

Approved: 3/30/10

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:02 a.m. on March 16, 2010, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Art Griggs, Office of the Revisor of Statutes  
Renaë Jefferies, Office of the Revisor of Statutes  
Jason Long, Office of the Revisor of Statutes  
Dennis Hodgins, Kansas Legislative Research Department  
Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

Mike Murray, Capitol Advantage LLC  
Jon McCormick, Retail Grocers Association of Greater Kansas City  
Mike Braxmeyer, Williams Brothers Supermarket, Atwood, KS  
Mike Moon, Moon's Hometown Market, Osawatomie, KS  
Gary Jones, C & J Management Services, Inc.  
Dick C. Stoffer, Hy-Vee, Inc.  
Thomas M. Palace, Petroleum Marketers and Convenience Store Association of Kansas

Others attending:

See attached list.

**HB 2697**      **Alcoholic beverages; amendments to licensure of alcoholic liquor retailers**

Jason Long, Assistant Revisor, explained the bill (Attachment 1).

Representative Gatewood asked what is a game of skill compared to a game of chance? A game of chance is like a poker machine and a game of skill would be like a video arcade machine.

Representative Grant asked what constitutes selling. Is a 19 year old running a cash register selling? The person who takes the money for the product is considered to be selling and that person must be 21 years old.

Dennis Hodgins, Kansas Legislative Research Department, gave the Committee a brief history of the liquor laws (Attachment 2).

Mike Murray, Capitol Advantage LLC, presented testimony as a proponent of **HB 2697** (Attachment 3). He said that this bill allows other retailers to offer full strength beer, wine and spirits. Retail liquor dealers have been a protected monopoly in Kansas since 1948.

Representative Pottorff asked Mike to clarify the point requiring anyone who sells full-strength beer, wine or spirits to be 21 years of age. If someone who is not 21 is ringing up the sale of groceries and full-strength beer, wine or spirits is presented, then someone who is 21 must step in and ring up the sale.

Representative Brunk asked how the passage of this bill was going to increase economic growth. They believe that there is an untapped market, especially for women, that will purchase these items if they are in grocery stores.

Jon McCormick, Retail Grocers Association of Greater Kansas City, presented testimony as a proponent of **HB 2697** (Attachment 4).

Representative Pottorff asked Jon if he was representing all the members of the Association. He said that according to a survey he is representing the vast majority of the grocers in the Association.

Representative Grange commented that the population of Missouri was twice that of Kansas, the implication being that Jon's statistics were misleading.

3/16

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:02 a.m. on March 16, 2010, in Room 784 of the Docking State Office Building.

Representative Brunk quoted the statement that Kansas is limiting competition and raising prices. Yet the bill seems to exclude certain major box retailers such as WalMart or Walgreens. Do you not want to compete with them? Jon said that would be up to the legislature.

Representative Schwab said there must be a line drawn somewhere.

Mike Braxmeyer, Williams Brothers Supermarket, Atwood, KS, presented testimony as a proponent of **HB 2697 (Attachment 5)**. He said we must have open and fair competition to survive and that should include beer, wine and spirits sales. His concern was that he was competing with Nebraska which sell beer, wine and spirits.

Representative Ruiz asked if his county was a dry county. Mike said no, they had two liquor stores and two grocery stores in the county.

Representative Brunk asked how this bill affects a dry county and wants to stay dry. Mike said it would not have any effect on the county.

Representative Grant suggested that if people purchased strong drinks in Nebraska and transported it to Kansas they are doing something illegal.

Mike Moon, Moon's Hometown Market, Osawatomie, KS, presented testimony as a proponent of **HB 2697 (Attachment 6)**.

Representative Pottorff asked why his Humboldt store would not be a good candidate for the sale of beer, wine and spirits. Mike said it was a size consideration.

Representative Grant asked if liquor stores were not safe. Mike said that many women were uncomfortable going into a liquor store.

Gary Jones, C & J Management Services, Inc., presented testimony as a proponent of **HB 2697 (Attachment 7)**. He is co-owner of two supermarkets in Kansas and two in Missouri. He feels that this bill would make his Kansas stores profitable.

Dick C. Stoffer, Hy-Vee, Inc., presented testimony as a proponent of **HB 2697 (Attachment 8)**. He said they have 14 stores in Kansas and they operate 227 stores across an eight state area, seven of which sell wine, beer and spirits. He mentioned several safety features that Hy-Vee is installing in their stores, such as anti-theft caps, tags that set off alarms if someone tries to steal them. They also have a mandatory ID system.

Representative Schwab asked if they would be open to the creation of a transition system where we cap the number of liquor licenses and if you want a liquor license you must buy it from a store going out of business so that they have an exit strategy to get out of debt and their employees would have a place to work. Dick said yes, they would be open to it.

Representative Suellentrop asked why we would restrict big box stores from having licenses. Dick said that they face stiff competition everyday but they are trying to protect the industry.

Thomas M. Palace, Petroleum Marketers and Convenience Store Association of Kansas, presented testimony as a proponent of **HB 2697 (Attachment 9)**.

Representative Schwab asked if they were competing with Dillon's gas. Tom said yes and it was difficult competition. They try to offer convenience as well as price.

The next meeting is scheduled for March 17, 2010.

