

Approved: 5-1-93
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on February 26, 1993 in Room 254-E of the Capitol.

All members were present except:
Sen. Vidricksen was excused

Committee staff present: Mary Galligan, Legislative Research Department
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
Ralph Decker, Executive Director, Kansas Lottery
Dave Schneider, Kansans For Life At Its Best
Tuck Duncan, Kansas Wine and Spirits Wholesalers Association
Jim Conant, Admin. Officer, ABC

Others attending: See attached list

Sen. Oleen recognized Sen. Tillotson, who introduced pages from her district who are assisting the committee today. Sen. Oleen requested that Mary Galligan explain SB 285 to the committee. Sen. Oleen introduced Ralph Decker, who explained the changes that this bill would bring about relating to retailers for The Lottery and permission for The Lottery to offer non-monetary prizes (Attachment 1). Discussion centered around concerns the committee has with each section of the bill. In the first section, Sen. Oleen expressed her concern with minors having access to the machines and if The Lottery intended to utilize it for special events only. Mr. Decker assured the committee it is a violation for anyone under the age of 18 years to play, and if a person under the age of 18 years were to win, he/she could not collect. Sen. Parkinson questioned who would pay income taxes or any other obligations as a result of winning a car, or any other nonmonetary prize. Mr. Decker answered that can be a problem, and explained that The Lottery figures allowances when giving nonmonetary prizes and includes it within the prize. Mr. Decker also commented he saw no problem with this procedure in other states where nonmonetary prizes are not restricted. Sen. Gooch questioned why the car had to be bought from one dealer only, and stated he thought the car, or any other prize, should be able to be claimed from more than one dealer. He continued by saying he did not want to give The Lottery unlimited power regarding both of these issues. Mr. Decker responded that the car proposals are put out for bid, following state purchasing procedures. Dave Schneider appeared to oppose SB 285 and will submit written testimony later (Attachment 2). Sen. Oleen closed the hearing on SB 285 and announced the committee will schedule a hearing on SB 299 later.

Sen. Oleen directed the committees' attention to SB 322 and announced that Tuck Duncan, will present an amendment (Attachment 3) for its consideration. He announced the amendment was the Department of Revenue, Alcohol Beverage Control (ABC) Unit's amendment, and Jim Conant explained why the ABC thought this amendment was necessary. He also presented an amendment to SB 323 (Attachment 4) for the committees' consideration. Sen. Oleen clarified Mr. Conant's remarks and announced that the two amendments could be joined. Sen. Gooch made the motion to merge both amendments and adopt them, and it was seconded by Sen. Hensley; the motion passed. Sen. Jones made a motion SB 322 be passed as amended, and it was seconded by Sen. Hensley; the motion passed.

Sen. Oleen referred the committee to SB 196, concerning discrimination against members of the military, which was heard earlier in the week, and Sen. Jones made a motion to delete on Page 2, Line 10 the words, "has occurred or is about to occur"; the motion was seconded by Sen. Hensley; the motion passed. Sen. Hensley made a motion SB 196 be passed as amended, and it was seconded by Sen. Walker; the motion passed.

Sen. Oleen announced there has been an Attorney General's opinion requested by Rep. Chronister which would relate to SB 285 and SB 299, pertaining to The Lottery. The committee will wait until that Opinion is received before consideration of either bill.

The remainder of time was devoted to the Subcommittee meeting on the Human Rights Commission.

Meeting adjourned at 11:50.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 26, 1993

[illegible]

Attach 1

KANSAS LOTTERY Test Results to Date of Instant Ticket Vending Machines

Since November the Lottery has tested the feasibility of utilizing instant lottery ticket vending machines. The Lottery secured the use of four machines to test in Topeka and Wichita. The previous sales of each retailer were averaged and then compared against sales with the machine. In each of the four locations the results were astounding.

The four locations experienced the following increases in sales:

A's IGA-Wichita	213% increase
Checkers-Wichita	120% increase
Gage Bowl-Topeka	189% increase
Street Corner News Topeka, Westridge Mall	25.45% increase**

**Machine was placed in rear of store resulting in no visibility;
when machine was relocated, sales increased dramatically.

AVERAGE INCREASE IN SALES 137%!!!

These machines were loaned to the Lottery by Lottery Enterprises, Inc. of San Diego, California.

In every instance, use of vending machines increases sales of Lottery tickets dramatically. The positive aspects of utilizing the machines are as follows:

- * Retailers are not troubled by employee theft of tickets.
- * Machines handles all inventory and accounting functions and issues hard copy for audit trail.
- * Employees are free to sell higher profit products.
- * Consumer reluctance diminished as evidenced by higher sales.

One option available to the Kansas Lottery is to procure the machines at no cost to the Lottery. This is accomplished by having the vendor receive a percentage of the sales price of the tickets. In return, the vendor loads the machine, services the machine and collects the money for deposit in the bank of our choice. The vendor hires its own staff to provide these services. The Lottery has no staff involved in the day-to-day operation of the machines. This also benefits the retailer by reducing the amount of employee time spent on accounting and sales functions necessary for the sale of Lottery products.

