

Approved: 2-23-94
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Vice Chairperson Lisa Benlon at 1:30 p.m. on February 15, 1994 in Room 526-S of the Capitol.

All members were present except: Representative Clyde D. Graeber, 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: Representative Jim Lowther
Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Officer
Don Bird, Kansans for Life at its Best
R. E. "Tuck" Duncan, Kansas Wines and Spirits
Wholesalers Association
Frances Wood, Woman's Christian Temperance Union

The Vice Chairperson, Lisa Benlon, opened the hearing on HB 2847.

Representative Jim Lowther testified supporting HB 2847, and stated the bill would extend the existing defense to prosecution for liquor licensees and permit holders charged with permitting possession or consumption of alcoholic beverages by a minor. The defense would be that the permit holder reasonably believed the minor to be at least 21 years of age and that the minor displayed an official photo ID (usually a drivers license) depicting the minor as at least 21 years of age. (See Attachment #1)

The Vice Chairperson announced due to Representative Lowther having to attend another meeting he would give his testimony for HB 2876 which would be heard later.

Representative Jim Lowther testified in support of HB 2876, stating this is an attempt to crack down on minors who are breaking the law and attempts to give the owners a defense against fraud. The bill would impose the same penalty for minors in possession of alcohol as is assessed for conviction of driving under the influence. (See Attachment #2)

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, stated the ABC Division is generally supportive of any measure intended to reduce underage access to alcoholic beverages. HB 2847 accomplishes this by providing an increased incentive to licensees to check identification whenever there is any question about the purchaser's age.

The ABC would respectfully recommend an amendment in New Section 2 to clarify the available defense as an affirmative defense adding after if in line 38, "evidence is presented which indicates that". While the Division supports the availability of a defense, it should be made clear that evidence must be presented to support a false ID claim. (See Attachment #3)

Don Bird, Kansans for Life At Its Best, stated that with the understanding that the burden of proof still rests with the establishment serving the alcoholic liquor or cereal malt beverage to the minor, Kansans for Life at its Best are hesitant proponents of HB 2847. (See Attachment #4)

R. E. "Tuck" Duncan, Kansas Wine and Spirits Wholesalers Association, testified there needs to be created a cause of action whereby the vendor who sells to a minor, because the minor by using false identification fraudulently procure the beverage from the vendor, may seek to recoup damages, if any, from the minor for such fraud. (See Attachment #5)

Representative Empson asked if this would appear on the records as a DUI? No.

Leslie Bennett opposed HB 2847 stated that she is 20 years old and attends the University of Kansas and this

bill will just do the opposite of what it is intended. Ms. Bennett further testified that the bouncers are very good at weeding out fake ID's and this Bill would allow more minors in these establishments.

The Vice Chairperson closed the hearing on HB 2847 and opened the hearing on HB 2876.

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, testified in support of HB 2876, stating the ABC Division is generally supportive of any measure intended to reduce underage access to alcoholic beverages. HB 2876 accomplishes this by providing increased penalties when a minor is apprehended in possession of an alcoholic beverage. (See Attachment #6)

Don Bird, Kansans For Life At Its Best, testified in support of HB 2876, stated that statistics showing consumption by underage consumers convey the need for this type of proposed legislative action. (See Attachment #7)

Mrs. Frances Wood, Woman's Christian Temperance Union of Kansas, testified in support of HB 2876 because of the problems with youth drinking alcoholic beverages and this would help deter consumption of that product. (See Attachment #8)

R. E. "Tuck" Duncan, Kansas Wine and Spirits Wholesales Association, testified supporting HB 2876, but cautions against the severity of the approach being taken. (See Attachment #9)

The meeting adjourned at 3:05 PM

The next meeting will be February 16, 1994.

