

Approved: 3-15-93
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on March 9, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Rand Rock, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Bob Alderson, Attorney, Casey's General Store
W. Kent Laughman, Falleys Food 4 Less and
Kansas Food Dealers Association
Susie Frisbie, EZ Shops
George Leiszler, Leiszler Oil Company
Jack Landstrom, Dillon Stores and Kwik Shops
Steve Kearney, Pete McGill and Associates

Others attending: See attached list

The Chairperson stated that James Conant, Alcoholic Beverage Control, brought the information requested by the committee on Monday, March 8. (See Attachments # 1 & 2)

The Chairperson opened the hearing on HB 2510 and stated that the proponents would be heard today.

Bob Alderson, representing Casey's General Store, and on behalf of Kansas Food Dealers Association, QuikTrip, Kansas Oil Marketers Association (Convenience Store Division), Coastal Corporation (C-Mart), Falley's, Dillons and Kwik Shop, stated these organizations and businesses have formed a coalition for the purpose of supporting legislation which will enable coalition members to regain an appropriate share of the market for cereal malt products.

Mr. Alderson further stated the real issue involved is not a liquor issue. It is an economic issue. Raising the drinking age to 21, authorizing liquor by the drink and the persistent misconception by consumers that CMB is of a lesser quality than beer have all combined to produce a dramatic reduction in the sales of CMB. By allowing us to compete with retail liquor dealers on the proverbial "level playing field," HB 2510 will provide CMB retailers the opportunity to regain the share of the cereal malt product market they lost over the past several years. (See Attachment #3)

W. Kent Laughman, President, Falley's Inc., Midwest Division, testified in support of HB 2510, stated that since the laws have changed governing who can consume alcoholic beverage and the legal age to purchase said beverage now to be 21 universally, that there is no longer a need for a distinction regarding cereal malt beverage between 3.2% alcohol and 5% alcohol content (strong beer). It is felt there should be a level playing field and supermarkets should be able to sell the same quality grades of cereal malt beverage/beer merchandise as liquor stores.

Mr. Laughman further stated since supermarkets do not sell hard liquor, and since beer would not be consumed on their premise it is believed that clerks should be of legal age to sell beer at 18 years of age rather than 21. (See Attachment #4).

Susie Frisbie, EZ Shops, testified in support of HB 2510, stating there is not an appreciable difference in alcohol content in 3.2% and 5%. (See Attachment #5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S
Statehouse, at 1:30 p.m. on March 9, 1993.

George Leiszler, Vice-President of Leiszler Oil Company, Clay Center, Kansas and Chairman of the Board of Directors of the Kansas Oil Marketers Association, supported HB 2510 and stated that KOMA is a statewide association whose membership is comprised of hundreds of small businesses, locally owned who have experienced declining sales of cereal malt beverage (CMB) for the past several years. (See Attachment #6)

Jack Landstrom, representing the Dillon Stores and Kwik Shops, testified in support of HB 2510, stated the bill is needed to change the marketing of cereal malt beverage. Sales have been rapidly shrinking, especially since the enactment of the 21 year old age requirement for purchase of any cereal malt beverage. Since the economic growth of our state over the last several years has been flat, we are concerned that any continued erosion of sales in any area could directly affect the ability to compete and grow. We are asking for equal treatment in the area of cereal malt beverage to help meet the rising costs of business and will help in maintaining employees and tax base in our home state of Kansas. (See Attachment #7)

Steven F. Kearney, Pete McGill & Associates, representing Coastal Mart, testified in support of HB 2510, stating that reclassification of cereal malt beverage will level the playing field in the sale of cereal malt products. The elimination of the confusing two-tier system of marketing cereal malt products will achieve uniformity of licensing, enforcement, sales and distribution. Sales of cereal malt beverage have decreased dramatically since the change in drinking age was raised to 21. (See Attachment #8)

The Chairperson distributed the fiscal note for HB 2510. (See Attachment #9)

Kansas Oil Marketers Association sent a letter supporting HB 2510. (See Attachment #10)

The Chairperson stated the opponents for HB 2510 would be heard on Wednesday, March 10, 1993.

The meeting adjourned at 3:25 PM.

The next meeting is scheduled for March 10, 1993.

Date: 3-90-93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
BOB ANDERSON	CASEY'S GROC. STORE	TOPEKA
GEORGE LEISZLER	KANSAS OIL MARKETERS	CIAT CENTER
Pat Oppitz	KRLDA	Topeka
Don Larling	KRLDA	Topeka
Tom McE	KWSWA	WICHITA
JOHN T. WILLIAMS	K.B.L.D.A.	LEAVENWORTH
Jim Sheehan	Kansas Food Dealers Assn.	Shawnee Mission
Kent Jorgensen	Fallers & F.D.A.	3120 Kz. Ave. Topeka
Gerald Kluer	SKIP'S SHOPPING, K.F.D.A.	CARBONDALE KS
FRANCES KASTNER	Ks Food Dealers	Topeka, Ks
Ron Whitney	Mussatto Bros., Inc.	Osage City
Jim Conant	ABC	Topeka
Robert Engler	ABC	Topeka
Deane Howard	ABC	Topeka
Jimmy R. Dodson	Legislative Inten	Topeka

Date: 3-9-93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME

ORGANIZATION

ADDRESS

Pat Hahbell	WGP	Topoka
Jack D. Dow	KANSWA	Topoka
Rebecca J. [unclear]	K Retail Liquor D. Assoc.	Topoka
Eugene Stenking	K R L D A.	Hutchinson
BRYAN BEAVER	KS. Oil Mkters Assoc.	OVERLAND PARK
Charles H. Nicolay	Ks Oil Marketers Assn	Topoka, Ks
Steve Montgomery	Caseys General Store	Topoka
John Polue	Polue Liquor	Topoka
Pamela Coulter	KRLDA	Hutchinson
Jeanette Wright	KRLDA	Morrison
Gret Beaufort	Gov's Off of Drug Abuse	Topoka
Don Peyton	Peyton Liquors & Wines	Topoka
Ben Swine	Univ. Daily Kansan	Lawrence
Kevin Tipton	BAXTER RETAIL LIQUOR Distilled Spirits Council of the US, Inc	Stamwood Denver, Co

