

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:40 a.m. on Tuesday, March 22, 2005, in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Amy Campbell, Kansas Association of Beverage Retailers  
Tom Palace, Petroleum Marketers & Convenience Store Association of Kansas  
Phil Bradley, Kansas Licensed Beverage Association  
Marge Roberson, Newton liquor retailer  
Larry Knackstedt, Overland Park liquor retailer  
Garry Winget, Kansans for Addiction Prevention  
Tom Groneman, Director, Alcoholic Beverage Control Division, Dept. Of Revenue  
Tuck Duncan, Kansas Wine & Spirits Wholesalers Association  
Sandy Jacquot, League of Kansas Municipalities  
Bob Alderson, Casey's General Stores  
Terry Presta, Governmental Affairs Chairman, Petroleum Marketers and Convenience Store Association of Kansas  
Mike Thornbrugh, QuikTrip Corporation, Tulsa, OK  
Jim Scott, Ft. Scott liquor retailer

Others attending:

See attached list.

Chairman Brungardt made some committee announcements. He said committee members had been given copies of a letter addressed to the committee from Senator Apple asking for special consideration of **HB 2309**, which was assigned to this committee late last week. The Chairman asked the members to review his request, and the committee would take the matter up later in the meeting. He noted minutes for the March 3, 8, and 9 meetings had been distributed last week, and asked for consideration for approval.

Senator Ostmeyer made a motion to approve the minutes as written, seconded by Senator Reitz, and the motion carried.

**SB 298 - Liquor control act and cereal malt beverage laws; uniformity; Sunday sales**

Chairman Brungardt opened the hearing on **SB 298**. Amy Campbell, on behalf of The Kansas Association of Beverage Retailers (KABR), testified in support of **SB 298**. She stated that this bill is asking the Kansas Legislature to assert its authority over the sale and distribution of alcoholic liquor in the State of Kansas. She explained liquor store owners are engaged in a partnership with the state. As the first access point to the public for this highly regulated product, licensees submit themselves to strict regulation and enforcement. This cooperative relationship is designed to privatize the sale of the product while maintaining the state's interest in its distribution. As adult beverages are subject to three levels of taxation, the state has an obvious interest in tracking and regulating the three tier distribution system. Ms. Campbell said that KABR believes this partnership extends beyond the issuance of taxation to the mutual interest of maintaining an even playing field and the safe and legal sale of adult beverages.

Ms. Campbell stated that the clarification of state control and regulation of the Liquor Control Act is their number one priority, and that KABR opposes making **SB 298** a conglomeration of various initiatives unrelated to the primary objective. She said the bill before the committee was a simplified version of **SB 305** from the 2004 session. **SB 298** will make the Liquor Control Act uniformly applicable, affirming to the Kansas supreme court that Kansas does intend to enforce its authority as a state to regulate the sale and

## CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Tuesday, March 22, 2005, in Room 231-N of the Capitol.

distribution of alcoholic beverages. Ms. Campbell's written testimony reflected why KABR feels the uniformity of Kansas liquor laws is so important. She included with her testimony a suggested amendment which would replace Section 5, page 8, of K.S.A. 41-303. ([Attachment 1](#))

Tom Palace, Petroleum Marketers & Convenience Store Association of Kansas (PMCA), and also on behalf of the QuikTrip Corporation, the Kansas food Dealers Association, and Casey's General Stores, spoke in favor of **SB 298**. He said that this bill would allow licensed retailers of cereal malt beverages (CMB) and retail liquor dealers to sell packaged products on Sundays. A number of cities and counties have opted out of the Liquor Control Act because the act is not uniform, allowing liquor stores to be open on Sunday. CMB retailers, operating under a uniform law don't have the opportunity to opt-out of a law, and obviously this puts all CMB retailers at a competitive disadvantage in cities and counties where Sunday sales are allowed. He stated **SB 298** will help codify the current liquor laws and help small businesses be competitive with the neighboring states of Kansas. ([Attachment 2](#))

