

Approved: February 24, 2010

Date

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 8, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Don Hill- excused
Representative Mitch Holmes- excused
Representative Mike Peterson- 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:

Amy Campbell, Kansas Association of Beverage Retailers (Attachment 1)
Sandy Jacquot, League of Kansas Municipalities (Attachment 2)
Melissa Wangemann, General Counsel and Director of Legislative Services, Kansas Association of Counties (Attachment 3) (written only)
Kirby Snider, Ottawa liquor store owner (Attachment 4)
Jennifer Vogel, Kansas City, Kansas liquor store owner (Attachment 5) (written only)
Mike and Karen Heberger, Olathe liquor store owner (Attachment 6) (written only)
Amelia Redd, Pittsburg (Attachment 7) (written only)
Phil Bradley, KLBA (Attachment 8)
Tom Groneman, Director, Alcohol and Beverage Control Division (Attachment 9)
Fiscal Note from Division of the Budget (Attachment 10) (written only)

Others attending:

See attached list.

Representative Brown moved for the introduction of two bills regarding : (a) employment security laws and (b) fire districts and service providers. Motion was seconded by Representative Huebert. Motion carried.

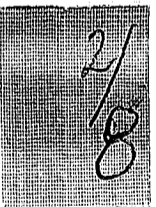
Representative Loganbill moved for the introduction of legislation which would allow the revenues and expenditures regarding tax credits to be available on the KANVIEW network. Motion was seconded by Representative Brown. Motion carried.

Representative Kriegrel moved for the approval of the minutes of February 2, 2010. Motion was seconded by Representative O'Brien. Motion carried.

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

Amy Campbell, Executive Director of the Kansas Association of Beverage Retailers, testified that the current CMB regulations in Kansas offer the consumer the availability of both types of beer (Attachment 1). Kansas has a particular issue as this legislation could be declared unconstitutional as it changes the definition of alcoholic liquors/intoxicating liquors. She pointed out that the perception both 3.2% and 4% are the same is incorrect: three 4% cans of beer are equal in alcohol content to four 3.2% cans of beer. Should liquor stores start selling 3.2% CMB no convenience stores would go out of business but if the convenience and grocery stores start selling strong beer, the liquor stores would be in jeopardy due to the high volume of strong beer they sell. The Distilled Spirits Council of the U.S. states there would be a 45% reduction in both lost spirit and beer sales should this legislation pass. She suggested that an amendment be offered to delete all references to CMB retailers, the CMB Act, and sell all products under the Liquor Control Act.

Sandy Jacquot, Director of Law and General Counsel of League of Kansas Municipalities, spoke in defense of the current policy which allows local enforcement and licensing (Attachment 2). If this bill was to pass,



CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 8, 2010, in Room 346-S of the Capitol.

the enforcement would be at the state level and the municipality would have not authority to suspend or revoke the establishment's license but would have to request a hearing with the Alcoholic Beverage Control Division of the state. The League is also in opposition to the shift from charging sales tax on CMB to imposing the alcoholic liquor taxing scheme on CMB. This proposed fund would make it subject to appropriations with no guarantee that local governments will receive the revenue.

Written testimony from Melissa Wangemann, General Counsel and Director of Legislative Services for the Kansas Association of Counties, was distributed (Attachment 3).

Kirby Snider, Ottawa liquor store owner, spoke in opposition to the bill which would cause a shift in the market and ultimately destroy the small liquor stores in Kansas (Attachment 4). The proposed option of liquor stores selling grocery items would be unacceptable as most stores could not accommodate the fixtures and space. Mr. Snider also pointed out that the reduction in price of 4% beer plus the increased availability could lead to increased alcohol-related accidents,

Testimony was received from:

Jennifer Vogel, Kansas City, Kansas liquor store owner (Attachment 5) (written only)

Mike and Karen Heberger, Olathe liquor store owner (Attachment 6) (written only)

Amelia Redd, Pittsburg (Attachment 7) (written only)

Philip Bradley, CEO of Kansas Licensed Beverage Association, stated his organization had no position on the bill but listed concerns and questions which would need to be addressed prior to passage of the bill (Attachment 8). This organization represents the interest of the hospitality industry i.e. restaurants, bars, breweries, clubs, caterers, and hotels known as drinking establishments (DE).

Tom Groneman, Director of Alcoholic Beverage Control Division, reported on the additional staff which would be hired if this bill is passed (Attachment 9). New hires would include 8 licensing persons, 10 enforcement agents, 5 general office, an Assistant Attorney General, and additional staff under the Division of Taxation to handle the tax accounts CMB's would be required to file. There would be 3,761 beer labels to be changed. He presented a map showing where there is no liquor-by-the-drink, liquor-by-the-drink allowed with 30% food requirement, and liquor-by-the-drink allowed with no food requirements.

A fiscal note from the Kansas Division of the Budget was distributed showing the effect on FY 2011 consensus revenue estimates showing total receipts \$5,181,605.00 (Attachment 10).

The next meeting is scheduled for February 9, 2010.

The meeting was adjourned at 3:00 p.m.

FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: Feb 8

NAME	REPRESENTING
Amy Campbell	KABE
TED HENRY	CAPITOL STRATEGIES
Phil Beatty	KLBA
Spencer Duncan	Capitol Connection
Sandy Jacquet	LKM
Joe Mosimann	PACA
Brenda E. Smith	Pete's Covered Stores
Kendra Hanson	Hinlaw Firm
Linda Lampton	Eudora Co. Inc.
Alice Murray	Ks Food Dealers
Whitney Gunn	Lucky Super Store
Rebecca King	ABW D

KANSAS ASSOCIATION OF BEVERAGE RETAILERS

P.O. Box 3842, Topeka, KS 66604
785-969-1617 – campbell525@sbcglobal.net

TESTIMONY PRESENTED TO THE FEDERAL AND STATE AFFAIRS COMMITTEE

February 4, 2010

By Amy A. Campbell, Executive Director

Mr. Chairman and members of the committee, my name is Amy Campbell and I appear before you as an opponent to strong beer legislation on behalf of the Kansas Association of Beverage Retailers. For those of you who were not members of the Legislature in 2001 and 2002, this request to raise the alcohol content of cereal malt beverages was raised during that session. It was also rejected by the Legislature during the 1993-94 session. In 1989, the same idea was rejected by the Senate Federal and State Affairs Committee. We also faced versions of this bill in 2005, 2006, 2007, 2008, and 2009. Kansas retail liquor store owners are disappointed, but not surprised, to be addressing the same issue again.

This is a complex bill – written to achieve one purpose: to allow the sale of strong beer by cereal malt beverage retailers. What is the public purpose to be achieved by such a bill?

Proponents say there is little difference between CMB and beer. Even for the average Bud Light – it would take four cans to equal the intake of three cans of average cereal malt beverage. For some, this is the difference between driving under the influence and being under the legal limit.

There is a perception that strong beer legislation will modernize our state and promote positive change by eliminating an outdated product. Many people look at Missouri as a positive example and suggest our alcohol distribution model should look more like our neighbors to the east. In fact, Missouri drunk driving statistics have exceeded the national averages. (Source: NHTSA, National Center for Statistics and Analysis 2003)

There are a wide variety of state policies relating to how liquor is sold, and they reveal both the priorities of that state and the history of how prohibition was repealed in that particular state. Kansas has a particular issue relating to its constitution which makes this legislation potentially unconstitutional as it changes the definition of alcoholic liquors / intoxicating liquors – a reference included in our constitution.

There are control states – which only allow the state to sell spirits and/or wine. This may be paired with the sale of beer through licensed outlets. Many states differentiate between the sale by packaged stores and convenience stores or grocery stores and the products they may carry. In fact, some actually differentiate whether or not the product sold may be refrigerated. It is not correct to paint Kansas as the most regulated of these states. It is also not true that states are rushing to open up their laws. Proposals have been defeated very recently in Massachusetts and Colorado, just to name two. NO STATE HAS MADE THIS CHANGE.

In fact, Kansas represents an excellent balance between the desires of those who would expand access and availability and those who would prefer a more regulated model.

According to the Substance Abuse Policy and Research Program, Investigators at Louisiana State University Health Sciences Center examined the relationship between regulatory practices of alcohol-control agencies and alcohol-related traffic deaths in 107 cities that participate in the National Highway and Traffic Safety Administration's Fatality Analysis Reporting System (FARS).

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Attachment 1

Investigators surveyed state Alcohol Beverage Control agencies and local city police departments in the 107 cities and interviewed staff from alcohol-enforcement agencies in 20 cities. The investigators reported their findings in an article in the February 2002 issue of *Preventive Medicine*:

- Lower rates of alcohol-related traffic fatalities, were found in states and communities that:
 - Limit alcohol accessibility. (*limiting access includes limiting outlets that sell the product*)
 - Require licensure of outlets selling alcohol.
 - Provide for disciplinary actions against outlets that violate laws...
- Strong beer legislation puts this stronger product in the hands of underage individuals: to stock it, to sell it, to resist the temptation to provide to their friends or to pick up for themselves.

According to Preventing Underage Alcohol Access: Essential Elements for Policy, Deterrence and Public Support, a public policy guide by the Prevention Research Center, recommends a number of methods to reduce underage access to alcohol with the first being "BEST PRACTICE: Require that all retail alcohol outlet employees who are engaged in the sale or service of alcohol be at least 21 years of age."

- In the past 3 years, 23% to 26% of "beer" purchases in Kansas are cereal malt beverage. There is a market for the lower alcohol product. Are we to think that one out of five people does not know what he or she is buying? Cereal malt beverages are popular for softball teams and back yard barbecues and are very important to dry counties, taverns, and many local fundraising events.
- This product does have a consumer base in Kansas. What is the motivation for removing the 3.2% option from Kansas? Certainly, we will continue to have beers with lighter alcohol content, but the option of choosing the lighter alcohol product within a brand will disappear. 3.2% is an important product in Kansas and our neighboring states, particularly Oklahoma and Colorado.
- If liquor stores took over the sales of cereal malt beverages from the convenience stores and grocery stores, **not one of them would lose their businesses**. However, the reverse situation would cause irreparable damage to those stores whose sales of beer can be as low as 40% of their sales and as high as 80%. These sales statistics are common for liquor retailers. Is this the reward for liquor store owners who have built their businesses by working within a stringent licensing and regulation system?