The meeting was adjourned at 10:34 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 3-16-10

NAME	REPRESENTING
Michael L Brafmeyer	KFDA / WILLIAMS BROS.
John M. Cormick	KFDA KANSAS FOOD DEALERS ASSOC.
Michael Moore	KFDA MOON'S HOMETOWN MARKET
Gary Jones	KFDA OTTAWA COUNTY MALL
Mike Murray	Kansas Food Dirs Assn
Dick Staffer	Hy-Vee Inc.
Spencer Duncan	Capital Connection
Maji Fanimokun	League of KS Municipalities
Patel Kessler	<del>Toms Wine &amp; Spirits</del> ↑
Tom Kessler	↓
Gratz Peters	Pumpkin Peter, Parsons KS.
JIM QUEEN	QUEENS PRICE CHOPPERS
SHAWN BROWN	HY-VEE, INC
BRAD WALTERS	HY-VEE INC.
Todd Wagner	HY-VEE INC.
Rob Estick	Hy-Vee, Inc.
Don Wellinghoff	Hy-Vee, Inc.
Scott Johnson	Hy-Vee, Inc
ANDREW YOUTHUM	HY-VEE, INC.
Martin Street	Hy Vee INC
Dan Bryan	Bryon's Liquor
JUDITH BADD	KS FOOD DEALERS ASSN.
Mel Minor	KS FOOD DEALERS
SHERILYN HURST	HURST LIQ STORE
JOHN HURST	HURST LIQUOR STORE

COMMERCE & LABOR COMMITTEE

DATE: 3-16-10

NAME	REPRESENTING
Rodney A. Robson	Kansas Assoc. Beverage Retailers Jo's Liquor Store Caney
John Davis	Kansas Assoc. Bev. Retailers Davis Liquor Wichita
DAVE DUBRAK	KABR V.P. FLINT HILLS WINE + SPIRITS
Gary Harlow	2 Bags Brew
Stacey Harlow	KABR V-Pres 2 Bags Brew
MARTIN PLATT	PLATT LIQUOR - PAST PRESIDENT KS. ASSOC. BEV. RETAILERS
Janet L. Wise	Westside Legion Store Oskaloosa, KS
Amy Campbell	KABR
Bruce Turnell	AFL-CIO
Megan Bottenberg	KDOL
Betty Chlunsky	Chlunsky Retail Liquor Great Bend, KS
Phil Bradley	KLBA, KUFWA, CBSK
J P SMADL	Walmart Stores, Inc

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  
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Legislative Information System

**Brief on House Bill 2697**  
**Amendments to Kansas Liquor Control Act**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 16, 2010

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HB 2697 makes amendments to the Kansas Liquor Control Act (KLCA) with respect to retailer licensees. Under the KLCA the Director of Alcoholic Beverage Control is authorized to issue retailer's licenses to individuals and businesses. Such licenses authorize the holder to sell alcoholic liquor at retail in the original, unopened package.

First, HB 2697 amends K.S.A. 41-102 to expand the definition of "retailer" to include those who derive not less than 50% of their gross receipts from the sale of food, food products or alcoholic liquor. This would allow establishments such as grocery stores to be included in the definition.

Second, the bill amends K.S.A. 41-308 to remove restrictions on what a retailer licensee can sell. Under the bill a retailer licensee would be permitted to sell other goods and services on the licensed premises. Under current law they are generally restricted to only selling alcoholic liquor. The bill would also only prohibit games of chance on the licensed premises, but would allow entertainment and games of skill, which are currently prohibited.

Third, section 3 of the bill removes prohibitions on who can obtain a retailer's license. The bill would remove the following prohibitions: (1) Nonresidents of the state; (2) those

**MEMORANDUM**

To: House Committee on Commerce and Labor

From: Jason B. Long, Assistant Revisor

Re: Synopsis of the scope of the statutes amended by HB 2697

Date: March 16, 2010

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Sec. 1. K.S.A. 2009 Supp. 41-102 - Provides definitions for the Kansas Liquor Control Act (KLCA). The bill amends "retailer" to include persons who derive at least 50% of their gross receipts from the sale of food, food products or alcoholic liquor.

Sec. 2. K.S.A. 41-308 - Provides what is permitted by a retailer's license. The bill would allow a retailer licensee to sell other goods or services in addition to alcoholic liquor. The bill also permits entertainment and games of skill on the premises.

Sec. 3. K.S.A. 2009 Supp. 41-311 - Provides prohibitions on who can obtain various licenses issued under the KLCA. The bill would remove several of the prohibitions on the issuance of a retailer license.

Sec. 4. K.S.A. 2009 Supp. 41-313 - Provides that foreign corporations must appoint a resident agent for service of process prior to being issued a license under the KLCA. The bill adds retailer license to the list of licenses set forth in the statute.

Sec. 5. K.S.A. 2009 Supp. 41-710 - Provides restrictions on the locations of certain licensed premises. The bill would remove the restriction on retailer licensees being located near schools and churches.

Sec. 6. K.S.A. 41-713 - Provides prohibitions on who retailer licensees can hire to work on the premises. The bill removes the prohibitions on hiring persons under 21 or guilty of a felony, but still prohibits such individuals from selling alcoholic liquor.

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**Brief on House Bill 2697**  
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Jason B. Long  
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March 16, 2010

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Second, the bill amends K.S.A. 41-308 to remove restrictions on what a retailer licensee can sell. Under the bill a retailer licensee would be permitted to sell other goods and services on the licensed premises. Under current law they are generally restricted to only selling alcoholic liquor. The bill would also only prohibit games of chance on the licensed premises, but would allow entertainment and games of skill, which are currently prohibited.

Third, section 3 of the bill removes prohibitions on who can obtain a retailer's license. The bill would remove the following prohibitions: (1) Nonresidents of the state; (2) those

1-4

holding a beneficial interest in another retail establishment; (3) copartnerships; and (4) trusts. The bill also would only prohibit corporations from obtaining a retailer's license if any officer, manager, director or stockholder owning more than 25% of the stock is ineligible for a license.

Fourth, the bill amends K.S.A. 41-710 to remove retailer licensees from the prohibition of being located within 200 feet of any school or church. The licensee would still be required to comply with all applicable building regulations.

