

Approved: May 23, 1994  
Date

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. on February 15, 1994 in Room 313-S of the Capitol.

All members were present except:

Representative Tom Bradley  
Representative Denise Everhart  
Representative Joan Wagnon

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Gene Johnson, Kansas Community Safety Action Project Coordinators Association  
Don Bird, Kansans for Life at Its Best  
Steve Dickerson, Kansas Trial Lawyers Association  
Frances Wood, Women's Christian Temperance Union of Kansas  
Ron Smith, Kansas Bar Association  
Tuck Duncan, Kansas Wine & Spirits Wholesalers Association  
George Puckett, Kansas Restaurant & Hospitality Association  
Rebecca Rice, Kansas Retail Liquor Association  
Neil Whitaker, Kansas Beer Wholesalers Association

Others attending: See attached list

Hearings on **HB 2785** - Civil liability for serving minors alcoholic beverages, were opened.

Chairman O'Neal explained that this bill was a result of a note from the Court of Appeals judges who served on the panel who heard the Robert Burton v. Jason Frahm & Budde's Restaurant, Inc. case. The opinion stated that the Court felt that if they were free to follow their collective consciences and apply what they believed to be sound legal reasoning, this panel would unanimously reverse the decision of the trial court granting summary judgement to Budde's. The Court has suggested that they felt that Kansas should have a dram shop law but it is up to the legislature to enact one.

Gene Johnson, Kansas Community Safety Action Project Coordinators Association, appeared before the Committee as a proponent of the bill. He suggested that the bill include a server training provision for all those individuals serving intoxicating beverages, (see attachment 1).

Chairman O'Neal asked if he had seen the proposed server training legislation that Tuck Duncan had put together. Mr. Johnson replied that he hadn't see the proposed legislation but he and Mr. Duncan had the same ideas when it came to this subject.

Don Bird, Kansans for Life at Its Best, appeared before the Committee as a proponent of the bill. He stated that retail licensees should be held accountable for furnishing any underage person alcoholic liquor or cereal malt beverages. They would encourage a server training program. Approximately 2/3 of teenagers who drink report that they can buy their own alcoholic beverages, (see attachment 2).

Chairman O'Neal commented that this bill was limited to evidence of violations of the statute involving sale or dispensation to a minor. This would pick up a social host who serves alcohol to a minor but does not include a licensee or social host who dispensed to an adult. Mr. Bird stated that they would be in favor of including adults into the proposed bill. Statistics from the Robert Johnson Foundation show that encouraging responsibility at the adult level also needs to be done.

Steve Dickerson, Kansas Trial Lawyers Association, appeared before the Committee in support of **HB 2785**. He commented that he was an attorney for Ling in Lyllis Ling v. Jan's Liquors case. This is one of the first cases that examined liability in this area. The goal of this legislation is to reduce injuries and save lives. They would like to see the bill expanded to include K.S.A. 41-715, dealing with those who are obviously intoxicated and adults, (see attachment 3).

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on February 15, 1994.

The Chairman asked if he was satisfied that the language creates a cause of action. Mr. Dickerson replied that this would create a new cause of action. It might be more appropriate to add language that would state "an aggrieved person shall have a civil cause of action of a breach of duties imposed by K.S.A. 21-3610 & 41-715."

Representative Plummer questioned if one served alcohol to a minor would this really be an intentional conduct under comparative fault. Mr. Dickerson stated that comparative fault and comparative negligence would apply. If the legislation states that K.S.A. 62-258a shall apply to this cause of action in all instances, then the language would be compelling. The Committee needs to make sure that there is no comparison of alleged liability in this area unless there is a civil cause of action. We don't want to create a statute that would allow the injured person to pursue the server of a minor and bar to pursue of the server of the intoxicated adult and allow the intoxicated adult to join for comparative purposes the server.

Chairman O'Neal commented that the definition of aggrieved party should be looked at and maybe be amended to include the person or the personal representative of the injured party.

Frances Wood, Women's Christian Temperance Union of Kansas, appeared before the Committee as a proponent of the bill. She stated that if those who serve alcoholic beverages were held more responsible they would be less likely to serve patrons an excessive amount, (see attachment 4).

Ron Smith, Kansas Bar Association, appeared before the Committee and stated that the KBA would support a dram shop law if it was based on comparative negligence principles. The phrase "any aspect of comparative negligence pursuant to K.S.A. 60-258a" has been held to mean comparison of unintentional negligence only, not including the possible intentional fault of a minor in driving drunk, versus unintentional conduct of those who served the minor, (see attachment 5).

The Chairman commented that if a cause of action were established, won't cases under the dram shop act be decided by the courts consistent with their previous decisions on whether or not they are comparing negligence with negligence or negligence with an intentional act. He questioned why the courts would treat the issue any different from the way they are treating it now. Mr. Smith stated that he was concerned if the Committee intended this bill to be strict liability. Chairman O'Neal responded that it was not the intent of the Committee. By simply establishing a violation of the statute does not make it negligence per se. Causation has to be shown in order to find the party liable.

Representative Rock stated that the bill refers to "minors". A minor is a person who is 18 years of age and under, and shouldn't the word "minors" be changed to "under aged drinkers" to encompass those under the age of 21 who are not authorized to drink.

