the repeal of prohibition (Attachment 4). Attorney General Opinion No. 87-48 concluded that the Kansas Legislature has the power to define all beer containing less than 5% alcohol by weight as a cereal malt beverage. In 1937 CMB was excluded from the definition of "intoxicating liquor." The public perception is that 3.2% beer is of lesser quality than beer sold in liquor stores while there is very little difference in alcohol content. By the passage of this bill there will be a loss of sales tax revenues by local units of government but there will be increased revenues from the imposition of the liquor enforcement tax and the 10% drink tax, creating the opportunity for monies to be distributed by the state to the local units of government. There are 111 Casey's General Stores in Kansas with 92 holding CMB licenses. This legislation would allow them to sell the more popular brands of beer which are labeled at 4%.

Brenda Elsworth, representing Pump 'n Pete's in Parsons, spoke in favor of passage of the bill which would allow fair competition to all CMB retailers (Attachment 5). These retailers have lost 146% of their beer sales since the federal drinking age was raised to 21. The alcohol content in a 12 pack of strong beer compared to a 12 pack of CMB is less than a 2 ounce cup. No one can tell the difference but the public perception is that there is a difference. According to Ms. Elsworth, liquor stores can charge more for their beer due to this perception even though both CMB retailers and liquor store pay the same from wholesalers.

Alison Leiszler, Short Stop Convenience Store of Clay Center, testified in favor of the bill which would fill a gap found in rural communities which do not have a liquor store and sometimes not a grocery (Attachment 6). The convenience store plays many roles in such areas and the sale of single strength beer would be a convenience for the customers. These local stores cannot sell strong beer and this is a disservice to the store owner, the customers, and the town itself through lower sales tax revenue.

Garry Winget, President of Kansans for Addiction Prevention, spoke in opposition to the bill which would expand the availability of strong beer which would mean more consumption (Attachment 7). His understanding is that stronger beers could become CMB. Enforcement would need to be quadrupled and the younger sales force would be in situation where they were selling something they could not purchase. If an infraction could close a liquor store, it should be able to close an entire grocery store.

Rebecca Rice, representing the Kansas Beer Wholesalers Association, said that the actual change in the bill is that this would be a statutory declaration that 4% malt products are non-intoxicating (Attachment 8). If the Legislature were to make this declaration it would present to the Supreme Court the opportunity to issue an opinion that in essence re-writes the statutes regarding alcoholic liquor.

Amy A. Campbell, Executive Director of the Kansas Association of Beverage Retailers, introduced members of her association who were from out-of-town.

Rodney Robson, President, Kansas Association of Beverage Brewers and owner of Jo's Liquor Store in Caney, Kansas, spoke in opposition to legislation which he thinks would make strong beer more available to minors (Attachment 9). The sale of strong beer, liquor or wine in grocery stores and convenience store would cause the closure of locally owned liquor stores that are owned by residents of the State of Kansas. This would mean a loss of 1,000 jobs. States with a higher access to alcohol—more outlets selling the product—alcohol related traffic fatalities are higher. In the current venue, customers have a choice of the 3.2% CMB or a stronger beer rather than just one strength.

Stacey Harlow, 3<sup>rd</sup> Vice President for the Kansas Association of Beverage Retailers, explained their training

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program to retailers of CMB which includes new Kansas I.D.'s, new state laws, and policy changes at the ABC (Attachment 10). This training includes such subjects as prevention of illegal sales, identification of underage purchasers and fake I.D.'s, and the prevention of sales to intoxicated persons. Customers who live in the rural part of the state where there are many dry counties, would be prevented from the purchase of wine and spirits if 30% to 50% of liquor stores were closed due to 4% beer being available in grocery and convenience stores.

Brandon Plaschka, liquor store and convenience store owner from Princeton, Kansas, reported that he thought the bill was attempting to "get something for nothing" (Attachment 11). Liquor store owners are not proposing a bill which would limit the number of liquor licenses or asking the laws to benefit them in any way. If convenience and grocery stores want to sell liquor they should meet the qualifications and open a liquor store under the current laws.

Kelly Jennings, Tippy's Liquor in Mission, Kansas, said that the closure of his store would mean the loss of 4 full-time jobs and 6 part-time jobs for persons over 21 who are responsible for their own living (Attachment 12). Sales of cereal malt beverages are around 1% of overall sales of a grocery store and up to 3% of the sales of a convenience store. Beer constitutes 45% of the sales of his liquor store. He pointed out that an infraction in the liquor law by one of his employees will cause the store to be fined and closed for a day or more. If such an infraction occurs in a grocery or convenience store, the CMB cooler is closed for a short period of time.

Dave Dvorak, owner of Flint Hills Wine & Spirits in Andover, stated opposition to the bill which will require the Director of the ABC to need more money and employees to license 3900 more outlets (Attachment 13). There is much more to consider than just raising the level of alcohol by 25%, rewording the laws and passing a bill: unemployment, empty buildings, destruction of family investments, and negative effects on retirement.

John Davis, owner of a liquor store in Wichita, asked that the Committee deny the request to change the meaning of CMB 3.2% beer to 4% by weight is ridiculous and would play havoc with the overall liquor business (Attachment 14). This bill would cause unemployment and no new employment by offering it at all the new locations. Liquor laws are much more stringent in that these stores cannot be incorporated, must have only one location, clerks must be 21 years of age, and selling to a minor can close the entire store rather than just the beer cooler.

R. E. "Tuck" Duncan, representing the Kansas Wine and Spirits Wholesalers Association, testified that this bill is really a deregulation argument (Attachment 15). He pointed out that a can of strong beer has an average of 22% more alcohol than a can of 3.2% beer. This proposed law would allow clerks under the age of 21 to sell strong beer. Statistics show individuals under age 21 are more likely to sell alcohol to their underage peers. If the law is passed all clerks selling alcohol should be at least 21. No one would go out of business if the law stays the same.

Chairman Neufeld continued the hearing to February 8, 2010.

The next meeting is scheduled for February 8, 2010.

The meeting was adjourned at 3:30 p.m.

FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: 2/4/2010

NAME	REPRESENTING
Jay Campbell	KABR
Grant Blise	KABR
Tom Kessler	KABR } Tom's Wine & Spirits
Rachel Kessler	KABR }
Larry Knack	KABR } Wine & Spirits
Bob Knack	KABR }
DAVE DVORAK	KABR + FLINT HILLS WINE + SPIRITS
Bill Wolff	WOIFF LIQUOR "
Monte Pelz	KABR
C. David Rauer	Kearney & Assoc.
Monte Platt	KABR
Sue How	KABR
Stacy Harlow	KABR
Rebecca Rice	KBWA
TUCK DUNN	KS WINE & SPIRITS WHOLESALE
Whitney Janner	(J) (u)
RJ Wilson	SANDSTONE
Karen Brown	WOL

Relay ASSN.

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

**Briefing on House Bill 2537**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

February 4, 2010

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This memorandum provides an overview of the significant policy changes contained in HB 2537. The bill would amend numerous statutes regarding the Kansas Liquor Control Act, the Club and Drinking Establishment Act and the Kansas Cereal Malt Beverage Act.

First, the bill changes the definition of cereal malt beverages (CMB) by increasing the limit on the alcoholic content from 3.2% or less to 4.0% or less by weight. A similar change is made in the definition of beer increasing the alcoholic content from more than 3.2% to more than 4.0%.

The bill allows CMB to be sold by liquor retailers under the same laws, rules and regulations as alcoholic liquor is sold. Sections 1 through 32 of the bill make various amendments to the Kansas Liquor Control Act to implement this policy change. Sections 33 through 42 of the bill make similar amendments to allow club and drinking establishments regulated under the Club and Drinking Establishment Act to sell CMB. In section 8 of the bill, subsection (b) is amended on page 10 to permit licensed liquor retailers to sell those goods and services that a licensed CMB retailer is allowed to sell, except that a liquor retailer would not be permitted to sell motor vehicle fuel or cigarettes and other tobacco products. Under current law liquor retailers are generally restricted from selling any goods or services other than alcoholic liquor.

Currently CMB retailers are licensed and regulated by cities and counties under the Kansas Cereal Malt Beverage Act. Under HB 2537 CMB retailers would be licensed by the division of alcoholic beverage control (ABC) in a manner similar to that provided for the

licensure of liquor retailers under the Kansas Liquor Control Act. Sections 44 through 50 are new sections of law that provide for the licensure and regulation of CMB retailers by ABC. Under these provisions corporations and other business entities can hold CMB licenses. A CMB retailer would be required to pay an annual fee for the license and file a \$2,000 surety bond. Furthermore, cities and townships where the CMB retailer is located could impose a local license and occupation fee on the retailer. Sections 51 through 58 of the bill make various amendments to the Kansas Cereal Malt Beverage Act so that it conforms to the new sections regulating CMB retailers.

The bill exempts sales of CMB from retail sales tax. However, such sales would be subject to the 8% liquor enforcement tax under K.S.A. 79-4101 et seq.. Additionally, CMB sold for consumption on the premises would be subject to the 10% drink tax under K.S.A. 79-41a01 et seq. Sections 59 through 71 makes the necessary amendments to current law to bring sales of CMB under these provisions.

Finally, the bill amends K.S.A. 79-4108 to create and fund a local cereal malt beverage revenue fund. The state treasurer would credit 25% of the revenue collected from CMB retailers to this new fund. This revenue comes from the 8% liquor tax imposed by K.S.A. 79-4101. Moneys in the fund would then be distributed on a quarterly basis to cities and counties to assist those local governments in the enforcement of the provisions of the Kansas Cereal Malt Beverage Act. The moneys would be distributed in proportion to the amount of retailers' sales tax revenue collected in each city and county under the Kansas retailers' sales tax act.

STATE OF KANSAS

**SCOTT SCHWAB**  
REPRESENTATIVE, 49RD DISTRICT  
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TOPEKA

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HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: ELECTIONS

MEMBER: AGING AND LONG TERM CARE  
COMMERCE AND LABOR  
HEALTH AND HUMAN SERVICES

Dear Members of the House Committee on Federal and State Affairs,

Thank you for allowing me to come and chime in on House Bill 2537. As many of you know, I carried an amendment on the floor last year that does much of what this bill does. It was the first time in years that either chamber has had an opportunity to debate this issue.

Today you are going to hear much about the advantages, disadvantages, and myths of single strength beer and cereal malt beverages. Please listen intently. My goal of supporting this type of legislation is to see an expansion of the free market. Beer is legal. The question then is not so much of a moral one, as a question of how the market and distribution should be handled.

As you listen today, I ask you to consider the same questions as our founding fathers; "How can we free the market place and encourage free enterprise."

I urge this committee to pass this legislation, and if not this, legislation that allows our liquor stores to sell that which gas stations sell, and let gas stations sell what liquor stores sell. I think we will be pleased to find where the Free Market will take everyone involved.

Representative Scott Schwab

House Fed & State Affairs

Date: 2-4-2010

Attachment 2



February 4, 2010

**Memorandum:**

To: House Federal and State Affairs Committee  
From: Thomas M. Palace  
Re: Testimony Supporting HB 2537

Mr. Chairman and Members of the House Federal and State Affairs Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store owners throughout Kansas.

We stand before you as a proponent of HB 2537.

By Kansas law, convenience store retailers may sell only cereal malt beverage (CMB), which is known as 3.2 beer. HB 2537 changes the definition of CMB from 3.2% alcohol by weight to 4.0% alcohol by weight.

The Kansas Legislature is no stranger to beer legislation. It is a known fact that there is very little difference in the alcohol content of CMB and so-called strong beer. We would not be here today if the liquor laws were changed at the same time the federal law moved the drinking age to 21. But the laws were not changed and that is why we have a 90 page bill before you.

We understand that all Kansas liquor stores are locally owned. But please understand that many convenience stores are locally owned as well. Additionally, we have several members that own multiple locations and we have several chain stores. They collect millions of dollars in sales and excise taxes for the state and employ thousands of Kansans paying millions of dollars in employee costs and taxes. Convenience stores are major employers in the state of Kansas.

A concern we have heard from some opponents is convenience stores use beer as a "loss leader" to drive the sale of other products that may have greater profit margins. Competition dictates the price on most products and I doubt beer will be an exception. I can say that business owners in general price their product to make a profit, not to lose money.