The Lottery can achieve significant sales gains at no financial risk to the State. One scenario calls for the vendor to receive a percentage of sales with no minimum guarantee. The agreement would be for three years with an option to renew at a lower percentage for a second three-year period. These machines sell for approximately \$5,000 each which would mean a savings of \$7,500,000 for the 1,500 machines

San F. & S. Q.
2-26-93
att 1

contemplated under a current proposal to the Lottery. The State would benefit by receiving its share of the increased sales. To accomplish this result, the Lottery seeks a no-limit fund through which it may make the payments to the vendor. This fund is identical in form to that which is in place to pay the commissions due our on-line vendor.

By establishing a no-limit fund, the legislature can assist the Lottery in its successful efforts to raise maximum revenue at minimal cost.



The following is a partial listing of states and the increases in instant ticket sales realized from the use of the ITR (Instant Ticket Retailer)

Washington D.C

13th Street Variety Store

October and November 1990 with no ITR - \$82.00 per week

December 1990 and January 1991 with use of the ITR - \$445.00 per week

443% increase

South Capitol Mini Mart

October and November 1990 with no ITR - \$2732 per week

December 1990 and January 1991 with use of ITR - \$5187 per week

90% increase

Baltimore, Maryland

Food King

Average weekly sales prior to installation of ITR - \$500

Week of February 4, 1991 sales increased to \$1573 with use of the ITR

215% increase

7-11

Average weekly sales prior to installation of ITR - \$700

Week of February 4, 1991 sales increased to \$1786 with use of the ITR

155% increase

Ohio

The Ohio sales figures cover a six week test period of the ITR from October through mid-November 1990.

Dairy Mart

Average daily sales prior to installation of ITR - \$85

Average daily sales with the use of the ITR - \$340

300% increase

Dairy Mart (different location)

Average daily sales prior to installation of ITR - \$30

Average daily sales with the use of the ITR - \$200

567% increase

Testimony Before The Senate
Federal & State Affairs Committee

2/26/93

Senate Bill No. 285

Dave Schneider
Kansans For Life At Its Best

We are opposed to this bill for two reasons.

1.) As we have stated previously before this committee, we think the Kansas Lottery transmits the wrong message to citizens in this state concerning how to succeed. The changes proposed in this bill will contribute to a greater dissemination of this message.

2.) The provision in Sec. 2(a) to allow the Lottery to "engage in direct sales of tickets at any selling points it establishes within the state" clashes within another value we have as a society, namely, the promotion of the arts. It seems clear that we share a common interest in at least creating a climate in which the arts can thrive. Because of this shared societal value, I think it unwise to allow the state to become an economic competitor at events which promote the arts and support artists. If the state cuts into their profits through direct competition, we make it just that much harder for them.

Therefore, I propose the committee at least consider a ban on the sale of lottery tickets at any special event which includes as part of the event the sale of arts and crafts.

Sen. F. & S. A.
2-26-93
Att 2

AMENDMENTS TO S.B. 322

The amendments as I understood the A.B.C. testimony are:

1. delete sections 3, 4, 5, and 6 of the bill. (These sections deal with tax stamps and is not necessary herein)
2. Delete New section 8 and thus the new sizes would apply to all alcoholic liquors (beer, wine and spirits)
3. Renumber all sections accordingly, and revise title and repealer as required.

-- R.E. "Tuck" Duncan

Sen. F. + S. A.
2-26-93
att 3

SENATE BILL No. 322

By Committee on Federal and State Affairs

2-15

8 AN ACT concerning alcoholic liquors; relating to certain containers
9 and packages of spirits; amending K.S.A. 41-211, 41-503 and 41-
10 508 and K.S.A. 1992 Supp. 41-102, 41-403, 41-502 and 41-1101
11 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1992 Supp. 41-102 is hereby amended to read
15 as follows: 41-102. As used in this act, unless the context clearly
16 requires otherwise:

17 (a) "Alcohol" means the product of distillation of any fermented
18 liquid, whether rectified or diluted, whatever its origin, and includes
19 synthetic ethyl alcohol but does not include denatured alcohol or
20 wood alcohol.

21 (b) "Alcoholic liquor" means alcohol, spirits, wine, beer and every
22 liquid or solid, patented or not, containing alcohol, spirits, wine or
23 beer and capable of being consumed as a beverage by a human
24 being, but shall not include any cereal malt beverage.

25 (c) "Beer" means a beverage, containing more than 3.2% alcohol
26 by weight, obtained by alcoholic fermentation of an infusion or con-
27 coction of barley, or other grain, malt and hops in water and includes
28 beer, ale, stout, lager beer, porter and similar beverages having such
29 alcoholic content.