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, appeared before the Committee and stated that they would not oppose a dram shop bill if liability was tied to comparative fault for licensees under the liquor control act, club and drinking establishment act or cereal malt beverage act, who made an intentional, unlawful sale to a minor. The intentional service to a minor can't be excused, but if there was going to be compared liability there should be a server training provision included into the bill. Also, vendors should have a cause of action if a minor intentionally used a fake ID to buy alcohol, (see attachment 6). A server trainer program should be mandatory and should be included in the proposed bill. The Alcoholic Beverage Control would implement the program in Kansas, (see attachment 7).

George Puckett, Kansas Restaurant & Hospitality Association, appeared before the Committee as an opponent of this bill or any other proposed dram shop legislation. He stated that current laws are adequate enough for the enforcement of the violation of serving liquor or cereal malt beverages to minors. The right to sue and collect appropriate damages already exists if a server of alcoholic beverages demonstrates gross negligence leading to property destruction or harm to an individual. With the passage of a dram shop law the liability insurance premium would be extremely high. Mr. Puckett stated that the current legal system in Kansas works and the true offenders are convicted if guilty, without endangering the livelihood of many small businesses, (see attachment #8).

Chairman O'Neal stated that in the case Burton v. Frahm & Budde's Restaurant, Inc., Jason had entered Budde's Restaurant on two separate occasions, ordered several alcoholic beverages and never was asked for any I.D. or proof of I.D. He told his waitress that he was not 21 and was served beverages anyway by the establishment. Some of the beverages were paid for by the owner of the bar. Jason later drove his car while he was intoxicated and caused a death. The Chairman questioned if it was his suggestion that under no circumstances should the server at Budde's have been held liable for civil damages. Mr. Puckett replied that that's not what he was suggesting. He understands that there are laws that exist that would penalize the server.

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MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on February 15, 1994.

Chairman O'Neal questioned what laws exist that would reasonably compensate the victim, in this case, for the actions of the server. Mr. Puckett responded that he's not an attorney and can't quote a case but wouldn't those that have been wronged have the right to sue the server. The Chairman replied that this was what this piece of legislation was all about. The Court has ruled that the State of Kansas does not have dram shop liability and that the State should have it but the legislature needs to be the one to adopt it. Mr. Puckett questioned if the Chairman was saying that the server in the Burton case could not be sued for what he did and goes free and clear. Chairman O'Neal replied this was correct.

Chairman O'Neal stated that in Mills v. The City of Overland Park a 19 year old was drinking until very intoxicated, in an establishment in Overland Park, and was thrown out of the bar by the server because of what he was doing under the influence of alcohol. He then wandered through a field and froze to death. This legislation was aimed at third party actions against the server that violates a criminal statute prohibiting the sale or dispensation to a minor. He questioned, in circumstances such as this, should there not be civil liability imposed on the server. Mr. Puckett replied that there should be civil liability on the server, but it was his understanding that it could be done now. The Chairman stated that the decisions in Burton v. Frahm & Budde's Restaurant, Ling v. Jan's Liquors & Mills v. City of Overland Park declined to extend civil liability saying that it was the function of the Legislature to determine whether civil liability ought to exist.

Representative Adkins stated that the civil liability would be contingent upon the violation of a criminal statute. He questioned if Mr. Puckett's position was that the criminal statutes that criminalize the conduct of selling alcohol to minors are sufficient to address the problem and need not go any further. Mr. Puckett replied that it was his understanding that current statutes are sufficient and if they are not they would support anything that would penalize the servers in the cases that were mentioned today. Representative Adkins stated that it was his belief that one of the major objections they have was the increase of liability insurance premiums. If in fact they are subject to suit now, and would be subject to suit under this legislation, it would seem that an increase in liability insurance premiums would not occur. Mr. Puckett commented that the states that currently have dram shop laws experience increases in their liability insurance. Mr. Adkins stated that these are states where civil liability for conduct did not exist before they enacted a dram shop law.

Rebecca Rice, Kansas Retail Liquor Association, appeared before the Committee as an opponent of the bill. The Kansas Retail Liquor Dealers are opposed to legislation which increases their liability for the acts of another over whom they have no control. Imposing liability, due to the fact that the liquor was purchased illegally, remains inherently unfair. The idea that this legislation would make retailers more careful in avoiding sales to minors is illogical. It would cause retailers to buy additional insurance. Such loss would be a greater threat than mere financial hardship brought about by increasing insurance costs, (see attachment 9).

Chairman O'Neal commented that a violation of K.S.A. 21-3610 & 21-3610a would mean that the courts must find that the defenses under those two sections are not applicable, so the defenses are built in. He then asked that if the Legislature makes it clear that the defenses that are currently available under the criminal statute would be available under the civil statute would her position change. Ms. Rice replied that they would still be opposed to the bill.

The Chairman questioned if a member of their association was unable, through the facts, to establish their entitlement to one of these defenses, then why shouldn't they be held liable, if the jury finds as a result of their violation of a statute that someone was injured. Ms. Rice replied because the minor was the person that did something illegal. The statute does not require the employee to card everyone, only not sell to an under age individual.

Ms. Rice questioned that if the defenses were built in would this require a copier to be at each establishment to take copies of I.D.'s of anyone who looks to be underaged. The employee had not done anything illegal if he cards an underaged person, who presented what appeared to be a legal I.D., and sold alcohol to the underaged person. She stated that the point being that just because the employee can't prove that there was an I.D. and the employee sold to the underage buyer doesn't constitute a violation. The Chairman stated that the underage drinker that goes out and kills someone probably didn't intend to kill anyone. He didn't not commit an intentional act but it was a negligence act.