**Petroleum Marketers and Convenience Store Association of Kansas**

115 SE 7th • Topeka, KS 66603  
PO Box 678 • Topeka, KS 66601-0678  
785-233-9655 • Fax: 785-354-4374

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Attachment 3



## **AGE VERIFICATION**

Currently, employees of retailers that sell CMB must be 18 or older. Liquor store statutes require anyone that works in a liquor store to be 21. The obvious reason for this requirement is that, in addition to beer, liquor retailers sell other products which have significantly higher alcohol content. Clearly, it is best to have 21 year old clerks handling 80-100 proof alcohol.

CMB retailers have been selling age restricted products...including CMB, for quite some time. We are happy to report that the current SYNAR statistics show that tobacco retailers have a compliance rate of 92%. And we are not aware of problems with underage sales to minors with CMB products in Kansas. Regardless of the cereal malt product that we sell today, anyone purchasing this product must be 21 and ID's checked. I believe the compliance rate for liquor stores is in the 80% range. I bring this to your attention because both convenience stores and liquor stores sell age sensitive products, and we do our best to be responsible retailers. I offer this only as a comparison, not to suggest that retail liquor dealers do not do an adequate job of complying with age requirements.

HB 2537 requires the Division of Alcohol Beverage Control (ABC) to conduct the compliance visits. Currently, CMB retailers receive compliance visits from the cities and counties. We anticipate there will be a fiscal note for the ABC to conduct the compliance visits as referred to in HB 2537. But we also expect a fiscal not to be offset with the addition fees that will be collected.

## **FEES AND ENFORCEMENT TAX**

Both CMB retailers and liquor stores pay licensing fees. HB 2537 will require CMB retailers pay the same licensing fee as liquor stores. Also, CMB retailers charge sales tax on CMB, and liquor store owners charge an 8% enforcement tax. HB 2537 will remove the sales tax provision and CMB retailers will charge the 8% liquor enforcement tax.

With the removal of the sales tax provision for CMB, we included a city and county carve-out of 25% to be divided among cities and counties in a manner similar to the distribution of tax receipts paid under the Kansas retailer's sales tax act.

Receipts from both the 8% enforcement tax and new license fees should cover the costs of enforcement.

## **LIQUOR STORES MAY SELL GROCERY ITEMS**

Mr. Chairman, another topic that we have all heard regarding this legislation is that it will put liquor stores out of business! How preposterous is that? Motor fuel marketers have some experience with competition in our business with the sale of gasoline. As you can

imagine, gasoline sales make up 60-65% of gross sales at convenience stores. Approximately 10 years ago, Big Box Retailers decided to get into the gas business...and yes we yelled "they are going to put us out of business." Our situation was a little different in that gasoline was being sold "under cost." It was tough to compete with another company when they were selling motor fuel cheaper than most people were buying it. You should also know that alcohol, by statute, cannot be sold under cost.

Many of our members learned to compete with the Big Box Retailers; it was either that or find something else to do. This is not easy when you have a million dollars invested in your business.

People go out of business for many reasons: unfair competition, poor customer service, poor locations, bad management, poor pay for employees and higher prices. I believe there are protections in HB 2537 (hour of service, enforcement, fees) that make it pretty tough to be an unfair competitor. We are unaware of any statistics that can rationally support a contention that competition will put liquor stores out of business.

Additionally, **there is a provision in the bill that allows liquor stores to sell grocery items.** Currently, the only way a liquor store can offer items, other than liquor, is to circumvent the law and put in a party shop.

The major provisions of House Bill 2537 are as follows:

- HB 2537 changes the definition of Cereal Malt Beverage (CMB) sold by convenience store retailers and grocery stores.
- CMB contains 3.2% alcohol by weight. Liquor store beer (LSB) contains alcohol levels higher than 3.2% measured by volume. The Kansas Bureau of Investigation has tested the alcohol content in comparing CMB to Liquor Store Beer. Tests show that there is very little difference in alcohol content...less than .5 percent. The definition of CMB will permit convenience stores and grocery stores to sell beer that has 4% or less alcohol measured by weight.
- **This bill is not about alcohol, but rather about economic parity between all beer vendors.**
- **Kansas is only one of 5 states with this archaic law.**
- The Alcoholic Beverage Control Division will enforce CMB retail sales.
- CMB retailers will be allowed to sell CMB the same hours as liquor retailers are open (9:00 am-11:00 pm). They will pay the same local and state licensing fees as liquor retailers, but they will sell ONLY CMB.
- CMB retailers will pay the 8% liquor enforcement tax when purchasing product from the wholesaler. In addition, the 10% drink tax will be applied to all on-premise sales of beer by beer retailers.
- **CMB retailers, unlike liquor retailers, will not have the ability to sell 100 proof alcohol or wine.**
- City and county carve out of 25% of CMB tax paid.
- **Changing the CMB definition is an economic issue for the state and retailers of alcoholic beverages...not an alcohol issue.**

I assume the opponents will say that the current system works...and it does because liquor store are currently legislatively protected, but to think that Kansas is only one of a handful of states that have 3.2 and strong beer should tell us something. There are 45 other states that allow one strength beer.

Mr. Chairman, we have tried to make sure that what we seek in HB 2537 does not give convenience stores an advantage over liquor stores that sell beer. We will pay the same licensing fees, the same taxes and our hours of operation (when selling CMB) will be the same as applied to liquor stores. Passing HB 2537 will give the consumer a chance to make choices when buying their beer.

We urge you to pass HB 2537.



# 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 FEDERAL AND STATE AFFAIRS**

**FEBRUARY 4, 2010**

Chairman Neufeld 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. 2537 ("HB 2537"). Casey's is located in Ankeny, Iowa, and it operates 1,507 convenience stores in nine Midwestern states, including 111 stores in Kansas.

In supporting HB 2537, Casey's is working in cooperation with the Petroleum Marketers and Convenience Store Association of Kansas, Inc., QuikTrip Corporation and Hy-Vee, Inc. ("Proponents"). The Proponents are retail grocers and convenience stores. Collectively, the Proponents have thousands of locations throughout Kansas; employ thousands of Kansans, with an annual payroll in the hundreds of millions of dollars; pay millions of dollars in Kansas property taxes; and also collect and remit millions of tax dollars to the State of Kansas.

## **BACKGROUND**

**Cereal Malt Beverage Laws.** Currently, grocery stores and convenience stores may be licensed to sell cereal malt beverage ("CMB") in the original and unopened containers. CMB is statutorily defined as a malt product containing not more than 3.2% alcohol by weight. 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.

In 1937, 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, from that point

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Attachment 4

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 constitutional 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 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. 2009 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 beers.

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. A copy of that later test also is attached as Attachment B.

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 Proponents' 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.

**Constitutionality.** In connection with the Proponents' prior legislative proposals, the question of whether the legislature has the constitutional authority to re-define CMB has been raised. Anticipating that the same question may be raised in connection with HB 2537, it should be noted that Attorney General Opinion No. 87-48 concluded that the Kansas Legislature has the power to define all beer containing less than 5% alcohol by weight as a cereal malt beverage. The Proponents are unaware of any change in the opinion of that office. Since there are no opinions of any Kansas appellate courts on this specific issue, there can be no guarantee as to this proposal's constitutionality, which is the case with most proposed legislation. However, in the absence of such definitive case law, the above-referenced Attorney General Opinion provides credible authority.

Moreover, it should be remembered that, during the time when the Kansas Constitution prohibited the sale and consumption of intoxicating liquor, "intoxicating liquor" was legislatively defined in 1937 (as noted previously) and CMB was legislatively excluded from that definition.

**HOUSE BILL NO. 2537**

The principal provisions of HB 2537 are as follows:

- CMB is re-defined as a malt beverage having not more than 4.0% alcohol by weight, and “beer” is defined accordingly as a malt beverage having more than 4.0% alcohol by weight.
- HB 2537 provides for the licensing and regulation of cereal malt beverage retailers by the ABC. Cities and townships will have an advisory role in the licensing of CMB Retailers to the same extent they have an advisory role in the licensing of retail liquor stores, and cities and counties will be able to regulate CMB retailers through zoning laws, by prescribing hours of operations to the same extent they do so currently, by continuing to impose standards of conduct on CMB retailers licensed for on-premises consumption of CMB and by continuing to regulate the moral, sanitary and health conditions of the licensed premises.
- Currently, the sales of beer by retailer liquor dealers licensed under the Kansas Liquor Control Act are subject to an 8% liquor enforcement tax on the gross receipts of such sales. On the other hand, sales of CMB pursuant to the Kansas Cereal Malt Beverage Act are subject to state and local sales taxes. HB 2537 provides that all retail sales of CMB are subject to the 8% liquor enforcement tax and are not subject to state and local sales taxes. In addition, sales of CMB by cereal malt beverage retailers licensed for on-premises consumption will be subject to the 10% drink tax imposed by K.S.A. 79-41a01 *et seq.* The Proponents believe that this tax structure will place the sales of CMB on equal footing with other sales of alcoholic beverages. Although there will be a loss of sales tax revenues by local units of government, there will be increased revenues from the imposition of the liquor enforcement tax and the 10% drink tax, creating the opportunity for monies to be distributed by the State to the local units of government where the tax revenues are derived. Section 64 of HB 2537 (amending K.S.A. 2009 Supp. 79-4108) provides for the quarterly distribution to cities and counties of a portion of the liquor enforcement tax revenues received from cereal malt beverage retailers. We invite the Committee to consider whether the distribution is in an appropriate amount. In addition, as is the case with retail liquor stores, local units of government will have the authority to impose an occupation license fee of not less than \$100 or more than \$300 on cereal malt beverage retailers.
- The days and hours when cereal malt beverage retailers may sell CMB in the original and unopened containers are identical to the days and hours of operation for retail liquor stores.
- Retail liquor stores will be authorized to sell CMB without the need for further licensing.

From the foregoing, it should be apparent that HB 2537 will, to the greatest extent feasible, bring parity to the sales of CMB and the corresponding sales of other intoxicating beverages.

**CONCLUSION**

In conclusion, it should be emphasized that the real issue involved in HB 2537 is not a liquor issue. It is an economic issue. Raising the drinking age to 21, authorizing liquor by the drink and the persistent misconception by consumers that CMB is of a lesser quality than beer have all combined to produce a dramatic reduction in the sales of CMB. By allowing retail grocers and convenience stores to compete on an equal basis with retail liquor dealers, HB 2537 provides CMB retailers the opportunity to regain the share of the cereal malt product market they lost over the past several years.

I appreciate the opportunity to appear before the Committee in support of HB 2537, and I will attempt to answer any questions members of the Committee may have.



*Appendix A*  
Comparison of Strong Beer and Cereal Malt Beverage by Alcohol Content

RESULTS OF EXAMINATION  
by K.B.I. LAB

	% ETHANOL (Alcohol) BY WEIGHT
1 - One 12 oz. can Bud Light (strong)	3.5
2 - One 12 oz. can Bud Light (3.2)	2.8
3 - One 12 oz. can Busch (strong)	3.9
4 - One 12 oz. can Busch (3.2)	3.2
5 - One 12 oz. can Budweiser (strong)	3.9
6 - One 12 oz. can Budweiser (3.2)	3.1
7 - One 12 oz. can Coors (strong)	3.8
8 - One 12 oz. can Coors (3.2)	3.2
9 - One 12 oz. bottle Miller (strong)	3.8
10 - One 12 oz. bottle Miller (3.2)	3.1
11 - One 12 oz. bottle Michelob (strong)	4.1
12 - One 12 oz. bottle Michelob (3.2)	3.2
13 - One 12 oz. can Old Milwaukee (strong)	3.9
14 - One 12 oz. bottle Wiedemann (strong)	3.7
15 - One 16 oz. can Colt 45 (strong)	4.1
16 - One 12 oz. bottle Corona (Mexican, strong)	3.6
17 - One 7 oz. bottle Little King (3.2)	3.2

K.S.A. 41-102 (C) defines "beer" when its meaning is not enlarged, modified, or limited by other words, means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

K.S.A. 41-2701 (a) defines "Cereal Malt Beverage" as any fermented but undistilled liquor brewed or made from malt or a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight.