Date: 3-9-93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Sandra Dowell	KRLDA	1221 SW 21 ST Topeka
Sherry Sutton	Quik-Trip	5914 W. 76 th Terr. 66204 Prairie Village, KS
AL FRITZ	QUIKTRIP CORP.	6300 W. 51 ST MISSION, KS 66202
CURT BAIRD	PREMIER WINE & SPIRITS	14320 W. 101 ST Terr. Lenexa, KS 66215
TREVA POTTER	KS RETAIL LIQ. DEALERS	TOPEKA
Tom Bruno	Bottenberg & Assoc	Topeka
James Wood	Women's Christian Temperance Union	Topeka
Jan Cooper	QuickTrips	3344 Westwood Shawnee, MO 63011
STEVE KEAGNEY	COSTAL MART	TOPEKA
James D. Markham	QuikTrip	12834 Larsen Overland Park.
SUSIE FRISBIE	EZ SHOP, INC	3706 S TOPEKA BLVD TOPEKA, K.
Dee Ann Reed	Women's Christian Temperance Union	Topeka
DAVE SCHNEIDER	KFLAIB	Topeka
JACK LINDBSTROM	Dillon's & Quik Seters	TOPEKA
Jim Eastburn	Famous Brands Distributors Inc	Topeka.

Date: 3-9-93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME

ORGANIZATION

ADDRESS

Russ Flynn

Famous Brands Dist
KS Responsible Liquor

TOPEKA

Albert D. Lollar

EDUCATION COUNCIL

TOPEKA

Carol Mitchell

Ks Retail Liquor Dealer Assoc. Wichita

Rich Freese

Ks Retail Liquor Dealer Assoc. O.P.

LICENSEE QUALIFICATIONS

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US CITIZEN		KANSAS RESIDENT	RECORD	AGE	OTHER EMPLOYMENT	CONTROL OF PREMISE	SPOUSE	MULTIPLE LICENSING
RETAIL LIQUOR STORE (INDIVIDUAL, PARTNERSHIP, ASSOCIATION, TRUST)	10YR MINIMUM (*1)	4 YR. MINIMUM (*2)	NO FELONY, PROSTITUTION, GAMBLING/MORALS CONVICTION. NO ALCOHOLIC LIQUOR OR CMB LICENSE REVOKED FOR CAUSE (*3).	21	MAY NOT BE, APPOINT OR SUPERVISE ANY LAW ENFORCEMENT OFFICIAL (#4) OR BE EMPLOYED BY THE DIRECTOR	PROOF OF OWNERSHIP OR VALID LEASE FOR AT LEAST 3/4 OF LICENSE PERIOD	INITIAL APPLICATION MUST BE FULLY QUALIFIED OTHER THAN CITIZENSHIP, RESIDENCY & AGE. RENEWAL - N/A	NO BENEFICIAL INTEREST IN ANY OTHER ALCOHOLIC LIQUOR LICENSE. MAY HOLD A CMB LICENSE ON SEPARATE PREMISES.
CEREAL MALT BEVERAGE RETAILER (INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORATION)	MUST BE CITIZEN (NO MIN.) <div>RESIDENCY NOT APPLICABLE TO CORPORATIONS</div>	1 YR + RESIDENT OF COUNTY FOR MINIMUM 6 MONTHS	NO FELONY, PROSTITUTION, GAMBLING/MORALS OR DUI CONVICTION FOR TWO YEARS PRECEDING APPLICATION	21	N/A	N/A	INITIAL APPLICATION MUST BE FULLY QUALIFIED OTHER THAN CITIZENSHIP, RESIDENCY & AGE. RENEWAL - N/A	MAY HOLD MULTIPLE CMB LICENSES

1. Spouse of deceased retail liquor licensee may be licensed if US citizen or becomes citizen within 1 yr. of licensee's death.
2. Does not apply upon 10th and subsequent renewals if resident agent has been appointed.
3. License may be issued after lapse of 10 yr. from date of revocation if revocation was for conviction of a misdemeanor.
4. Except as member of city or county governing body.

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 $\pm .05\%$

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OF COUNSEL

DANIEL B. BAILEY

MEMORANDUM

TO: House Committee on Federal and State Affairs

FROM: Bob Alderson on Behalf of Casey's General Store

RE: House Bill No. 2510

DATE: March 9, 1993

My name is Bob Alderson, and I am appearing on behalf of Casey's General Store in support of House Bill No. 2510. I also am authorized to present testimony in support of this bill on behalf of the Kansas Food Dealers Association, QuikTrip, Kansas Oil Marketers Association (Convenience Store Division), Coastal Corporation (C-Mart), Falley's, Dillon's and Kwik Shop. These organizations and businesses have formed a coalition for the purpose of supporting legislation which will enable coalition members to regain an appropriate share of the market for cereal malt products.

Casey's General Store has 71 convenience stores located in Kansas. In 1992, the Casey's stores in Kansas employed 582 people, with an annual payroll of \$4.8 million. These stores paid Kansas property taxes of \$251,602, and they remitted sales taxes of \$1.38 million. Attached to this testimony are three pages of information regarding Casey's, including a map showing its Kansas locations.

Comparable information for all of the other proponents of HB 2510 has not been compiled. However, from the statistics that are known for many of them, it is clear that, collectively, the coalition has thousands of locations throughout Kansas; employs thousands of Kansans, with an annual payroll in the hundreds of millions of dollars; pays millions of dollars in Kansas property taxes; and also collects and remits millions of tax dollars to the State of Kansas.

BACKGROUND

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

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Substantially, all other cereal malt products are defined as "beer" and may be sold by the package only in retail liquor stores.