Finally, the bill amends K.S.A. 41-713 to allow retailer licensees to employ persons under 21 years of age provided such person does not sell any alcoholic liquor. The bill allows the employment of persons convicted of a felony provided such person does not sell any alcoholic liquor.



MEMORANDUM

To: House Committee on Commerce and Labor

From: Jason B. Long, Assistant Revisor

Re: Synopsis of the scope of the statutes amended by HB 2697

Date: March 16, 2010

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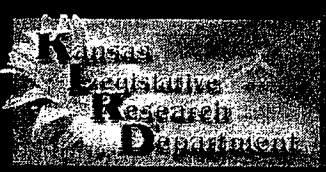
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**Alcohol, Drugs, and Gambling**

**C-1  
Liquor Laws**

**Other Alcohol, Drugs, and Gambling reports available**

**C-2  
Lottery, Parimutuel Wagering, Bingo, and Indian Casinos**

**C-3  
Casinos**

**Dennis Hodgins,  
Principal Analyst  
785-296-3181  
Dennis.Hodgins@kldr.ks.gov**

**Kansas Legislator  
Briefing Book  
2010**

**Alcohol, Drugs, and Gambling**

**C-1 Liquor Laws**

The Kansas liquor laws are administered by the Alcoholic Beverage Control Division of the Kansas Department of Revenue.

**Current Liquor Laws.** The current Kansas liquor laws include the following acts:

- Liquor Control Act;
- Cereal Malt Beverage Act;
- Private Club and Drinking Establishment Act;
- Nonalcoholic Malt Beverages Act;
- Beer and Cereal Malt Beverage Keg Registration Act; and
- Statutes authorizing sales by farm wineries and microbreweries.

**Liquor Licenses.** To produce, distribute, or sell alcoholic beverages in Kansas, a license must be obtained from the Division of Alcoholic Beverage Control. License types include the following:

- Manufacturer;
- Spirits Distributor;
- Wine Distributor;
- Beer Distributor;
- Retail Liquor Store;
- Farm Winery;
- Microbrewery;
- Class A Private Club (not-for-profit);
- Class B Private Club (for-profit);
- Drinking Establishment;
- Caterer;
- Hotel Drinking Establishment; and
- Temporary Permit.

**History of Liquor Laws.** Some major dates in the history of Kansas liquor laws are listed below.

**House Commerce & Labor  
Date: 3-16-10  
Attachment # 2**

- 1880 Voters approved a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors.
- 1917 The Legislature passed the "Bone Dry Law," prohibiting the possession of all liquor.
- 1937 The Legislature authorized the sale of cereal malt beverage (3.2 percent beer) for consumption both on- and off-premises.
- 1948 Voters approved a constitutional amendment authorizing the Legislature to "regulate, license, and tax the manufacture and sale of intoxicating liquor . . . ."
- 1949 The Legislature enacted the Liquor Control Act in response to the 1948 constitutional amendment.
- 1965 The Legislature enacted the Private Club Act providing for the sale of liquor in private clubs.
- 1979 Private clubs were statutorily authorized to sell liquor by the drink to members and guests. "Liquor Pools" were eliminated and a 10 percent "drink tax" was imposed.
- 1983 Farm wineries were authorized to sell table wine made from Kansas products.
- 1986 Voters approved a constitutional amendment permitting sale of liquor by the drink in establishments open to the public.
- 1987 Drinking establishments were created as a category of licenses permitted to sell liquor by the drink. Microbreweries were permitted to manufacture and sell beer.
- 1990 The Nonalcoholic Malt Beverages Act authorized the sale of malt beverages containing less than 0.5 percent alcohol.
- 1994 Election day sales legalized.
- 1995 Credit card sales authorized.
- 2002 The Beer and Cereal Malt Beverage Keg Registration Act required retailers to register all beer kegs.
- 2005 The Kansas Liquor Control Act and Cereal Malt Beverage Act is applied uniformly to all cities and counties. The state may issue licenses for retail liquor stores in any city unless the governing body of a city adopts an ordinance to prohibit retail liquor stores within the city. Sunday sales and holiday sales of liquor and cereal malt beverage for off-premise consumption is prohibited within a city or within the unincorporated area of a county unless the governing body adopts an ordinance or resolution authorizing Sunday and holiday sales.

- 2006 The Kansas Liquor Control Act allows direct shipment of wine from wine manufacturers to the consumer if such consumer is 21 years of age or older, purchases the wine while physically present on the premises of the wine manufacturer, uses the wine for personal consumption, and pays all applicable taxes. The Act allows in-state farm wineries and out-of-state wineries, manufacturing wine in quantities not exceeding 100,000 gallons, to ship wine to a licensed retailer designated by the consumer. In-state farm wineries and out-of-state wineries, manufacturing wine in quantities exceeding 100,000 gallons, to ship wine to a licensed distributor who would distribute it to a licensed retailer designated by the consumer. The Act permits Kansas wineries to ship wine to other states in conformity with other states' laws. Wine and beer, which is legally available in Kansas, is allowed to be sold and consumed at the Kansas State Fair. Legal patrons of drinking establishments are allowed to remove one or more opened containers of alcoholic liquor from a licensed premise if such containers are the original containers, securely resealed, placed in a tamper-proof transparent bag, and posses a dated receipt for the unfinished container. The Act allows an unfinished container to be transported behind the last upright seat or in an area not normally occupied by the driver or the passenger, if the vehicle does not have a trunk.
- 2007 The Kansas Liquor Control Act allows a licensed farm winery or a person who holds an interest in a licensed farm winery to hold a class B club license, a drinking establishment license, and a caterer's license. The Act makes the statutes consistent so that a farm winery also may be a caterer. The bill also allows microbreweries to have more than one microbrewery license. The Act exempts specified charitable and campaign fund raising activities from the requirement to have a liquor license or a temporary permit to serve alcohol at their events.
- 2008 The Kansas Liquor Contract Act was amended to allow a farm winery to sell wine, manufactured by the winery, to holders of temporary permits who sell and serve alcoholic liquor. The Act also allows the temporary permit holders at the State Fair to sell, in its original, unopened container, wine that is being sold by the glass. The Act eliminates the requirement that not less than 50.0 percent of agricultural products used in the manufacturing of domestic microbrewery beer be grown in Kansas. The Act permits consumption of alcoholic liquor on the premises of any Kansas National Guard Armory. In addition, a defendant who has served a minor under 21 years of age can use as evidence against the revocation, suspension, or imposition of a fine, that the driver's license or identification card presented by the minor reasonably appeared to contain a photograph of the minor purporting to establish that such minor was 21 years of age. The Act also requires a retailer, prior to selling a keg of beer or cereal malt beverage, to record what reasonably appears to contain a purchaser's picture and signature. Finally, the Act allows issuance of a license to sell retail alcoholic liquor in the original package on premises located in an unincorporated area of a county.