## ALCOHOL CONTENT -SELECTED BEERS

PRODUCT	ALCOHOL %	BY WEIGHT	ADDITIONAL
	CMB	STRONG	ALCOHOL PER 12 OZ. CAN (STRONG VS. CMB)
BUDWEISER	<u>3.22</u>	<u>3.96</u>	<u>0.089 OZ.</u>
COORS	<u>3.15</u>	<u>3.56</u>	<u>0.049 OZ.</u>
MILLER	<u>3.01</u>	<u>3.6</u>	<u>0.071 OZ.</u>
BUD LIGHT	<u>3.13</u>	<u>3.33</u>	<u>0.024 OZ.</u>
COORS LIGHT	<u>3.14</u>	<u>3.29</u>	<u>0.018 OZ.</u>
MILLER LITE	<u>3.05</u>	<u>3.22</u>	<u>0.020 OZ.</u>
COLT 45 MALT LIQUOR	<u>N/A</u>	<u>4.58</u>	<u>N/A</u>
KING COBRA MALT LIQUOR	<u>N/A</u>	<u>4.81</u>	<u>N/A</u>
SCHLITZ MALT LIQUOR	<u>N/A</u>	<u>4.87</u>	<u>N/A</u>
CORONA EXTRA BEER	<u>N/A</u>	<u>3.58</u>	<u>N/A</u>
FOSTERS LAGER	<u>N/A</u>	<u>4.22</u>	<u>N/A</u>
HEINEKEN LAGER	<u>2.97</u>	<u>4.09</u>	<u>0.134 OZ.</u>
MOLSON CANADIAN BEER	<u>N/A</u>	<u>3.87</u>	<u>N/A</u>

ANALYSIS ACCURACY  $\pm$  .05%

Pump'n Pete's  
1712 Broadway  
Parsons, Kansas 67357  
620-423-8142

Mr. Chairman & Committee Members:

My name is Brenda Elsworth. I appreciate this time to speak to you regarding the Kansas customer and Single Strength beer.

After all of the facts regarding Strong beer compared to CMB has been revealed and evaluated, we still find ourselves in a situation where liquor stores enjoy the luxury of selling a bill of goods to Kansas customers that is not what it is portrayed to be.

The liquor stores make money off of the Kansas customer because of this untruth.

Liquor stores enjoy a 22% gross margin on strong beer while CMB retailers experience a 12% margin. You may ask what does that equate to in dollars?

According to numbers from the Kansas Department of Revenue office of Policy and Research, liquor tax receipts (net of refunds) fiscal year 2008, liquor stores sold over 18 million 30 packs, when converting total gallons sold to 30 packs. The additional dollars per 30 pack, after all taxes, equates to over 36 million dollars in retail that Kansas liquor stores charged the Kansas customer over what the CMB retailer charged the Kansas customer.

According to beer distributors, liquor stores and CMB retailers pay the same cost for all beer. Strong beer does not cost more.

Even though Liquor stores have less regulation, less overhead and fewer employees, they still charge the customer a higher retail.

I have heard it said, by legislators, the liquor stores might go out of business if Single strength beer is passed.

Tobacco shops have not gone out of business, even though they and other retailers sell cigarettes. C-stores have experienced an on slot of competition from Wal-Greens – Wal-Mart but they have survived. Liquor stores will survive as well. Liquor stores sell over 500 different wines plus many other products besides beer.

I have heard it said that CMB retailers are not responsible retailers. We have over a 90% compliance rating regarding underage sales.

In addition, the fact about the alcohol content in a 12 pack of strong beer compared to a 12 pack of CMB is amazing. One could not fill a 2 oz cup with the difference in alcohol

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Attachment

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when comparing the entire 12 packs. Not 1 can, but 12 cans, have less than a 2oz variance in alcohol content.

CMB retailers have lost 146% of their beer sales since the federal drinking age was put at 21.

Kansas' legislators have not raised taxes on liquor for 30 years.

Bottom line, we need to look to the customer. What does he or she want? Pick up any study and you will find they want choices, convenience and competition. Competition will allow for lower retails. This will only happen if the liquor stores no longer have a protected niche, a venue in which they can charge the customer a higher retail because no one else has the product.

Choices will only happen when the untruth about CMB is removed and all retailers are able to label the beer as strong, because it is.

Respectfully,

Brenda Elsworth

Pairott Head Liquor  
1812 N Broadway  
PittsburgKS 66762

Inv # 1025291  
Station: 1

Date: 02/03/10  
Time: 9:39 AM

Brand	Description	Size	Qty	Price	Ext \$
BUSCH LIGHT	12OZ CAN	12 OZ	30	0.65	19.45

*\$4.60 variance*

Petes #21  
1711 North Broadway  
Pittsburg KS 66762  
(620) 232-3255

Petes, 21  
1711 North Broadway  
Pittsburg, KS 66762

02/03/2010 9:52:24 AM  
Register: 1 Trans #: 3965 Op ID: 5427  
Your cashier: Victoria

Nu  
Busch Light 30 Pk Cans (018200860317)\$15.2  
9 101

Sub-Total	\$	19.45
EF Tax	\$	1.56
Sales Tax	\$	0.00
Total	\$	21.01

*Liquor store  
after tax*

Subtotal =	\$15.29
Tax =	\$1.12
Total =	\$16.41

Change Due = \$0.00

Cash

*\$16.41*

*e-store after tax*

*pg. 2  
5-3*

Petes  
1430 Main  
Parsons KS 67357  
620-421-2530

Petes, 8  
1430 Main  
Parsons, KS 67357

C-Store

02/03/2010 9:25:49 AM  
Register: 1 Trans #: 9442 Op ID: 7650  
Your cashier: Brandi

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

age verification (999999) \$0.00 101  
Busch Light 30 Pk Cans (018200860317)\$16.3  
9 101

-----  
Subtotal = \$16.39  
Tax = \$1.24  
-----  
Total = \$17.63

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Change Due = \$0.00

Cash

\$17.63

Fill Out a Survey  
Register to Win  
www.gasvisit.com

After  
Tax

YOUR RECEIPT  
THANK YOU

02-03-10  
07-15  
5841  
00 - 01OK  
1 18.38TX  
18.38  
1 1.47TX  
1.47  
-19.85OK

C & E LIQUOR  
214 E. MAIN  
PARSONS, KS 67357  
02/03/10 09:54:31  
MEM#: 853572962828  
STAFF: 0001 TERM: 0991  
3-D-L-E-S 0-2-9-1  
REF: 6403 BCH: 513  
CR TYPE: 96  
TR TYPE: 99  
TOTAL: \$19.86  
NOTE: \*\*\*\*\*  
EYR: M/A/R N#: 688766  
SOLS & MERCEZ  
MEMBER DONORAL EYES  
REPORT OF GUNS, DRUGS  
SERVICES IN THE AMOUNT  
OF THE TOTAL AMOUNT  
HEREON AND OFFERS TO  
PERFORM THE OBLIGATIONS  
SET FORTH IN THE  
MEMBER AGREEMENT  
MEMBER ID: 000000000000  
NITM THE MEMBER  
TOP SECRET SECTION  
BY: [Signature]  
CUSTOMER

After tax -  
Cigarettes

\$222 variance

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5-4

## Alcohol Content Of Selected Beers And Cereal Malt Beverages

Comparison of Strong Beer and Cereal Malt Beverage by Alcohol Content	%Ethanol (Alcohol) by Weight
1 - One 12 oz. can Bud Light (strong)	3.5
2 - One 12 oz. can Bud Light (3.2)	2.8
3 - One 12 oz. can Busch (strong)	3.9
4 - One 12 oz. can Busch (3.2)	3.2
5 - One 12 oz. can Budweiser (strong)	3.9
6 - One 12 oz. can Budweiser (3.2)	3.1
7 - One 12 oz. can Coors (strong)	3.8
8 - One 12 oz. can Coors (3.2)	3.2
9 - One 12 oz. bottle Miller (strong)	3.8
10 - One 12 oz. bottle Miller (3.2)	3.1
11 - One 12 oz. bottle Michelob (strong)	4.1
12 - One 12 oz. bottle Michelob (3.2)	3.2
13 - One 12 oz. can Old Milwaukee (strong)	3.9
14 - One 12 oz. bottle Wiedemann (strong)	3.7
15 - One 16 oz. can Colt 45 (strong)	4.1
16 - One 12 oz. bottle Corona (Mexican, strong)	3.6
17 - One 7 oz. bottle Little King (3.2)	3.2

### RESULTS OF EXAMINATION By K.B.I. LAB

K.S.A. 41-102 (C) defines "beer" when it meaning is not enlarged, modified, or limited by other words, means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

K.S.A. 41-2701 (a) defines "Cereal Malt Beverage" as any fermented but undistilled liquor brewed or made from malt or a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight.

*My Guil = 34 mL  
in one dose 34 x 10% = 3.4 mL alcohol in one dose*

### Alcohol Content - Selected Beers

*127 mL to 1 oz.*

Product	Alcohol% CMB	By Weight	Additional Alcohol Per 12 Oz. Can (Strong vs CMB)
Budweiser	3.22	3.96	0.098 oz
Coors	3.15	3.56	0.049 oz
Miller	3.01	3.6	0.071 oz
Bud Light	3.13	3.33	0.024 oz
Coors Light	3.14	3.29	0.018 oz
Miller Lite	3.05	3.22	0.020 oz
Colt 45 Malt Liquor	N/A	4.58	N/A
King Cobra Malt Liquor	N/A	4.81	N/A
Schlitz Malt Liquor	N/A	4.87	N/A
Corona Extra Beer	N/A	3.58	N/A
Fosters Lager	N/A	4.22	N/A
Heineken Lager	2.97	4.09	0.134 oz
Molson Canadian Beer	N/A	3.87	N/A

*0.98 = 12oz = .008%*  
*1 ounce = 29.57 ml. liters*  
*to convert ml into ozs. multiply by .0338*  
*0.98oz ÷ 0.338 = 2.89 mL*  
*in a 12 oz. can*

*3.4*

Analysis Accuracy ± .05%

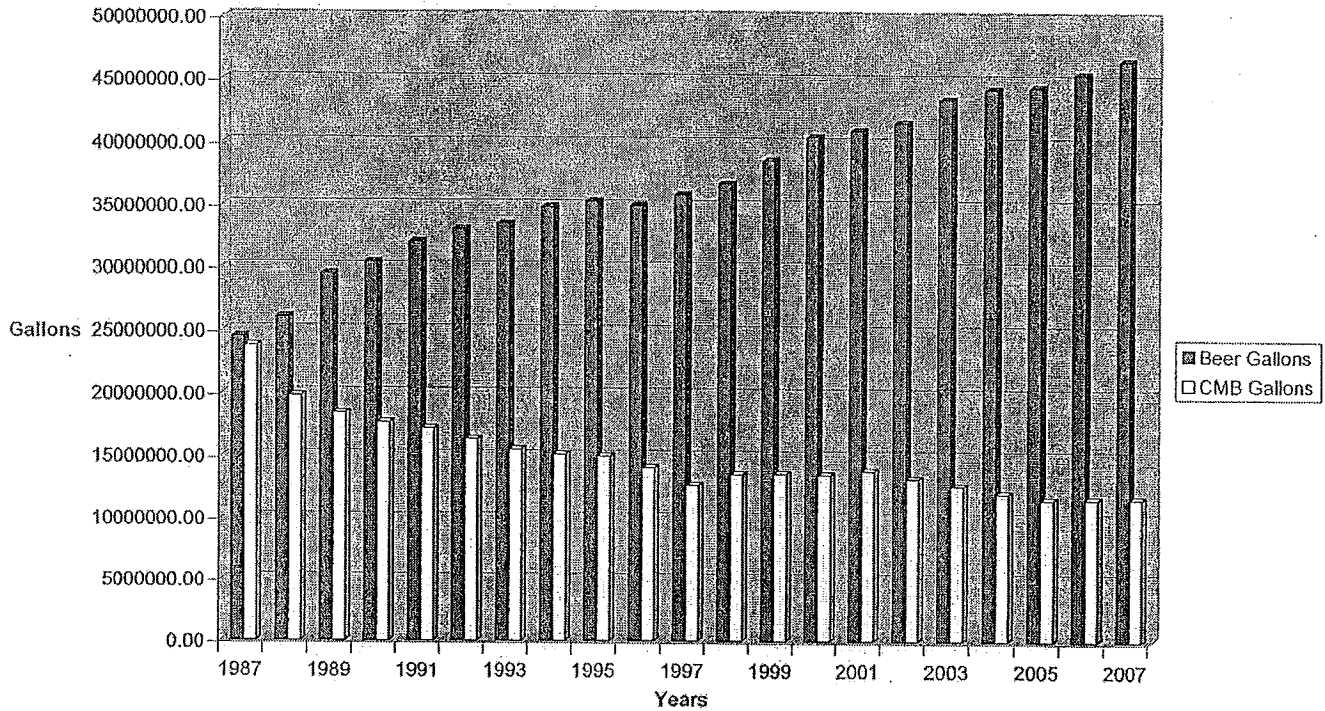
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Pg. 04