During the last nine years, while the sale of beer has increased by 48.2%, the sale of CMB has declined by 42.5%. These trends in the sales of cereal malt products are primarily the result of a public misperception that present CMB products are of a lesser quality than the cereal malt products sold in liquor stores.

This misconception originated during the time when there was a difference in the legal drinking age. Persons between the ages of 18 and 21 were allowed to purchase CMB, but were not allowed to purchase beer or alcoholic liquor. Presumably, the original distinction in creating the separate classifications of cereal malt products was to make available only to "adults" the "strong beer," based on a belief that there was a significant difference in alcoholic content of these classes of cereal malt products. As will be discussed subsequently, the truth of the matter is that there is not an appreciable difference in alcoholic content between these classes of cereal malt products. Notwithstanding, this distinction became translated into a perception that CMB was not of the same quality as beer.

Thus, when the drinking age for all alcoholic beverages was established at 21, not only did retailers of CMB lose a significant number of potential purchasers (i.e., persons who were 18, 19 and 20 years of age), persons who were 21 years of age and older began purchasing "beer" from retail liquor stores, rather than purchasing CMB from licensed CMB retailers, because of the misconception that CMB is of lesser quality than beer.

Because of these factors and the rather artificial distinction between CMB and beer, CMB retailers have lost a significant share of the market for cereal malt products. The purpose of HB 2510 is to provide the opportunity for CMB retailers to regain some of that lost market share.

HOUSE BILL NO. 2510

The organizations sponsoring HB 2510 propose to resolve some of the confusion attending the sale of cereal malt products by the enactment of this legislation. HB 2510 recognizes that there is not an appreciable difference in alcohol content between most "beers" and CMB, by redefining these statutory terms. As redefined in HB 2510, CMB is defined to include all cereal malt products containing not more than 5% alcohol by weight, and "beer" will include cereal malt products having an alcohol content greater than 5% by weight.

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By this reclassification of cereal malt products, retailers currently licensed to sell CMB will be authorized to sell some of the cereal malt products now available only in retail liquor stores, thereby providing the opportunity for achieving competitive equality with retail liquor stores for these products. The bill includes additional features which are designed to establish a "level playing field" for all retailers of CMB sold in the original and unopened containers. By way of summary, HB 2510 would accomplish the following:

1. All CMB retailers will be licensed by the Division of Alcoholic Beverage Control (ABC) of the Kansas Department of Revenue, thereby providing an additional layer of law enforcement of CMB laws by the ABC.
2. As is now the case with "beer" sold by retail liquor stores, all package sales of CMB, regardless of where sold, will be subject to the 8% liquor enforcement tax, and those sales will be exempt from state and local sales taxes and other excise taxes.
3. HB 2510 will preserve the application of state and local sales taxes to CMB sales for consumption on the premises of a licensed CMB retailer, and it will provide revenue and sources of revenue for cities and counties to offset the loss of revenue from the licensing of CMB retailers and the current application of local sales taxes on CMB package sales. Specifically, cities and counties will be authorized to impose occupation taxes on licensed CMB retailers to provide an offset for the loss of licensing revenues, similar to the statutory provisions now applicable to retail liquor stores, and cities and counties now imposing local sales taxes will receive a portion of the revenues collected from the 8% liquor enforcement tax on CMB sales sufficient to offset the loss of local sales tax revenues from CMB sales.
4. Retail liquor stores, clubs, drinking establishments and caterers will be authorized to sell CMB, without having to obtain a separate CMB license.

PUBLIC POLICY CONSIDERATIONS

Throughout the Committee's deliberations regarding this legislation, it is likely that a variety of public policy considerations will be at issue. Based upon information gathered in connection with prior legislative proposals of similar import, as well as concerns we have heard expressed in visiting with legislators and state administrative personnel regarding this proposal, we have attempted to identify as many public policy considerations as we could, and the following

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represents a summary of these various issues and our responses to them.

Issue: Will redefining CMB to include cereal malt products which currently are sold only in retail liquor stores increase the availability or consumption of alcohol?

Response: While the proposal is expected to effect a shift in the sales of the various cereal malt products, it will not encourage an increase in the consumption of these products. Cereal malt products will continue to be available from the same retail outlets as they are at present.

As noted previously, contrary to popular perception, there is currently very little difference in alcohol content between the so-called "strong beer," now sold only by the package in retail liquor stores, and CMB. Laboratory comparisons of these two cereal malt products disclose very little difference in their alcoholic content, less than 1% when comparing most domestic products. Thus, the redefinition of CMB will not result in an appreciable increase in the availability of alcohol.

Moreover, the proposal will not make alcoholic beverages available to any class of persons who cannot now buy these products. It must be remembered that the current system, which distinguishes between "strong beer" and cereal malt beverage was created for the purpose of allowing persons at least 18 years of age to purchase cereal malt beverage, but not permit them to purchase "strong beer." That is no longer true, as the drinking age for all products is 21.

Issue: Since the cereal malt products now sold only in retail liquor stores constitute approximately 40% of all sales by these outlets, will the authorization to sell these products at locations currently licensed as CMB retailers result in retail liquor store closings because of the lost revenue?

Response: ABC records indicate that there has been a 28% reduction in the number of retail liquor stores since 1986, apparently the result of market and economic conditions. It is not anticipated that any shift in revenues resulting from the proposed legislation will accelerate this rate of decline.

Issue: IF CMB retailers are allowed to sell CMB at times different from the hours of operation for retail liquor stores and are allowed to sell CMB below cost, will that detract from the concept of establishing a "level playing field?"

Response: Yes, and the sponsors of HB 2510 earnestly request that these differences be reconciled. We have not presumed to do so in HB 2510, since we do not have a preference as to how fairness is achieved on these issues.

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Issue: Is it equitable to continue the statutory authority for persons 18 years of age and over to sell CMB, while salespersons in retail liquor stores must be at least 21?