2-3

2009 The Kansas Liquor Control Act and Club and Drinking Establishment Act are amended to permit in-state and out-of-state wineries to directly ship wine to consumers in Kansas. Wineries would be limited to 12 cases of wine per consumer per calendar year, and the consumer must be 21 years or older. The Acts permits wine to be sold at a *bona fide* farmer's market. The Acts allow drinking establishments to store wine on the premise which has been sold to a customer for future consumption. The Acts permit consumption of alcoholic liquor at special events held on public streets, alleys, roads, sidewalks, or highways closed to motor traffic.

**Liquor Taxes.** Currently, Kansas imposes three levels of liquor taxes. For more information see article V-2.

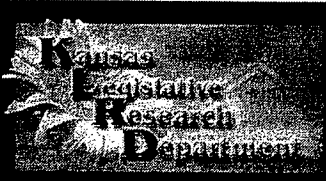
For more information, please contact:

Dennis Hodgins, Principal Analyst  
[Dennis.Hodgins@klrd.ks.gov](mailto:Dennis.Hodgins@klrd.ks.gov)

Julian Efird, Principal Analyst  
[Julian.Efird@klrd.ks.gov](mailto:Julian.Efird@klrd.ks.gov)

Kansas Legislative Research Department  
300 SW 10th Ave., Room 68-West, Statehouse  
Topeka, Kansas 66612  
Phone: (785) 296-3181  
Fax: (785) 296-3824

2-4



**Taxation**

W-2

**Liquor Taxes**

**Other Taxation reports available**

W-1

**Homestead Program**

Chris Courtwright,  
Principal Economist  
785-296-3181  
Chris.Courtwright@klrd.ks.gov

**Kansas Legislator  
Briefing Book  
2010**

**Taxation**

**W-2 Liquor Taxes**

Kansas has three levels of liquor taxation, each of which imposes different rates and provides for a different disposition of revenue, including:

***Liquor Gallonage Tax***

***Liquor Enforcement or Sales Tax***

***Liquor Drink Tax***

Gallonage. The first level of taxation is the gallonage tax, which is imposed upon the person who first manufactures, sells, purchases, or receives the liquor or cereal malt beverage (CMB).

Enforcement or Sales. The second level of taxation is the enforcement or sales tax, which is imposed on the gross receipts from the sale of liquor or CMB to consumers by retail liquor dealers and grocery and convenience stores; and to clubs, drinking establishments, and caterers by distributors.

Drink Tax. A tertiary level of taxation is levied on the gross receipts from the sale of liquor by clubs, caterers, and drinking establishments.

***Gallonage***

\* Since the tax is imposed upon the person who first manufactures, uses, sells, stores, purchases, or receives the alcoholic liquor or cereal malt beverage, the tax has already been paid by the time the product has reached the retail liquor store – or in the case of CMB, grocery or convenience store.

**So when the liquor store owner purchases a case of light wine from a distributor, the 30 cents per gallon tax has already been built in as part of that store owner's acquisition cost.**

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

\* Gallonage tax receipts in FY 2009 were approximately \$21.2 million. Of this amount, nearly \$10.9 million was attributable to the beer and CMB tax.

Gallonage Tax – Disposition of Revenue		
	State General Fund	Community Alcoholism and Intoxication Programs Fund (CAIPF)
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 3.75 percent.

**CMB sales therefore are taxed at rates ranging from 5.3 to 9.05 percent.**

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			
	SGF	State Highway Fund	Local Units
Enforcement (8 percent)	100.00%	---	---
State Sales (5.3 percent)	87.74%	12.26%	---
Local Sales (up to 3.0 percent)	---	---	100.00%

\*\* Enforcement tax receipts in FY 2009 were approximately \$53.8 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			
	SGF	CAIPF	Local Alcoholic Liquor Fund
Drink Tax (10%)	25%	5%	70%

\*\*\* Liquor drink tax revenues in FY 2009 were about \$36.5 million, of which \$9.1 million were deposited in the SGF.

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

2-7



Before the House Commerce and Labor Committee

Michael R. Murray

HB 2697

March 16, 2010

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear here today on behalf of the Kansas Food Dealers Association and the Retail Grocers Association of Greater Kansas City, and to testify in support of HB 2697 which will allow retail grocery stores in Kansas to sell full-strength beer, wine and spirits.

The Kansas Food Dealers Association and the Retail Grocers Association represent nearly 400 retail grocery stores employing several thousand Kansans.