What is the motivation to expand sales for these major corporations?

- It appears that strong beer legislation attempts to require all cmb retailers to no longer pay sales tax -- which is divided between the State and local entities - pay the 8% enforcement tax now paid by liquor stores. This puts cities and counties into the unenviable position of relying on the State to transfer their portion.
- **It is not true that this legislation provides a level playing field.** Liquor stores must hire 21 year olds, employees must pass a background check, employees can't have felonies on their records, days of sale are more restricted, license requirements are more restrictive. Although this bill attempts to equalize many of the licensing differences, it does not prohibit corporations, it does not require 21 year old sellers, and it continues to allow the cmb retailer to sell beer on Thanksgiving and Christmas.
- KABR is also concerned that this beer legislation makes policy changes to the law regarding wholesaler sales to temporary permit holders. What is the relevance to cereal malt beverage?

If the Committee wishes to change how alcohol is sold in Kansas, KABR would respectfully request this Committee consider an amendment to strong beer legislation that would require all alcohol beverages and cereal malt beverages be sold by licensed retail liquor stores. Simply delete all references to cereal malt beverage retailers, the cereal malt beverage act, and sell all products under the Liquor Control Act.

Kansas retail liquor stores have proven compliance rates in preventing underage sales – as high as 88%. There are no statewide compliance rates for convenience stores.

We can not emphasize enough the negative impact this legislation will have upon the retail liquor stores' business throughout the state. Many may have the harsh opinion the number of retailers lost is an immaterial factor. However, I would submit that this is extremely important, as this Legislature established the business

practices and structure under which 750 retail liquor store owners must now operate. Therefore, we assert you should feel a type of fiduciary duty towards these individuals to protect their business from unfair competitive advantages enjoyed by the cereal malt beverage retailers.

The proponents say that they simply want to regain a share of the beer market that was lost when Kansas changed the drinking age – but that market is gone. Those 18 to 20 year olds are no longer in the market at all. What they are really proposing is to get a foothold into the Strong Beer market – the liquor market.

The proponents state that they doubt if any liquor stores would go out of business. According to the 2008 fiscal analysis developed by the Distilled Spirits Council of the United States:

"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."

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 .. 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 take sales away from traditional package stores."

"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."

"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."

"The \$254.6 million in total package sales would support a total of 509 package stores. Thus, 217 package stores are projected to go out of business. Naturally, as the number of package stores declines, the availability of spirits will decline as well."

(The analysis relies on Kansas sales statistics, market analysis by Gallup Organization, Sept. 29, 2006; and tax receipts by the Kansas Department of Revenue.)

The proponents have doubted our statements, and if this analysis is not convincing enough for you, we have a copy of an economic impact assessment by Summit Economics, LLC, regarding Colorado economic losses that would occur if similar legislation passes there. It states: *"The Colorado Liquor Stores will lose 50 percent of full-strength beer sales to supermarkets and convenience stores in the first year alone. They will lose 70 percent of beer sales within 3 to 5 years. It is estimated that 40 percent or 700 of the stores will be forced to close within the first 3 years. This will result in the loss of 4,830 wage and self-employment jobs. Overall the Colorado Liquor Stores will lose \$700 million in annual revenues, resulting in a permanent \$90 million loss in annual wages and proprietor income earnings. These losses will continue through the fifth year. After the fifth year the new market structure will stabilize with 900 fewer stores. There will be 5,500 fewer jobs in the industry, resulting in a loss of \$120 million annually in employee and proprietor earnings."*

Last, but not least, Mr. Chairman, is the situation we place those 18-20 year old clerks who are treated as adults under the Kansas Criminal Code but as underage for purposes of purchasing alcohol. Please consider the importance of not increasing availability to those individuals.

What is the public policy being advanced by this bill? Please support jobs and Kansas businesses. Oppose Strong Beer legislation.

Thank you, Mr. Chairman, and members of the Committee for your kind attention.



League of Kansas Municipalities

TO: House Federal and State Affairs Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: February 4, 2010

RE: Opposition to HB 2537

On behalf of the League of Kansas Municipalities and our 585 member cities, I appreciate the opportunity to testify in opposition to HB 2537. Briefly, this bill in its 90 pages totally revises the cereal malt beverage (CMB) regulatory scheme. Cities for decades have regulated and licensed the sale of CMB, for both general and limited retailers, in their communities. Under HB 2537, however, the state would take over the licensing of these establishments. There has been no showing of necessity to justify upsetting decades of a procedure that has worked well in our cities. When there is a problem with a retailer, whether it is a convenience store selling to minors or a tavern where illegal activities occur, the enforcement and licensing control is local, where it needs to be. Enforcement occurs at the local, not the state level. The municipality is able to handle the problem and immediately address the issue with the hammer of suspending or withdrawing the CMB license. This option is not available when the state is the licensing entity. The municipality would have no authority to suspend or revoke the establishment's license, but would have to request a hearing with the Alcoholic Beverage Control Division of the state. This is a major concern to cities.