30 (d) "Caterer" has the meaning provided by K.S.A. 41-2601 and
31 amendments thereto.

32 (e) "Cereal malt beverage" has the meaning provided by K.S.A.
33 41-2701 and amendments thereto.

34 (f) "Club" has the meaning provided by K.S.A. 41-2601 and
35 amendments thereto.

36 (g) "Director" means the director of alcoholic beverage control
37 of the department of revenue.

38 (h) "Distributor" means the person importing or causing to be
39 imported into the state, or purchasing or causing to be purchased
40 within the state, alcoholic liquor for sale or resale to retailers licensed
41 under this act or cereal malt beverage for sale or resale to retailers
42 licensed under K.S.A. 41-2702 and amendments thereto.

43 (i) "Domestic beer" means beer which contains not more than

1 8% alcohol by weight and which is manufactured from agricultural
2 products grown in this state.

3 (j) "Domestic table wine" means wine which contains not more
4 than 14% alcohol by volume and which is manufactured without
5 rectification or fortification from agricultural products grown in this
6 state.

7 (k) "Drinking establishment" has the meaning provided by K.S.A.
8 41-2601 and amendments thereto.

9 (l) "Farm winery" means a winery licensed by the director to
10 manufacture, store and sell domestic table wine.

11 (m) "Manufacture" means to distill, rectify, ferment, brew, make,
12 mix, concoct, process, blend, bottle or fill an original package with
13 any alcoholic liquor, beer or cereal malt beverage.

14 (n) (1) "Manufacturer" means every brewer, fermenter, distiller,
15 rectifier, wine maker, blender, processor, bottler or person who fills
16 or refills an original package and others engaged in brewing, fer-
17 menting, distilling, rectifying or bottling alcoholic liquor, beer or
18 cereal malt beverage.

19 (2) "Manufacturer" does not include a microbrewery or a farm
20 winery.

21 (o) "Microbrewery" means a brewery licensed by the director to
22 manufacture, store and sell domestic beer.

23 (p) "Minor" means any person under 21 years of age.

24 (q) "Nonbeverage user" means any manufacturer of any of the
25 products set forth and described in K.S.A. 41-501 and amendments
26 thereto, when the products contain alcohol or wine, and all labo-
27 ratories using alcohol for nonbeverage purposes.

28 (r) "Original package" means any bottle, flask, jug, can, cask,
29 barrel, keg, hogshead or other receptacle or container whatsoever,
30 used, corked or capped, sealed and labeled by the manufacturer of
31 alcoholic liquor, to contain and to convey any alcoholic liquor. *Orig-*
32 *inal container does not include a sleeve.*

33 (s) "Person" means any natural person, corporation, partnership,
34 trust or association.

35 (t) "Primary American source of supply" means the manufacturer,
36 the owner of alcoholic liquor at the time it becomes a marketable
37 product or the manufacturer's or owner's exclusive agent who, if the
38 alcoholic liquor cannot be secured directly from such manufacturer
39 or owner by American wholesalers, is the source closest to such
40 manufacturer or owner in the channel of commerce from which the
41 product can be secured by American wholesalers.

42 (u) (1) "Retailer" means a person who sells at retail, or offers for
43 sale at retail, alcoholic liquors.

- 1 (2) "Retailer" does not include a microbrewery or a farm winery.
2 (v) "Sale" means any transfer, exchange or barter in any manner
3 or by any means whatsoever for a consideration and includes all
4 sales made by any person, whether principal, proprietor, agent,
5 servant or employee.
6 (w) "Salesperson" means any natural person who:
7 (1) Procures or seeks to procure an order, bargain, contract or
8 agreement for the sale of alcoholic liquor or cereal malt beverage;
9 or
10 (2) is engaged in promoting the sale of alcoholic liquor or cereal
11 malt beverage, or in promoting the business of any person, firm or
12 corporation engaged in the manufacturing and selling of alcoholic
13 liquor or cereal malt beverage, whether the seller resides within the
14 state of Kansas and sells to licensed buyers within the state of Kansas,
15 or whether the seller resides without the state of Kansas and sells
16 to licensed buyers within the state of Kansas.
17 (x) "Secretary" means the secretary of revenue.
18 (y) (1) "Sell at retail" and "sale at retail" refer to and mean sales
19 for use or consumption and not for resale in any form and sales to
20 clubs, licensed drinking establishments, licensed caterers or holders
21 of temporary permits.
22 (2) "Sell at retail" and "sale at retail" do not refer to or mean
23 sales by a distributor, a microbrewery, a farm winery, a licensed
24 club, a licensed drinking establishment, a licensed caterer or a holder
25 of a temporary permit.
26 (z) "To sell" includes to solicit or receive an order for, to keep
27 or expose for sale and to keep with intent to sell.
28 (aa) *"Sleeve" means a package of two or more 50-milliliter (3.2-*
29 *fluid-ounce) containers of spirits.*
30 (bb) "Spirits" means any beverage which contains alcohol ob-
31 tained by distillation, mixed with water or other substance in so-
32 lution, and includes brandy, rum, whiskey, gin or other spirituous
33 liquors, and such liquors when rectified, blended or otherwise mixed
34 with alcohol or other substances.
35 ~~(bb)~~ (cc) "Supplier" means a manufacturer of alcoholic liquor or
36 cereal malt beverage or an agent of such manufacturer, other than
37 a salesperson.
38 ~~(ee)~~ (dd) "Temporary permit" has the meaning provided by
39 K.S.A. 41-2601 and amendments thereto.
40 ~~(dd)~~ (ee) "Wine" means any alcoholic beverage obtained by the
41 normal alcoholic fermentation of the juice of sound, ripe grapes,
42 fruits, berries or other agricultural products, including such bever-
43 ages containing added alcohol or spirits or containing sugar added