Phil Bradley, Kansas Licensed Beverage Association (KLBA), testified in support of **SB 298**. He stated that consistency of what is, and more importantly is not, allowed throughout the state makes for less confusion and a greater compliance with all statutes and regulations. He pointed out the 18<sup>th</sup> amendment to the U.S. Constitution gives the states the right to regulate alcohol issues, and KLBA believes that uniformity serves Kansas best. ([Attachment 3](#))

Marge Roberson, owner of Roberson's Liquor Store in Newton, KS, spoke in favor of **SB 298**. She stated she was a Director and Past President of the Kansas Association of Beverage Retailers (KABR), and shared her experience of working with a committee for several years to revise the Liquor Control Act to eliminate the unenforceable provisions and contradictory language. The Legislature never adopted the revisions that were submitted for consideration. Ms. Roberson asked the legislators to work with the retailers in trying to clean up this issue once and for all by passing **SB 298**. ([Attachment 4](#))

Larry Knackstedt, retail liquor store owner and board member of the KABR, testified in support of **SB 298**. He explained that for him, the local ordinances allowing for Sunday sales and holidays sales have meant that his customers never have a need to go anywhere else to purchase their adult beverages. He stated it is time for Kansas to set up a uniform Liquor Control act, and he supported that effort 100%. He asked that the Legislature protect his business from the competition from across the state border by preserving his ability to open the store on the days which are now in effect. ([Attachment 5](#))

Garry Winget, President, Kansans for Addiction Prevention (KAP), spoke in partial support of **SB 298** as it is very important to have a uniform liquor code so that enforcement and licensing that is fair to everyone can be accomplished. He said it was in the best interest of the people in Kansas to restore the state's previous status and not have Sunday sales of alcohol. He stated that there will continue to be a creeping expansion of alcohol sales unless the Liquor Control Act is made uniform. ([Attachment 6](#))

Tom Groneman, Director of the Alcoholic Beverage Control Division, testified in support of **SB 298**, and uniformity of the Liquor Control Act. He stated that the ability of cities to charter out from under provisions of the act have led to numerous local ordinances which are almost impossible to track and difficult to regulate. ([Attachment 7](#))

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association (KWSWA), testified as a neutral conferee on **SB 298**. He stated that KWSWA still supported the concept of uniformity bills, but felt needed time was running out with the shortness of session days left to work on such a complex topic. He explained the concerns that KWSWA has outlined in his detailed written testimony. He stated that KWSWA saw no difficulty in allowing this bill to rest in this committee until the start of next session when concerns could be thoroughly reviewed and addressed. ([Attachment 8](#))

Sandy Jacquot, League of Kansas Municipalities, testified as an opponent to **SB 298**. She said there had been much discussion at the state level of whether or not cities should be preempted from being able to exempt themselves through the use of charter ordinances from the provisions of the Liquor Control Act. This could only be done through a recodification of the Act to make it uniformly applicable to all cities

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Tuesday, March 22, 2005, in Room 231-N of the Capitol.

which is what this bill purports to do. The League continues to wonder why this bill is necessary as more and more cities adopt charter ordinances to allow for the Sunday sale of packaged liquor.

Ms. Jacquot stated that if the committee passes out a uniform Liquor Control Act bill, the League wanted to point out two problematic provisions in **SB 298**. The first provision relates to Section 2(c) which is totally preemptive for cities and counties. Under this provision, not only would local governments be prohibited from adopting ordinances or resolutions in conflict, but the local governments could not even adopt provisions more restrictive or supplemental to **SB 298**. She stated that the League has pointed out on numerous occasions, taking away local control of alcohol means alcohol is less regulated. The state does not fill in with regulations where local governments are preempted. Ms. Jacquot explained the second provision related to Section 9 which allows a city to permit the Sunday sale of packaged liquor by adopting an ordinance. This provision is subject to a protest to compel an election. She said the numerous cities that have adopted ordinances and, in addition, those that have had an election, must once again opt in to provide for Sunday packaged liquor sales. The League requests that this provision be an opt-out, rather than opt-in if this bill moves forward. She stated if the Legislature deems it appropriate to make the Liquor Control Act uniform, then it should allow for more local control, and provide for Sunday packaged liquor sales on an opt-out basis. (Attachment 9)

Chairman Brungardt asked what Ms. Jacquot's position was on cereal malt beverage (CMB). She responded that the League likes that provision if the bill passes. She explained that currently the CMB Act is uniform, and the League tells cities they cannot allow for the Sunday sale of CMB. The Chairman asked if the League would like some type of provision for grandfathering of those local governments that have already gone through the process of opting in. Ms. Jacquot said that somehow it needs to be addressed.

