

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 22, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Russell Mills, Legislative Research
Dennis Hodgins, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
John Beverlin, Committee Secretary

Conferees appearing before the committee:

Senator Dave Jackson
Tom Groneman, Executive Director, Alcoholic Beverage Control, Department of Revenue

Others attending:

See Attached List.

Chairperson Brungardt called the meeting to order. He asked staff member Theresa Kiernan to review **SB 295** for the committee.

Ms. Kiernan reviewed **SB 295**. She stated that **SB 295** was originally **SB 2** last session. The bill conforms the Kansas agricultural remediation board and the KU hospital authority language to the confirmation language that the statutes have, when there is a multi-member board or commission.

Ms. Kiernan stated that the bill did pass the Senate last session.

Chairperson Brungardt asked the committee for questions. None were asked. Chairperson Brungardt thanked Theresa and welcomed Senator Jackson.

Senator Jackson reviewed **SB 290** for the committee (Attachment 1). After the explanation of the bill, he explained that the fiscal note stated there would be no impact on the state's general fund. However, he explained that while members of the Capitol Area Plaza Authority receive no wages, there would be less money spent on travel expenses associated with an eleven member committee instead of one consisting of thirteen members.

Chairperson Brungardt asked the committee for questions. None were asked. The Chairperson asked staff member Theresa Kiernan to provide a briefing on **SB 305**.

In addition to a review of **SB 305** (Attachment 2), Ms. Kiernan also provided for the Committee a copy of the constitutional provision concerning a city's powers of home rule (Attachment 3).

Ms. Kiernan reviewed each section of **SB 305** for the committee.

Chairperson Brungardt wanted to know if there was a problem with how the bill would affect in-state wineries and their ability to ship product.

Ms. Kiernan answered that she did not currently know.

Chairperson Brungardt stated that if there is a problem that it may need to be addressed. He then asked whether the bill prohibited more restrictive language.

Ms. Kiernan answered that the bill did prohibit more restrictive language.

Chairperson Brungardt asked whether the prohibition of more restrictive language was problematic for home rule considerations or normal authorities of the city, such as zoning ordinances.

Ms. Kiernan answered no. She stated the bill does not limit cities' zoning authority, but it requires that if

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zoning exists the liquor stores must comply with local zoning ordinances.

Chairperson Brungardt asked the committee for questions.

Senator Barnett asked Ms. Kiernan to expand on the advertising language that was not enforceable.

Ms. Kiernan reviewed section 11 on page 13. She stated that it was of the Attorney General's opinion that the language was so vague, it was unenforceable.

Senator Barnett asked who was in charge of regulating adult entertainment establishments.

Ms. Kiernan answered that the local authorities were in charge of that regulation.

Senator Barnett asked how pre-emptive language would effect local authorities to regulate adult entertainment.

Ms. Kiernan answered that as long as the regulation is on adult entertainment and not liquor, it should not interfere with the local authorities' ability.

Senator Barnett asked for more information concerning the issue of adult entertainment and the bill's effect on the ability of local authority to regulate.

Chairperson Brungardt asked the committee for additional questions. None were asked. He thanked Theresa and welcomed Tom Groneman, Executive Director, Alcoholic Beverage Control, Department of Revenue.

Mr. Groneman presented more information concerning **SB 305** (Attachment 4).

Chairperson Brungardt asked Ms. Kiernan whether the wording concerning population would be problematic.

Ms. Kiernan answered that she did not believe it would be problematic.

Senator Vratil stated that there was a difference between home rule for cities and home rule for counties. He explained that cities acquire their power to home rule through the constitution, but counties are different. They can only acquire home rule powers by statutes, enabling the legislature to change that power by changing the statute. He explained that **SB 305** would place a provision in the statutes specifically preventing counties from chartering out of the provisions. He stated that he did not believe the township population provisions make the act subject to county local control.

Chairperson Brungardt asked about Kansas wineries and market breweries being able to ship their product.

Mr. Groneman answered that currently Kansas wineries and market breweries were unable to ship their product within the state.

Chairperson Brungardt asked what was problematic with the wineries and breweries being able to ship their product within the state.

Mr. Groneman answered that if Kansas wineries and breweries were able to, but outside retailers were not allowed to ship in the state, there would be lawsuits.

Chairperson Brungardt stated that maybe what is needed is to allow outside retailers to ship in the state, then also allow Kansas wineries and breweries to ship within the state.

Laura Graham from the audience stated that the provision in the bill requires direct shipment to the retailer. The consumer then would have to go to the retailer to receive the product.