Neil Whitaker, Kansas Beer Wholesalers Association, appeared before the Committee as an opponent of the bill. He stated that this bill sends the wrong message to minors that they are not responsible for their own actions and places the responsibility on others. While this would provide a defense to licensed retailers & establishments the defenses does not apply to a social host, (see attachment 10).

Chairman O'Neal stated that it was the intent of the Committee that a violation would mean that the jury would have to be satisfied that the defenses were not applicable, and this not be a strict liability concept, meaning that

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on February 15, 1994.

it was negligence per se of a violation of a statute. This proposed bill states that negligence must be shown and that in failure to comply with the statutes damages were done.

William Sneed, State Farm Insurance Companies, could not appear before the Committee but requested that his testimony be included into the minutes, (see attachment 11).

Hearings on **HB 2785** were closed.

The Committee meeting adjourned at 5:30 p.m. The next meeting is scheduled for February 16, 1994.

# GUEST LIST

## HOUSE JUDICIARY COMMITTEE

DATE February 15, 1994

NAME	ADDRESS	ORGANIZATION
Gene Johnson	Topeka	Ks Alcohol/Drug Program
JOHN C. BOTTENBERG	Topeka	KINWA
Mary Woodland	Topeka	KWSLA
KEVIN ROBERTSON	Topeka	KDBT
Danielle Nee	Topeka	KS Logging Assn
Neal Whitaker	Topeka	State Farm Ins.
George Ruckett	Topeka/Wichita	KS Board of Education
Paul Tesin	Topeka	KRHA
KEITH R LANDIS	Topeka	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Paul Shelby	Topeka	OJA
Robert Engler	Topeka	KDOR ABC
Jim Conant	"	"
Susan Hamilton	"	KTCA
Steve Dickerson	Kansas City	KTLC
Don Bird	Topeka	KFLAIB
Frances Wood	Topeka	WCTU
Don Smith		

Testimony

House Judiciary Committee  
February 15, 1994

House Bill 2785

Good Afternoon, Mr. Chairman and Members of the Committee:

My name is Gene Johnson and I represent the Kansas Community Safety Action Project Coordinators Association, the Kansas Alcoholism and Drug Addiction Counselors Association and the Kansas Association of Alcohol and Drug Program Directors. Our organizations wish to convey to this Committee our support of House Bill 2785. This type of legislation is another way to enforce our present laws which forbid the sale or consumption of alcoholic beverages to minors, unless they are supervised by their parent or guardians.

Members of this Committee know that we supported this concept at the meeting of October 28, 1993. At that point in time we had some concerns about the limits of liability. It appears that this bill has addressed those problems and we can live comfortably with the language in the bill at the present time.

Our big concern is that we do not see any server training provision in this proposed legislation. We feel that any Dram shop legislation should mandate server training for all those individuals serving intoxicating beverages. We also would suggest that some type of certification of completion be given to those who complete this training. In addition, we feel it necessary to periodically check those individual servers to determine whether they have retained the knowledge acquired during their server training and schooling.

Thank you for allowing me to appear before this Committee today, and I will attempt to answer any questions.

Respectfully,



Gene Johnson

Legislative Liaison

Kansas Alcoholism and Drug Addiction Counselors Association

Kansas Association of Alcohol and Drug Program Directors

Kansas Community Alcohol Safety Action Project Coordinators Association

House Judiciary

Attachment 1

2-15-94



TO: The Honorable Michael O'Neal, Chairperson  
House Judiciary Committee

FROM: Don Bird  
Kansans For Life At Its Best

DATE: February 15, 1994

RE: House Bill No. 2785

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Thank you for the opportunity to appear before the committee today as a proponent of HB 2785. As we have done consistently in the past, Kansans For Life At Its Best supports any measure which discourages negligence on the part of retailers.

The results of a national survey conducted by the Office of the Inspector General, US Department of Health and Human Services, reveal that "approximately 2/3 of teenagers who drink report that they can buy their own alcoholic beverages."\*\* That, quite frankly, greatly concerns us.

Retail licensees and owners should be held accountable for furnishing any underage person alcoholic liquor or cereal malt beverage. Making them liable, however, should not give the public access to windfalls of money without proof of negligence by the business. Retailers who implement responsible service procedures and make efforts to achieve full compliance with the law should have little to worry about.

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



## ***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.<sup>1</sup>
- Purchase and public possession of alcohol by people under the age of 21 is illegal in all 50 states.<sup>2</sup>
- Approximately 2/3 of teenagers who drink report that they can buy their own alcoholic beverages.<sup>3</sup>
- 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.<sup>4</sup>
- Alcohol and other drug use at an early age is an indicator of future drug or alcohol problems.<sup>5</sup>

### **USAGE RATES AND PATTERNS**

- First use of alcohol typically begins around the age of 13.<sup>6</sup>
- 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.<sup>7</sup>
- 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.<sup>8</sup>
- 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.<sup>9</sup>
- Though male high school seniors "binge" drink in greater numbers than females, the difference has been diminishing gradually during the last decade.<sup>10</sup>
- 41% of college students have "binged" on alcohol during the past two weeks.<sup>11</sup>