Date: 2/15/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Tish Dupont	KWSA	Topeka
Neal Whitaker	Ks Beer Wholesalers Assn	Topeka
Robert Engler	ABE	Topeka
Jim Conant	ABC	Topeka
Larry Burgen	B.B. Enterprise	Emporia
Kathy Peterson	DESCUS	Topeka
Don Hubert	Interim	Emporia
Jeff Bullias	Interim	Wichita
Tim Clark	KCDAA	Topeka
Frances Kastner	Ks Food Dealers Assn	Topeka
Wendy Houburg	KDOR	Topeka
M. Haave	Haave's Capitol Report	!
D. Stevens	Anton J. Wells	Lawrence
L. Bennett	Interim R. Lahti	Lawrence
John W. Smith	FD KDOR DMV	TOPEKA

JAMES E. LOWTHER
 REPRESENTATIVE, 60TH DISTRICT
 LYON COUNTY
 1549 BERKELEY ROAD
 EMPORIA, KANSAS 66801



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS	
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SUBCOMMITTEE CHAIRMAN	APPROPRIATIONS
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	TAXATION

Feb. 15, 1994

Before House Federal and State Affairs Committee

Testimony on HB 2847
 State Rep. Jim Lowther

In brief, HB 2847 would extend the existing defense to prosecution for liquor licensees and permit holders charged with permitting possession or consumption of alcoholic beverages by a minor. The defense in place now under KSA 21-3610 for criminal actions would be available under KSA 41-2615 in civil proceedings.

The defense would be that the permit holder reasonably believed the minor to be at least 21 years of age and that the minor displayed on official photo ID (usually a drivers license) depicting the minor as at least 21 years of age.

New Sec. 2 provides the defense in any administrative proceedings to suspend or revoke a license or impose a civil fine. This defense is not available now in cases of fraudulent and fake IDs when the permit holder is before the Alcoholic Bureau of Control (ABC) because a minor was found to be in possession of alcohol or beer in the permit holder's place of business.

Under the rules and regs of the ABC a permit holder operating a restaurant or bar is fined \$1,000 per incident for a minor in possession (MIP). After several - ten I believe - violations, the license to operate can be revoked. The minor is subject to fines of various amounts depending upon which town or city is involved.

This bill would, by statute, give the licensee a defense that is not and never has been recognized by the ABC. Let me give you a quick example of what happens. In Emporia, a university town, the students convinced the city to permit minors in bars and taverns. Under the law the city can govern this by ordinance. In the so-called Drinking Establishments, minors can go in under state law. All restaurants that serve beer and liquor have "DE" licenses in Kansas - this fits many of the places where you eat ~~here~~ in Topeka as well as in your home towns: China Inn, Por Richards, Casa Del Sol, Annie's, The Vintage, to name a few.

FSA
 2-15-94
 Atch #1

In Emporia, minors frequent those that are their favorite places, both DE and Class A & B clubs. This is the case in other college towns: Lawrence, Manhattan, Pittsburg, Wichita, etc. To gain entry, the owners have the right to check identification - at the door or after entry - to determine legal age. They can refuse entry to a minor as I understand it, but from a practical matter, they don't because of the competitive factor. If one establishment turned minors away - age 18, 19 and 20 - they would simply go elsewhere and take their adult student friends with them. The end result would be the business would be forced to change policy or close.

The problem is that too many minors 18 to 20 are using altered drivers licenses to gain admission and purchase alcoholic beverages. Or they use the fake ID to get in, let their adult friend buy them a beer and if the owner checks them, they show the altered ID. Now, in walks the police or an ABC agent checking IDs and the minor shows their real drivers license. It is a worse offense, apparently to be caught with a fraudulent drivers license than to have to pay a relatively small fine for being a MIP.

I have been told that even in cases where the restaurant owner caught a minor in possession and turned the minor in, they are also charged with serving a minor. Such a self-incriminating situation works against the honest restaurant owner. In court, the presence of fraud is a defense. In an administrative hearing before the ABC, it is not considered. This bill would enable the permit holder or licensee to present the fake ID as evidence in their defense. A \$1,000 fine and possible revocation of the license are stiff penalties. In cases where the sale to minors was made knowingly, they are justified. But, in cases in which the minor has defrauded the business, there should be a defense.

JAMES E. LOWTHER
 REPRESENTATIVE, 60TH DISTRICT
 LYON COUNTY
 1549 BERKELEY ROAD
 EMPORIA, KANSAS 66801



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN: LEGISLATIVE POST AUDIT COMMITTEE
 SUBCOMMITTEE CHAIRMAN: APPROPRIATIONS
 MEMBER: EDUCATION
 TAXATION

Feb. 15, 1994

Before House Federal & State Affairs Committee

HB 2876 - Testimony by Rep. Jim Lowther

Thank you for the opportunity to appear before you today on HB 2876. In a way, this is a follow-up on the bill you just heard, HB 2847, in that it deals with minors in possession of alcohol - called MIPs for short. However, this bill, is an attempt to crack down on minors who are breaking the law while the HB 2847 was an attempt to give the owners a defense against fraud.