Chairperson Brungardt asked if it then could be allowed for Kansas wineries and breweries to ship to the retailers for the customer.

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Ms. Graham stated that she supposed that would be the case. She explained that a problem would occur with regards to the possibility of underage individuals receiving the product, if the product was shipped directly to the consumer.

Senator Vratil explained that there was interest within the legislature to allow Kansas wineries to have the same benefits already possessed by out-of-state wineries, by allowing them the ability to ship in Kansas through a licensed retail dealer, where the consumer picks the product up from the dealer.

Chairperson Brungardt stated that this would still enable the state's control mechanisms.

Senator Vratil stated the one problem that occurs is the issue of collecting the gallonage tax on the product. He stated that the committee needs to make certain that the bill imposes the gallonage tax, not on what the retailer licensee receives as a fee for handling the transaction, but on the wine itself.

Mr. Groneman stated that a new mechanism for collecting the tax will have to be put in place.

Senator Vratil stated it was the intent of the Interim Judiciary Committee that the gallonage tax be collected on the wine that was shipped in from out-of-state, by the local retail dealer, and remitted to the state.

Russell Mills asked whether in-state wineries could market through retail liquor stores under current law.

Ms. Graham answered that she believed they could.

Mr. Mills stated that in-state wineries could sell at the winery and through retail liquor stores.

Ms. Graham stated that Mr. Mills was correct.

Senator Clark asked if whether through the current system, the distributor pays all of the taxes.

Ms. Graham stated that Senator Clark was correct.

Ms. Kiernan asked whether the language for the gallonage tax needed to be changed.

Mr. Groneman answered that gallonage tax is a process that needs to be made familiar to the retailers. He stated that there may be a problem with the 8 percent enforcement tax which is collected at the retail level on gross receipts. He explained that the only thing the retail liquor store is going to have is the 5 dollar handling fee and that there needs to be a mechanism for its collection.

Senator Teichman asked whether it was possible to separate the issues of wineries and Sunday sales.

Chairperson Brungardt asked the committee to comment on the idea of separating the two issues.

Senator Barnett stated that he shared the same opinion as Senator Teichman.

Chairperson Brungardt stated that he would address committee members individually.

Senator O' Connor asked whether the gallonage tax was different or similar to the enforcement tax.

Mr. Groneman answered that the gallonage tax was different. He explained that the tax depended on volume and the percentage of the wine.

Senator O' Connor asked if the gallonage tax was a percentage of the retailer's total sales or whether it was a separate form the retailer had to fill out. She also wanted to know whether it would be complicated for the retailer to perform this duty.

Mr. Groneman answered that it could be complicated for the retailer to fill the separate form out but the ABC would attempt to make it as uncomplicated as possible.

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Senator O' Connor asked if the report could be included on the other paper work the retailer is already doing.

Mr. Groneman said the ABC would have to look into the idea.

Senator O' Connor asked how many distributors were in the state.

Senator Vratil answered that there were two or three distributors of wine in the state.

Senator Lyon expressed concern about the many different aspects of the current bill.

Chairperson Brungardt stated that there were some unresolved questions concerning liquor regulations and adult entertainment as well as the issue of how to collect the taxes in an orderly process. He asked the staff members and the ABC to do more research into these issues.

Senator O' Connor expressed concern over section 10.

Senator Barnett asked about the fiscal impact of Sunday sales. He stated that he had read new reports stating Sunday sales would increase revenue for the state. He stated he was surprised with Mr. Groneman's comment that Sunday sales would not increase revenue for the state.

Mr. Groneman stated border counties would feel an increase in business from individuals who would normally travel across state lines to buy alcohol. However, he explained, other counties not on the border have not shown an increase in volume of sales.

Mr. Barnett asked whether the additional tax revenue from the border counties were significant for the state.

Mr. Groneman answered that when the increase gained by the border counties is spread over the entire state, the revenue generated is determined not to be that significant.

Senator Barnett stated there were several issues in which he had interest in knowing. He asked for a comparison between Missouri and Kansas with regards to liquor laws, minimum drinking age and when it was enacted, legal blood alcohol level, and tax rates.

Senator Barnett asked Mr. Groneman if he could provide a comparison of sales in cereal malt beverage versus a retail store's age qualifications and background checks.

Chairperson Brungardt asked the committee for questions. None were asked.

The meeting was adjourned at 11:30. The next meeting is scheduled for January 27, 2004, at 10:30 a.m. in room 231-N.