Response: This is not really an issue of equity, and the different statutory circumstances attending the business of the various establishments preclude an accurate comparison. Alcoholic beverages are the only products sold by retail liquor stores, while CMB retailers who sell CMB only in the original and unopened containers (i.e., package sales) include grocery stores and convenience stores which sell a wide variety of other products. Not only will retail liquor stores be able to sell CMB, but they will continue to be authorized to sell alcoholic beverages containing much higher alcoholic content than CMB or beer. CMB retailers will not be authorized to sell liquor.

Thus, the disparity in these age levels does not create any inequity or inconsistency. Moreover, if the age level were established at 21 in all instances, it would have a significant, adverse impact on many young people who are employed by convenience stores and grocery stores, not to mention the impact on these employers.

Finally, as noted above, the change in the nature of the product being sold does not dictate any increase in the age level. The redefined product is not liquor, and even though there will be some increase in the maximum alcoholic content of CMB, the increase is very slight, thereby negating any concern as to the welfare of the young people selling and handling these products.

Issue: Will the proposed legislation result in any loss of revenue to local units of government?

Response: To the contrary, the proposed legislation will not only provide for the replacement of licensing and tax revenues now derived by local units of government from CMB retailers, it will, in some instances, provide for additional revenue. Sponsors of HB 2510 have made a concerted effort to produce at least "revenue neutral" consequences for local governments.

Issue: Will the proposed legislation provide sufficient revenues to fund the additional enforcement activities by ABC?

Response: It is anticipated that, not only will the state general fund derive additional revenues from imposition of the liquor enforcement tax on all package sales by CMB retailers, the licensing of CMB retailers by ABC will produce revenues which, by themselves, are nearly sufficient to fund the additional enforcement activities.

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Issue: Is it constitutionally permissible to redefine CMB?

Response: Attorney General Opinion No. 87-48 concluded that the Kansas Legislature has the power to define all beer containing less than 5% alcohol by weight as a cereal malt beverage (CMB), and the sponsors of this proposal have been advised that this continues to be the opinion of that office. Since there are no opinions of any Kansas Appellate Courts on this specific issue, there can be no guarantee as to this proposal's constitutionality, which is the case with most proposed legislation. However, in the absence of such definitive case law, the above-referenced Attorney General Opinion provides credible authority.

We believe that the foregoing issues represent the primary public policy considerations attending the passage of HB 2510. If the Committee identifies additional policy questions, we will be pleased to respond and provide whatever information the Committee deems pertinent to its consideration. We also trust that the Committee will sift out the "red herrings" from the real issues. For example, the suggestion that allowing CMB sales by a retailer which also sells gasoline increases the potential for drinking and driving is clearly a non-issue. We would respectfully submit that substantially all package sales of beer and CMB, whether made by a liquor store, grocery store or convenience store, are made to persons who travel to and from the point of sale in a motor vehicle. That fact is unaffected by whether the retailer also sells gasoline.

CONCLUSION

In conclusion, we want to emphasize that the real issue involved in HB 2510 is not a liquor issue. It is an economic issue. Raising the drinking age to 21, authorizing liquor by the drink and the persistent misconception by consumers that CMB is of a lesser quality than beer have all combined to produce a dramatic reduction in the sales of CMB. By allowing us to compete with retail liquor dealers on the proverbial "level playing field," HB 2510 will provide CMB retailers the opportunity to regain the share of the cereal malt product market they lost over the past several years.

We appreciate the opportunity to appear before the Committee in support of HB 2510, and I will attempt to answer any questions the Committee may have.

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LOCATIONS OF CASEY'S GENERAL STORES

<u>CITY</u>	<u>COUNTY</u>
Altamont	Labette
Americus	Lyon
Arkansas City	Cowley
Arma	Crawford
Augusta	Butler
Baldwin City	Douglas
Basehor	Leavenworth
Baxter Springs	Cherokee
Belleville	Republic
Blue Rapids	Marshall
Burlingame	Osage
Canton	McPherson
Carbondale	Osage
Chanute #1	Wilson
Chanute #2	Wilson
Cherryvale	Montgomery
Chetopa	Labette
Coffeyville	Montgomery
Columbus	Cherokee
Cottonwood Falls	Chase
El Dorado	Butler
Emporia #1	Lyon
Emporia #2	Lyon
Eudora	Douglas
Eureka	Greenwood
Fredonia	Wilson
Frontenac	Crawford
Galena	Cherokee
Gardner	Johnson
Garnett	Anderson
Herington	Dickinson
Hiawatha	Brown
Hillsboro	Marion
Holton	Jackson
Humboldt	Allen
LaCygne	Linn
Leavenworth	Leavenworth
Lebo	Osage
Louisburg	Miami
Lyndon	Osage
Madison	Greenwood
Marysville	Marshall
McLouth	Jefferson
Mound City	Linn
Neodesha	Wilson
New Strawn	Coffey
Osage City	Osage
Osawatomie #1	Miami
Osawatomie #2	Miami
Oskaloosa	Jefferson
Oswego	Labette
Ottawa #1	Franklin
Ottawa #2	Franklin
Overbrook	Osage
Ozawkie	Jefferson
Paola #1	Miami
Paola #2	Miami
Parsons #1	Labette
Parsons #2	Labette
Perry	Jefferson
Pittsburg	Crawford
Pleasanton	Linn
Pamona	Franklin
Sabetha	Nemaha
Scranton	Osage
Silver Lake	Shawnee
Spring Hill	Johnson
Tonganoxie	Leavenworth
Wamego	Pottawatomie
Wathena	Doniphan
Wellsville	Franklin



"STATEMENT OF PURPOSE"

TO: KANSAS HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

FROM: W. KENT LAUGHMAN, PRESIDENT FALLEY'S INC, MIDWEST DIVISION

SUBJECT: HOUSE BILL 2510

DATE: March 9, 1993

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Mr. Chairman, Committee Members and Fellow Kansans: I'm here on behalf of the retail grocery industry, specifically the Kansas Food Dealers Association and Falley's/Food 4 Less Supermarkets. I am here to ask for your support of HB 2510 now before you.