In addition, LKM opposes the shift from charging sales tax on CMB sales to imposing the alcoholic liquor taxing scheme on CMB. While this bill also creates a local CMB revenue fund, such fund is subject to appropriation with no guarantee that local governments will receive the revenue. Proponents may argue that the change has a neutral revenue impact, but any revenue that must be appropriated and is not certain to reach cities is not a revenue stream that we support. Again, the process has worked well for decades and there simply is no showing that the current process needs to be upset to impose new procedures and taxing methods. It appears that this is an attempt to make CMB look like alcoholic liquor without actually labeling it alcohol, since this bill would also increase the percentage of alcohol by weight to 4% from 3.2%. If it is alcoholic liquor, then perhaps it is time to totally do away with the dichotomy, rather than maintaining the legal fiction.

The League of Kansas Municipalities urges the committee not to report HB 2537 favorably for passage.



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY TO THE HOUSE
FEDERAL AND STATE AFFAIRS COMMITTEE
ON HB 2537

FEBRUARY 4, 2010

Chairman Neufeld and Members of the Committee:

I appreciate the opportunity to submit written testimony on behalf of the Kansas Association of Counties in opposition to HB 2537.

Cities and counties regulate and license cereal malt beverages under current law. HB 2537 shifts this responsibility to the State. We do not believe there is any justification to change the current system. We believe cities and counties are handling regulation and enforcement of cereal malt beverage laws well now, and this responsibility should remain at the local level.

Secondly, we are concerned about the change in tax on cereal malt beverage proposed in HB 2537. The bill creates a local revenue fund for local government, which appears to make the proposal revenue neutral to cities and counties. However, this local fund requires an appropriation by the State. An appropriation by the state to the counties is not a guaranteed revenue stream, as we have under current law. Given that the State has decreased or eliminated several revenue streams that traditionally provide funds to counties, we cannot rely on this appropriation.

We would appreciate the Committee's consideration of our thoughts and ask that you not pass the bill.

Respectfully Submitted,

Melissa Wangemann

General Counsel and Director of Legislative Services

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
785•272•2585
Fax 785•272•3585

House Fed & State Affairs

Date: 2-8-2010

Attachment ³

February 8, 2010

Mr. Chairman and Members of the Committee:

Thank you so much for letting me speak to you today regarding HB 2537.

My name is Kirby Snider. I am a life long resident of Kansas and a graduate of Pittsburg State in Pittsburg Kansas.

In November 2008 my wife and I got a significant loan and purchased Blue Sky Liquors in Ottawa, Kansas. We moved back home from Overland Park. We wanted a small business and we decided the retail liquor market was a good choice for us. Our store is one of four liquor stores in Ottawa and the second to the smallest revenue store in Ottawa. We also have 8 CMB retailers including three Casey's, Phillips 66, BP and Conoco.

I can tell you without question it has been the most rewarding experience I've had in my professional life. There is nothing like owning your own business and having only yourself to please.

Owning a small liquor store requires you to wear many hats. I dust the bottles, vacuum the carpets, mop the floors and shovel the snow and work as a clerk most every day that we are open. You can't buy a small liquor store and hire someone to run it as there is not enough profit to do that. Make no mistake that the majority of liquor store owners are not getting wealthy but it does provide an honest living. I believe a small liquor store is truly the essence of small business in America.

My wife and I attended the hearing on Thursday and learned a great deal. There were questions and comments from committee members and the proponents that I would like to respond to.

First, there was a question/comment from a committee member asking "why are you against this bill when states like Missouri have both liquor stores and CMB retailers who both sell strong beer." It is my opinion that the answer is that Kansas markets will eventually look more like the Missouri market if you pass this bill. This bill will not put all Kansas liquor stores out of business. There are haves and have nots within the Kansas retail liquor business. I believe many of the smaller liquor stores will go out of business and probably even a few of the larger ones due to the shift in market share from the liquor stores to the CMB retailers.

There was also a testimonial from a proponent Thursday that told you that liquor stores were charging \$2-4 more for a 30 pack. She felt that the Kansas consumer was not getting a fair price. In many cases this is true and I believe it is a good thing for Kansas. If you want to let the Kansas consumer get the lowest price on beer then vote yes on this bill. Prices will come down and this will be a major reason why some liquor stores will struggle as the margins will be too low. Kansans will drink more beer because it will be cheaper and more readily available. Is this good or bad for Kansas streets and highways?

A gentleman from the petroleum industry stated that several years ago they enjoyed a 45% market share of beer versus 18% today. They would like that 27% market share back. Yet he says that it will not put any retail liquor stores out of business. How can that even make sense to say unless we increase the Kansas drinking population by a similar percentage? Also, they now say liquor stores can sell grocery items to make up the difference. 55% of my business is strong beer! I don't believe I can make that loss up selling slim jims and chocolate milk and I don't

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Attachment 4

have the space to sell grocery items. If I want to compete in the retail liquor market I must maximize my space to have a wide range of choices for alcoholic beverages.

This brings me to the last part of my testimonial.