I asked the revisor to draft a bill that would impose the same penalty for MIP as is assessed for conviction of driving under the influence. We all know that our tough DUI penalties haven't stopped driving while drinking, but the incidence is less. The more stringent .08 blood alcohol limit hasn't stopped drunken driving, but again the incidence is less.

This bill would put some real teeth into the law as punishment for being a minor in possession. It won't stop it, but it could well have the same affect of reducing the number of minors who decide to break the law. It could lessen the incidence of fake drivers licenses being used to buy liquor in liquor stores and in restaurants and bars.

Under current law, the penalty for being convicted of being a MIP varies from town to town. I hear that in some towns it is only \$70 while in others it is \$200. Whatever the present law is, it is not acting as an effective deterrent. In college towns especially, the pressure to "party" is great and the easy accessibility of fake IDs coupled with the perceived minor fines that are imposed, simply means that many minors age 18, 19 and 20 - too many -- ignore the law. Many are repeat offenders.

This bill to make the penalty for being a MIP stronger should have a deterrent affect. It should catch the attention of most students. I notice efforts now among students to not drink and drive and the designated driver is being promoted in campus newspapers and on posters around the campus and around town. By imposing the DUI penalties on minors for buying or being in possession of alcohol, perhaps more students would think twice.

F & S A
 2-15-94
 Atch #2

STATE OF KANSAS



Robert A. Engler, Director
4 Townsite Plaza Suite 210
200 S.E. 6th Street
Topeka, Kansas 66603-3512

(913) 296-3946
FAX (913) 296-0922

Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Clyde Graeber, Chairperson
House Committee on Federal & State Affairs

FROM: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division

DATE: February 15, 1994

SUBJECT: House Bill 2847

Thank you for the opportunity to appear before the committee today regarding House Bill 2847. The ABC Division is generally supportive of any measure intended to reduce underage access to alcoholic beverages. House Bill 2847 accomplishes this by providing an increased incentive to licensees to check identification whenever there is any question about the purchaser's age.

The inclusion of a defense to prosecution under K.S.A. 41-2615 recognizes the growing problem with use of false identification by minors. The opportunity for a defense actually provides increased incentive for all licensees to make a thorough ID check when there is any question of the purchaser's age. Since K.S.A. 41-2615 may be cited in both criminal and administrative actions against on-premise licensees for underage violations, we support the language in New Section 2 which specifies the availability of a defense in administrative hearings, in addition to any criminal action which may be filed.

We would respectfully recommend an amendment in New Section 2 to clarify the available defense as an affirmative defense. (See balloon on reverse side.) While the Division supports the availability of a defense, it should be made clear that evidence must be presented to support a false ID claim. In an administrative hearing, the Division is required to prove the elements of a violation existed in support of the charge. It must be made clear that the licensee bears the burden of evidence in showing that the elements of the defense were met.

Thank you for your consideration of these issues. I would be happy to answer any questions the committee may have.

F+SA
2-15-94
Atch #3

HOUSE BILL No. 2847

By Representative Lowther

2-3

8 AN ACT concerning alcoholic beverages; relating to certain offenses
9 involving minors; amending K.S.A. 41-2615 and repealing the
10 existing section.
11

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

13 Section 1. K.S.A. 41-2615 is hereby amended to read as follows:

14 41-2615. (a) No licensee or permit holder, or any owner, officer or
15 employee thereof, shall knowingly or unknowingly permit the pos-
16 session or consumption of alcoholic liquor or cereal malt beverage
17 by a minor on premises where alcoholic beverages are sold by such
18 licensee or permit holder, except that a licensee's or permit holder's
19 employee who is not less than 18 years of age may serve alcoholic
20 liquor or cereal malt beverage under the on-premises supervision of
21 the licensee or permit holder, or an employee who is 21 years of
22 age or older.

23 (b) Violation of this section is a misdemeanor punishable by a
24 fine of not less than \$100 and not more than \$250 or imprisonment
25 not exceeding 30 days, or both.