Current total KS tax receipts converted to gallons for 2007 year.	58,211,197.83		
CMB gallons at 49.24% market share		28,663,193.81	
Actual CMB gallons for 2007		11,616,623.11	
CMB gallons lost in 2007 when compared to 1987 49.24% market share		17,046,570.70	146.74%

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**Kansas Beer Vs CMB Tax Receipts  
converted to gallons**



**KS TAX RECEIPTS CONVERTED TO GALLONS**

Year	Beer Gallons	CMB Gallons	Total	CMB Percentage of Total Gallons
1987	24534916.00	23799929.00	48334845.00	49.24% *
1988	26092762.00	19833758.00	45926520.00	43.19%
1989	29492634.00	18445885.00	47938519.00	38.48%
1990	30432503.56	17708076.00	48140579.56	36.78%
1991	32082818.33	17211140.06	49293958.39	34.92%
1992	33099054.56	16367010.44	49466065.00	33.09%
1993	33550014.67	15521967.56	49071982.22	31.63%
1994	34927952.17	15137728.00	50065680.17	30.24%
1995	35384300.67	15005851.06	50390151.72	29.78%
1996	35044045.78	14084984.56	49129030.33	28.67%
1997	35931112.06	12671581.83	48602693.89	26.07%
1998	36815655.06	13549795.78	50365450.83	26.90%
1999	38656029.17	13597789.28	52253818.44	26.02%
2000	40512970.94	13504492.39	54017463.33	25.00%
2001	41011885.67	13826011.11	54837896.78	25.21%
2002	41626409.28	13222117.28	54848526.56	24.11%
2003	43492079.50	12627279.83	56119359.33	22.50%
2004	44303136.78	12026844.00	56329980.78	21.35%
2005	44505973.89	11538481.61	56044455.50	20.59%
2006	45530921.11	11609219.83	57140140.94	20.32%
2007	46594574.72	11616623.11	58211197.83	19.96% *

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page

Besides the rate differential between sales of strong beer (and other alcohol) by liquor stores and CMB by grocery and convenience stores, there is a major difference in the disposition of revenue.

Enforcement and Sales Tax – Disposition of Revenue			
	<u>SGF</u>	<u>State Highway Fund</u>	<u>Local Units</u>
Enforcement (8 percent)	100.00%	---	---
State Sales (5.3 percent) – FY 2007	92.83%	7.17%	---
State Sales (5.3 percent) – FY 2008 and thereafter	87.74%	12.26%	---
Local Sales (up to 3.0 percent)	---	---	100.00%

\*\* Enforcement tax receipts in FY 2006 were approximately \$44.2 million. Grocery and convenience store sales tax collections from CMB are unknown.

The liquor enforcement tax rate has not been increased since 1983.

**Drink**

\*\*\*The liquor drink tax is imposed at the rate of 10 percent on the gross receipts from the sale of alcoholic liquor by clubs, caterers, and drinking establishments.

The club owner (who had previously effectively paid the gallonage tax and then the enforcement tax when he acquired the case of wine) next is required to charge the drink tax on sales to its customers. Assuming the club charged \$4.00 for a glass of wine, the drink tax on such a transaction would be 40 cents.

Drink Tax – Disposition of Revenue			
	<u>SGF</u>	<u>CAIPE</u>	<u>Local Alcoholic Liquor Fund</u>
Drink Tax (10%)	25%	5%	70%

\*\*\* Liquor drink tax revenues in FY 2006 were about \$32.0 million, of which \$8.0 million were deposited in the SGF.

The liquor drink tax rate has remained unchanged since imposition in 1979.

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Rates	
	<u>Per Gallon</u>
Beer and CMB	\$0.18
Light Wine	\$0.30
Fortified Wine	\$0.75
Alcohol and Spirits	\$2.50

\* Gallonage tax receipts in FY 2007 were approximately \$20.0 million. Of this amount, over \$10.5 million was attributable to the beer and CMB tax.

Gallonage Tax – Disposition of Revenue		
	<u>State General Fund</u>	<u>Community Alcoholism and Intoxication Programs Fund (CAIPF)</u>
Alcohol and Spirits	90%	10%
All Other Gallonage Taxes	100%	---

Liquor gallonage tax rates have not been increased since 1977.

**Enforcement and Sales**

**Enforcement.** Enforcement Tax is an in-lieu-of sales tax imposed at the rate of 8 percent on the gross receipts of the sale of liquor to consumers and on the gross receipts from the sale of liquor and CMB to clubs, drinking establishments, and caterers by distributors.

\*\* So a consumer purchasing a \$10 bottle of wine at a liquor store is going to pay 80 cents in enforcement tax.

The club owner buying the case of wine (who already had paid the 30 cents per gallon gallonage tax as part of his acquisition cost) also would now pay the 8 percent enforcement tax.

**Sales.** CMB purchases in grocery or convenience stores are not subject to the enforcement tax, but rather are subject to state and local sales taxes. The state sales tax rate is 5.3 percent, and combined local sales tax rates range as high as 3.625 percent.

CMB sales therefore are taxed at rates ranging from 5.3 to 8.925 percent.

Besides the rate differential between sales of strong beer (and other alcohol) by liquor stores and

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pg. 8  
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# LEISZLER OIL COMPANY, INC.

(785) 632-5648 • Fax (785) 632-6009 • 635 West Crawford • Clay Center, Kansas 67432



Leiszler Oil  
dba Short Stop  
635 W. Crawford  
Clay Center, KS 67432

Mr. Chairman and members of the Federal and State affairs committee:

Thank you for allowing me the opportunity to speak with you today about a topic that is important to me, Single Strength House Bill # 2537. My name is Alison Leiszler with Short Stop. My family has sold fuel in Kansas since 1932.

Short Stop currently operates 14 convenience stores, 11 commissioned sites and also wholesales fuel throughout the state. We currently employ 169 individuals. In 2009 we paid \$3,220,359 in wages and benefits. Also in 2009, we paid \$236,060 in Federal and State income tax, and \$210,132 in property tax. We remitted \$1,015,449 to the State of Kansas for sales taxes and \$9,501,374 in motor fuel tax.

When preparing myself for this testimony, I tried to put myself in your shoes and determine what would sway me to vote in favor of this bill. While I think the arguments that (1) there is virtually no difference between weak beer and strong beer and (2) more competition is only a good thing for Kansas consumers are valid, I have chosen a different perspective.

Many smaller towns in Kansas do not have a liquor store. Instead, they have one convenience store struggling to serve all of the community's daily needs. The fact that these local stores cannot sell strong beer does a disservice to the store owner, their customers, and the town itself through lower sales tax revenue.

I live 3 miles south of Randolph, KS. Randolph has a population of 175, with 1 convenience store named Sharp's Short Stop. We are their fuel supplier but not involved in his convenience store operation. Sharp's is more of your classic general store than a true convenience store. It has a little bit of everything; groceries, gloves and boots for winter, fishing supplies, even some fresh fruit! Dave Sharp has invested considerably to upgrade his store. He has replaced the fuel pumps. He will soon be replacing the register system. He works hard to provide for the community and it shows. When I asked him if I could use him as an example in my testimony he said yes and that "It (single strength beer) would sure help." He also mentioned that with his being close to the ORV Park, a lot of his customers are from Nebraska. They bring their beer with them since he cannot sell "strong beer" and there is no liquor store in Randolph. Selling single strength beer would help insure his ability to stay in business in a small town.

The town of Randolph is being hurt. Dave's customers are planning ahead and buying their beer in Manhattan or worse for the state, in Nebraska. This means that Randolph never sees these sales tax dollars. Plus the people who live in Randolph are missing out on the convenience part of the

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Attachment

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convenience store when it comes to beer purchases. Dave Sharp is missing out on additional sales that could help him continue to improve his store for the town of Randolph.

The reality is that small town Kansas is struggling and so are small town convenience stores.

I encourage you to think about small town Kansas and pass Single Strength House Bill #2537 out of committee.

Respectfully,

Alison Leiszler

# KANSANS FOR ADDICTION PREVENTION

P.O. Box 16774, Wichita, Kansas 67216

Phone 316-681-0122

## **SUBJECT: House Bill 2537**

There has been significant erosion of controls of alcohol over the past few years. There has also been a major jump in the number of alcohol related traffic fatalities. Alcohol is the number one drug problem in America. You have expanded access which always increases consumption. House Bill 2537 however is not just an erosion of control; it is a radical shift in policy. It may seem that a shift from 3.2% to 4% is insignificant, but that is not true. I understand that the whole product line is affected, and these stronger beers would magically become "cereal malt beverages." This bill should be defeated.

**PREVENTION:** is our primary focus, and a proliferation of places that sell strong beer would mean that more people would drink. Prevention of access by youth means that fewer persons will become addicted to alcohol. Numerous studies throughout the world have linked expanded number of sales outlets and/or expanded hours to increased consumption and the resulting harmful effects. In Great Britain, the sale of reduced price alcohol in grocery stores is blamed for a dramatic increase in harm done by alcohol.

**ENFORCEMENT:** Under this bill, enforcement would need to be quadrupled. It needs to be vastly increased because you would be adding two to three thousand outlets for strong beer. Would a large national corporation train their staff of much younger sales associates to the same standard that liquor stores now maintain? It has never made sense that young people could sell a product that they can not buy themselves.

In order to fund the vastly increased enforcement effort it would be important to raise the tax noted on page 66 from 8% to 12%, and the tax on page 83 from 10% to 12%. Actually it is part of our proposals this year to raise all alcohol taxes, but this increase could be dedicated to expanded enforcement efforts.

The penalties for sales to minors need to be level. If an infraction would close a liquor store, an equal infraction should close an entire grocery store. It would seem that a well run grocery store would be unwilling to take the risk of selling strong beer because of the potential for severe penalties.

Garry Winget, KAP President

February 4, 2010

House Fed & State Affairs

Date: 2-4-2010

Attachment 7

To: House Federal & State Affairs Committee  
By: Rebecca Rice, Legal Counsel  
For: Kansas Beer Wholesalers Association  
Date: February 4, 2010  
Re: HB 2537

The Kansas Beer Wholesalers Association is opposed to **HB 2537** for one primary reason: The members are concerned that the Kansas Supreme Court might rule that CMB is illegally classified as non-intoxicating in violation of §10 of the Kansas Constitution and thereby, remove the product from Kansas outlets. (Section 10 is attached to this testimony.)

The *Intoxicating Liquors* section specifically prohibits and allows certain behavior and grants authority to the state in defined areas. But the entire section is limited to *intoxicating liquors*. Paradoxically, *intoxicating liquors* is not defined by the Kansas Constitution.

It is the lack of constitutional definition that raises significant concerns about the range of possible consequences if *intoxicating liquors* is statutorily redefined and all malt beverages containing no more than 4% alcohol are declared *non-intoxicating*. And that is the purpose of HB 2537: to redefine *non-intoxicating liquor* to include malt beverages containing 4% or less alcohol.

Although a 90 page bill with a vast number of substantial policy changes is well designed to obscure the base issue, it is important to not allow tangential issues to divert attention and dilute the importance of the actual single issue involved.

Discussion about weight vs. volume; corporations vs. individually owned; sales of non-liquor items alongside liquor and the many other topics raised in HB 2537 divert our attention from the actual change: statutory declaration that 4% malt products are non-intoxicating.