1 for the purpose of correcting natural deficiencies.
2 Sec. 2. K.S.A. 41-211 is hereby amended to read as follows: 41-
3 211. (a) The rules and regulations adopted by the secretary of revenue
4 pursuant to K.S.A. 41-210 and amendments thereto shall include
5 rules and regulations:
6 (1) Prescribing the nature, form and capacity of all containers
7 used for alcoholic liquors;
8 (2) prescribing the nature of and the representations to be shown
9 upon the labels attached to the containers and requiring that the
10 labels attached to all original containers or packages of alcoholic
11 liquors sold or offered for sale in this state shall set forth in plain
12 and legible print in the English language the quantity of such liquors,
13 exclusive of the package or cask containing them, in either metric
14 or English measurement; ~~except that no original package of al-~~
15 ~~coholic liquor sold or offered for sale in the original package~~
16 ~~in this state shall contain less than 100 milliliters (3.4 fluid~~
17 ~~ounces);~~
18 (3) prescribing administrative procedures for the issuance of li-
19 censes and the investigation of license applications and providing for
20 advisory recommendations from governing bodies of cities as to re-
21 tailers' licenses and for hearings on applications;
22 (4) prescribing conditions for the issuance of duplicate licenses
23 in lieu of those lost or destroyed;
24 (5) prescribing those violations of the rules and regulations for
25 which licenses shall be suspended or revoked;
26 (6) establishing standards of purity, sanitation and honest adver-
27 tising and representations;
28 (7) establishing the form of revenue stamps and the methods of
29 affixing the same to the containers and prescribing such design,
30 character, color combination, color changes, sizes and material there-
31 for, including a decalcomania revenue stamp, as afford the best
32 security to the state;
33 (8) requiring the destruction of stamps upon containers which
34 have been opened;
35 (9) in the case of manufacturers and distributors of alcoholic liq-
36 uors, requiring the labels attached to all containers of such liquors
37 which are intended for sale in this state to set forth, in plain legible
38 print in the English language, the name and kind of alcoholic liquors
39 contained therein, together with their alcoholic content, and if a
40 blended product (except wine) to so state, except that, if the director
41 deems it unnecessary to show the alcoholic content of beer on labels
42 of containers of beer, the alcoholic content shall not be required to
43 be shown thereon; and

1 (10) providing for such other details as are necessary or conven-
2 ient to the administration and enforcement of this act.

3 (b) The secretary of revenue may adopt rules and regulations
4 pursuant to K.S.A. 41-210 and amendments thereto establishing:

5 (1) Standards of manufacture of alcoholic liquors and beer, re-
6 gardless of its alcoholic content, not inconsistent with federal laws,
7 in order to insure the use of proper ingredients and methods in the
8 manufacture and distribution thereof; and

9 (2) standards, not inconsistent with federal law, for the proper
10 labeling of containers or barrels, casks or other bulk containers or
11 bottles of alcoholic liquor and beer, regardless of its alcoholic content,
12 manufactured or sold in this state.

13 Sec. 3. K.S.A. 1992 Supp. 41-403 is hereby amended to read as
14 follows: 41-403. Alcoholic liquor, on payment of the tax thereon,
15 pursuant to rules and regulations of the secretary, may be withdrawn,
16 on such triplicate forms as the director prescribes, from the ware-
17 house, pursuant to application to the director or to the storekeeper
18 or inspector in charge of such warehouse. One triplicate original of
19 each entry of withdrawal shall be transmitted to the director. When
20 such liquor is withdrawn from any warehouse for sale only to other
21 distributors or to retailers, clubs, drinking establishments or caterers,
22 licensed in this state, there shall be affixed to each original package,
23 *sleeve*, container or cask, a bonded warehouse stamp or stamps in-
24 dicative of the fact that the gallonage tax thereon, as hereinafter
25 levied, has been paid. In case of receipt of such liquor by manu-
26 facturers or distributors, entry of such receipt to such warehouses
27 shall be made in triplicate, and one triplicate original of such entry
28 of receipt shall be transmitted forthwith by the proprietor of the
29 warehouse to the director.