### **NEGATIVE CONSEQUENCES**

- Drivers under the age of 25 were more likely than those 25 or older to be intoxicated in a fatal crash.<sup>12</sup>
- In 1991, nearly 10% (more than 126,000) of the clients admitted to state-funded alcohol treatment programs were under the age of 21.<sup>13</sup>
- 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.<sup>14</sup>
- 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.<sup>15</sup>
- Almost half of college students who said they had been victims of crime admitted they had used drugs or alcohol before the crime occurred.<sup>16</sup>



- 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.<sup>17</sup>
- 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.<sup>18</sup>

## 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.<sup>19</sup>
- 56% of students in grades 5 to 12 say that alcohol advertising encourages them to drink.<sup>20</sup>
- 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.<sup>21</sup>

## SOURCES

<sup>1</sup>National Institute on Drug Abuse (NIDA), **National Survey Results on Drug Use from the Monitoring the Future Study**, 1992. <sup>2</sup>Office 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. <sup>3</sup>OIG, HHS, **Youth and Alcohol: A National Survey. Drinking Habits, Access, Attitudes, and Knowledge**, Washington, DC, 6/91, p. 11. <sup>4</sup>Centers 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. <sup>5</sup>J 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. <sup>6</sup>Public Health Service, HHS, **Healthy People 2000: National Health Promotion and Disease Prevention Objectives**, Washington, DC, 1990, p. 97. <sup>7</sup>OIG, HHS, **Drinking Habits, etc.**, p. 6. <sup>8</sup>NIDA, op. cit. <sup>9</sup>OIG, HHS, **Drinking Habits, etc.**, p. 8. <sup>10</sup>National Institute of Alcohol Abuse and Alcoholism, **Eighth Special Report to the US Congress on Alcohol and Health**, (in press). <sup>11</sup>NIDA, op. cit. <sup>12</sup>CDC, **Alcohol-Related Traffic Fatalities Among Youth and Young Adults—United States, 1982-1989**, MMWR, 3/91, p. 179. <sup>13</sup>W 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. <sup>14</sup>C Presley and P Meilman, **Alcohol and Drugs on American College Campuses**, Student Health Program Wellness Center, Southern Illinois University, 7/92, p 8. <sup>15</sup>US Department of Justice, **Survey of Youth in Custody, 1987**, Bureau of Justice Statistics Special Report, 9/88. <sup>16</sup>S Dodge "Campus Crime Linked to Students' Use of Drugs and Alcohol," *The Chronicle of Higher Education*, 1/90, pp. A33-35. <sup>17</sup>OIG, HHS, **Youth and Alcohol: Dangerous and Deadly Consequences**, Washington, DC, 4/92, p. 3. <sup>18</sup>RW 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. <sup>19</sup>OIG, HHS, **Drinking Habits, etc.**, p. 9. <sup>20</sup>The Scholastic/CNN Newsroom Survey on Student Attitudes About Drug and Substance Abuse, 2/90. <sup>21</sup>The 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.

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# KANSAS TRIAL LAWYERS ASSOCIATION

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TESTIMONY  
of the  
KANSAS TRIAL LAWYERS ASSOCIATION  
before the  
HOUSE JUDICIARY COMMITTEE

HB 2785 - Dram Shop Liability

February 15, 1994

This past summer the Kansas Trial Lawyers Association testified in support of legislation enacting dram shop liability. In support of our position, we submitted a paper by Dr. James Mosher, which we felt very effectively articulated the need for this legislation. Dr. Mosher's paper remains relevant and reflective of our position and we offer it to the House Judiciary Committee.

KTLA supports HB 2785. However, it represents only a small step towards a complete dram shop liability law that would provide the maximum benefits to Kansans. The goal of this legislation is to reduce injuries and save lives. We strongly urge this Committee to strengthen HB 2785 to insure it will reduce MORE injuries and save MORE lives. This would include furnishing alcohol to those who are visibly or obviously intoxicated, not just selling alcohol to minors.

Thank you for your consideration of KTLA's position on HB 2785.

**Prevention Research:**  
**The Model Dram Shop Act of 1985**

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January 1986

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**Prevention Research:  
The Model Dram Shop Act of 1985**

**Introduction**

Recent research regarding the prevention of alcohol-related problems has stressed the need to examine the social, economic, and physical environments where drinking takes place. Alcohol prices, the minimum age of purchase, and many other aspects of alcohol availability have been shown to affect the drinking behavior of individuals in society, including those who exhibit serious alcohol-related problems.

Reshaping drinking environments is a complicated process, however, and frequently entails the careful consideration and understanding of legal and regulatory mechanisms available to federal, state and local governments. This raises extremely difficult issues for the researcher and policy-maker. The legal system in the United States tends to be insulated from study, and their operations may appear incomprehensible to those not specially trained. As a result, prevention strategies often take existing legal structures as a given and attempt to operate within what can be very severe restraints. The legal system, meanwhile, tends to operate without regard to the profound influence it can have on social policy and social problems.

The research described in this article, regarding the potential use of dram shop law as a tool for preventing alcohol-related problems, is an explicit effort to address these problems. The article is divided into six parts. Section I provides an overview of dram shop liability and its current status in the United States. Sections II and III describe the design and findings of the legal research project which led to the drafting of the Model Alcoholic Beverage Retail Licensee Liability Act of 1985 ("Model Act"). The major provisions and purposes of the Model Act are discussed in Section IV, and its present legislative status is described in Section V. The article concludes with a discussion of future agendas.