Chairman Brungardt opened the floor for discussion on whether the committee wanted to have uniform liquor, or make this look like one action for CMB and for liquor store beer as part of that policy, or if the committee does not want to have uniformity. He stated that most people feel that the state should have some responsibility in this area and should have some control.

Senator Barnett commented that if this bill was just about uniform liquor laws, he would not have any problem with it. However, he said this bill is about Sunday sales expanded down to CMB sales, and there are a lot of negatives to the bill. He stated making this preemptive is bad public policy.

Senator Vratil stated that it was important for the state to have uniform liquor control provisions, and it was good to extend those provisions to cereal malt beverage products. He explained that one could say there has been no harm done by not having uniformity for the last several years, but all it takes is one prevailing city attorney and the state could have a very serious situation. There is a long history in this state with the Legislature controlling consumption of alcoholic beverages in a uniform manner, and that history has served the state well; therefore, the state needs to get back to that situation.

Senator O'Connor stated that she supports the concept of CMB and has no concern with that issue, but is concerned that the state has not grandfathered in the local governments whose hours are different from what is required by this bill. She asked if this bill would require those areas to change their local laws.

Chairman Brungardt explained that this is a policy decision and asked what the committee's desire was regarding **SB 298**.

Senator Vratil made a motion that the committee recommend SB 298 favorably for passage, and Senator Gilstrap seconded the motion.

Committee discussion followed. Chairman Brungardt called for a vote on the motion. The motion carried to pass SB 298 out of committee.

**SB 299 - Liquor control act and cereal malt beverage laws; uniformity; Sunday sales**

Chairman Brungardt opened the hearing on **SB 299**. Bob Alderson, on behalf of Casey's General Stores,

## CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Tuesday, March 22, 2005, in Room 231-N of the Capitol.

Inc., the Petroleum Marketers and Convenience Store Association of Kansas, Inc., QuickTrip and the Kansas Food Dealers Association, testified in support of **SB 299**. He shared background information on cereal malt beverage (CMB), and explained the difference between CMB and the liquor store beer. He said the coalition sponsoring this proposed bill to reclassify CMB, requires the exercise of a local option by a city or county in order for the bill's provisions to become operative. The bill will allow each community to decide for itself whether CMB should be reclassified to include malt products containing not more than 5% of alcohol by weight. Each community will be able to exercise the same right of self determination that has been afforded by many of the other state laws enabling the local sales of alcoholic beverages.

Mr. Alderson talked briefly on the issue of state taxes possibly being lost to the state on CMB products because of the shift in where those products will be sold with the passage of **SB 299**. He said for that reason it was determined to make all sales of CMB in the original and unopened package under the CMB Retailers' Act subject to both the liquor enforcement tax and the state and local sales taxes. This could produce tax revenues in excess of those taxes currently produced in the cities and townships where the CMB Retailers' Act is applicable. Mr. Alderson stated that this is an economic issue which allows for competition on an equal basis with retail liquor dealers. It would allow CMB retailers the opportunity to regain the share of the cereal malt product market they lost over the past several years. (Attachment 10)

Terry Presta, Petroleum Marketers and Convenience Store Association of Kansas, testified in favor of **SB 299**. He talked about the history of CMB, and how a new classification of beer was created during the years of prohibition and was considered non-intoxicating. Laws were created to keep organized crime from dominating alcohol throughout the nation. He explained that the coalition he represents proposed this legislation to recapture some of the market that was lost when the drinking age changed from 18 to 21, and which also should have been the time to change the CMB laws. He stressed one of the main purposes of this bill is to highlight the misconception people have about CMB and strong beer. In regard to the tax issue, Mr. Presta said this bill would allow the state, cities, counties and beer retailers to be equal when pricing their product, and no one has an advantage. He concluded that **SB 299** brings parity back to the liquor industry. (Attachment 11)