30 Sec. 4. K.S.A. 1992 Supp. 41-502 is hereby amended to read as
31 follows: 41-502. Payment of the tax provided for in K.S.A. 41-501
32 and amendments thereto shall be evidenced by tax stamps or crowns
33 to be affixed to each original package or *sleeve* of alcoholic liquor,
34 except wine and brandy, for use in this state. It is the duty of each
35 manufacturer and distributor at wholesale before delivery of any
36 alcoholic liquor, except wine and brandy, to a licensed purchaser to
37 affix a stamp or crown firmly to each original package at the rate of
38 gallonage provided for in such section, in such amounts as the con-
39 tents of each original package or *sleeve* bears to one gallon, subject
40 to all the conditions of K.S.A. 41-401 through 41-409, and amend-
41 ments thereto. The secretary of revenue may adopt rules and reg-
42 ulations pursuant to K.S.A. 41-210 and amendments thereto which:
43 (a) Require that such tax stamps or crowns be affixed to each original

1 package or sleeve of alcoholic liquor, except wine and brandy, at
2 the place where such original package or sleeve is manufactured or
3 filled; (b) permit the cancellation of attached stamps or crowns by
4 the distributor; and (c) permit credit or replacement to be issued to
5 such distributor for stamps or crowns so canceled or destroyed.

6 In lieu of the affixture of stamps to each original package or sleeve
7 as the means of payment or evidencing payment of any of the taxes
8 imposed by K.S.A. 41-501 and amendments thereto, the secretary
9 of revenue may prescribe, by rules and regulations adopted pursuant
10 to K.S.A. 41-210 and amendments thereto and designed to protect
11 the revenue of this state, a method of reporting, paying and collecting
12 such tax on any alcoholic liquors without the use of stamps.

13 If the rules and regulations prescribe a method other than the
14 affixture to original packages or sleeves of alcoholic liquor of stamps
15 or other visible evidence of the payment of such tax, the tax imposed
16 upon such alcoholic liquor by K.S.A. 41-501 and amendments thereto
17 shall be paid on or before the 15th day of the calendar month next
18 succeeding the month in which the distributor acquires possession
19 of such alcoholic liquors made taxable by the provisions of K.S.A.
20 41-501 and amendments thereto. The reporting and payment thereof
21 within the time prescribed by this section and in the manner pre-
22 scribed by the rules and regulations shall constitute a compliance
23 with the provisions of K.S.A. 41-501 and amendments thereto. If
24 the rules and regulations provide for a method of reporting, paying
25 and collecting such tax on alcoholic liquors without the use of stamps,
26 the director, in accordance with rules and regulations adopted by
27 the secretary of revenue pursuant to K.S.A. 41-210 and amendments
28 thereto prior to putting such method into effect, shall require each
29 original container or sleeve to be marked or identified in some dis-
30 tinctive manner to reflect that such original package or sleeve was
31 filled and first offered for sale in this state. On and after the effective
32 date of the rules and regulations authorizing the payment of the tax
33 as provided in this section, it shall not be unlawful for the holder
34 of a retailer's license to receive or possess any alcoholic liquor in
35 any original package or sleeve upon which the stamps evidencing
36 the payment of such tax are not affixed. In the case of wine and
37 brandy, the tax imposed upon such wine and brandy by K.S.A. 41-
38 501 and amendments thereto shall be paid on or before the 15th
39 day of the calendar month next succeeding the month in which the
40 distributor acquires possession of such wine and brandy made taxable
41 by the provisions of such statute. The recording and payment thereof,
42 within the time prescribed by this section and in the manner pre-
43 scribed by the secretary of revenue, shall constitute compliance with

1 the provisions of such statute. Notwithstanding any other provision
2 of this act to the contrary, the affixation of stamps or crowns shall
3 not be required, nor shall it be required that either the original
4 package, ~~sleeve~~ or shipping container of wine and brandy be marked
5 in a distinctive manner to reflect that such original package, ~~sleeve~~
6 or shipping container was filled and first offered for sale in this state.
7 Sec. 5. K.S.A. 41-503 is hereby amended to read as follows: 41-
8 503. The director shall adopt the designs of such tax stamps and
9 shall procure the manufacture of such stamps in such amounts and
10 denominations as ~~he shall deem~~ *the director considers* necessary
11 to provide for the affixation of the proper amount of tax stamps to
12 every original package *or sleeve*.