### **I. Dram Shop Liability: An Overview**

"Dram shop liability" refers to the civil liability of those who furnish alcoholic beverages to minors or to those who are "visibly" or "obviously" intoxicated. The typical factual scenario involves a patron who is served past the point of obvious or apparent intoxication, attempts to operate a motor vehicle, and soon after causes a crash with other vehicles on the highway. The innocent victim may be able to recover damages from the intoxicated party as well as the licensed establishment which provided the alcohol.

Dram shop liability may be based on either statutory law or common law. Statutory law derives from statutes enacted by state legislatures and may take a number of forms; common law stems from judicial opinions and is based on a court's determination of the application of ordinary negligence

principles to the particular factual situation involved. Thus, a judicial decision can have the same legal effect as written law.

There are 24 states with dram shop statutes which explicitly provide for the civil liability of those who improperly furnish alcoholic beverages. Twenty-nine states provide for common law liability, with 13 of these jurisdictions permitting liability to be based on dram shop statutes as well. Presently, 38 states have some form of dram shop liability, (Colman et al., 1985).

In recent years, state courts have dramatically expanded dram shop liability based on ordinary negligence principles. Until the early 1960's virtually no court recognized the right to sue servers for the actions of their patrons, ruling instead that, absent legislative action to the contrary, the drinker was solely responsible for his or her own actions. Today, the clear trend is to overrule this old common law principle. Servers are now held to the same standard applied to any other commercial business - if an action (in this case the serving of alcohol to a minor or obviously intoxicated person) creates a reasonably foreseeable risk of harm to others, then liability may be imposed (Mosher 1985; Harrington 1984).

The expansion of court-imposed liability has recently caused a move by legislatures to protect licensees. This trend stems from two major factors: the casualty insurance "crisis" and the powerful lobbying forces of the retail alcoholic beverage industry. To be sure, the ability to obtain liquor liability insurance at affordable rates is a problem not just bars, restaurants, and liquor stores encounter, but also one which child care centers, ice skating

rinks, doctors, lawyers, and a host of other businesses face. It is unclear to what extent if any this development has been artificially created by the insurance industry, which is presently seeking more advantageous liability laws. However, the fact remains that some licensed retailers of alcohol are unable to obtain liability insurance, and are pushing their state legislatures for relief. In response to industry lobbying efforts, a small number of state legislatures are either limiting or eliminating dram shop liability (Harrington 1986). Some states, by attacking the problem directly, have attempted to set up insurance pools that make liability insurance available.

Present legislative debates generally ignore the real and potential public health impact that dram shop liability provides (Mosher 1984a, 1985). The debate too often matches the alcohol beverage industry against the state trial lawyers group. The public views both groups as self-interested, with perhaps some justification. Unfortunately, it is the public who loses. Dram shop liability, if properly framed provides an important tool for preventing alcohol-related problems. Neither of the primary lobbying groups, however, see this public health approach as in their self-interest.

## **II. Server Intervention and the Law: Summary of a Legal Research Project**

The Model Act is the major product of an 18-month research project (which ended March 1, 1985) on dram shop liability funded by the National Institute on Alcohol Abuse and Alcoholism. The project consisted of three separate data collection components. In Phase 1, a comprehensive nationwide analysis of all relevant appellate court cases on dram shop



liability and all relevant regulatory materials, including those relating to minimum age drinking laws, were collected.

For the case analysis, project staff developed a unique data analysis software package which broke down each individual case into specific key variables, which later formed the framework for the Model Act. Case searches using the software program could be accomplished in a short period of time. The statutory provisions were found primarily in three bodies of law: criminal law, civil liability law, and alcohol beverage control statutes and regulations. A model form designed by project staff for collecting legal data was used to codify the acquired provisions. Each dram shop statute was evaluated in terms of coverage, clarity, extent of liability, and potential defenses. The comparison of all relevant state laws provided the drafters with a useful research base for the Model Act.

Phase 2 involved a detailed analysis of selected dram shop cases based on interviews with plaintiff and defense attorneys. Project staff concentrated on three case study sites -- California, Massachusetts and Michigan-- with contrasting histories of dram shop liability laws. An interview schedule was developed, which was divided into four major categories: the key attributes of persons or entities being sued; the server practices of the defendant establishment; demographic data regarding the patron, the server, and the person(s) injured; and data regarding the incident in which the injury and damage occurred. (The results are summarized in Colman 1984).

Phase 3 involved a review of server and manager training programs. The program curricula were analyzed and divided into major subject areas

and training components. The results proved to be the basis for Section 10 of the Model Act -- the "Responsible Business Practices Defense," which includes a noninclusive list of responsible management policies, procedures and actions which should be stressed by the fact-finder. (See Mosher, forthcoming, 1986 for summary of the results).

### **III. Research Findings**

There were six major research findings stemming from the data analysis conducted during Phases 1, 2 and 3:

#### **(1) Lack of a Prevention Focus**

Courts have generally justified the imposition of dram shop liability on two grounds: it promotes the prevention of alcohol-related problems, particularly drinking-driving, and it offers a just mechanism for compensating innocent victims.