Mike Thornbrugh, QuikTrip Corporation, submitted written testimony in support of **SB 299**. (Attachment 12)

Amy Campbell, Kansas Association of Beverage Retailers, appeared in opposition to **SB 299**. She explained that the depth of opposition to this legislation is very strong by retail liquor store owners. This is not about a six pack of beer, but involves products including malt based coolers, fruit flavored malt beverages that mimic liquor based products, mini-kegs, and kegs. The proposed legislation would encourage further expansion and proliferation of flavored malt based products on the market. She said the sale of liquor store beer in all existing CMB outlets would only move those sales from Kansas liquor stores to a multitude of other businesses. To replace CMB with stronger beer is to remove that product with less alcohol content from the market altogether. (Attachment 13)

Ms. Campbell stressed the proposed bill would have a very negative impact upon the retail liquor stores' businesses throughout the state. She asked if the legislators were willing to give an unfair competitive advantage to large corporate entities at the expense of small business, and what is the public policy being advanced by this legislation.

Jim Scott, Fort Scott liquor retailer and past president of KABR, submitted written testimony in opposition to **SB 299**. (Attachment 14)

Tuck Duncan, Kansas Wine & Spirits Wholesales Association, testified in opposition to **SB 299**. He referred to Mr. Alderson's earlier testimony which stated, "It is anticipated by the coalition that the application of the Cereal Malt Beverage Retailers' Act in any city or township will produce in some shift in sales of these products from liquor stores to convenience stores and food dealers." He emphasized that is the purpose of this bill - to shift sales. In summary, Mr. Duncan stated it would be inappropriate for the legislature to re-establish market share after 56 years wherein the current stakeholders have relied upon the

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Tuesday, March 22, 2005, in Room 231-N of the Capitol.

existing system. It would truly be poor public policy particularly if the only rationale for redefining or eliminating cereal malt beverages is to alter market share. He said there are historical accidents that have created the system Kansas has in place today, a history that sets parameters; but, it is a history that needs to be respected to avoid economic dislocation of Kansas' retail liquor dealers and to maintain an orderly market as described heretofore. (Attachment 15)

Garry Winget, Kansans for Addiction Prevention (KAP), expressed strong opposition against **SB 299**. He stated that convenience was the issue for KAP, and they do not want the public to have greater convenience for alcohol consumption. KAP is especially bothered that 18 year olds would be selling a product with more alcohol content, and prefer that it be sold by 21 year olds and older. He stated this is a bad proposal, and KAP stands solidly against it. (no written testimony submitted)

Tom Groneman, Director of the Alcoholic Beverage Control Division, testified as a neutral conferee on **SB 299**. He asked if the bill passes that the effective date be extended until January 1, 2006, in order to permit the Division to make the necessary changes to existing systems and procedures and to work with local governments to put in place the needed business processes. (Attachment 16)

Chairman Brungardt closed the hearing on **SB 299**. He announced that with time permitting, the committee would return to this bill for questions and discussion.

Chairman Brungardt called the committee's attention to Senator Apple's letter requesting special consideration be given to **HB 2309** by this exempt committee which involves three counties that Senator Apple represents. He explained that the bill just got through the House, and was assigned to this committee late last Friday. He stated, since this is the last day for committee meetings, if this committee wishes to advance the bill, that option is available to the committee at this time. (Attachment 17)

Following brief committee discussion, Senator Reitz made a motion to pass the bill out favorably, seconded by Senator O'Connor, and the motion carried.

Chairman Brungardt called for discussion on **SB 299**, and asked what was the committee's intention for handling this proposed legislation.

Committee discussion regarded this bill being a market share argument, the strong opposition of liquor retailers, tax problems, and regulation issues. Following discussion, the consensus of the committee was to hold this bill for consideration next session due to the difficult nature of this proposed legislation.

The meeting adjourned at 11:55 a.m.