1. We believe that since the laws have changed governing who can consume alcoholic beverage and the legal age to purchase said beverage now to be 21 universally, that there is no longer a need for a distinction regarding cereal malt beverage between 3.2% alcohol and 5% alcohol content (strong beer).
2. We believe that there should be a level playing field in Kansas that supermarkets as well as liquor stores should be able to sell what is perceived by customers to be the same quality grades of cereal malt beverage/beer merchandise.
3. We believe that no industry should be protected by the legislature and guaranteed a market and therefore a profit. We believe that market forces should prevail.
4. We believe that there is really very little difference between so called 3.2 malt beverage and strong beer(5%) except in the minds of some consumers. Therefore, to enable the various governing bodies to better enforce applicable laws the distinction should be erased and there should be only one grade of cereal malt beverage/beer in Kansas and that would be strong beer and it would be available to the public wherever they choose to shop for it.
5. We believe that enforcement of the appropriate laws would therefore be made simpler and easier and the taxes derived from said sales more easily audited and controlled by the various forms of government concerned.

In conclusion, the playing field needs to be made level between grocery stores and retail liquor stores. Certainly all laws governing those sales should be enforced equally. However, since supermarkets do not sell hard liquor, and since beer would not be consumed on our premise we believe that our clerks should be of legal age to sell beer at 18 years old rather than 21. I would entertain any questions you might have of me and thank you for your time and consideration.

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The EZ Shop chain of convenience stores consists of 25 stores in Kansas and is headquartered in Topeka. We employ 203 Kansas residents, and have been in business for twenty one years when the chain was founded by Mr. Ned Fleming of Fleming Foods. Our sales for the year 1992 totaled \$29 million, which contributed significant tax dollars to the State, not to mention property taxes, the State's share of over one million Lottery tickets sold, taxes on cigarettes, beer and gasoline. EZ Shop is also a significant contributor to the University of Kansas and area high schools. Our armed robbery incident totals zero for the year of 1992, while any violations in regards to cereal malt beverage infractions also total zero. We have never received a violation for octane mislabeling, or any other problems in running a successful business save the economic pressures we have recently encountered in the 1990's.

The 1990's have found us in a quandry, more laws, more taxes, more fees, more competition, have found us fighting even harder to stay at even. We are fighting economic problems at a disadvantage when we are unable to sell the same products or provide the same services as our nearest neighbors. We have 11 convenience stores with a liquor store next door. It seriously effects our business and for what reason?! As you have already been made aware, there is not an appreciable difference in alcohol content in 3.2 and 5%. We have a convenience store in Topeka next door to a liquor store with total beer sales of \$26,053 and a customer count of 128,159 a year. Ten blocks away, with no liquor store next door is an EZ Shop with beer sales of \$186,000 and a customer count of 260,375. A big difference in sales but not as big a difference in customer count. We need your help in House Bill 2510 for us to continue to employ Kansas citizens and pay Kansas taxes.

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STATEMENT BY THE KANSAS OIL MARKETERS ASSOCIATION AND
CONVENIENCE STORE ASSOCIATION OF KANSAS

PRESENTED BY GEORGE LEISZLER

TO THE HOUSE OF FEDERAL AND STATE AFFAIRS COMMITTEE

TOPEKA, KANSAS

March 9, 1993

Mr. Chairman and Members of Your Committee:

My name is George Leiszler, Vice-President of Leiszler Oil Co, Clay Center, Kansas. I'm also Chairman of the Board of Directors of the Kansas Oil Marketers Association. I appear before you today on behalf of the members of the convenience store division of this association in support of HB 2510. KOMA is a statewide association whose membership is comprised of hundreds of small businesses, locally owned who have experienced declining sales of cereal malt beverage (CMB) for the past several years.

Our association authorized Bob Alderson to provide the testimony giving this committee the specific details of this proposal.

We thank you for the opportunity to appear today in support of HB 2510 and sincerely urge your support for this proposal that will provide equity in the sale of CMB in Kansas.

F-5A
3-9-93
Atch #6

DILLON COMPANIES STATEMENT OF SUPPORT

FOR

HB 2510

House of Representatives

Dillon Stores and Kwik Shops are Kansas based companies that have been in business for over 70 years. We have grown-up with Kansas and are proud of our state's heritage. We offer our customers the most modern and up-to-date shopping environment available in the Food Industry. We plan to grow and continue with this commitment.

We feel that HB 2510 is a needed change in the marketing of Cereal Malt Beverage. As you have been shown, our sales in this category have been rapidly shrinking, especially since the enactment of the 21 year old age requirement for purchase of any cereal malt beverage. Since the economic growth of our state over the last several years has been flat, we are concerned that any continued erosion of sales in any area could directly affect our ability to compete and grow.

As the members of this committee are surely aware of, our Companies represent 127 retail outlets, 8,380 employees with a payroll of over \$130,000,000.00 per year. Our overall tax contributions for last year were almost \$60,000,000.00 (60 million) to the State. Obviously, we have a large concern for any activity that affects our business, and based on our contributions to the economy of the State of Kansas, we hope you share in this concern.

We hope you will support HB 2510 for us, for our employees and for our customers. We, after all, are only asking for equal treatment in the area of Cereal Malt Beverage Marketing. This will help us meet the rising costs of business and will help us in maintaining our employee and tax base in our home state of Kansas.