A committee member stated something like "this is about who gets to sell in this market." I could not agree more with this statement. I entered this market based on the current structure knowing that I did not have to compete with big business. Casey's general store has over 100 stores in Kansas. Others stores I would have to compete with in Ottawa are Phillips 66, BP, and Conoco. These are good and strong businesses under the current structure. This bill is icing on their cake, whereas, strong beer is most of my cake!

You have the power to decide whether this market goes to small businesses that depend on it, or to big businesses including the petroleum industry that will help them get even bigger.

I stand before you today asking that you say no to big business and big government by voting no to this bill. I ask you to say yes to small business and smaller government by voting no on this bill.

Thank you so much for listening to me.

Kirby Snider
Blue Sky Liquors
913-645-1901

February 4, 2010

House Federal and State Affairs Committee
Kansas Legislature

Chairman Brungardt and Committee:

My name is Jennifer Vogel, my husband and I have liquor stores in Kansas City Kansas. We are third generation owners.

We bought the family store in September 2000 and a second store in June of 2005. These were major purchases for us and we won't have them paid off until 2015. We are the owners of our stores, and we WORK our stores. We are not absentee owners that pull the strings from out of state.

We have two teenage daughters ages 16 and 14. Our 16 year old will go and get her first job, outside of babysitting, this summer. We would love to hire her to work in the family business but she can't do that until she is 21. We understand why and certainly agree with the law.

A lot of the 16 year olds work in the surrounding grocery stores, Henhouse, Hy-Vee and Price Chopper. I feel that these businesses have been good community partners for our youth and I would not like to see them employ our youth to sell strong beer, let alone liquor. I would not want to put our youth in a position where they have to implement the State Liquor Laws of Kansas. And, let's not kid ourselves; we are not just talking about Strong Beer.

The bottom line for me on changing the wording of the State Liquor Laws and allowing strong beer to be sold by the grocery and convenience stores is:

- (1) Over 200 stores may go out of business
- (2) Profits will go out of state
- (3) Jobs will be lost
- (4) Store fronts will be vacant
- (5) Our youth will have more access

In this economy, of ALL economies, self-inflicting more job losses and tax revenue losses are beyond my comprehension.

Thank you for your time.

Jennifer Vogel, 1717 N 38th St., Kansas City, KS 66102 913-371-7372

House Fed & State Affairs

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Attachment 5

FEDERAL AND STATE AFFAIRS COMMITTEE

Our names are Michael and Karen Heberger. We each own a liquor store in Kansas-- Mike's Discount Liquors at 1320 Merriam Lane, Kansas City, KS, and Heberger Retail Liquor at 909 S. Chestnut, Olathe, KS.

I have been advised that the Kansas Legislature is once again considering legislation to allow convenience and grocery stores to sell strong beer at the instigation of these entities. I am writing to ask you to oppose any such legislation. My reasons are as follows:

1. There will be no increase in tax revenues for the cities/state by allowing the large corporations that own convenience/grocery stores to sell strong beer--all that will happen is sales will be taken away from local business owners and put into the coffers of the large, non-locally owned corporations.
2. The current retail liquor stores will see a decrease in sales, thereby necessitating the layoff of employees, resulting in:
 - a) additional tax burden on the state/county via unemployment and welfare payments made to those laid-off employees
 - b) loss of revenues for the state and localities from fewer license fees once retail liquor stores begin closing because of lack of business. The last thing anyone needs in these tough economic times is more people out of work.
3. The large corporations desiring the ability to sell strong beer currently sell a wide variety of items, from food to cigarettes to magazines. Under the current law, Kansas retail liquor stores are only allowed to sell beer and liquor. To allow the large out of town corporations to sell strong beer, along with the other variety of items they already sell (from food to cigarettes to magazines, etc.) makes for a totally uneven playing field for the retail liquor stores.
4. The large corporations that wish to sell strong beer have a large percentage of employees under the age of 21. Passage of such a bill as this would put stronger beer into a much less controlled environment, since liquor stores cannot employ anyone under the age of 21.
5. Kansas liquor retailers are currently under the strict direction of the State's Alcohol & Beverage Control commission, which routinely checks for compliance with state laws. These large corporations wishing to sell strong beer are not regulated by the ABC. Retail liquor stores are faced with stiff penalties for the sale of beer to minors and are therefore very cautious about who comes in their store--the large convenience/grocery stores sell a variety of goods to minors, therefore, the presence of minors in the store would not be unusual, leading to the increased possibility of sales to minors.

Thank you for considering our arguments above.

Mike and Karen Heberger

House Fed & State Affairs

Date: 2-8-2010

Attachment

6

February 3, 2010

**FOR THE COMMITTEE ON
FEDERAL AND STATE AFFAIRS**

**WRITTEN TESTIMONY
FOR HOUSE BILL #2537
OPPOSITION**

**Presented by Amelia Redd
Pittsburg, Kansas**

I am against the selling of one strength beer in Kansas. For a great number of liquor store owners, it could cause the closing of their stores. Also, the employees in these stores would be dismissed and would no longer receive income. Beer is two thirds of a retail liquor store profit. It would be devastating to allow large chain stores to limit the number of small ones, where only a few could maintain their businesses. Therefore, I urge members not to pass House Bill #2537. Thank you for your consideration.