I know I would be unprepared to declare by personal vote that 4% alcohol is non-intoxicating. I believe the Supreme Court will have an equally difficult time ruling that 4% alcohol is non-intoxicating.

So the real question presented by HB 2537 is: Does this legislature want to make that declaration and thereby present to the Supreme Court the opportunity to issue an opinion that in essence re-writes the statutes regarding alcoholic liquor. Hopefully, the Supreme Court would only issue an opinion as to whether the new statute violated the constitution.

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Attachment 8

However, each time an issue is presented to the Supreme Court there is the potential for decisions that change the Legislature's authority in any given area. Our most recent dramatic example is the school finance decision. We discovered that the Supreme Court can interpret a section of the Constitution as creating a legislative obligation to appropriate money without regard to: current resources; the state population's economic condition; inefficiency; actual need; or outcome.

I can't articulate an equivalent for the liquor industry that would equal the education funding mandate decision. However, I assume there is one and I would prefer that we not go fishing for it with this legislation. And, if this legislation or something similar is adopted, I have been assured that litigation against the state will be filed so the risk is real.

### **The Argument in a Nutshell**

From 1937 to the present, all laws and constitutional amendments regarding alcoholic beverages have been adopted or rejected based upon the current statutory definition of the term *intoxicating liquors*: consumer beverages containing alcohol, except for malt beverages that contain no more than 3.2% alcohol.

The Supreme Court has never addressed the issue of whether legislation could narrow the definition of *intoxicating liquor* without amending the Constitution. However, the Court does not typically allow the Legislature to change the Constitution by simply adopting statutory definitions that differ from the common meaning.<sup>1</sup>

In 1987, then-Attorney General Stephan opined that expanding the definition of cereal malt beverages to include CMB containing no more than 5% alcohol would be "acceptable to the Supreme Court".<sup>2</sup> However, the opinion relied primarily on Kansas Supreme Court decisions rendered prior to 1935, and one law journal article.

Of greater importance, is the "aside" comment contained in the AG opinion that - should the legislature's authority to redefine the constitutional term *intoxicating liquors* be challenged, the Court *could rule* that not only does the new definition violate the Constitution but that *the current legislative definition* violates the Constitution.<sup>3</sup> If the current

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<sup>1</sup> Any legislative definition of a term used in the constitution must be within reason and must conform to the commonly understood meaning of the term, as intended by the framers of the constitutional provision and the people adopting it. *Board of County Commissioners of Wyandotte County v. Kansas Ave. Properties*, 246 Kan. 161 (1990)

<sup>2</sup> *AG Opin. 87-48*

<sup>3</sup> "(It should be noted that if a 5% CMB definition is challenged, the Court could set aside its earlier line of reasoning due to current societal concerns with driving under the influence, etc. If this were to happen, the legislature may lose the 3.2% definition as well.)" *AG Opin. 87-48* at page 5



definition of intoxicating liquor is ruled unconstitutional, the result could be that CMB would be removed from all CMB outlets – on and off premise - until (if) the Legislature chose to re-write the Liquor Control Act to change licensing classifications and requirements for both on and off premise malt beverage sales. Within that extremely difficult effort, would be the necessity to protect retail liquor dealers' right to equal protection.

So, while the 1987 AG Opinion states that the Court has not ruled that classifying CMB as a non-intoxicating liquor is unconstitutional, of greater importance is that the court has not ruled that such classification *is* constitutional. Without more, current law should not be jeopardized.

As with all legislation – but especially when considering legislation changing the state's liquor statutes – this legislation should be weighed on a *need* vs. *want* scale. When weighed, this legislation is heavily weighted to *want-based*. There is little if any *need* involved. It should fail for that reason alone. But, if that is insufficient reason, the legislation should be rejected because of the unknown *unintended consequences* of a Supreme Court ruling on a statutory declaration that 4% malt beverage products are non-intoxicating.

## Article 15.--MISCELLANEOUS

### § 10: Intoxicating liquors.

(a) The legislature may provide for the prohibition of intoxicating liquors in certain areas.

(b) The legislature may regulate, license and tax the manufacture and sale of intoxicating liquors, and may regulate the possession and transportation of intoxicating liquors.

(c) The sale of intoxicating liquor by the individual drink in public places is prohibited, except that the legislature may permit, regulate, license and tax the sale of intoxicating liquor by the drink in public places in a county where the qualified electors of the county approve, by a majority vote of those voting on this proposition, to adopt this proposition, but such sales shall be limited to: (1) Public places where gross receipts from sales of food for consumption on the premises constitute not less than 30% of the gross receipts from all sales of food and beverages on such premises; or (2) public places for which a temporary permit has been issued as authorized by law.

At any subsequent general election, the legislature may provide by law for the submission of propositions to qualified electors of counties for: (1) The prohibition of sales of intoxicating liquor by the individual drink in public places within the county ; (2) the regulation, licensing, taxing and sale of intoxicating liquor by the drink in public places within the county without a requirement that any portion of their gross receipts be derived from the sale of food; or (3) the regulation, licensing, taxing and sale of intoxicating liquor by the drink in public places within the county which derive not less than 30% of their gross receipts from the sale of food for consumption on the premises.

Temporary permits for the sale of intoxicating liquor may be issued in any county in which the regulation, licensing, taxation and sale of intoxicating liquor by the drink in public places is approved pursuant to this section, but no temporary permit shall be issued for the sale of intoxicating liquor by the drink within any county in which the regulation, licensing, taxation and sale of intoxicating liquor by the drink in public places is prohibited.

**Rodney A. Robson, President**

**Kansas Association of Beverage Retailers**

**Jo's Liquor Store, Caney KS**

Chairman Neufeld and Committee,

First I want to thank each one of you for your service and today for your time in hearing this very important issue. Let me tell you about myself and how I have become involved with this issue and the organization I am representing today.

Approximately seven years ago my wife and I purchased a liquor store in a small town of about 2,000 people. Prior to that I was a police officer for ten years, working the last four years as a narcotics detective.

Now a lot of you might think, "Wow, what a drastic career change from being a police officer to selling liquor." Well the motto of a police officer is to serve and protect. I am still working in that capacity. I still serve and I still protect, and by that I mean I serve customers and protect the public by making sure that the laws of the state of Kansas are adhered to in my liquor store.

Let me tell you about the issues of changing liquor laws. First I believe that allowing strong beer and liquor to be sold by minors or people under the age of 21 will make alcohol more accessible to underage people. You may say that I have no knowledge that this would happen. I beg to differ; also during my career as a law enforcement officer I was involved in stings of sending underage people into grocery stores and convenience stores in an attempt to purchase alcohol and tobacco. During these stings it was common for the clerk in these venues to sell to these under age individuals. These stings would take place with an agent from the ABC. The cooperating individuals whom were attempting to make the purchase were from another local city or town and would travel with us to the location and make these purchases. It is understandable that teens who have a friend working at one of these locations will seek them out when they have a party to attend and want to buy strong beer or liquor for their parties.

Let's take a different look at how allowing the sell of strong beer, liquor or wine in grocery stores and convenience stores would affect the retail liquor stores in the State of Kansas. Locally owned liquor stores that are owned by residents of the State of Kansas would close. Let me repeat that. Locally owned liquor stores that are owned by residents of the STATE of KANSAS would close. Not because they wanted to but because people would start purchasing these items at grocery and convenience stores and they would be forced out of business. Once again you might say I have no personal knowledge of that because it has not been done yet.

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A 2008 study by the Distilled Spirits Council of the United States (DISCUS) concluded that over 200 retail liquor stores would close if strong beer could be sold in convenience stores and grocery stores. See attached.

Also please remember that most of these stores are not based in the State of Kansas. Liquor stores in Kansas are owned by Kansans who live in Kansas. That means that the money that is collected in Kansas stays in Kansas. We pay our mortgages in Kansas, we pay our utility bills in Kansas, we have children that live in Kansas, and we are members of organizations in Kansas, we pay taxes in Kansas, and even our lobbyist Amy Campbell lives and works in KANSAS. If over two-hundred liquor stores close - if you figured each store employs just five workers - that would mean the loss of 1000 jobs, and I do not believe that Kansas can afford to lose 1,000 jobs at this point in time.

I am certain that my store would be one of those closed stores because 75% of my store sales are beer.

The grocery stores and convenience stores have stated that there is not a lot of difference in the alcohol content and that they could sell more strong beer if they were allowed this product. We have been told that people want just strong beer. Then why it is that beer distributors have been brewing 3.2% beer for years? And why is it that people continue to buy 3.2% beer when strong beer is offered? People want a choice and they want to be able to decide if they want 3.2% or strong beer. Additionally, two of the most popular new products on the market are MGD 64 and Bud Select 65 – these are low carb, low calorie 3.2% cereal malt beverages.

Please remember the public safety issues. According to the National Highway Traffic Safety Administration alcohol related fatalities with blood alcohol content (BAC) greater than .08 that compares Kansas and Missouri there were 145 fatalities and 310 fatalities respectively. In fact, in states with greater access to alcohol – more outlets selling the product – alcohol related traffic fatalities are higher.

In closing I would ask you to seriously take a look at the big overall picture and the economy of the State of Kansas. Kansas cannot afford the loss of jobs and we cannot afford to change the liquor laws that have withstood the test of time for years. It is not time for change, it is time to realize that the regulated role of state licensed liquor stores has value. It works and sometimes things are best left just the way they are. Hence the saying, "If it ain't broke, don't fix it!" Thank you again for your time and attention in this matter.

*For more information, contact me at [crrobson@coffeyvilleks.net](mailto:crrobson@coffeyvilleks.net)*

## MEMORANDUM

To: Courtney Armour

From: David Ozgo

Date: February 9, 2008

Re: Full strength beer in Kansas grocery and convenience stores

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You asked me to estimate the impact on the spirits industry if legislation allowing Kansas grocery and convenience stores to carry full strength beer were to become law. This memo makes the following points:

- Since 70% of spirits buyers are also beer buyers there is a danger that many shoppers will forgo or curtail spirits purchases as they begin shopping for beer in stores that do not carry spirits. Many will substitute spirits occasions for beer occasions. Spirits volumes are projected to fall by 107,000 cases as a result.
- While the proposal will increase full strength beer availability by 500%, total full strength beer volume sold through off-premise outlets is projected to increase from 12.8 to 20.2 million cases – an increase of less than 60%. Thus average cases of full strength beer sold per licensee is expected to fall by 13,000 cases annually.
- Beer represents incremental business to food stores. Since most full strength beer sales will be incremental business for food stores, food stores do not need to sell as much volume to make beer sales profitable.
- However, beer sales make up an estimated 55% of total package store revenues – they are a core part of package store business. The reduction in beer sales, along with lost spirits sales will, initially, reduce average package store revenues by 45%.

- As a result of lost revenues, 217 package stores are projected to go out of business. As spirits become less available, an additional 64,000 cases of spirits sales will be lost annually.
- Between beer substitution and a reduction in spirits availability the spirits industry is projected to see a reduction of 169,000 cases worth \$15.2 million to suppliers.

These points are discussed in more detail below.

### I. Analysis of Kansas beverage alcohol market.

Full strength beer claims the overwhelming share (79%) of the total beer market in Kansas, despite the fact that only 726 package stores currently carry it. Clearly, consumers prefer full strength beer over 3.2 beer.

Assuming 40% of full strength beer is sold through on-premise outlets would mean that almost 12.8 million cases of full strength beer are sold annually through package stores. These sales would be worth over \$255 million to package store retailers.

**Table 1**  
**Estimation of Off-Premise Volumes**

	Full Strength	3.2	Total Beer	Spirits	Wine
Total Cases (000)	19,668	5,128	24,796	1,393	1,075
Off Premise	12,784	4,872	17,656	1,037	833

Sources: Adams Handbooks, Kansas Dept. of Revenue

The average package store generates an estimated \$352,000 annually from beer sales – roughly 55% of total sales. Clearly, any policy that threatens these revenues also threatens the viability of the package stores themselves.