26 (c) *It shall be a defense to a prosecution under this section if:*

27 (1) *The defendant permitted the minor to possess or consume the*
28 *alcoholic liquor or cereal malt beverage with reasonable cause to*
29 *believe that the minor was 21 or more years of age; and (2) to*
30 *possess or consume the alcoholic liquor or cereal malt beverage, the*
31 *minor exhibited to the defendant a driver's license, Kansas non-*
32 *driver's identification card or other official or apparently official*
33 *document, containing a photograph of the minor and purporting to*
34 *establish that such minor was 21 or more years of age.*

35 New Sec. 2. In any administrative proceeding pursuant to the
36 Kansas liquor control act to suspend or revoke a license, or to impose
37 a civil fine, for a violation of K.S.A. 21-3610, 21-3610a or 41-2615,
38 it shall be a defense if: (a) The defendant permitted the minor to
39 possess or consume the alcoholic liquor or cereal malt beverage with
40 reasonable cause to believe that the minor was 21 or more years of
41 age; and (b) to possess or consume the alcoholic liquor or cereal
42 malt beverage, the minor exhibited to the defendant a driver's li-
43 cense, Kansas nondriver's identification card or other official or ap-

evidence is presented which indicates that

TO: The Honorable Clyde Graeber, Chairperson
House Committee on Federal and State Affairs

FROM: Don Bird
Kansans For Life At Its Best

DATE: February 15, 1994

RE: House Bill No. 2847

With the understanding that the burden of proof still rests with the establishment serving the alcoholic liquor or cereal malt beverage to the minor, we appear today as hesitant proponents of HB 2847.

Our concern lies with the results of a national survey conducted by the Office of the Inspector General, US Department of Health and Human Services, in which "approximately 2/3 of teenagers who drink report that they can buy their own alcoholic beverages."*

Whether this is due simply to the ingenuity of minors or to negligence on the part of licensees and owners, we encourage legislation that would discourage the first (as does HB 2876) and insists on full responsibility for the second (as in HB 2785).

We are not opposed, however, to a defense for a business which follows responsible service practices in its efforts to achieve strict compliance with K.S.A. 41-2615. Hopefully, the phrase "with reasonable cause" in Section 1(c) is strong enough language to eliminate loopholes for negligence.

*See the attached copy of the National Council of Alcoholism and Drug Dependence Fact Sheet.

FSA
2-15-94
Atch #4

NCADD FACT SHEET: YOUTH AND ALCOHOL

AN OVERVIEW

- 87% of high school seniors have used alcohol; in comparison, 63% have smoked cigarettes; 32% have used marijuana; and only 6% have used cocaine.¹
- Purchase and public possession of alcohol by people under the age of 21 is illegal in all 50 states.²
- Approximately 2/3 of teenagers who drink report that they can buy their own alcoholic beverages.³
- Use of alcohol and other drugs is associated with the leading causes of death and injury (e.g., motor-vehicle crashes, homicides, and suicides) among teenagers and young adults.⁴
- Alcohol and other drug use at an early age is an indicator of future drug or alcohol problems.⁵

USAGE RATES AND PATTERNS

- First use of alcohol typically begins around the age of 13.⁶
- Junior/middle and senior high school students drink 35% of all wine coolers sold in the United States; they also consume 1.1 billion cans of beer.⁷
- Approximately 7% of the nation's eighth graders; 18% of tenth graders; and 30% of twelfth graders report they have been drunk during the last month.⁸
- Among teenagers who "binge" drink (consuming five or more drinks in a row on a single occasion), 39% say they drink alone; 58% drink when they are upset; 30% drink when they are bored; and 37% drink to feel high.⁹
- Though male high school seniors "binge" drink in greater numbers than females, the difference has been diminishing gradually during the last decade.¹⁰
- 41% of college students have "binged" on alcohol during the past two weeks.¹¹

NEGATIVE CONSEQUENCES

- Drivers under the age of 25 were more likely than those 25 or older to be intoxicated in a fatal crash.¹²
- In 1991, nearly 10% (more than 126,000) of the clients admitted to state-funded alcohol treatment programs were under the age of 21.¹³
- A clear relationship exists between alcohol use and grade-point average among college students: students with GPAs of D or F drink three times as much as those who earn As.¹⁴
- 31.9% of youth under 18 in long-term, state-operated juvenile institutions in 1987 were under the influence of alcohol at the time of the arrest.¹⁵
- Almost half of college students who said they had been victims of crime admitted they had used drugs or alcohol before the crime occurred.¹⁶