Courts have not, however, clearly analyzed these rationales. While prevention is often cited in court opinions, little attention has been placed on the actual effect of the decisions on licensee behavior. Since no specific guidelines have been established for licensees to follow in order to avoid liability, they have little incentive to adopt responsible service practices and to train staff. Apparently recognizing this failure to analyze the prevention justification adequately, courts have emphasized the need to compensate victims as the primary basis for imposing liability. This is unfortunate, as civil liability is at best an imperfect system for compensating victims. Only a small

percentage of those injured by intoxicated persons will have a valid dram shop claim. Obtaining necessary evidence for a licensee's involvement is extremely difficult and the litigation process is expensive and time-consuming. If compensation is the primary goal of dram shop liability law, then clearly a much more equitable and efficient system for victims can be devised.

## **(2) Limited Evidentiary Focus:**

The courts' failure to analyze the purpose of dram shop liability stems in large measure from the very limited evidentiary focus found in the litigation. Data collected in both Phases 1 and 2 uncovered very few instances in which evidence of server practices and management policies were even mentioned at either the trial or appellate court level.

This lack of evidence is not surprising. Virtually all dram shop cases in the recent past have rested on whether the plaintiff could show that the drinker was "obviously intoxicated" when served, a vague standard that is difficult for a jury to apply. The lack of clear guidelines for determining negligence was found to be a major impediment to effective use of dram shop liability as a prevention tool. Insurance companies are more likely to settle questionable claims than litigate, particularly since juries are unlikely to be sympathetic to the commercial server. The resultant outlays are translated into the higher premiums for licensees, with little regard for the licensee who takes responsible steps to reduce the risk of negligent service. Plaintiff attorneys in turn are more likely to file claims against any licensee remotely connected to the drinking event, in the hopes of obtaining easy

settlements. In this climate, licensees have little incentive for reforming their serving policies and practices, concluding that they are in jeopardy of facing expensive lawsuits whatever their prevention actions. (For further discussion see Mosher 1984b, 1984c).

### **(3) Lack of Attention to Social Policy Issues:**

Court-imposed liability law is developed on a case by case basis, with decisions stemming from analysis of particular factual situations. For dram shop cases, this has created both confusion of purpose, discussed above, and a failure to analyze underlying social policy issues. Phase 1 research showed that with each court opinion, numerous policy issues were left unresolved, which in turn, promoted additional litigation and uncertainty. Every new case presented attorneys with a new opportunity to argue the impact and meaning of previous decisions. This tended to extend the litigation process, create long delays, and to promote out-of-court settlements that were not necessarily based on the merits of particular cases. The need for clear legislative guidelines for courts to follow was clearly demonstrated based on this analysis.

### **(4) Poorly Drafted Legislation:**

States with dram shop statutes did not fare better than those using court-based liability, however. Existing legislation (analyzed in Phase 1) was found to be poorly drafted, with important issues left unaddressed. Vague language is often present that promotes unnecessary litigation, and a prevention focus was uniformly absent.

### **(5) Server Training Promoted:**

Despite these flaws, Phase 3 research demonstrated that the fear of liability was nonetheless a major impetus for the development of server training programs nationwide. Most of the programs were inadequate from a prevention standpoint, best described as "awareness" efforts with little or no attention to the role of management and the need for skills development among servers (for a review of this aspect of the research see Mosher, forthcoming, 1986). Typically, a lecture format is used during a relatively short time period (four hours or less), with no follow-up. In many instances, those leading the awareness programs have little or no experience in conducting training programs. Despite these shortcomings, dram shop liability was shown to have great potential for shaping responsible business practices, provided the laws were carefully drafted.

**(6) Ordinary Legal Principles Apply:**

Finally, the legal analysis found that dram shop liability did not constitute a special form of legal analysis nor an unduly harsh standard for licenses, at least in principle. Ordinary principles of negligence law clearly applied: the defendant must be shown to have duty to others; a foreseeable risk of harm to the plaintiff must be present; specific actions by the defendant to prevent the injury which could be reasonably expected of an ordinarily prudent person in a like situation must be shown. Refusing service to a minor or obviously intoxicated person in a situation where such persons are likely to be operating a motor vehicle appear to fulfill these basic requirements of negligence law.

Thus, the principles on which dram shop liability is based are identical to those applied to any other commercial enterprise. Providing special protection from liability, which is now the case in many states, provides alcohol retailers a benefit not applicable to other businesses.

### **The Model Act**

These findings provided the foundation for drafting the Model Act, which constituted Phase 4 of the project. An initial draft was prepared in November and December of 1984, and was disseminated to over one hundred interested parties, with an explanatory cover letter requesting comments and criticisms. Over twenty recipients responded, ranging from brief acknowledgements to detailed section-by-section critiques. The majority of respondents were attorneys, three were experts in blood chemistry, and four were government officials. The alcohol beverage industry and the insurance industry each supplied one respondent.

The comments proved extremely useful in identifying ambiguities and omissions. Numerous revisions were made with particular attention given to creating a comprehensive and fair document that would promote responsible business practices among licensees. The final draft of the Model Act was completed on February 28, 1985.

The major goals guided drafting and revising of the Model Act. First, it is designed to refocus the law's primary purpose to prevention. This is stated specifically in Section 2 of the Act. Compensation remains a

secondary purpose, but courts are instructed to apply the provisions of the Act such that its prevention mandate is fulfilled.