**Table 2**  
**Estimated Package Store Revenues**

Beverage	Revenue (000)	Per Store (000)
Spirits	\$ 155,612	\$ 214
Wine	\$ 49,988	\$ 69
Beer	\$ 255,683	\$ 352
Total	\$ 461,283	\$ 635

Source: Adams Handbooks, DISCUS  
Estimates

## II. Substituting spirits drinking occasions for beer occasions.

The dangers to the spirits industry are two fold. First, spirits buyers and beer buyers are drawn from similar populations. Some 70% of all spirits consumers also drink beer.<sup>1</sup> Additionally, large numbers of shoppers purchase both beer and spirits when they visit a package store.<sup>2</sup> Shopping decisions are often driven by customer convenience. If full strength beer is available at grocery and convenience stores many shoppers will opt to visit food stores where spirits are not available. Faced with having to make a special trip to a package store to purchase spirits many will substitute beer consumption for spirits consumption.

**Table 3**  
**Kansas Off Premise Retail Outlets, Current and Proposed**

	Spirits, Wine & Beer	3.2 Beer Only	Full Strength Beer	Total Spirits	Total Full Strength Beer	Beer Outlets Per Capita
Current	726	3790	726	726	726	0.38
Proposed	726	3790	3790	726	4516	2.34
Increase	0		3064	0	3790	1.96

Source: Adams Liquor Handbook, U.S. Census and DISCUS calculations

Currently, there are 3,790 grocery and convenience stores that sell 3.2 beer and 726 package stores that sell full strength beer, wine and spirits. The number of full strength beer outlets per 1000 adult adults is 0.38. If all of the 3.2 beer stores begin selling full strength beer the number of outlets per 1000 adults would climb over 500% to 2.34.

<sup>1</sup> Special analysis by Gallup Organization, September 29, 2006.

<sup>2</sup> The owner of a large "destination" package store estimated that well over 50% of his customers purchase both spirits and beer at the same time. While the figure is likely to vary by state and the size of the package store the percentage will still be significant.

**Table 4**  
**Estimation of New Beer Sales**

Increase in Per Capita Beer Outlets	1.96
Per Capital Consumption Reaction <sup>1</sup>	0.1022
Increase in Per Capita Beer Consumption	3.02
Total New Beer Gallons (000)	5,827
Cases (000)	2,590

<sup>1</sup> See Appendix A

As the number of full strength beer outlets increases, so too will the amount of beer sold. As Table 4 shows, nearly 2.6 million additional cases of beer are projected to be sold as a result. Some of these new beer purchases will be substituted for spirits purchases. As shown in Table 5, these lost sales will amount to an estimated 107,000 9-liter cases worth almost \$16 million to package stores.

**Table 5**  
**Lost Retail Spirits Revenue from Increased Beer Sales**

New Beer Drinks (000)	62,157
Spirits Equivalent Gallons (000)	728
Spirits Equivalent Cases (000)	306
Estimated Diversion (000) <sup>1</sup>	107
Lost Spirits Retail Revenue (000)	\$ 16,084

<sup>1</sup> See Appendix A

### III. Impact on package stores.

The second danger stems from the projected reduction in package stores – the only venue for off premise spirits sales. The package stores rely on beer sales as well as spirits and wine sales to stay in business.

Assuming that all 3.2 beer becomes full strength beer and adding in the 2.6 million new cases estimated in Table 4, total off-premise full strength beer volumes will increase from around 12.8 million cases to 20.2 million cases.



Currently, the 726 package stores allowed to sell full strength beer sell an estimated 17,600 cases per year. Accounting for both the new beer volumes *and* the new number of full strength beer licenses, the average number of cases sold per outlet will decline to around 4,480 cases per year.

**Table 6**  
**Volume Impact for Current Licensees**

	Full Strength Beer Licensees	Beer Volume (000)	Average Cases Per License (000)
Current	726	12,784	17.61
Proposal	4516	20,246	4.48
Decline in Average Cases			13.13

For the new full strength beer licensees, most of the new volume will be incremental (except that volume which is replacing 3.2 beer sales). Thus, grocery and convenience stores will be able to sell comparatively low volumes of full strength beer profitably. Obviously, this does not preclude large supermarkets from selling tremendous volumes. What it does mean, however, is that the 3,790 convenience and grocery stores in the state will be able to obtain full strength beer licenses and take sales away from traditional package stores.

As sales at traditional package stores decline some will inevitably be forced out of business, making the purchase of distilled spirits less convenient. As spirits become less convenient to purchase sales will suffer.

**Table 7**  
**Estimated Package Store Revenues**

Beverage	Current		Proposed			Percentage Loss
	Annual Revenue (000)	Per Store (000)	Annual Revenue (000)	Annual Per Store (000)	Lost Revenue Per Store	
Spirits	\$ 155,612	\$ 214	\$ 139,527	\$ 192	\$ (22)	-10%
Wine	\$ 49,988	\$ 69	\$ 49,988	\$ 69	\$ -	0%
Beer	\$ 255,683	\$ 352	\$ 65,095	\$ 90	\$ (263)	-75%
<b>Total</b>	<b>\$ 461,283</b>	<b>\$ 635</b>	<b>\$ 254,610</b>	<b>\$ 351</b>	<b>\$ (285)</b>	<b>-45%</b>

Source: Adams Handbooks, DISCUS Estimates

Accounting for both the lost spirits sales and lost beer sales, total package store revenues would decline from \$461.3 million to \$254.6 million – a 45% reduction. If all package stores were to remain in business, average annual package store revenues would fall from an estimated \$635,000 to \$351,000.

### III. Impact from reduced spirits outlets.

Clearly, not all businesses could withstand a 46% decline in revenues. As a result, we would expect a decline in the number of package stores. Assuming that the average package store would need at least \$500,000 in annual revenue to stay solvent, the \$254.6 million in total package stores would support a total of 509 package stores. Thus, 217 package stores are projected to go out of business.

**Table 8**

<b>Volume Lost From Reduced Availability</b>	
Estimated Loss in Spirits Outlets	217
Decline Per 1k Adults	(0.11)
Decline in per Capita Consumption <sup>1</sup>	-3.2%
Volume Decline (000, Cases)	-62

<sup>1</sup> See Appendix A

Naturally, as the number package stores declines the availability of spirits will decline as well. Because of lost availability, spirits sales are projected to decline by an additional 62,000 cases annually.

#### IV. Total spirits industry impact.

As a result of the proposal to allow the sale of full strength beer in grocery and convenience stores spirits volumes are projected to decline by a total of 229,000 cases worth \$20.6 million in supplier revenues.

**Table 9**  
**Supplier Impact**

Impact	Cases (000)	Supplier Revenues (000)
Substitution	(107)	\$ (9,651)
Lost Availability	(62)	\$ (5,582)
Total	(169)	\$ (15,233)

## Appendix A

### A. Per capita beer response to change in outlets.

The natural log of Per capita beer consumption was regressed against the natural log of beer outlets per 1000 adults and median household income, and whether or not the state attracts large amounts of cross border traffic and whether or not more than 25% of the population is Baptist or Mormon. All independent variables were significant.

The coefficient on Beer Outlets/1k adults is equal to the elasticity of per capita consumption to beer outlets. Given the large increase in the number of per capita outlets (521%) that the legislation would allow, the percentage increase in per capita consumption was calculated by the formula:

$$(1 + 5.21)^{0.53224} - 1 = 0.1021$$

Thus, per capital consumption was increased by 10.21%.

#### SUMMARY OUTPUT

<i>Regression Statistics</i>						
Multiple R		0.666125222				
R Square		0.443722811				
Adjusted R Square		0.395350882				
Standard Error		0.131471016				
Observations		51				

ANOVA						
	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>	
Regression	4	0.63421772	0.158554	9.173147	1.55287E-05	
Residual	46	0.79509288	0.017285			
Total	50	1.4293106				

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	5.375098259	0.55296714	9.720466	9.95E-13	4.262033147	6.4881634
Beer Outlets/1k Adults	0.053224072	0.02470332	2.154531	0.036469	0.003498871	0.1029493
Median Household Income	-0.50286338	0.14502811	-3.46735	0.001151	-0.79478983	-0.210937
Cross Border or Tourist	0.225037896	0.08029813	2.80253	0.007397	0.063406147	0.3866696
Heavy Mormon or Baptist	-0.14811085	0.05136397	-2.88356	0.005962	-0.25150115	-0.044721

**B. Reaction of spirits consumers to increased beer availability.**

70% of spirits drinkers also drink spirits. The 500% increase in full strength beer availability will make beer fare more convenient to purchase than spirits. Assuming that the 500% increase in availability will impact the purchase decisions 10% of the time, 50% of consumers who drink both beer and spirits would be impacted. Multiplying 70% (spirits drinkers who also drink beer) by 50% yields 35%. Thus, 35% of all new beer drinking occasions will be taken from spirits drinking occasions.

**B. Per capita spirits response to change in outlets.**

Per capita spirits consumption was regressed against spirits outlets per 1000 adults, median household income, whether or not the state attracts large amounts of cross border traffic and whether or not more than 25% of the population is Baptist or Mormon.

SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.8647107
R Square	0.74772459
Adjusted R Square	0.7257876
Standard Error	0.37704732
Observations	51

ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	4	19.38279	4.845697	34.0851	3.19E-13
Residual	46	6.539575	0.142165		
Total	50	25.92236			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	0.89500286	0.405713	2.206	0.032418	0.078345	1.711661
Spirits Outlets/1k Adults	0.28582906	0.110512	2.586405	0.012928	0.06338	0.508278
Median Household Income	0.02218339	0.008463	2.621138	0.011839	0.005148	0.039219
Cross Border or Tourist	2.1063314	0.228129	9.233065	4.83E-12	1.647131	2.565532
Heavy Mormon or Baptist	-0.28703618	0.142533	-2.013817	0.0499	-0.573941	-0.000131

# Kansas Association of Beverage Retailers

P.O. Box 3842, Topeka, KS 66604

February 4, 2010

Chairman Neufeld and House Federal and State Affairs Committee,

My name is Stacey Harlow and I have driven to Topeka today to visit with you from Satanta, Kansas.

In 2008, I was elected to serve as 3<sup>rd</sup> Vice President for the Kansas Association of Beverage Retailers. Since taking a leadership role, I have learned a great deal about the work of our association and the services we provide to the state licensed retail liquor stores. Our members take very seriously their role as licensed retailers of adult beverages and we spend a significant amount of time staying on top of the laws and regulations that we must follow.

We work very closely with the ABC – collaborating with them to offer training programs to licensees and their employees. We have recently amended our training program to include new information relating to new Kansas I.D.s, new state laws, and policy changes at the ABC. We also cooperate with ABC to send out important information to our members about issues important to the State – including their new penalty guidelines, new rules about keg registration and wine sales, and where they may be seeing problems in the industry.

I have recently become a certified trainer for our Retailer Education Program. Most of this training is designed to prevent illegal sales, identify underage purchasers and the myriad of fake i.d.s on the market, and prevent sales to intoxicated persons. We must be attentive to safe sales and deal with people who will do their best to fool me or my clerks.

The retailers who serve in our organization and on our board are extremely involved and are very attentive to the laws of Kansas. They do not get paid extra for this work, but consider it an important part of being a retail liquor licensee in Kansas. Why? Because owning and operating a retail liquor store is not only a full time job in itself, but it includes extra responsibilities to our community and to the State.

I come from a part of the state that includes many dry counties. Many of our communities have 3.2 taverns instead of drinking establishments. This bill makes major changes to the way taverns are regulated and the taxes they pay. They would pay for a state license, become ABC regulated, and pay a 10% drink tax instead of sales tax.

Please refer to the attached fact sheet.

For my community – the closing of my store would mean that people will face a greatly reduced variety of wine and spirits products. The availability of some brands of wine and spirits is very limited in our area already. Can you imagine the impact of closing 30% to 50% of the liquor stores on the sales of wine and liquor? Of course, the ultimate purpose of changing Kansas liquor laws is to move the sales of all liquor, wine and beer into thousands of additional outlets.

Please support your Kansas owned retail liquor stores. And please feel free to contact us if we can work with you on other issues as well.