- Researchers estimate that alcohol use is implicated in one- to two-thirds of sexual assault and acquaintance or "date" rape cases among teens and college students.¹⁷
- Among sexually active teens, those who average five or more drinks daily were nearly three times less likely to use condoms, thus placing them at greater risk for HIV infection. Among all teens who drink, 16% use condoms less often after drinking.¹⁸

PERCEPTIONS AND INFLUENCES

- Almost 80% of teenagers don't know that a 12 oz. can of beer has the same amount of alcohol as a shot of whiskey; 55% don't know that a 5 oz. glass of wine and a can of beer have the same amount.¹⁹
- 56% of students in grades 5 to 12 say that alcohol advertising encourages them to drink.²⁰
- 35% of children in the fourth grade report having been pressured by their classmates to drink; by the time they reach sixth grade, 49% have been pressured.²¹

SOURCES

¹National Institute on Drug Abuse (NIDA), **National Survey Results on Drug Use from the Monitoring the Future Study**, 1992. ²Office of the Inspector General (OIG), US Department of Health and Human Services (HHS), **Youth and Alcohol: Laws and Enforcement: Is the 21-Year-Old Drinking Age a Myth?**, Washington, DC, 10/91, p. 2. ³OIG, HHS, **Youth and Alcohol: A National Survey. Drinking Habits, Access, Attitudes, and Knowledge**, Washington, DC, 6/91, p. 11. ⁴Centers for Disease Control (CDC), **Alcohol and Other Drug Use Among High School Students—United States**, 1990, Morbidity and Mortality Weekly Report (MMWR), 11/91, p. 776. ⁵J Hawkins, R Catalano, **Risk and Protective Factors for Alcohol and Other Drug Problems in Adolescence and Early Adulthood: Implications for Substance Abuse Prevention**, 1989, p. 78. ⁶Public Health Service, HHS, **Healthy People 2000: National Health Promotion and Disease Prevention Objectives**, Washington, DC, 1990, p. 97. ⁷OIG, HHS, **Drinking Habits, etc.**, p. 6. ⁸NIDA, op. cit. ⁹OIG, HHS, **Drinking Habits, etc.**, p. 8. ¹⁰National Institute of Alcohol Abuse and Alcoholism, **Eighth Special Report to the US Congress on Alcohol and Health**, (in press). ¹¹NIDA, op. cit. ¹²CDC, **Alcohol-Related Traffic Fatalities Among Youth and Young Adults—United States, 1982-1989**, MMWR, 3/91, p. 179. ¹³W Butynski, JL Reda, et. al., **State Resources and Services Related to Alcohol and Other Drug Abuse Problems, FY 1991. An Analysis of State Alcohol and Drug Abuse Profile Data**, Washington, DC: National Association of State Alcohol and Drug Abuse Directors, 12/92, pp. 22, 25. ¹⁴C Presley and P Meilman, **Alcohol and Drugs on American College Campuses**, Student Health Program Wellness Center, Southern Illinois University, 7/92, p 8. ¹⁵US Department of Justice, **Survey of Youth in Custody, 1987**, Bureau of Justice Statistics Special Report, 9/88. ¹⁶S Dodge "Campus Crime Linked to Students' Use of Drugs and Alcohol," *The Chronicle of Higher Education*, 1/90, pp. A33-35. ¹⁷OIG, HHS, **Youth and Alcohol: Dangerous and Deadly Consequences**, Washington, DC, 4/92, p. 3. ¹⁸RW Hingson, L Strunin, et. al., "Beliefs About AIDS, Use of Alcohol and Drugs, and Unprotected Sex Among Massachusetts Adolescents," *American Journal of Public Health*, 3/90, pp. 295-299. ¹⁹OIG, HHS, **Drinking Habits, etc.**, p. 9. ²⁰The Scholastic/CNN Newsroom Survey on Student Attitudes About Drug and Substance Abuse, 2/90. ²¹The Weekly Reader National Survey on Drugs and Alcohol, Field Publications, Middletown, CT, Fall 1990, p. 13.

What Is NCADD?