The major provisions of HB 2697 are:

1. It allows retail liquor dealers to sell other products besides full-strength beer, wine and spirits.
2. It allows retail liquor dealers, as well as retail grocery stores, to have more than one license.
3. It applies to retailers who derive 50% or more of their revenues from the sale of food or food products, or alcoholic liquor. Meaning retail grocery stores and retail liquor stores.
4. It allows corporations not domiciled in Kansas to have liquor licenses.
5. It requires that anyone who sells full-strength beer, wine or spirits to be at least 21 years of age.

This legislation is about a lot things. It's about competition and meeting customer demand. It's about economic growth and prosperity. It's about jobs. It's about generating tax revenue on numerous fronts without raising anyone's taxes.

Is this bill the perfect answer to free and open competition? No it is not. But it is a major step in that direction.

Full-strength beer, wine and spirits are legal products. That issue has been decided. This bill simply allows other retailers to offer these products for sale. Retail liquor dealers have been a protected monopoly in Kansas since 1948. Times are changing. Monopoly is a dinosaur of the past.

House Commerce & Labor

Date: 3-16-10

Attachment # 3

You need only to reflect on the telecommunications industry and see the benefits of competition unfolding in front of your eyes. 15 years ago cell phones didn't exist. The internet had not been invented. It is competition which has led to the incredible technological advancements in the wireless industry, the deployment of high speed internet, and the many choices the customer has for all manner of telecommunications services.

Competition leads to better products, better service and lower prices. Government got out of the way and let market forces work. That is what needs to happen in this instance. Those who can adapt, who can embrace change, who can innovate and be entrepreneurial, will survive and prosper.

I believe it was in one of the more recent presidential campaigns when someone uttered the now famous line "it's about the economy, stupid." Well, this bill is about the economy and jobs. Private sector jobs.

It's about jobs in the construction industry when new grocery or liquor stores are built or expanded.

It's about jobs in the grocery industry when new and expanded stores hire more people.

It's about jobs in the trucking industry when distributors have to hire more drivers to deliver their products to new customers.

And it may be about new jobs in the retail liquor industry if those dealers need to hire more people to sell more products and provide more service.

This bill is about saving the local hometown grocery store in many rural Kansas communities. Here is an opportunity to do something about rural economic development. You're not being asked to hand out tax breaks, not being asked for a grant. You're just being asked to begin to clear the way for competition to stimulate economic growth.

And, HB 2697 is about state and local governments having a means to increase their revenue streams without raising taxes on anyone. It means more income taxes from new employees, more property taxes as businesses are built and expand, more sales taxes, more liquor enforcement taxes—again, all without any governing body having to raise a dime in new taxes.

Thank you and I'd be pleased to respond to questions at the appropriate time.

Before the House Commerce and Labor Committee

HB 2697

Jon McCormick

March 16, 2010

Mr. Chairman and Members of the Committee:

My name is Jon McCormick and I'm the president/CEO of the Retail Grocers Association of Greater Kansas City and Executive Director of the Kansas Food Dealers Association. These two Associations represent most of the remaining independent supermarket retailers in Kansas. I appreciate the opportunity to appear before you to represent these retailers that are back in their stores working today. I am here to represent their support of HB 2697 which would allow their retail grocery stores to sell full-strength beer, wine and spirits.

I will remain brief, as you will hear directly from some representative retailers from Kansas towns across the state.

I will be putting this in bullet points for ease of reading.

1. This law protects a class of trade and discriminates against Kansas retailers and has "unintended consequences" that are far reaching to your constituencies. Kansas laws provide no protection from outside competition coming into rural Kansas for the supermarkets yet protect Liquor stores. (Similar plights are being felt in urban areas as well.)
2. A recent AARP publication compares MO grocery stores 756 to KS stores 329. How many stores will there be in Kansas in 2011? 2012?
3. David Procter, Director of the Center for Engagement and Community Development (KSU) reports the following:
  - a. There were 106 grocery stores closed since 2006 in towns of less than 2,500 people... every day we hear of more
  - b. These are critical infrastructures to the rural communities
  - c. These closings threaten the health and existence of these communities
4. It seems to have morphed into government control and alliances with a certain protected class of trade that has formed a monopoly and wields great power when the monopoly is threatened.
5. This monopoly limits competition and artificially raises prices. This protected class of business is using the State to impose a cartel that can't exist in a free market.

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HB2697

House Commerce & Labor

Date: 3-16-10

Attachment # 4

6. Unintended consequences:

- a. Higher prices – Monopolies are great for the cartel
- b. Lower taxes – KS is sending customers to Missouri
- c. Grocery stores with 30-50 employees are being displaced and laid off
- d. Protected Liquor stores employ anywhere from 3 to 6 employees

Legislation created this monopoly for the Liquor cartel. Legislation can change this situation.

Respectfully, I ask you to support HB 2697.

*Jon McCormick*

Jon McCormick  
President/CEO  
Retail Grocers Association of Greater Kansas City  
Executive Director  
Kansas Food Dealers Association

4-2

Mr. Chairman & Committee Members:

My name is Mike Braxmeyer, and I own and operate Williams Brothers Supermarket in Atwood, KS. Thanks to the committee for giving me some time to appear before you in support of HB2697. Grocery stores in the State of Kansas would very much like to have the opportunity to sell beer, wine and spirits.

For years we have paid fees, applied for annual licenses and permits and been certified to sell such items as tobacco products, beer, prepared food (delis), non-prescription over the counter health remedies and live plants. We perhaps are one of the most regulated industries in the State. By the same token, we probably collect more in state sales tax for Kansas than any other industry. In so doing, we have to compete 24 hours a day to keep our doors open – and some competitors, actually quite a few, are in neighboring states, and two of those states exempt food from sales tax also. We must have the ability to compete openly, and use all the tools available to keep those doors open. By restricting the sale of beer, wine and spirits, the State of Kansas handicaps us.