13 Sec. 6. K.S.A. 41-508 is hereby amended to read as follows: 41-
14 508. It shall be unlawful for the holder of any retailer's license to
15 receive or possess any alcoholic liquor upon which the gallonage tax
16 levied by this act has not been paid or to receive or possess any
17 alcoholic liquor in any original package *or sleeve* upon which the
18 stamps or crowns evidencing the payment of such tax are not affixed.
19 Any ~~such licensee who shall violate~~ *retailer who violates* the
20 provisions of this section shall be guilty of a misdemeanor and upon
21 conviction fined not more than ~~five hundred dollars (\$500)~~ \$500,
22 to which may be added not more than ~~twelve (12) months~~ 12
23 *months'* imprisonment.

24 Sec. ~~3~~ 3. K.S.A. 1992 Supp. 41-1101 is hereby amended to read
25 as follows: 41-1101. (a) No distributor licensed under this act shall
26 purchase any alcoholic liquor from any manufacturer, owner of al-
27 coholic liquor at the time it becomes a marketable product, exclusive
28 agent of such manufacturer or owner, microbrewery, farm winery
29 or distributor of alcoholic liquor bottled in a foreign country either
30 within or without this state, unless the manufacturer, owner, exclu-
31 sive agent, microbrewery, farm winery or distributor files with the
32 director a written statement sworn to by the manufacturer, owner,
33 exclusive agent, microbrewery, farm winery or distributor or, in case
34 of a corporation, one of its principal officers, agreeing to sell any of
35 the brands or kinds of alcoholic liquor manufactured or distributed
36 by the manufacturer, owner, exclusive agent, microbrewery, farm
37 winery or distributor to any distributor licensed in this state and
38 having a franchise to distribute the alcoholic liquor pursuant to
39 K.S.A. 41-410 and amendments thereto and to make such sales to
40 all such licensed distributors in this state at the same current price
41 and without discrimination. Each manufacturer, owner, exclusive
42 agent, microbrewery or farm winery shall provide to each distributor
43 written notice not less than 45 days before any change in the current

1 price of any spirits or wine which such manufacturer, owner, ex-
2 clusive agent, microbrewery or farm winery sells to such distributor.
3 If any manufacturer, owner, exclusive agent, microbrewery, farm
4 winery or distributor making the agreement violates the agreement
5 by refusing to sell such alcoholic liquor to any such franchised li-
6 censed distributor in this state or discriminates in current prices
7 among such franchised licensed distributors making or attempting to
8 make purchases of alcoholic liquor from the manufacturer, owner,
9 exclusive agent, microbrewery, farm winery or distributor, the di-
10 rector shall notify, by registered mail, each such franchised licensed
11 distributor in this state of the violation. Thereupon, it shall be un-
12 lawful for a franchised licensed distributor in this state to purchase
13 any alcoholic liquor from the manufacturer, owner, exclusive agent,
14 microbrewery, farm winery or distributor. If thereafter such a fran-
15 chised licensed distributor purchases any alcoholic liquor from the
16 manufacturer, owner, exclusive agent, microbrewery, farm winery
17 or distributor, such franchised distributor's license shall be revoked
18 by the director. If any manufacturer, owner, exclusive agent, mi-
19 crobrewery, farm winery or distributor of alcoholic liquor bottled in
20 a foreign country, making any agreement hereunder, does not have
21 a sufficient supply of alcoholic liquor of any of the brands or kinds
22 which the manufacturer, owner, exclusive agent, microbrewery, farm
23 winery or distributor manufactures or distributes to supply the de-
24 mands of all licensed distributors having a franchise to distribute
25 such alcoholic liquor, the manufacturer, owner, exclusive agent, mi-
26 crobrewery, farm winery or distributor may ration such alcoholic
27 liquor and apportion the available supply among such franchised
28 licensed distributors purchasing or attempting to purchase it, in
29 accordance with a plan which shall be subject to the approval of the
30 director.

31 (b) No retailer licensed under this act shall purchase any alcoholic
32 liquor from any distributor licensed under this act unless the dis-
33 tributor files with the director a written statement sworn to by the
34 distributor, or in case of a corporation by one of its principal officers,
35 agreeing to sell any of the brands or kinds of alcoholic liquor dis-
36 tributed by the distributor and to provide service in connection
37 therewith to any licensed retailer whose licensed premises are located
38 within the geographic territory of the distributor's franchise for the
39 alcoholic liquor, unless written approval to do otherwise is obtained
40 from the director, and to make such sales to all such licensed retailers
41 at the same current bottle, *sleeve* and case price and without dis-
42 crimination. For purposes of this subsection the "same current bottle,
43 *sleeve* and case price" for spirits and wine means a price effective

1 for a specified period as designated by the distributor on or before
2 the first day of each month. If any distributor making the agreement
3 violates the agreement by refusing to sell or provide service to any
4 such licensed retailer in this state without written approval of the
5 director or discriminates in current prices among such licensed re-
6 tailers making or attempting to make purchases of alcoholic liquor
7 from the distributor, the director may revoke the license of the
8 distributor. If any licensed distributor making any agreement her-
9 eunder does not have a sufficient supply of alcoholic liquor of any
10 of the brands or kinds which the distributor distributes to supply
11 the demands of all such licensed retailers, the distributor may ration
12 such alcoholic liquor and apportion the available supply among such
13 licensed retailers purchasing or attempting to purchase the same, in
14 accordance with a plan which shall be subject to the approval of the
15 director.