House Fed & State Affairs

Date: 2-8-2010

Attachment

7



*Kansas
Licensed
Beverage
Association*

Testimony on HB-2537
February 4, 2010

House Federal & State Affairs Committee

Mr. Chairman, and members of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Association. The KLBA represents the interests of the men and women in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels, and restaurants. These are the places you frequent and enjoy with the tens of thousands of employees that are glad to serve you. Thank you for the opportunity to speak today and I will be brief.

Although this bill addresses an issue that we take no position on, we have several questions/concerns we would ask to be resolved satisfactorily before this bill could advance.

In no particular order;

- 1- We now have "Dry" counties where no "alcohol" may be sold only CMB. Since this will now allow CMB to be stronger alcohol, "liquor store" beer, does that cause a constitutional problem?
- 2- Does a Drinking Establishment (DE) license allow sale of the new CMB?
- 3- Will a CMB retailer be allowed to obtain a federal wholesaler license and then sell to a DE as Liquor stores now do?
- 4- Why is the CMB bond different than DE/Club licensees in that it does not adjust as DE/Club's do now?
- 5- Why is the license only 25% of a DE license? (\$250 vs. \$1000)
- 6- Also would the CMB taverns pay the 8% enforcement tax on their purchases as do all other on-premise retailers? And if not why not?
- 7- We ask that in the definition of domestic beer (page two line 16) delete "~~not more than 8% alcohol by weight~~".

There are undoubtedly further issues that will arise as these are answered.

Again thank you for your attention and consideration. I am available for your questions.

Philip Bradley

*Philip Bradley
CEO*

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info@klba.org

House Fed & State Affairs

Date: 2-8-2010

Attachment 8

Testimony on House Bill No. 2537
To
The House Federal and State Affairs Committee
By
Tom Groneman, Director
Alcoholic Beverage Control Division

February 8, 2010

Mr. Chairman, members of the committee, thank you for allowing me to appear before you today regarding House Bill 2537. The Alcoholic Beverage Control Division (ABC) takes a neutral position on this proposal.

Under this bill, licensing, regulation and enforcement of CMB retailers would pass from cities and counties to the ABC. Currently, there are approximately 3,300 on and off premise CMB retailers in the state. This would effectively double the number of licensees we currently oversee. We calculate that to license and regulate CMB retailers we would need an additional 8 licensing FTE, 10 enforcement agent FTE and 5 general office FTE, including an additional Assistant Attorney General. There also would be additional staff required in customer relations under the division of taxation to manage the new liquor enforcement tax accounts the CMB retailer would now be required to file.

This bill does not do away with CMB it only changes the definition of CMB from not more than 3.2% alcohol by weight (abw) to not more than 4% abw. Currently there are 712 cmb labels registered in Kansas and 4,908 labels for beer with an alcohol content greater than 3.2% abw commonly referred to as strong beer. Changing the definition of cmb to include beer up to 4% abw would shift 3,049 labels from strong beer to CMB for a total of 3,761 labels leaving 1,859 labels that would still qualify as strong beer. CMB sales for distributors in the eastern part of the state make up 15-20% of their sales, whereas CMB sales for western distributors make up in excess of 50% of their sales. This correlates to the number of counties that have adopted liquor by the drink and their locations. Kansas counties that have not adopted liquor by the drink can only sell CMB in taverns for on premise consumption. There are 81 Kansas counties that have adopted liquor by the drink with either a 30% food requirement (60) or no food requirement (21) and 25 counties that have not adopted liquor by the drink. (see attached map)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL
DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA, KS 66625-3512
Voice 785-296-7015 Fax 785-296-7185 <http://www.ksrevenue.org/abc.htm>

House Fed & State Affairs

Date: 2-8-2010

Attachment 9

CMB is currently licensed and enforced at the local level. ABC will when requested assist locals with training or actually accompanies locals on enforcement activities. We do not have numbers on violations or compliance regarding CMB because we do not prosecute these cases. ABC enforces violations of the liquor control act and the club and drinking establishment act. In 2009 ABC conducted 753 underage compliance checks resulting in 138 sales for a compliance rate of 82%.