In the process of tying our hands, it also restricts open competition. No one has protected us from the WalMarts of the world or our local pharmacies from Walgreen's or our local lumberyards from Lowes or Home Depots. In the interest of a true market, this needs to work in both directions. In Atwood, Kansas, at one time, we had two grocery stores – now only one. In Oberlin, Kansas there were two stores – now only one. In Goodland, Kansas, two stores -- now only one, and at one time during the past forty years Atwood had four grocery stores. Grocery stores close more often than they are sold. To my knowledge, never in the history of Rawlins County, has an acre of ground

House Commerce & Labor  
Date: 3-16-10  
Attachment # 5

"not" sold. We must have open and fair competition to survive and that should include beer, wine and spirits sales.

You have heard, or soon will, of how many grocery stores the State of Kansas has lost in recent years. Two small towns in western Kansas have lost their schools and recently one has lost its only grocery store. Both these communities are within fifteen miles of Nebraska.

In my particular situation in Atwood, I have to compete with two locations in Nebraska. Both of these not only sell beer and wine, but also exempt all food from state sales tax. I am aware that an increase of 1% in the state sales tax has been discussed. I am also well aware of the revenue generated by the states sales tax on food and know you would be hard pressed to find a substitute for the revenue. What an advantage Nebraska has – but I am certainly not asking you to exempt food items from sales tax, just please give us the chance to compete in the area of wine and spirits. The fact that I have such restrictions as not being able to sell wine and spirits coupled with the fact that my customers can save 16 cents on a \$1.99 purchase over the border hurts. My friends in Kansas City cannot believe our customers would drive 40 or 60 miles for grocery shopping. They find it very difficult to find that true. But believe me, it is!! My experience of 38 years in Atwood has proven that over and over.

Most supermarkets in the State are open 80 to 90 hours a week and most of us will work 50 to 65 hours a week personally to assure we earn the respect and support of the consumer. We do so knowing that we cannot always be the biggest and the newest, but will provide the best service and the cleanest store there is. In the process, we employ from 10 to 100 employees per location and yet we are denied the freedom or right

to sell wine and spirits in an open market. And most of us are already selling the 3.2% beverage and effectively complying with the same sales regulations as the liquor store locations. We are ready to assume all the responsibilities required, but have been denied the right to sell the real thing. In today's world there are millions who enjoy a glass of wine or a cocktail with their meal – and guess where they get that meal. Most times in the clean, friendly, safe, convenient environment of our stores. Yet we are denied the ability to merchandise that cocktail or wine to our customer, while many locations over the state line can. Fair competition – I don't think so!!

This bill also gives liquor locations the ability to compete with snack and beverage sales, and I believe it is safe to say once HB 2697 becomes reality many will expand into snack, soft drinks and food items. You may even see some building expansions in the liquor store market and with that you will see more tax sale dollars staying in our State through expanded sales from both liquor locations and supermarkets. These are dollars going out of our State now. That is exactly what the bill is about. A truly open market with true competition – no handcuffs on any segment of the market.

Please put yourselves in our shoes. I honestly believe in the next several years, you will see more grocery stores close than liquor stores, even after the passage of a bill such as HB2697.



701 6<sup>th</sup> Street Osawatomie, Kansas 66064 (913) 755-2635; fax (913) 755-2545

Before the House Commerce and Labor Committee  
HB 2697  
Michael (Mike) Moon

March 16, 2010

Mr. Chairman and Members of the Committee:

My name is Mike Moon. My wife and I own and operate two grocery stores in Kansas, one in Osawatomie, where I live, and another in Humboldt. I appreciate the opportunity today to discuss House Bill 2697 and why it should be passed.

Today and tomorrow you will hear impassioned pleas for and against this bill. There will undoubtedly be more emotionally charged opinions when hearing from those who oppose this legislation. My goal here today is to try to talk about both sides of the issue in a realistic manner. The following bullet points outline several of the issues that will likely be discussed:

- **This legislation will not doom liquor stores to extinction. First**, a quick look at our neighboring states that allow wine and spirits in grocery stores will prove that liquor stores and grocery stores co-exist quite nicely. There are hundreds of Kansas liquor stores that are well run, exceedingly profitable, and have terrific locations. They would likely be untouched by this change. Those that would experience a competitive situation would adapt and change just as we grocers regularly do. **Second**, it should not be assumed that every grocery store in the state will install a liquor department. Space constraints, start up costs, community needs, personal convictions, and indeed, existing liquor competition will be deciding factors for grocery store operators. As an example, I will tell you that my Humboldt store does not look like a good candidate at this time for a liquor department.
- **The change in legislation may put a liquor owner's personal investment at risk.** It will be said that liquor store operators made the decision to invest in their stores based on existing laws. Truth be told, the investment in any business is always at risk, from the first day the doors are opened. The existing liquor laws simply created a bit of a safety net, but offered no protection from other liquor store competition or poor business practices, or *other legislative changes*. Allowing Sunday liquor sales, for instance, changed the business for those liquor stores whose communities did not enact the statute but had a neighboring community that did. Another example that affected all Kansas business was the dramatic legislated changes to the 2010 Contribution Rate for unemployment accounts. This changed my company's premium from just over \$1000 in 2009 to over \$17,000 in 2010, something I will struggle to meet. If we are going to allow measurement of personal risk in our business in this argument, it goes without saying that the independent grocer, due to the physical size of the business, and the amount equipment and inventory required to operate has much more exposure and risk than the typical liquor store. Bottom line: the rules and regulations for business change constantly, and we must be prepared to change with them
- **This legislation will allow current liquor store owners some flexibility that they do not enjoy today.** Current law restricts individuals to hold one liquor license in their name. Persons who want to expand and open another location must find a way around the law and license the store in the name of a spouse, adult child, or business partner. **House Commerce & Labor** also restricted to selling only beer, wine, and spirits and cannot sell any other merchandise. Many liquor stores are equipped with ice and pop machines out **Date: 3-16-10**

**Attachment # 6**



stores but they cannot legally sell the product through their stores. This legislation would allow them the ability to sell other types of merchandise in their stores that their customers desire.