16 (c) No club or drinking establishment licensed in this state shall
17 purchase any wine or beer from any distributor licensed under this
18 act unless the distributor files with the director a written statement
19 sworn to by the distributor, or in case of a corporation by one of
20 its principal officers, agreeing to sell any of the brands or kinds of
21 wine or beer distributed by the distributor to those clubs and drink-
22 ing establishments to which the distributor is authorized to sell such
23 wine or beer and to which the distributor desires to sell such wine
24 or beer, unless written approval to do otherwise is obtained from
25 the director and to make such sales to all such licensed clubs or
26 drinking establishments at the same current bottle and case price
27 and without discrimination. If any distributor making the agreement
28 violates the agreement by refusing to sell to any such licensed club
29 or drinking establishment in this state without written approval of
30 the director or discriminates in current prices among such licensed
31 clubs or drinking establishments making or attempting to make pur-
32 chases of wine or beer from the distributor, the director may revoke
33 the license of the distributor. If any licensed distributor making any
34 agreement hereunder does not have a sufficient supply of wine or
35 beer of any of the brands or kinds which the distributor distributes
36 to supply the demands of all such licensed clubs or drinking estab-
37 lishments, the distributor may ration such wine or beer and apportion
38 the available supply among such licensed clubs or drinking estab-
39 lishments purchasing or attempting to purchase the same, in accor-
40 dance with a plan which shall be subject to the approval of the
41 director.

42 For the purposes of this subsection, a delivery charge shall not
43 be considered a part of the price of wine or beer sold by a distributor.

- 1 ~~New Sec. 8.~~ (a) No manufacturer or distributor shall sell or offer
2 for sale in this state ~~any original package of alcoholic liquor containing~~
3 ~~less than 100 milliliters (3.4 fluid ounces) except that a spirits man-~~
4 ~~ufacturer or spirits distributor may sell or offer for sale unopened~~
5 ~~sleeves to persons to whom the manufacturer or distributor is allowed~~
6 ~~to sell spirits pursuant to this act.~~
- 7 ~~(b) No retailer shall sell or offer for sale in this state any original~~
8 ~~package of alcoholic liquor containing less than 100 milliliters (3.4~~
9 ~~fluid ounces) except that a retailer may sell or offer for sale 50-~~
10 ~~milliliter (3.2-fluid-ounce) containers of spirits to persons to whom~~
11 ~~the retailer is allowed to sell alcoholic liquor pursuant to this act.~~
- 12 (c) This section shall be a part of and supplemental to the Kansas
13 liquor control act.
- 14 Sec. ~~4~~. K.S.A. 41-211, 41-503 and 41-508 and K.S.A. 1992 Supp.
15 41-102, 41-403, 41-502 and 41-1101 are hereby repealed.
- 16 Sec. ~~5~~. This act shall take effect and be in force from and after
17 its publication in the statute book.

Attach. 4 2/6

STATE OF KANSAS



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Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Lana Oleen, Chairperson,
Senate Committee on Federal & State Affairs

FROM: Jim Conant
Alcoholic Beverage Control Division

DATE: February 25, 1993

SUBJECT: Senate Bill 323

The following information is provided regarding our previous discussion of additional amendments to Senate Bill 323:

- Senate Bill 323 would remove all statutory requirements for gallonage tax stamps or other tax markings on containers of alcoholic liquor (spirits, wine and beer over 3.2% alc. by wt.). Wine and brandy are already exempt, and the bill would remove the remaining requirements for spirits and strong beer.
- Alternate reporting and auditing procedures are already in place and used by ABC for collection of all gallonage taxes. Removal of the stamps/markings would have no impact on the Division's ability to collect the gallonage tax.
- Gallonage tax rates and collection procedures for cereal malt beverages (CMB) are found in Article 38 of Chapter 79 of the Kansas Statutes. Article 38 imposes responsibility for collection, including the use of stamps and crowns, on the Director of Taxation. In actual practice, the CMB gallonage tax is being collected by ABC along with all other gallonage taxes. No stamps or crowns are currently in use for this process.
- The Department of Revenue recommends that K.S.A. 1992 Supp. 41-501 be amended to include the gallonage tax on CMB (proposed amendment attached). Amending the CMB gallonage tax into the Liquor Control Act would bring the law into synch with actual practice and would eliminate over 20 unnecessary and duplicative tax statutes. Further, repeal of the outdated language found in Article 38 of Chapter 79 would be consistent with the intent of SB 323 to remove tax stamps, crowns and other markings.