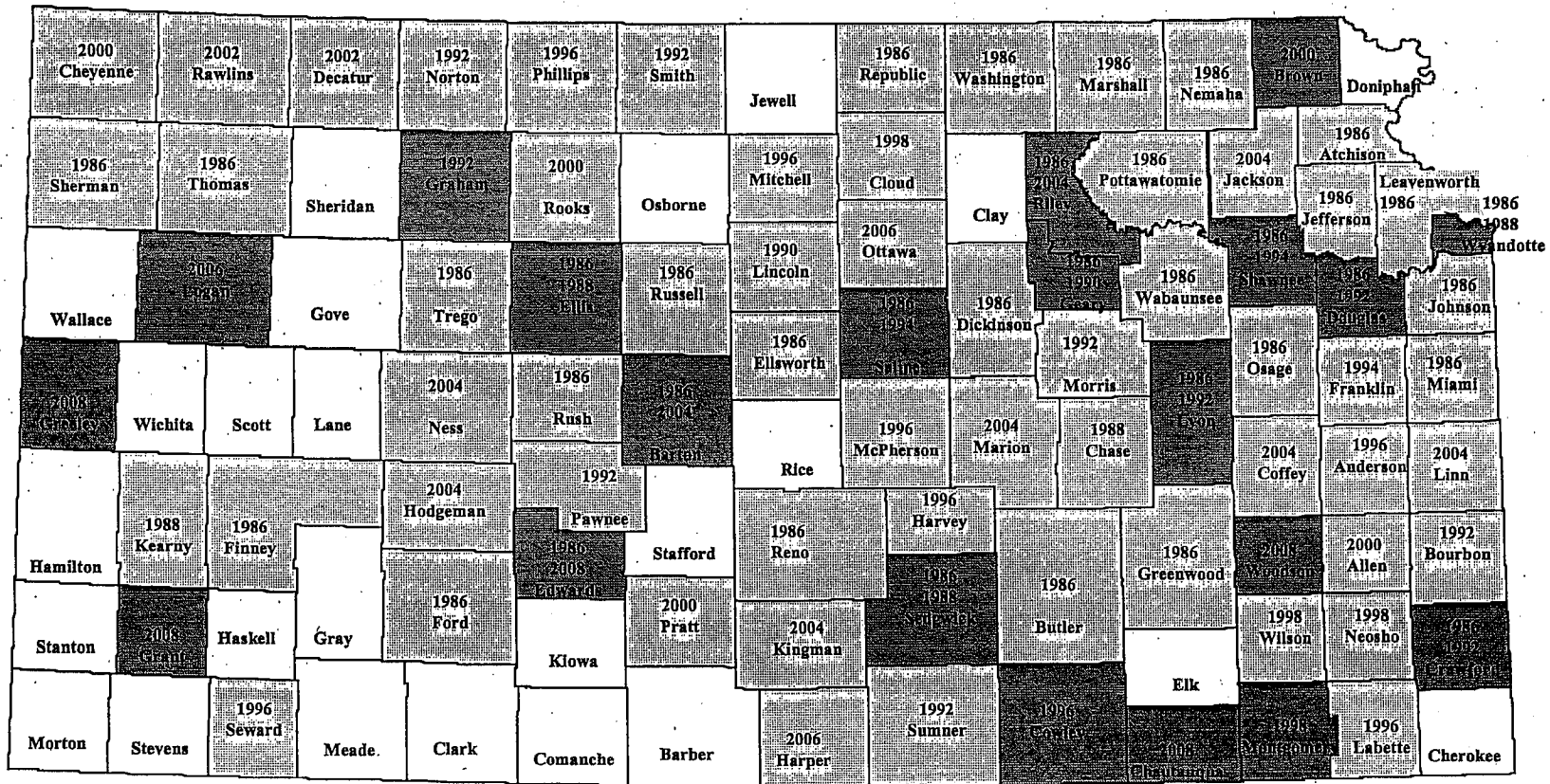
House Bill 2537 is very similar to House Bill 2062 and Senate Bill 76 that were introduced last session. Concerns we expressed last year have been addressed in this bill, basically, pushing forward the effective date of the bill to July 1, 2011 and increasing the time allowed for switching over CMB licensees. We thank the proponents for including these changes to allow for the needed lead time to implement this bill if it should move forward.

I would be glad to try to answer any questions you

Kansas Liquor-by-the-Drink

November 2008

No liquor-by-the-drink Liquor-by-the-drink allowed with 30% food requirement Liquor-by-the-drink allowed with no food requirement



This map identifies the status of liquor by the drink in all Kansas counties. It includes the year the county voted for liquor-by-the-drink, and where applicable, the year the county removed the 30% food requirement. Last updated 12-15-08.

9-3

February 4, 2010

The Honorable Melvin Neufeld, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 149-S
Topeka, Kansas 66612

Dear Representative Neufeld:

SUBJECT: Fiscal Note for HB 2537 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2537 is respectfully submitted to your committee.

HB 2537 would create the Kansas Cereal Malt Beverage Retailers' Act and amend certain provisions of the Kansas Liquor Control Act and the Kansas Cereal Malt Beverage Act. The bill would amend the Kansas Liquor Control Act by making various technical corrections and including "cereal malt beverage" (CMB) in addition to "alcoholic liquor" as being subject to the provisions of the Act. The bill would also amend the Kansas Cereal Malt Beverage Act by implementing various technical corrections and prohibiting cereal malt beverages from being sold in the original package between the hours of 11 p.m. and 9 a.m. and for consumption on licensed premises between the hours of 12 midnight and 6 a.m. Under current law, cereal malt beverages sold in liquor stores, convenience stores, and grocery stores have a liquor content of up to 3.2 percent alcohol by weight. HB 2537 would increase the maximum liquor content sold in these stores to 4.0 percent alcohol by weight. The bill would no longer require microbreweries to utilize 50.0 percent of Kansas-grown products when manufacturing domestic beer.