F&SA
3-9-93
Hch#7

P.O. BOX 1927
734 E. FOURTH ST.
HUTCHINSON, KS 67504-1927

NUMBER OF STORES	63
NUMBER OF EMPLOYEES	480
CONTRIBUTIONS	\$114,900.00
REAL ESTATE	\$361,285.00
PROPERTY TAX	\$32,362.00
SALES TAX	\$1,489,359.00
GAS TAX	\$5,890,232.00
TOTAL PAYROLL	<u>\$6,056,044.00</u>
GRAND TOTAL	\$13,944,182.00

FISA
3-9-93
72

DILLON STORES
2700 E. FOURTH ST.
HUTCHINSON, KS 67504-1927

NUMBER OF STORES	64
NUMBER OF EMPLOYEES	7900
CONTRIBUTIONS	\$925,000.00
REAL ESTATE	\$2,650,000.00
PROPERTY TAX	\$1,275,000.00
SALES TAX	\$48,000,000.00
GAS TAX	---
TOTAL PAYROLL	<u>\$125,000,000.00</u>
GRAND TOTAL	\$177,850,000.00

FISA
3-9-93
73

**TESTIMONY
OF
STEVEN F. KEARNEY
OF
PETE MCGILL & ASSOCIATES
ON BEHALF OF
COASTAL MART
PRESENTED BEFORE
THE HOUSE
FEDERAL AND STATE AFFAIRS
COMMITTEE**

MARCH 9, 1993

RE: HB 2510

*FLSA
3-9-93
Atch #8*

Chairman Graeber and Members of the Committee:

I am Steve Kearney with Pete McGill & Associates. Our firm represents Coastal Mart, a convenience store retail operation with 115 locations here in Kansas. We employ 822 Kansans at these locations. Last year our payroll to Kansans was \$8.4 million.

Coastal Mart supports the reclassification of cereal malt beverage that will level the playing field in the sale of cereal malt products. The elimination of the confusing two-tier system of marketing cereal malt products will achieve uniformity of licensing, enforcement, sales and distribution.

We believe that the proposal before you provides for the necessary revenue to enable the ABC to enhance enforcement and still keep the local units of government whole in terms of tax dollars collected to continue their enforcement efforts as well.

Since the change in drinking age in Kansas to 21 for all products, and the elimination of the 18, 19, and 20 year old market for cereal malt beverage, the sales of cereal malt beverage have decreased dramatically. This decrease was accompanied by an almost identical increase in the sale of beer at liquor stores. The need for two classes of cereal malt products ended with the elimination of two classes of markets for cereal malt products.

Coastal Mart supports HB 2510 and requests your favorable consideration.

FLSA
3-9-93
82

STATEMENT BY THE KANSAS OIL MARKETERS ASSOCIATION AND
CONVENIENCE STORE ASSOCIATION OF KANSAS

PRESENTED BY GEORGE LEISZLER

TO THE HOUSE OF FEDERAL AND STATE AFFAIRS COMMITTEE

TOPEKA, KANSAS

March 9, 1993

Mr. Chairman and Members of Your Committee:

My name is George Leiszler, Vice-President of Leiszler Oil Co, Clay Center, Kansas. I'm also Chairman of the Board of Directors of the Kansas Oil Marketers Association. I appear before you today on behalf of the members of the convenience store division of this association in support of HB 2510. KOMA is a statewide association whose membership is comprised of hundreds of small businesses, locally owned who have experienced declining sales of cereal malt beverage (CMB) for the past several years.

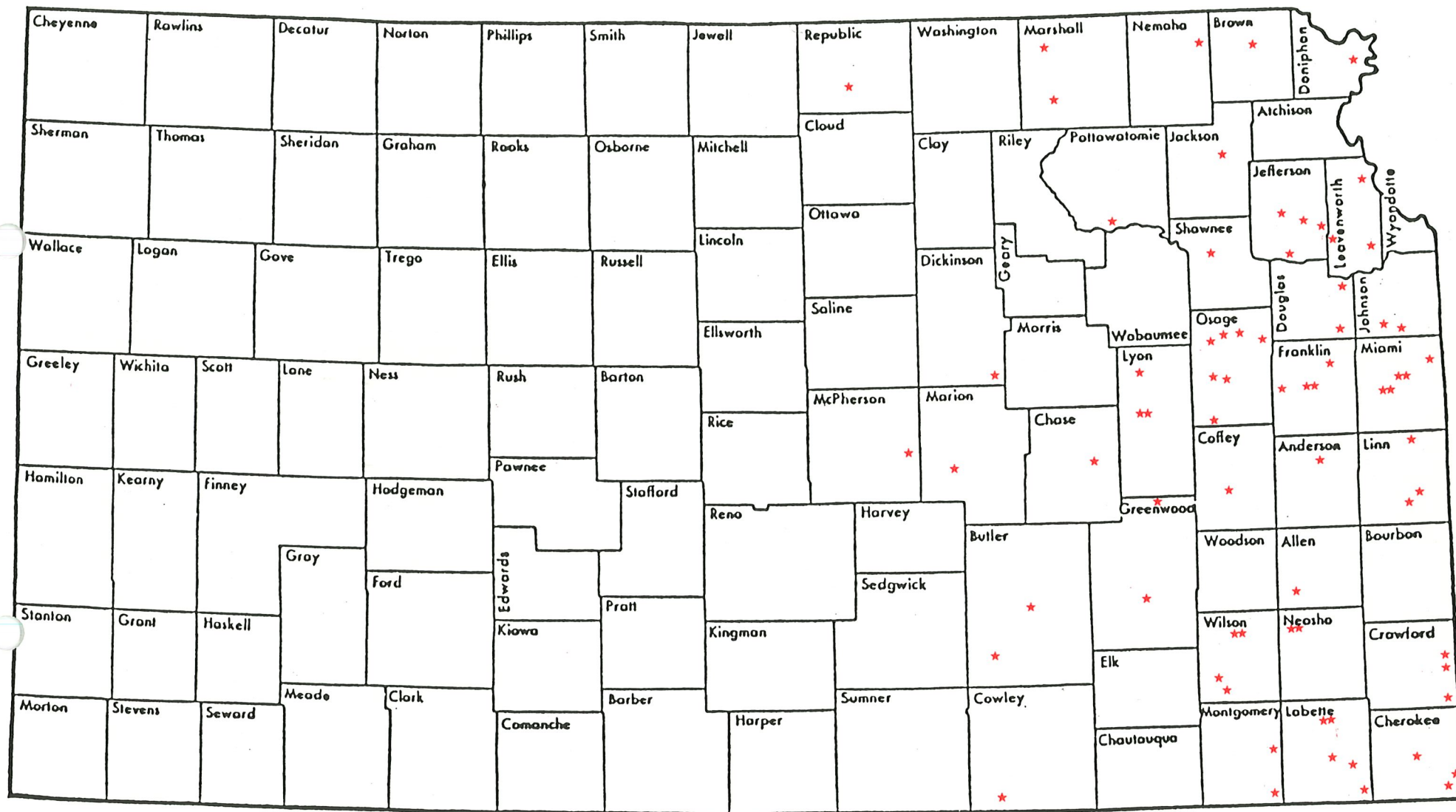
Our association authorized Bob Alderson to provide the testimony giving this committee the specific details of this proposal.