- **Grocery stores are struggling, and in some communities, their very survival is at risk.** Numerous stores have closed, many in the areas you represent, some leaving entire communities without one of their Essential Services. Grocery stores operate with very slim profit margins, have huge labor and utility factors, and are highly price competitive. A huge part of that struggle is the constant erosion of our customer base to other, non-traditional competitors. Big-box stores, dollar stores, convenience stores, specialty stores, even hardware stores and lumberyards are selling what used to be traditional grocery items. One crucial piece of this legislation is the restriction of wine and spirits to stores that sell 50% or more of their merchandise in food items, giving grocers a commodity that would bring consumers back to their stores.
- **There is no evidence that the increased availability of liquor equates to an increase in consumption.** Many of us in this room regularly consume alcoholic beverages. I challenge you to consider your personal drinking habits and ask yourself if you will consume more because it is on the shelf at your grocery store. There will undoubtedly be more statewide sales of wine and spirits, resulting in increased taxes and revenue for our cash-strapped state, but this will come primarily from border states who currently allow grocers to sell.
- **Grocers can be counted on to regulate the sale of liquor to underage persons.** It will be argued that increasing the number of liquor outlets and sales clerks will increase the frequency of illegal, underage sales. On a daily basis, grocers regulate and restrict the sale of tobacco, beer, and lottery tickets to persons of legal age. The State of Kansas currently conducts an aggressive tobacco age-checking compliance by conducting regular "stings" in our stores. I will strongly support this program as it may apply to liquor purchases if this bill is passed. Additionally, I am personally in favor of a mandatory training and licensing procedure for every person who may sell wine and spirits in our stores.
- **This bill will be great for Kansas consumers.** The consumer will be the ultimate winner if this new legislation is passed. Beer, wine, and spirits are food products, promoted and discussed regularly in food magazines and on food television, and should be available in food stores. Consumers will have access to the products they desire in a safe, comfortable, convenient environment. As grocers are notoriously competitive, Kansas consumers will enjoy better pricing and selection in some markets, and will have access to products without the inconvenience of driving to another town or across the border to purchase liquor. I received an email last week from a friend of mine, who was inquiring about this proposed legislation. I believe he speaks for the masses:

*"I forgot to ask last Sunday, is there a reasonable chance grocery stores will get to sell liquor? I have read/heard a little bit about the matter but was not sure who was pushing the political ball to make this happen. Such arrangement was the case when I lived in Wisconsin, made it very convenient to purchase beer, etc. while picking up the normal food for the week. I read part of the argument against was the strain on the "mom & pop" owners of liquor stores and their likely demise. I hope someone makes the argument that competition based on selection, service and price should be the concern of the legislature. The consumer has been receiving the short-end of the retail liquor equation for a long time in Kansas. It would be nice to see the 2.2 million Kansas consumers placed ahead of the 1,000 or so retail liquor store owners but I doubt Topeka has that much vision."*

Ladies and Gentlemen of the Committee, we, as Kansans, need this bill for a lot of reasons. I need this bill to assist my chance of survival. My two small stores alone employ 50 people, generate nearly half a million dollars of annual payroll, tens of thousands of dollars in real estate and sales taxes, and provide an Essential Service to each of my communities. Please do not sit back and watch the rural, independent grocery stores struggle and die. If you think competition is good for business and good for the consumer, please give my industry (and the liquor industry) access to all the tools to be competitive with. I urge you to support House Bill 2697.

Yours respectfully,  
Mike Moon  
Osawatomie, KS

6-2

# C & J Management Services Inc.

2138 Princeton Circle - Ottawa, Kansas 66067 - 785-242-6055 - Fax 913-904-0656 - email: gjones@cj-foods.com

Ottawa Country Mart	Shawnee Apple Market	Sterling Apple Market	Piggy's Market	Buckner Thriftway
Ottawa Kansas	Kansas City Kansas	Independence Mo	Sugar Creek, Missouri	Buckner, Missouri

Before the House Commerce and Labor Committee

HB 2697

Gary Jones

March 16, 2010

Mr. Chairman and Members of the Committee:

My name is Gary Jones; I am the co-owner of four supermarkets in the Kansas City Metro trade area. Two of my stores are located in Missouri and two of the locations are in Kansas. Our two Kansas Stores had a combined payroll in 2009 of \$2,844,000. One of our larger stores is located in Ottawa Kansas and is the last Supermarket left in town since the Supercenter came. I am very aware of the differential in the operations of the stores in the two states and am here today to ask that you pass house bill 2697 to enable the Supermarkets of Kansas to survive in today's economic times.

With more stores closing or struggling to keep their doors open this bill would give them something to help offset the higher taxes, payrolls and day to day operating expenses. It will enable more stores to stay open and support the communities they operate.

Some points are:

- In our Ottawa Kansas Location:
  - Our donations to the local various organizations such as schools, churches and scouts and other activities in 2009 were in excess of \$57,000. This directly helped the local economy.
  - At our Ottawa location we currently have 65 employees on our payroll which are all Kansas residents. I myself moved to Ottawa in 2002 when we purchased that location.
  - Our Ottawa location has yet to generate a profit because of sales limitations, higher than normal property taxes, etc. We are the second owners, as the original owners gave up in 2002 after 13 years in business.
  - Based on the current operating results of my two stores in Missouri I estimate that HB2697 would give my store in Ottawa a 6% increase in sales with a gross profit margin of approximately 25%. This WOULD make this store a viable operation and would ensure the continued operation at this location.
- This bill would help every grocery store in the state and hopefully would stop the exodus of business that we are now seeing.