*Stacey Harlow – 2 Bags Brew, 204 W Nez Perce, Satanta, KS 67870*

House Fed & State Affairs

Date: *2-4-2010*

Attachment *10*

# Kansas Association of Beverage Retailers

P.O. Box 3842, Topeka, KS 66604

785-266-3963 kabr@amycampbell.com

This session, the Legislature is considering legislation that would put Strong Beer (now classified as alcoholic liquor) on the shelves of the convenience stores and grocery stores. This legislation – which has been defeated many times in the past – serves no positive public purpose and will seriously harm Kansas owned businesses.

## Please oppose “single strength beer” or “strong beer” legislation.

- Liquor store owners must be Kansas citizens and independent businesses – this legislation takes primary business away from Kansas small businesses to give to chains and corporations – often sending those profits out of state.
- Job and proprietor losses of income will multiply throughout the Kansas economy into other sectors.
- Liquor stores must hire adults OVER 21 years of age. This legislation puts stronger alcohol in the hands of underage convenience store and grocery clerks – to stock it, to sell it, and to resist the temptation to provide to their friends.
- Strong beer sales make up approximately 55% of sales for Kansas licensed liquor stores – as high as 80% for some. This legislation could close as many as 50% of the state licensed stores (according to past testimony by the Division of ABC) – especially in the less populated areas of the state. This analysis was based on the experience of other states which expanded Strong Beer sales to grocery and convenience stores.
- Financial analysis of the Kansas market predicts the loss of at least 217 Kansas licensed liquor stores (30%). This will significantly reduce the availability of wine & spirits – then, you will see the grocery & convenience stores come back to the Legislature to ask to sell those products as well.
- Beer sales make up an estimated 55% of total package store revenues – they are a core part of package store business. The reduction in beer sales, along with lost spirits sales will, initially, reduce average package store revenues by 45%.
- The ABC does not conduct audits on cmb retailers, as they do regularly in retail liquor stores.
- The ABC does not include cmb retailers in their controlled buy (sting) programs and licensee inspections. Retail liquor stores may receive multiple visits from an agent in a single year.
- Cereal malt beverage sales are 26.4% of the beer sales in Kansas – increasing 6.6% in 2008. Customers buy lower alcohol beer because they choose to purchase a lower alcohol product. This legislation will remove that choice from Kansas altogether.
- Strong beer legislation has constitutional problems. Our Kansas constitution speaks to intoxicating liquors and gave the counties a choice. This legislation will automatically increase the alcohol content of all products sold in the taverns and stores in “dry” counties – without a public vote.
- Strong beer legislation increases the availability of Strong Beer by 500% and likely eliminates the sale of cereal malt beverage products offering a lower alcohol content.
- Convenience and Grocery Stores say that there is no appreciable difference between 3.2% cmb and regular beer. But their legislation will allow them to sell all beer up to 4% alcohol content by weight – increasing alcohol content of the products they sell by 25%.
- The passage of the Strong Beer bill will expand the responsibilities of the Division of ABC to cover an additional 3790 businesses approximately.

**Will the legacy of the 2010 Kansas Legislature be an unconstitutional law - increasing the alcohol content of beer in every tavern, grocery and convenience store in Kansas?**

*Please feel free to contact KABR for more information. Amy Campbell, executive director: 785-969-1617.*

10-2  
~~10-2~~



Plaschka & Kramer Retail Liquor  
1455 Hwy 59  
Princeton, KS 66078

Hello my name is Brandon Plaschka. In 2006 I bought the retail liquor store that my parents had owned for twenty years. Later that same year I bought the convenience store/gas station next door. These stores are in Princeton, KS about six miles south of Ottawa and they are the main hub in our small community. They provide many jobs and services to our rural patrons. My family and I are very giving to our community with our time, resources and financially as well.

Numerous economic studies say that income to a locally owned business is spent 7 times in the local economy. My business income stays here.

My parents taught me long ago that it is very rare to get something for nothing. Yet that is what this bill is all about. I wanted to get into the liquor business so I bought a liquor store. Later I wanted to get into gas and convenience sales so I bought that store. If I wanted to get into the grocery business, a car business, jewelry, pharmacy, etc. I could. Just as the proponents of this bill can. Why should Kansas give them the ability to sell liquor when they already can if they meet the qualifications?

We, liquor store owners, have been accused of not wanting or avoiding competition. Quite the contrary, we are not proposing bills to limit the number of liquor licenses or asking to change the laws to benefit us in any way. These laws have been in place a long time and are not broken, so why change them? The proponents have the same opportunities that I do. This is America and Kansas laws are set up to allow free enterprise. If they want to enter into the liquor business they need only have the desire and the right qualifications, and if they want to set up right across the street from me they can and I wish them good luck!

It is my understanding that this proposed bill would allow independent grocery stores to sell all alcohol as long as they don't sell tobacco or motor fuels. Where is the gain in this? Again, this is something for nothing.

As a liquor store owner and c-store owner, I already sell tobacco and motor fuels. The proponents will argue that they are giving me an opportunity to sell items other than liquor. This is a right I already have. If I wanted to sell what the big box stores sell, I could open one and go head to head with them. If I wanted to be a grocery store, I could open a grocery store. I'm not asking for that because I don't want to sell those products.

I have chosen my career path just as most of you have chosen what you want to do with your life. Imagine someone asking for a part of what you have invested so much in – but they don't want to earn the license you have earned and they don't want to obey the laws that you obey or be subject to the same penalties.

Many of us represent family businesses, which have been here for decades. These businesses are our livelihood and lifelong investment. The proponents of this bill are likely hard working folk as well and many of them are maintaining family legacies, surely we can all see that if the tables were turned and we wanted to take something from them, it would be like asking for something for nothing.

House Fed & State Affairs

Date: 2-4-2010

Attachment 11

# Tipsy's Liquor

6840 Johnson Drive  
Mission, KS 66202

Chairman Melvin Neufeld and members  
House Committee on Federal and State Affairs

Please reject House Bill 2537. As the owner of Tipsy's Liquor in Mission and a former partner of Brown Bag Liquor in Olathe, I ask you to support locally owned businesses and turn down this request.

I can see the front door of Hy-Vee from my store. Additionally, there are three convenience stores within view. Certainly, these are also valuable businesses to our community – but they do not need to put my business in jeopardy in order to survive.

If my store closes – it will mean the loss of 4 full time jobs and <sup>1</sup>6 part time jobs for adults – people who are over the age of 21 and are earning a living. These are not after school jobs for teenagers. It is not wise to sacrifice those jobs in order to add a product to the convenience and grocery stores which will not add any jobs.

Sales of cereal malt beverage are around 1% of the overall sales of a grocery store. It can be up to 3% of the sales of a convenience store. Cereal malt beverage is not a priority product for these businesses and does not receive the majority of their attention. In my store, beer is around 45% of sales. At the store in Olathe, it is 55% of sales. As a result, we pay close attention to the sales of beer. My clerks are not attempting to service the gas pumps and soda fountains, while also trying to keep an eye on the beer aisle. They are charged with the safe and legal sale of adult beverages and are able to give that task their full attention.

If I or one of my employees violates the law, my store will be fined and then closed for a day or more. If one of the corporations benefited by this bill commits the same violation – they will simply lock up the cereal malt beverage cooler for short period of time. The bill does not create a even playing field for our family owned businesses.

I have worked in the retail business for 10 years. Tipsy's opened two years ago. There are many unique issues and challenges related to running a liquor store. Selling alcoholic liquor is not the same as selling other products. Even the relationships between my retail store and my wholesalers and suppliers are regulated by the State and, at the federal level, by the TTB. The current licensing structure insures that I must be a good partner to the State – collecting and remitting the 8% enforcement tax that is dedicated entirely to the State General Fund.

There is no shortage of availability of strong beer to the public and I am unaware of community groups coming forward to request this drastic change in state law.

According to the Licensed Beverage Dealers of South Dakota, it took only two years to put 35 of the 38 independent liquor stores in the city out of business after Rapid City, SD, passed a law allowing sales of full strength beer and wine in additional grocery outlets. And that was simply an expansion of access – not rewriting the liquor act.

With Kansas unemployment rates at historic highs, we should be looking at measures to retain and add local jobs – not considering legislation that will kill Kansas businesses and jobs and send profits out of state.

Thank you for your time.  
Kelly Jennings

House Fed & State Affairs  
Date: 2-4-2010

Attachment 12

Flint Hills Wine & Spirits  
125 W Hwy 54  
Andover, KS 67002  
316-733-8333

Dear Representatives,

2/2/10

**I am opposed to HB 2573.** You have heard the facts and will be voting on this soon. Please allow me to reflect some key points that I would like you to consider. Thank you!

You may hear them say, "It's time to level the playing field"

But you need to know that it is not level,

It can't be "level" when:

They won't agree to only hiring 21 yr old employees.

They want to retain corporate ownership.

They won't have their entire business closed as a penalty for selling to a minor.

You may hear them say, "It is highly doubtful that this would put any liquor store out of business"

Yes it would affect liquor stores! There are two recent economic studies that say so. The first thing to let go would be our staff. It would be very unlikely that they would do any more hiring, just to sell more beer in their store. As time goes by it would randomly affect stores in proximity to the CMB stores and will shutter small stores as well as larger stores!

You may hear them say, "Our laws are antiquated", or "it's time for a change"

How is it possible to redefine an industry that is based on the state constitution?

When is it a good time for rewording the law? That's what they are doing.

This may not be constitutional and the question will end up in the courts.

More importantly, when is it a good "time for a change" to allow 3900 more outlets to sell alcohol in KS?

You may hear them say, "It will increase sales"

How much? Let's take a liquor store...

Say for instance they sell 50 cases of beer a day. *(not a real number)*

Multiply that times 748 stores = 37,400

Lets say liquor stores beer business goes down 50% due to this bill.

Now the liquor stores sell 18,700 cases of beer that they sell

The other 18,700 cases of beer get split up and sold at 3900 other outlets

They now have increased their business by .2085 cases of beer.

That amounts to a six pack's worth of beer !

You may hear them say, "We'll keep the same hours of sale as liquor stores, 9am to 11pm"

They will not be closed on Thanksgiving or Christmas.

You may hear them say; " Other states do it"

What they don't tell you is that after prohibition, every state chose to write the law that worked for them. Some are state owned, some are individually owned. But they all lived with it and grew up with their own respective laws for the last 60 years. Change a law now, in KS and you disrupt the system of control over alcohol. For what purpose? To be like Missouri?

No other state has passed a strong beer law.

No other state defines cmb as 4% alcohol.

House Fed & State Affairs

Date: 2-4-2010

Attachment

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The Director of the ABC will need more time, more money, and more employees to license 3900 more outlets.

The Director of the ABC will also have to approve thousands of new labels – changing many from beer to cereal malt beverage. They want the percentage changed to 4%. Will a majority of beer companies will reformulate their beer AND packaging, just for Kansas? Will that change the number of products I can sell now? What will happen to the 3.2 versions of brands like Coors, Miller and Anheuser-Busch and the customers that prefer them?

I'd like to take a moment to also point out that:

307 of the 748 licensees in the state are women. There are many minority owners as well.

Many owners also own their own building. This is the kind of market change that creates empty buildings.

We invest upwards of \$100,000 to maintain an inventory, paid for in cash. Some are smaller and some larger but this is an investment all the same.

We as employers hire between 2-14 employees at each store. These F/T and P/T jobs will go away. In a down economy do we really want this? Will 3900 other outlets hire any more people to sell another case a day? No.

You would affect the nest egg of 748 owners. This is our form of a 401K. This is our retirement. It's better than my 401K right now!

There is a lot more to consider than just raising the level of alcohol 25%, rewording the laws and passing this bill. I feel that there is no good time to increase the availability of alcohol and affect peoples' jobs.

I may not be from your area but I do appreciate you taking the time to read this. I would appreciate your support and **vote NO for HB 2573**, in any way shape or form, with amendments, in committee or if it appears attached to another bill later in session.

Regards,

Dave Dvorak, owner

February 4, 2010

Mr. Chairman

HB 2573

For the past 35 years I have proudly sold alcohol products as a Licensed Kansas Retail Liquor Dealer. I applied for my license and at that time was required to have a hearing with the Director of Alcoholic Beverage Control in Topeka. I appeared and had an informal meeting with the Director and a member of his staff. He reminded me that it was a privilege not a right to be given a Liquor License.