We thank you for the opportunity to appear today in support of HB 2510 and sincerely urge your support for this proposal that will provide equity in the sale of CMB in Kansas.

FISA
3/9/93
83

KANSAS LOCATIONS FOR CASEY'S GENERAL STORES

FUSA
3/9/93
87



CASEY'S GENERAL STORES: KANSAS INFORMATION

NUMBER OF STORES	71
NUMBER OF 1992 EMPLOYEES	582
COMPENSATION PAID TO 1992 EMPLOYEES	\$4.8 million
1992 KANSAS PROPERTY TAX PAID	\$251,602
1992 KANSAS SALES TAX REMITTED	\$1.38 million

FISA
3/9/93
85



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer
Director

March 8, 1993

The Honorable Keith Roe, Chairperson
Committee on Taxation
Statehouse, Room 170-W
Topeka, Kansas 66612

Dear Representative Roe:

SUBJECT: Fiscal Note for HB 2510 by House Committee on
Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 2510 is respectfully submitted to your committee.

HB 2510 would amend several sections of the Kansas Liquor Control Act and the Cereal Malt Beverage Retailers' Act to restructure the malt beverage industry. The bill would define a cereal malt beverage (CMB) as a malt beverage containing 5.0 percent **or less** alcohol by weight. Cereal Malt beverages are currently defined as those malt beverages with an alcohol content less than 3.2 percent alcohol by weight. Under provisions of this bill, beer would be defined as a malt beverage containing **more than** 5.0 percent alcohol by weight. Licensees under the Liquor Control Act and the Club and Drinking Establishment Act would be authorized to sell the newly-defined CMB under existing licenses.

The bill would transfer authority over CMB retailers from local governing bodies to the Director of the Alcoholic Beverage Control Division of the Kansas Department of Revenue. The regulatory authority would be effective July 1, 1993.

The bill would exempt sales of CMB from state and local sales taxes and impose an 8.0 percent enforcement tax. Currently, an enforcement tax is imposed only on strong beer (over 3.2 percent alcohol by weight). A mechanism is established in the bill to distribute a portion of the enforcement tax to the local units of government.

*FLSA
3-9-93
Atch #9*

The bill would be effective after its publication in the statute book. The effect of HB 2510 would be implemented January 1, 1994, except as noted above regarding regulatory authority of the Department of Revenue.

Additional net State General Fund revenues of \$2.3 million and expenditures of \$1,309,817 are anticipated in FY 1994 upon passage of this bill. The estimated revenues would be derived from two sources that include the enforcement tax and license fees.

Additional revenues to the State General Fund from the enforcement tax are estimated at \$4.4 million. This estimate assumes an existing average price for strong beer to be \$4.25 per six-pack and for CMB (3.2 beer) at \$4.00 per six-pack. This assumed average price per six-pack may be higher than the actual price on the store shelves. The Department notes that if the actual average price or an average price which may result upon passage of this bill should be \$.50 per six-pack less, or \$3.50 per six-pack, revenues to the State General Fund would be reduced by approximately \$500,000.

A second source of state revenue would be from licensing fees, because the bill provides that regulation would be shifted from local governments to the Department of Revenue. The Department of Revenue estimates that 3,587 license fees would be received for a total of \$966,500. Revenues from the enforcement tax and the license fees are credited to the State General Fund.

Revenues to the state from sales tax collections would be reduced approximately \$2,851,052 under provisions of this act. The reduction in sales tax collections would thus reduce amounts transferred to the State Highway Fund by \$145,404 and to the State School District Finance Fund by \$378,335. The net reduction to the State General Fund after the transfers is \$2,327,313. Revenues to the State General Fund would be further reduced \$780,000 annually because of a monthly transfer of \$65,000 under this bill from the State General Fund to the Local Cereal Malt Beverage Fund. Amounts transferred to the Local Cereal Malt Beverage Fund would be distributed to local units of government.

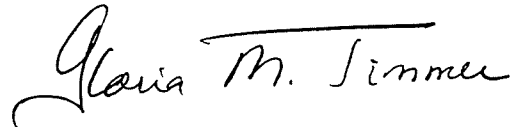
Revenues to local units of government would be increased slightly under provisions of this act. Revenues would be decreased from collections of local sales taxes on CMB sales and would be increased by distributions from the Local Cereal Malt Beverage Tax Fund financed by transfers from the State General Fund. The Department of Revenue estimates that the amount of local sales tax revenue foregone under this bill at \$727,309. Additional revenues to local units of government under the distribution provisions included in the bill would be \$780,000. Expenditures of local units of government relating to regulation of CMB sales outlets would be reduced by an indeterminable amount.

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The Honorable Keith Roe, Chairperson
March 8, 1993
Page 3

Additional State General Fund expenditures of \$1,309,817 are anticipated by the Department of Revenue to hire, equip and train additional enforcement agents, hire additional legal staff and hire additional licensing and administrative staff. Of the 35.0 new FTE positions required, 25.0 FTE positions would be assigned to the enforcement subprogram of the Alcohol Beverage Control Division (ABC). Salary expenses are estimated at \$1,024,586 annually. Support expenses for new personnel are estimated at \$285,231, including \$75,778 in one-time expenses of office equipment, handguns, computers, telephones, badges and numerous other items. The largest single support expense is for travel at \$136,224. Communications expenses are estimated at \$37,258 and other related support expenses total \$35,971.