Sen. F. & S.A.
2-26-93
Att 4

41-501. Tax rate; exemptions; limitation on tax by city; collection and disposition of tax; permit to import for certain purposes. (a) As used in this section and K.S.A. 41-501a and amendments thereto:

(1) "Gallon" means wine gallon.

(2) "Federal area" means any lands or premises which are located within the exterior boundaries of this state and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States.

(3) "*Malt product*" means malt syrup, malt extract, liquid malt or wort.

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic ~~liquors~~ liquor, cereal malt beverage or malt products in this state or a federal area at a rate of \$.18 per gallon on ~~all beer containing more than 3.2% alcohol by weight beer and cereal malt beverage~~; \$.20 per gallon on all wort or liquid malt; \$.10 per pound on all malt syrup or malt extract; \$.30 per gallon on wine containing 14% or less alcohol by volume; \$.75 per gallon on wine containing more than 14% alcohol by volume; and \$2.50 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic ~~liquors~~ liquor or cereal malt beverage. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor or cereal malt beverage is manufactured and sold in this state or a federal area, the tax shall be paid by the manufacturer, microbrewery or farm winery producing it. If the alcoholic liquor or cereal malt beverage is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor or cereal malt beverage is manufactured in this state. If not to exceed one gallon, or metric equivalent, per person of alcoholic liquor has been purchased by a private citizen outside the borders of the United States and is brought into this state by the private citizen in such person's personal possession for such person's own personal use and not for sale or resale, such import is lawful and no tax payment shall be due thereon.

(c) Manufacturers, microbreweries, farm wineries or distributors at wholesale of alcoholic ~~liquors~~ liquor or cereal malt beverage shall be exempt from the payment of the gallonage tax imposed on alcoholic ~~liquors~~ liquor and cereal malt beverage, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director requires, that the ~~liquors~~ were liquor or cereal malt beverage was manufactured in this state but ~~were~~ was shipped out of the state for sale and consumption outside the state.

(d) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided for by this section.

(e) The tax provided for by this section is not imposed upon:

(1) Any alcohol or wine, whether manufactured in or imported into this state, when sold to a nonbeverage user licensed by the state, for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or scientific, chemical, experimental or mechanical purposes; or

(2) the privilege of engaging in any business of interstate commerce or otherwise, which business may not be made the subject of taxation by this state under the constitution and statutes of the United States.

(f) The tax imposed by this section shall be in addition to all other taxes imposed by the state of Kansas or by any municipal corporation or political subdivision thereof.

(g) Retail sales of alcoholic liquor and beer, sales of beer to consumers by microbreweries and sales of wine to consumers by farm wineries shall not be subject to the tax imposed by the Kansas retailers' sales tax act but shall be subject to the enforcement tax provided for in this act.

(h) Notwithstanding any ordinance to the contrary, no city shall impose an occupation or privilege tax on the business of any person, firm or corporation licensed as a manufacturer, distributor, microbrewery, farm winery, retailer or nonbeverage user under this act and doing business within the boundaries of the city except as specifically authorized by K.S.A. 41-310 and amendments thereto.

(i) The director shall collect the taxes imposed by this section and shall account for and turn over to the state treasurer at least once each week all moneys collected from the tax. The state treasurer shall credit 1/10 of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126 and amendments thereto and shall credit the balance of the moneys collected to the state general fund.

(j) If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon the manufacturer or distributor shall be reduced by the amount of the taxes which have been paid under this section as to the alcoholic liquor so used.

(k) The tax provided for by this section is not imposed upon alcohol or wine used by any school or college for scientific, chemical, experimental or mechanical purposes or by hospitals, sanatoria or other institutions caring for the sick. Any school, college, hospital, sanatorium or other institution caring for the sick may import alcohol or wine for scientific, chemical, experimental, mechanical or medicinal purposes by making application to the director for a permit to import it and receiving such a permit. Application for the permit shall be on a form prescribed and furnished by the director, and a separate permit shall be required for each purchase of alcohol or wine. A fee of \$2 shall accompany each application. All permits shall be issued in triplicate to the applicant and shall be under the seal of the office of the director. Two copies of the permit shall be forwarded by the applicant to the microbrewery, farm winery, manufacturer or distributor from which the alcohol or wine is purchased, and the microbrewery, farm winery, manufacturer or distributor shall return to the office of the director one copy of the permit with its shipping affidavit and invoice. Within 10 days after receipt of any alcohol or wine, the school, college, hospital or sanatorium ordering it shall file a report in the office of the director upon forms furnished by the director, showing the amount of alcohol or wine received, the place where it is to be stored, from whom it was received, the purpose for which it is to be used and such other information as required by the director. Any school, college, hospital, sanatorium or institution caring for the sick, which complies with the provisions of this subsection, shall not be required to have any other license to purchase alcohol or wine from a microbrewery, farm winery, manufacturer or distributor.

Repeal K.S.A. 79-3817, 79-3818, 79-3819, and 79-3821 through 79-3836.