I have seen many changes over the years;

Going from 1175 (late 1970's) Retailers to 720 (2009)

Lottery sales

Franchise Distribution

Cold Beer (late 1960's)

There have been many Laws and Regulation changes along numerous Director of ABC changes over the many years which I have worked in the industry.

Now the proposal to change the meaning of Cereal Malt Beverage (CMB) 3.2% by weight Beer to 4% by weight is ridiculous and would play havoc with the overall Liquor business.

I don't want to sell CMB and by the Liquor Control Act I am not allowed to sell CMB in my Liquor Store. This change would alter many lives;

It would stand to put myself and my employees out of work.

Or at least cause layoffs in my store.

IT WOULD CAUSE NO NEW EMPLOYMENT AT Convenience or

Grocery stores

I am required to have only one location

Grocery and Convenience stores are Corporate Chains

I can not be a Corporation

They Are Corporations

I hire only 21 year old employees

They hire 16 year olds and up

I Sell to a Minor and State of Kansas can close my entire store

They sell to a minor and must close Beer Department

If the Convenience Stores and Grocery Stores would like to play on an;

EVEN PLAYING FIELD

Then let them give up there Corp Charter.

Have only one location.

Hire only 21 year old clerks for the entire store.

Close entire store if found guilty of a Law infraction.

I ask the committee to deny this request and to ask the proponents to spend your valuable time on much more pressing matters.

Thank you

John Davis of Wichita

House Fed & State Affairs

Date: 2-4-2010

Attachment 14

K • A • N • S • A • S  
**WINE & SPIRITS**  
WHOLESALE ASSOCIATION

February 4, 2010

To: House Committee on Federal and State Affairs  
From: R.E. "Tuck" Duncan  
Kansas Wine & Spirits Wholesalers Association  
Re: House Bill 2537

Kansas retail liquor stores are our customers. We have a few observations for your consideration:

First, don't break a fixed system. The current system is not broken. All liquor stores are locally owned, ensuring more dollars stay in Kansas. 3.2 beer is different from strong beer and should be treated accordingly.

In previous years convenience store owners have stated that beer totals 4 to 6% of their sales. For locally owned liquor stores, beer sales average more than 50% of sales. *(Last year one proponent said it was less than 1% of their sales)*. Liquor Retailers tell us that changing the law puts locally owned liquor stores at risk of going out-of-business.

Proponents of this legislation say they simply want to regain market share they've lost (for which there may be little evidence). Proponents have consistently stated in the past that this debate is about market share and economics, not alcohol. Yet selling liquor is not like selling candy bars or potato chips. Alcohol is a regulated product and should continue to be regulated so only those 21-years of age and older have access. This is really a deregulation argument.

Since the 1980's de-regulation of business has become a popular by-word. It is seen as a way to invigorate business and facilitate the benefits of a nationalized or globalized marketplace. However, as we have seen with the recent mortgage meltdown, an unregulated marketplace is not without problems. Such problems are even greater with alcohol, as increased purchasing and consumption can produce a great deal of social harm. Nevertheless, there are very active efforts to deregulate the sale and marketing of alcohol. Deregulation advocates claim that our current marketplace regulations are "antiquated" and should be eliminated. Changing the definition of cereal malt beverages is a form of deregulation.

House Fed & State Affairs

Date: 2-4-2010

Attachment 15

According to the studies in Appendix "A" locally owned businesses generate 70 percent more local economic impact per square foot than chain stores, three times as much money stays in the local economy when you buy goods and services from locally owned businesses instead of large chain stores, and local stores retain a much larger share of their profits within the local economy.

Many convenience and grocery stores use beer as a "loss leader." They do this because it accounts for a minimal amount of sales and they sell hundreds, if not thousands, of other products, to offset the lower priced beer. An increase of beer sales at outlets which sell beer cheaper could equate to a reduction in tax collections despite the change in tax rates contemplated in this bill. Liquor store tax collections have steadily increased for the past 5 consecutive years.

The change in the tax structure will have consequences on local revenues. No one can predict that effect because no one knows what the nature of the shift might be. *But in these time of uncertainty, its better not to disrupt local collections.*

Changing current law will significantly increase access to strong beer. Numerous regional and national studies prove the obvious: increased access leads to increased problems. Please consider the following:

All strong beer, wine and spirits in Kansas are sold in locally owned stores by clerks who are required, by law, to be 21 years of age or older. This law would allow clerks under the age of 21 to sell strong beer. Studies show individuals under 21 who sell alcohol tend to sell alcohol to their underage peers. If you pass this legislation, you need to require that convenience and grocery stores follow the same laws that all retail liquor stores follow: all clerks must be 21-years of age and older. This is a good law – people selling alcohol should be the same age as those of drinking age.

- ◆ The National Research Council Institute of Medicine found 70% of minors nationwide purchase their alcohol from grocery and convenience stores.

- ◆ A nationwide MADD study revealed the following: underage individuals were able to procure alcohol 70 percent of the time in grocery and convenience

stores compared to 14 percent of the time in liquor stores.

<http://www.madd.org/Parents/UnderageDrinking.aspx>

◆ Another study on sales to minors concluded convenience and grocery stores have a poorer underage sales compliance rate than liquor stores.\*

Anyone claiming 3.2 beer is "practically-the-same" as strong beer is perpetuating a myth. By same brand, a can of strong beer has an average of 22% more alcohol than a can of 3.2 beer. **How do we know this?** Mathematics and Science.

Density of average beer is 1.050 g/cm<sup>3</sup>. Given 355ml of beer (can size) and density of EtOH (alcohol), which is 0.789g/ml— the total mass of EtOH contained within the each beer.

**CALCULATION:** 5.5% beer has 355ml beer (5.5ml EtOH/100ml beer)(0.789g EtOH/1ml EtOH) = 15.405g EtOH.

3.2% alcohol by mass = 355ml beer (1.050g beer/1ml beer)(3.2gEtOH/100gbeer) = 11.928g EtOH.

**CONCLUSION:** A 12 o.z. can of beer that contains 5.5% alcohol by volume has 15.405g of EtOH. A 12 o.z. can of beer that contains 3.2% alcohol by mass has only 11.928g of EtOH.

**Liquor store beer contains 22.6% more alcohol compared to beer from convenience and grocery stores.**

*SOURCE: National Institute on Alcohol Abuse and Alcoholism*

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**\*Alcohol Outlet Sales**, Mallie J. Paschall, Joel W. Grube, Carol Black, Robert L. Flewelling, Christopher L. Ringwalt and Anthony Biglan Accepted: 21 December 2006 Published online: 23 January 2007 **Abstract** Reducing youth access to commercial sources of alcohol is recognized as a necessary component of a comprehensive strategy to reduce underage drinking and alcohol-related problems. ... The present study examines characteristics of off-premise alcohol outlets that may affect alcohol sales to youth. Random alcohol purchase surveys ( $N = 385$ ) were conducted in 45 Oregon communities in 2005. **Underage-looking decoys not carrying IDs were able to purchase alcohol at 34% of the outlets approached. Purchase rates were highest at convenience (38%) and grocery (36%) stores but were relatively low (14%) at other types of outlets (e.g., liquor and drug stores).** Alcohol purchases were less likely at stores that were participating in the Oregon Liquor Control Commission's Responsible Vendor Program (RVP), when salesclerks asked the decoys for their IDs, and at stores with a posted underage alcohol sale warning sign. Findings of this study suggest that more frequent compliance checks by law enforcement agents should target convenience and grocery stores, and owners of off-premise outlets should require training of all salesclerks to ensure reliable checks of young-looking patron IDs, and should post underage alcohol sales warning signs in clear view of patrons. <http://www.springerlink.com/content/m526083367655103/>, Prevention Research Center, Oregon Research Institute, Pacific Institute for Research and Evaluation



**Labeling:** Sec.5, pg.7, line 33. Is Kansas going to be the only state to require a label, "not more than 3.9% alcohol by weight"?

**Equal Treatment:** Convenience and grocery stores want all the benefits of selling strong beer, but do not want to take on any of the responsibility that comes with selling this product. If a retail liquor store commits a violation the Alcoholic Beverage Control officers can – and does – shut down the entire store for a period of time. If a convenience or grocery store commits a violation, only the beer cooler gets closed. This is unequal treatment under the law, and needs to be addresses. If convenience and grocery stores are allowed to sell stronger beer then all licensees selling stronger beer should be treated equally. If a convenience or grocery store commits a violation and is ordered to temporarily shut down, the entire store should be closed not just the coolers locked. This would be equal treatment under the law.

**No Lack of Access:** There is no lack of access to this product now. Allowing grocery and convenience stores to sell stronger beer will not increase sales of this product. It will only thin sales out across more outlets. Having strong beer sold in retail liquor stores does not limit an individuals' access to the product and continues to ensure this regulated product is sold in a controlled environment by individuals 21-years of age or older.

**Going out of Business Fallout:** Liquor Retailers tell us that this legislation will put some locally-owned Kansas retail liquor stores out of business. When that happens, it has several impacts outside the obvious loss of a store:

- It will put an additional tax burden on state and county economies, as laid off employees will collect unemployment benefits, personal and business income taxes are impacted, lost valuation and lower property taxes.
- There will be a loss of state revenue from lost licensing fees and perhaps enforcement taxes.

*NO ONE GOES OUT OF BUSINESS OR LOSES THEIR JOB IF THE LAW STAYS THE SAME. Please vote NO on HB 2537. Thank you.*

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## APPENDIX "A"

### ECONOMIC IMPACT OF LOCAL BUSINESSES VS. CHAINS

The following studies have found that locally owned stores generate much greater benefits for the local economy than national chains.

The Andersonville Study of Retail Economics  
<http://www.civiceconomics.com/Andersonville>  
By Civic Economics, October 2004

This compelling study, commissioned by the Andersonville Development Corporation, finds that **locally owned businesses generate 70 percent more local economic impact per square foot than chain stores**. The study's authors, Dan Houston and Matt Cunningham of Civic Economics, analyzed ten locally owned restaurants, retail stores, and service providers in the Andersonville neighborhood on Chicago's north side and compared them with ten national chains competing in the same categories. They found that spending \$100 at one of the neighborhood's independent businesses creates \$68 in additional local economic activity, while spending \$100 at a chain produces only \$43 worth of local impact. They also found that the local businesses generated slightly more sales per square foot compared to the chains (\$263 versus \$243). Because chains funnel more of this revenue out of the local economy, the study concluded that, for every square foot of space occupied by a chain, the local economic impact is \$105, compared to \$179 for every square foot occupied by an independent business.

The Economic Impact of Locally Owned Businesses vs. Chains: A Case Study in Midcoast Maine  
<http://www.newrules.org/retail/midcoaststudy.pdf>

by the Institute for Local Self-Reliance and Friends of Midcoast Maine, September 2003. **Three times as much money stays in the local economy when you buy goods and services from locally owned businesses instead of large chain stores**, according to this analysis, which tracked the revenue and expenditures of eight locally owned businesses in Midcoast Maine. The survey found that the businesses, with had combined sales of \$5.7 million in 2002, spent 44.6 percent of their revenue within the surrounding two counties. Another 8.7 percent was spent elsewhere in the state of Maine. The four largest components of this local spending were: wages and benefits paid to local employees; goods and services purchased from other local businesses; profits that accrued to local owners; and taxes paid to local and state government. Using a variety of sources, the analysis estimates that a national big box retailer operating in Midcoast Maine returns just 14.1 percent of its revenue to the local economy, mostly in the form of payroll. The rest leaves the state, flowing to out-of-state suppliers or back to corporate headquarters. The survey also found that the local businesses contributed more to charity than national chains.

Economic Impact Analysis: A Case Study  
<http://www.liveablecity.org/lcfullreport.pdf>  
by Civic Economics , December 2002.

This study examines the local economic impact of two locally owned businesses in Austin, Texas--- Waterloo Records and Book People---and compares this with the economic return the community would receive from a Borders Books store. The study finds that spending \$100 at Borders creates \$13 worth of local economic activity, while spending \$100 at the local stores generates \$45 in local economic activity. The difference is attributed to three factors: a higher local payroll at the independent stores (because, unlike Borders, none of their operations are carried out in an out-of-town headquarters office); the local stores purchased more goods and services locally; and **the local stores retained a much larger share of their profits within the local economy**.