Sincerely,



Gloria M. Timmer
Director of the Budget

cc: Steve Stotts, Revenue

2510.fn

FSA
3-9-93
93



KANSAS OIL MARKETERS ASSOCIATION

Convenience Store Association of Kansas

March 3, 1993

The Honorable Clyde Graeber
2400 Kingman
Leavenworth, KS 66048

Dear Representative Graeber:

We are writing on behalf of a coalition comprised of the Kansas Oil Marketers Association (Convenience Store Division), Kansas Food Dealers Association, Coastal Corporation (CMart), Falley's, QuikTrip, Casey's General Store, Dillons Kwik Shop and others. This group of Kansas businesses has joined together in support of a proposal to reclassify cereal malt beverage (CMB). We represent thousands of locations throughout Kansas, tens of thousands of Kansans employed and millions of dollars in payroll to Kansas employees. We also collect and remit millions of dollars in taxes to the state of Kansas.

The coalition is proposing, in House Bill 2510, to eliminate the confusing two-tier system of classifying cereal malt products in Kansas to achieve uniformity of licensing, enforcement, sales and distribution. Our proposal would redefine CMB to include cereal malt products which currently can be sold by the package only in retail liquor stores and to permit the sale of CMB, as redefined, by all establishments currently licensed to sell beer or CMB.

This change will help restore a level playing field in the sale of cereal malt products, eliminating the competitive advantage retail liquor stores have enjoyed since the legal drinking age for all products was raised to 21 years of age. The bill also provides for additional enforcement by the Alcoholic Beverage Control division of the Department of Revenue. We have included with this letter a document explaining our proposal in detail and the reasons for the change. It also contains public policy considerations which you will face as a legislator debating this issue.

This matter is now in the House Federal and State Affairs Committee and should receive a hearing in the very near future. Your consideration of our proposal and your support of HB 2510 will be greatly appreciated. Once you have had the opportunity to review our proposal, please feel free to contact any of the representatives of the coalition membership.

We thank you for your consideration.

George Leiszler
President
Kansas Oil Marketers Association

J.R. Waymire
Chairman
Kansas Food Dealers Association

J & SA
3/9/93
Atch #10

PROPOSAL TO RECLASSIFY BEER AND CEREAL MALT BEVERAGE

SPONSORS OF PROPOSAL:

Kansas Food Dealers Association, Quik Trip, Casey's General Store, Kansas Oil Marketers Association (Convenience Store Division), Coastal Corporation (C-Mart), FALLEYS, DILLONS KWIK Shop and others.

OBJECTIVE:

To statutorily redefine "cereal malt beverage" (CMB) to include cereal malt products which currently can be sold by the package only in retail liquor stores, and to permit the sale of CMB, as redefined, by all current CMB licensees.

THE PROPOSED LEGISLATION WILL:

- Redefine CMB to include all cereal malt products which contain not more than 5% of alcohol by weight.
- Provide for licensing of all CMB retailers by the Division of Alcohol Beverage Control (ABC).
- Provide an additional layer of law enforcement of CMB laws by the ABC, and provide for funding of these additional responsibilities.
- Subject all package sales of CMB, regardless of where sold, to the 8% liquor enforcement tax, and exempt those sales from state and local sales taxes and other excise taxes.
- Preserve the application of state and local sales taxes to CMB sales for consumption on the premises of a licensed CMB retailer, and provide revenue for cities and counties to offset the loss of revenue from the imposition of local sales taxes on CMB package sales.
- Authorize cities and counties to impose occupation taxes on licensed CMB retailers to provide an offset for the loss of revenue, similar to the statutory provisions now applicable to retail liquor stores.
- Authorize retail liquor stores, clubs, drinking establishments and caterers to sell CMB without requiring additional licensing.

REASONS FOR PROPOSED CHANGE:

- Eliminate the confusing two-tier system of classifying cereal malt products in Kansas, by achieving uniformity of licensing, enforcement, sales and distribution.
- Create a "level playing field" in the retail sales of CMB in Kansas
- Allow consumers to purchase, by the package, nearly all of the cereal malt products of their choice at all locations where "strong beer" or CMB are currently sold. The former has enjoyed a 48.2% growth in Kansas in the last nine years compared to 42.52% decline for CMB during the same period.

*J. S. A.
3-9-93
102*

- Provide enhanced law enforcement and licensing scrutiny for CMB retailers. Currently CMB retailers are licensed and regulated by local units of government, while retailers selling so-called "strong beer" are licensed and regulated by the state.

PUBLIC POLICY CONSIDERATIONS:

- It is not anticipated that any shift in revenues resulting from the proposed legislation will accelerate the historic rate of decline of retail liquor store closings which has been 28% since 1986.
- Sponsors of the proposed legislation do not object to the reconciliation of hours of sale or the sale of other products by retail liquor stores to create a "level playing field".
- The proposed legislation provides for the replacement of licensing and tax revenues now derived by local units of government from CMB retailers.
- The state general fund will derive additional revenues from imposition of the liquor enforcement tax on all package sales of CMB retailers and the licensing of CMB retailers by ABC sufficient to fund additional enforcement.
- The proposal will not make alcoholic beverages available to any class of persons who cannot now buy these products as the drinking age for all products is twenty-one.
- It is equitable to continue the statutory authority for persons 18 years of age and over to sell CMB, while salespersons in retail liquor stores must be at least twenty-one because alcoholic beverages are the only products sold by retail liquor stores, while CMB retailers who sell CMB only in the original and unopened containers (i.e., package sales) include grocery stores and convenience stores which sell a wide variety of other products.
- If the age level were established at twenty-one in all instances, it would have a significant, adverse impact on many young people who are employed by convenience stores and grocery stores, as well as their employers.
- The Attorney General has concluded that the Kansas Legislature has the power to define all beer containing less than 5% alcohol by weight as a cereal malt beverage.

JSK
3-9-93
10³