The bill would require all CMB retailers to register with the Director of Alcoholic Beverage Control of the Department of Revenue. The bill would require applications for all licenses to sell cereal malt beverages to be accompanied by an initial state registration fee of \$50 and \$10 for each renewal application. The bill would also require an annual fee of \$250 for CMB retailers' licenses. In addition, the bill would allow the Director to impose a civil fine of up to \$1,000 to any licensee for each violation of the Kansas Cereal Malt Beverage Act. The funds collected for civil fines imposed upon licensees found in violation of the Act would be credited to the State General Fund.

The bill would also exempt CMB from sales tax, impose an 8.0 percent CMB tax for off-

premise consumption under the liquor enforcement tax, and impose a 10.0 percent CMB tax for on-premise consumption under the liquor excise tax. Additionally, the bill would require 25.0 percent of the revenue collected from CMB retailers to be credited to the Local Cereal Malt Beverage Enforcement Fund. The funds would be distributed to cities and counties quarterly on January 15, April 15, July 15, and October 15 of each year, for the sole purpose of enforcing the Kansas Cereal Malt Beverage Act.

Estimated State Fiscal Effect				
	FY 2010 SGF	FY 2010 All Funds	FY 2011 SGF	FY 2011 All Funds
Revenue	--	--	\$3,104,974	\$2,936,360
Expenditure	--	--	\$1,915,200	\$1,915,200
FTE Pos.	--	--	26.00	26.00

The Department of Revenue estimates that HB 2537 would increase state revenues by \$2.9 million in FY 2011. Of that total, the State General Fund is estimated to increase by \$3,104,974 in FY 2011, while the State Highway Fund is estimated to decrease by \$396,965 in FY 2011, and the Community Alcohol Intoxication and Program Fund of the Department of Social and Rehabilitation Services is estimated to increase by \$228,351 in FY 2011. The State General Fund estimate of \$3,104,974 includes \$1,140,000 in fees from the registration and licensing of 3,900 cereal malt beverage retailers and \$1,964,974 from liquor enforcement and liquor excise taxes. This bill also is estimated to increase local revenues by \$3.6 million in FY 2011. The adjustments in revenues and how the November 5, 2009 consensus revenue estimate for FY 2011 would be affected are shown in the following table:

Effect on FY 2011 Consensus Revenue Estimates
 (Dollars in Thousands)

Receipt Description	Consensus Revenue Estimates (Nov. 5, 2009)	Change in Revenue FY 2011	Proposed Adjusted CRE FY 2011
Motor Carrier	\$ 24,000	\$ --	\$ 24,000
Income Taxes:			
Individual	2,610,000	--	2,610,000
Corporate	245,000	--	245,000
Financial Institutions	25,000	--	25,000
Estate	5,000	--	5,000
Excise Taxes:			
Retail Sales	1,710,000	--	1,710,000
Compensating Use	250,000	--	250,000
Cigarette	100,000	--	100,000
Corporate Franchise	15,000	--	15,000

The Honorable Melvin Neufeld, Chairperson
 February 4, 2010
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Severance	118,800	--	118,800
All Other Excise Taxes	96,200	1,965	98,165
Other Taxes	<u>125,000</u>	<u>--</u>	<u>125,000</u>
Total Taxes	\$5,324,000	\$ 1,965	\$5,325,965
Other Revenues:			
Interest	\$ 22,000	\$ --	\$ 22,000
Transfers	(223,700)	--	(223,700)
Agency Earnings	<u>56,200</u>	<u>1,140</u>	<u>57,340</u>
Total Other Revenues	(\$ 145,500)	\$ 1,140	(\$ 144,360)
Total Receipts	\$5,178,500	\$ 3,105	\$5,181,605

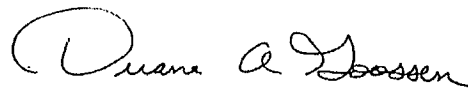
The fiscal effect to revenues during subsequent years would be as follows:

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
State General Fund	\$3,023,923	\$3,084,641	\$3,147,180	\$3,211,595
State Highway Fund	(408,874)	(421,140)	(433,774)	(446,788)
Community Alcohol	235,201	242,257	249,525	257,011
Local Governments	<u>3,716,181</u>	<u>3,827,666</u>	<u>3,942,496</u>	<u>4,060,771</u>
	\$6,566,431	\$6,733,424	\$6,905,427	\$7,082,589

To formulate these estimates, the Department of Revenue reviewed data on sales tax, liquor enforcement and excise tax, and cereal malt beverage retailers.

The Department of Revenue estimates the bill would increase expenditures from the State General Fund by an estimated \$1,915,200 in FY 2011. This estimate includes \$1,750,000 in salaries and wages expenditures for 11.00 Customer Representative FTE positions, 15.00 Field Agent FTE positions, and accompanying transportation and special equipment costs for ten of the field agent positions; \$115,200 for 1,280 hours of contract programming time; and \$50,000 for forms and publication changes for the modifications to the sales and liquor tax laws. Any fiscal effect associated with HB 2537 is not reflected in *The FY 2011 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
 Director of the Budget

cc: Steve Neske, Revenue