The National Council on Alcoholism and Drug Dependence, Inc. (NCADD) was founded in 1944. In partnership with nearly 200 Affiliates throughout the nation, NCADD seeks to prevent the disease of alcoholism, other drug addictions and related problems through educating the public and encouraging scientific research. At the same time NCADD advocates on behalf of alcoholics and their families and for policies that will ensure they have access to care for the treatment of alcoholism, other drug addictions and related problems. People seeking more information and/or referral can contact NCADD at the address above or an NCADD Affiliate in their area by calling NCADD's national toll-free help line: **800-NCA-CALL**.

NCADD produces other Fact Sheets on the following topics: **Alcoholism and Alcohol-Related Problems; Alcohol-Related Birth Defects; Alcoholism, Other Drug Addictions and Related Problems Among Women; and Alcohol and Other Drugs in the Workplace**. To receive a complete list of these and other NCADD publications, contact NCADD at the address above.

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NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE, INC.

12 West 21st Street, New York, NY 10010
1511 K Street, NW, Washington, DC 20005

K • A • N • S • A • S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

To: House Committee on Federal and State Affairs

From: R.E. "Tuck" Duncan
Kansas Wine and Spirits Wholesalers Association

RE: House Bill 2847

The Kansas Wine and Spirits Wholesalers Association previously supported the inclusion of this same provision in K.S.A. 21-3610 and 21-3610a. Additionally, we need to create a cause of action whereby the vendor (licensed retail liquor dealer, club, drinking establishment or CMB licensee) who sells to a minor, because the minor by using false identification fraudulently procures the beverage from the vendor, may seek to recoup damages, if any, from the minor for such fraud.

The court denied vendors a civil remedy against minors in the case *Sanctuary v. Smith*, 12 Kan. App.2d 38 (1987). They stated in that case that they did not create such a tort because: "The decision about how best to curtail alcohol consumption by minors rests with the legislature, not with the courts." We propose that you create a such a private right of action and allow the private sector an opportunity to take action against individuals who use fake IDs to procure alcoholic beverages and cereal malt beverages.

Thank you for your attention to and consideration of these matter.

See also testimony on HB 2876.

Fv SA
2-15-94
Atch #5

STATE OF KANSAS

Robert A. Engler, Director
4 Townsite Plaza Suite 210
200 S.E. 6th Street
Topeka, Kansas 66603-3512



(913) 296-3946
FAX (913) 296-0922

Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Clyde Graeber, Chairperson
Senate Committee on Federal & State Affairs

FROM: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division

DATE: February 15, 1994

SUBJECT: House Bill 2876

Thank you for the opportunity to appear before the committee today regarding House Bill 2876. The ABC Division is generally supportive of any measure intended to reduce underage access to alcoholic beverages. House Bill 2876 accomplishes this by providing increased penalties when a minor is apprehended in possession of an alcoholic beverage. While the Division deals primarily with the licensee in these types of violations, it is acknowledged that sufficient deterrents must be in place to discourage both parties from attempting an illegal act.

We would respectfully note a concern with this legislation regarding the imposition of license restrictions as provided by K.S.A. 8-1015. Other legislation proposed during this session would amend K.S.A. 8-1015 to provide for an ignition interlock device as the only restriction under that statute. Installation and use of an interlock device may be impractical for a period as short as 60 days. If the intention is to use the present restrictions set out in K.S.A. 8-105, that wording should be amended into this bill to avoid any unintended results.

Thank you for your consideration of these issues. I would be happy to answer any questions the committee may have.

F-5A
2-15-94
Atch #6

TO: The Honorable Clyde Graeber, Chairperson
House Committee on Federal and State Affairs

FROM: Don Bird
Kansans For Life At Its Best

DATE: February 15, 1994

RE: House Bill No. 2876

Thank you for the opportunity to participate in the committee's hearings today as a supporter of HB 2876. Statistics showing consumption by underage consumers convey the need for this type of proposed legislative action.

Despite the fact that all 50 states have made the purchase and public possession of alcohol by persons under the age of 21 illegal, junior/middle and senior high school students still drink "35% of all wine coolers sold in the United States" and "1.1 billion cans of beer."**

Providing stiffer penalties for underage offenders will, we believe, send a powerful message to them about the seriousness of the violation of current Kansas statute and thereby enabling them a greater awareness of the negative consequences of alcohol use by persons their age.**

We would also encourage the committee to amend the bill by making hours of public service for juveniles mandantory. With proper supervision, this is very profitable tool of channeling energy into useful activity as opposed to incarceration. Thank you for your consideration.