The Act's second goal, a means to fulfill the first, is to direct the factfinder's primary attention to the defendant's business practices. The intoxication of the patron necessarily remains a central issue to be resolved, but the jury is provided a means to evaluate the manner in which the defendant's establishment is operated and the extent to which it meets current industry and community standards. This evidence can be central to the jury's determination whether the defendant should have recognized the patron's intoxication (or age, in the case of serving minors).

Section 10 of the Act, the Responsible Business Practices Defense, was drafted to fulfill this second goal. Its noninclusive list of business practices to be considered by the jury include: the adequacy and training of the licensee's staff; the existence of written policies regarding the sale of alcoholic beverages; the existence of standardized hiring and reprimand policies; the availability of alternative safe transportation; the availability of food and beverages; and the extent of cooperation between the licensee and the surrounding community in the prevention effort. Also included are guidelines for evaluating the effectiveness of a licensee's age identification checking system. Section 10 provides positive benefits to a licensee who can establish the existence of responsible business practices, but will adversely impact the licensee's defense if the plaintiff can show that s/he failed to meet these minimum standards. Licensees thus have a strong incentive to adopt



the reforms now being developed in a variety of server intervention programs.

A third goal of the Model Act is to provide more certainty and clarity to the law. All major aspects of dram shop legislation were identified during the research phases of the project, and specific legal provisions were drafted to address major issues that led to uncertainty and repeated litigation. The research focus of the project allowed project staff to pay careful attention to detail, and the extensive analysis provided by outside reviewers proved to be invaluable. This process sharply contrasts with the drafting of the most current dram shop legislation, which is frequently accomplished in haste, in response to urgent demands of powerful lobbies, and without attention to key issues. The enactment of the Model Act should thus help to avoid much of the case by case determination of social policy issues that now characterizes current practice.

Finally, the Model Act is designed as a neutral document that serves as a resource tool for decision-making rather than as an advocacy tool. Several aspects of dram shop liability law raise considerable debate that are best resolved in a political process. In such cases, the Act provides commentary on possible options, and provides a format for legislative resolution. The Act recognizes that states may wish to take differing approaches based on a legislative analysis of that jurisdiction's needs, problems and resources.

Experience since the Act's completion has demonstrated its utility in this regard. It has been used as a resource by all partisan groups involved in the dram shop debate, although neither the trial lawyers nor the retail beverage industry has endorsed it. Policy-makers have been particularly interested in studying its provisions and commentaries, and numerous task forces and public policy groups have recommended its enactment.

#### **V. Current Status of the Model Act**

Since the final draft of the Model Act was completed, it has been widely disseminated and has received nationwide attention. More importantly, the Model Act has been introduced, in whole or in part, in several state legislatures, and is being actively considered in many other states as well. Table 1 provides an overview of the Act's current status in the various states now considering its enactment.

#### **VI. Conclusion**

The dram shop liability research project demonstrated the need for comprehensive and careful research on the laws and regulations which affect the prevention of alcohol-related problems. The project was able to increase communication between those in the legal process, those involved in prevention, and the retail alcoholic beverage industry. Its analysis provided a basis for establishing carefully drafted model legislation that is flexible and based on sound legal principles. Dram shop liability is a case study of the

current failure of the legal community to respond to and understand developments in social policy and research.

Much remains to be accomplished if the Model Act is to be successful in reducing alcohol-related problems, however. Most importantly, specific guidelines need to be established and agreed upon by all interested parties regarding the nature and content of responsible business practices. A process must also be established for updating standards on an ongoing basis. Active support of local communities and state agencies will be critical if this goal is to be realized. To be successful, server intervention programs must respond to the problems and needs of the surrounding community. This can only occur if local constituencies become active in the process of development and implementation. Local and state resources may be critical; community colleges or adult schools, for example, may provide an ideal setting for establishing training programs. Local ordinances and statewide regulations and laws will also be necessary to codify agreed-upon standards of conduct. Mandatory server training provisions, already in existence in Oregon, with complementary legislation to fund program development and evaluation, may also be needed.

While the process is complex and filled with obstacles, the goal is clearly attainable. Server intervention, and supporting dram shop legislation, is a practical prevention strategy that can reduce drinking-driving and other alcohol-related problems. It also provides a means to increase public awareness regarding the responsibility of servers, both private and commercial, to serve alcohol responsibly, and the need for a focused prevention effort.

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Chairman Michael O'Neal,  
Members of the Judiciary Committee,

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

We support HB 2785. We feel that if those who serve  
alcoholic beverages were held more responsible, they would  
be less likely to serve patrons an excessive amount.



KANSAS BAR  
ASSOCIATION

**Legislative Information  
for the Kansas Legislature**

**TO:** *House Judiciary Committee*  
**FROM:** *Ron Smith, KBA General Counsel*  
**SUBJ:** *HB 2785, Dram Shop*

**February 15, 1994**

**SUMMARY**

KBA would support a dram shop bill if based on comparative negligence principles.

**BACKGROUND**

The first paragraph of the bill indicates this new civil cause of action is based on comparative negligence principles. We support those principles.

However, the unknown is whether the phrase "any aspect of comparative negligence" includes the negative as well as the positive. Case law has determined that comparative negligence principles do not authorize comparison of intentional and unintentional conduct of codefendants. *Bruenger & Co. v. Dodge City Truck Stop Inc.* 234 Kan. 682 (1984).