House Commerce & Labor

Date: 3-16-10

Attachment # 7

- This would help every community in Kansas keep their current grocer and some towns might be able to support a new business venture.
- This bill would provide some security in the form of business growth to the thousands of employees working in Kansas Supermarkets today.
- This bill would give many operators the incentive to not only stay on their current operation and it would possibly provide incentive to grow to other locations.

Gary Jones  
C & J Management Services

Before the House Commerce and Labor Committee

HB 2697

Dick C. Stoffer, Registered Lobbyist, Hy-Vee, Inc

March 16, 2010

Mr. Chairman and Members of the Committee:

My name is Dick Stoffer, I am the Director of State Government Relations for Hy-Vee, Inc. and I am an employee owner of Hy-Vee, Inc., for the past 20 years. I appreciate the opportunity to comment in support of HB 2697 which would allow retail grocery stores to sell full-strength beer, wine and spirits.

I come here to today on behalf of the over 3,500 Hy-Vee employee-owners in Kansas located in 14 stores in primarily the Northeastern part of the state of Kansas. Hy-Vee, Inc. operates its 227 stores in 8 states in the upper Midwest and offers an array of food products, pharmacy, general merchandise, fuel, and customer service items. In 7 of our 8 states we have the ability to sell wine and spirits at our locations. Kansas is the only state in which we operate that we are not able to sell our wine and spirits products.

I am here also on behalf of the customers of our stores who support our business model and appreciate the convenience, safety and comfort of shopping our stores. Our demographics show that over 70% of our customers are women. Because of that large percentage we cater to their needs and wants. One of which is the ability to shop for wine and spirits in a safe and comfortable location. Most women prefer a grocery store in which to purchase their wine and spirits at the same time as they buy their groceries; they like the ability to do all of their shopping in one place to pair their wines with other foods, such as seafood, or beef, or to plan for special events all in a comfortable setting. Mothers with children do not stop at a liquor store to shop, single women and married women chose not to shop for their wine and spirits at a liquor store. There is a void of this service and product for women in Kansas.

I will tell you we have the safeguards in place to properly monitor, and keep the sale of this product out of the hands of underage people; they include and are not limited to:

By obeying all state laws in the sale of alcoholic beverages. In Kansas, as in many of our states, we require that 21 year olds or older complete the sale of alcoholic beverages. Our system is set up to recognize alcohol at the checkout lane and if the operator of the checkout lane is underage, the transaction will be stopped. An alert goes out to the front end manager to come over and complete this transaction.

We have a special tag system in place on every bottle to set off alarms should someone try to steal a bottle. We also have tamper proof caps which are unable to be removed by the potential thief without breaking the bottle first.

We have camera monitoring systems on at all times to be able to know exactly what happened and help authorities in any transgressions.

**House Commerce & Labor**

**Date:** 3-16-10

**Attachment #** 8

Many of our stores are now requiring that everyone be ID'd. Also, specialized equipment is being installed to verify that the ID is valid and they are of a legal age to purchase.

We also have a zero tolerance policy, which means if one of our employees fails a sting they are dismissed from employment immediately.

We take the responsibility of selling this regulated product seriously just as we do with the sale of other regulated products in our store, such as tobacco, pseudoephedrine, or pharmaceuticals.

We have extensive training for those who sell regulated products.

We have staked our reputation and brand name on doing the right thing for our customers, especially in the sale of regulated products.

We would like to have more stores in Kansas and being able to sell this product fits perfectly in our business model. Our stores will cost 12-16 million dollars to build and will employ 200-350 employees in each location depending on the size of our store, that is truly a big economic boost to a community.

The people who oppose this legislation are opposed to competition. We face the fiercest, most well financed competition in the land, but no one protects us from competition. We ask that you help move this ball down the field to allow us to keep dollars in Kansas and provide customer service, selection safety and comfort to the women who shop our store. Respectfully I ask you to support HB 2657.

Thank you for this opportunity and I will be happy to answer any questions the committee may have.

Sincerely

Dick C. Stoffer  
Director of State Government Relations  
Hy-Vee, Inc.  
5820 Westown Parkway  
West Des Moines, Iowa 50266  
[dstoffer@hy-vee.com](mailto:dstoffer@hy-vee.com)  
515-267-1770  
[www.hy-vee.com](http://www.hy-vee.com)



March 16, 2010

**Memorandum:**

To: House Commerce Committee  
From: Thomas M. Palace  
Re: Testimony Supporting HB 2697

Mr. Chairman and Members of House Commerce 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 2697.

Mr. Chairman HB 2697 does not include convenience store industry in this legislation. For years PMCA has advocated for different beer laws but to date we have been unsuccessful in our efforts. We currently have a bill HB 2537 that is being considered by the House Federal and State Affairs committee but I fear that is where it will set for the remainder of the legislative session. As such my efforts today will be to ask to have HB 2537 amended into HB 2697.

Whenever we make an effort to change the beer/liquor laws in Kansas it is necessary to amend many statutes. Our archaic laws require these changes which lead to a massive bill. The amendment would change the definition of Cereal Malt Beverage (CMB) from 3.2% alcohol by weight to 4.0% alcohol by weight. Basically, this allows CMB retailers to sell many of the basic beers (that have less than 4% alcohol by weight) that liquor stores sell.

As an attachment to my testimony, you will find a chart that was provided by the Kansas Bureau of Investigation that illustrates the alcohol content.

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

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

House Commerce & Labor  
Date: 3-16-10  
Attachment # 9

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.

### 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. Amending HB 2537 into this bill will give the consumer a chance to make choices when buying their beer.

Please accept this amendment to HB 2697..

*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  $\pm .05\%$