**See the National Council On Alcoholism and Drug Dependence Fact Sheet attached to testimony on HB 2847. Statistics are from the Office of the Inspector General, US Department of Health and Human Services.

Fv SA
2-15-94
Atch #7

Chairman Clyde Graeber,
Members of the Federal and State Affairs Committee

My name is Mrs. Frances Wood, 4724 S. E. 37th St. Topeka
I represent the Woman's Christian Temperance Union of
Kansas and also the Capital City Union.

We are in support of HB 2876. Because of the problems
with youth drinking alcoholic beverages we support any
bill that will help deter consumption of that product.

FISA
2-15-94
Atch #8

K • A • N • S • A • S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

To: House Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan
Kansas Wine and Spirits Wholesalers Association
RE: House Bill 2876

I appear here today in support of creating disincentives to the unlawful possession of alcoholic beverages by minors, but caution the committee against the severity of the approach being taken by House Bill 2876. I would like to spend a moment to look at some recent efforts to reduce possession of alcoholic beverages and cereal malt beverages by minors and to suggest a few approaches that might better accomplish the goal of this bill.

DUI laws have been strengthened. There is no question that impaired driving must cease, and that young persons are disproportionately involved. This association appeared before the House Judiciary Committee in support of the use of interlock devices last year and again this year. The House has passed a bill this year to encourage their use.

Last year the law regarding possession of alcoholic beverages or cereal malt beverages by a minor in a club or drinking establishment was clarified. The Alcoholic Beverage Control has aggressively prosecuted in the administrative process licensees who sell to minors. Such prosecutions are not as aggressive at the local level where CMB licensees are regulated.

This association has conducted industry campaigns against sales to underage individuals. Over the past two years tens of thousands of posters, buttons, stickers and the like have been distributed to licensed retail liquor dealers and clubs and drinking establishments for their use in dissuading minors from attempting to purchase alcoholic beverages.

I would suggest however, that the lesson this country has learned in the "war on drugs" is one that we should remember as we fashion state policy to curb the possession of alcoholic beverages of cereal malt beverages by minors. Interdiction fails, education to reduce demand prevails. House Bill 2876 is aimed in one sense at interdiction. It will put more pressure on over burdened juvenile courts who have scarce resources now to deal with children in need of care. It may place non-violent "possession" offenders in facilities with youths who have committed more serious crimes. For persons between 18 and 21 years of age it will equate the crime of possession with the more serious offense of driving while impaired by equating the penalties - - that is an incorrect signal.

Our goal must be to help create an environment of personal responsibility. We must encourage acceptable behavior. As an industry we must participate in helping to create that environment. We have begun that process through our industry NO ID, NO SALE programs. And, this afternoon in the House Judiciary Committee I will propose that that committee adopt a program I first discussed with this committee several years ago, mandatory server/seller training.

The Courts have some tools for combatting the problems this bill is designed to address as set out as current law on page 2 of the bill. K.S.A. 38-1663 has been amended several times in the past several years strengthening the court's dispositional

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2-15-94
Atch#9

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authority. We have provisions in the law at K.S.A. 21-3830 regarding dealing in false identification and at K.S.A. 8-260 and 8-1327 regarding the unlawful use of driver's licenses and nondriver's ID cards. These laws were amended to specifically prohibit the lending of such identification to facilitate the purchase of alcoholic beverages and cereal malt beverages.

What we do not have in the law is a remedy for the vendor who sells to a minor because the minor by using false identification fraudulently procures the beverage from the vendor. The court denied vendors a civil remedy against minors in the case *Sanctuary v. Smith*, 12 Kan. App.2d 38 (1987). They stated in that case that they did not create such a tort because, "The decision about how best to curtail alcohol consumption by minors rests with the legislature, not with the courts." We propose that you create a such a private right of action. Allow the private sector an opportunity to take action against individuals who use fake IDs to procure alcoholic beverages and cereal malt beverages. A private sector remedy will be less costly to the state and will allow the industry to enforce its efforts to reduce underage purchases, which will thence reduce underage possession.

We believe that through a combination of efforts: mandatory server training, enforcement of existing criminal laws, and by creating a civil remedy for vendors an environment can be created to better meet the well intentioned goals of House Bill 2876. Thank you for your attention to and consideration of these matters.

See also testimony on HB 2847.