When not given guidance from the legislature, our court has come to the conclusion that certain intentional conduct interventions ought not be compared with unintentional conduct of defendants. Strict liability is the result -- e.g. joint and several liability. See *Mills v. Smith*,

9 Kan.App.2d 80, 82 (1983)(doctrine of strict liability in tort to the possessor of wild animal for harm to another adopted).

The phrase "any aspect of comparative negligence pursuant to KSA 60-258a" has been held to mean comparison of unintentional negligence only, not including the possible intentional fault of a minor in driving drunk, versus unintentional (or possibly intentional) conduct of the tavern who served the minor.

Is the serving of liquor to minors an unintentional act of negligence? The general licensing law for taverns and restaurants does not allow the permittee the "I was fooled" defense.

There are other issues in this bill. For example,

1. do we allow evidence of previous illegal conduct of the tavern to be introduced at trial if that evidence was not the subject of an

*This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.*



ABC violation or complaint?

2. Is the tavern precluded from including the minor as a codefendant for comparative negligence purposes?

3. If the tavern may include the minor in its cross-claim, how does the court handle the situation when the jury is supposed to compare intentional with unintentional conduct?

These questions will be answered one way or the other. Either you will answer them with your legislation, or the court will act through litigation. If you prefer the latter approach, you should give the court some guidance in a "findings" section as to just how far you want the court to legislate issues regarding dram shop.

Thank you.

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

To: House Judiciary Committee

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

RE: House Bill 2785

The Kansas Wine and Spirits Wholesalers Association previously testified to this committee on the overall subject of dram shop legislation last October. A copy of that testimony is provided herewith to refresh your recollection.

With reference to the pending bill we believe that liability, if it is to be imposed, should not be as broad as it would be by adopting by reference the provisions of the criminal code. In response to the Chairman's question of last fall, one which we have seriously considered, regarding under what circumstances we might not oppose such legislation, please be advised that our organization would not oppose dram shop liability under comparative fault, for licensees under the liquor control act, club and drinking establishment act or cereal malt beverage act, who make an intentional, unlawful sale to a minor.

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.

Most importantly we need to enact mandatory server/seller training. A draft of such an enactment has been provided to the Chairman and has been reviewed by the Alcoholic Beverage Control for comment. I urge you to implement such a program in Kansas.

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

**To: House Judiciary Committee**  
**From: R.E. "Tuck" Duncan**  
**RE: Dram Shop legislation**

**October 28, 1993**

In common parlance, a "dram" is a drink of some substance containing alcohol, something which can produce intoxication. A dram-shop is a place where liquors are sold. A Dram Shop Act is a civil damage law directed at the operators of dram-shops which permits a law suit by a person injured by an intoxicated person against one who contributed to the intoxication.

The Kansas Supreme Court wrote in an opinion issued in July 1992 that there currently are no such laws on the books in Kansas that can be interpreted as a Dram Shop Act and "If such liability is to be imposed, under some or all circumstances, then we conclude...that this is a decision to be made by the legislature."

The Court recognized that "The English common law [from which American laws originate] imposed no tort liability on the furnisher of liquor on the theory that the drinking of the liquor, not the furnishing of it, is the proximate cause of the injury."

One reason that there should not be a Dram Shop Act in Kansas is found in the concept: "personal responsibility." To enact such a law means that people will no longer have to take full responsibility for their own actions.

KWSWA has long promoted consumption in moderation. KWSWA supports efforts to eliminate impaired driving, particularly through the distribution of educational materials to clubs and drinking establishments in Kansas. We

provided some of those materials to this committee during the last legislative session. KWSWA participates with the national efforts led by the Century Council. These efforts are designed to make people aware of their actions and to promote personal responsibility.

How broad should such a law apply? Is a homeowner to be responsible for the acts of a guest who leaves a dinner party? Is a charity to be responsible if they have a gathering that serves wine? Are you or your political committee responsible for the acts of an acquaintance when they leave your fundraiser at which beer is provided? Who really benefits from such a law?

Supporters of dram shop laws make the argument that there is a strong public policy to prevent harm due to excessive consumption and to deter injuries to others while one is inebriated. It is to that end that many changes were made last year in the laws relating to driving under the influence. Thus, the question before the Legislature during this debate will be, is this the best way or is there another to accomplish the same goal?

The KWSWA would suggest that there is a better approach. We have previously proposed to the House Committee on Federal and State Affairs several years ago that the State implement a mandatory server training program. Here's how it works:

The Alcoholic Beverage Control would approve programs  
(continued)

that can be offered in the state, much akin to the manner in which continuing legal education programs are approved.

The sponsor provides these programs to individuals who want to work as bartenders, waitresses, waiters, store clerks, tavern operators, and in other server and mixing and dispensing positions. The programs include a component about the beverage alcohol laws, and rules and regulations. Persons are taught to check for identification, and how to do so appropriately; how to know what I.D. is acceptable; to make sure its a bona fide I.D.; and, how to make sure the information is correct. Persons receiving the training are taught to pay attention to those to whom they are serving or selling; to observe behavior, to use common sense, and to identify visible intoxication. Dealing with upset customers is an element of the training. In short, the training is designed to improve the skills of individuals involved in the beverage alcohol industry ... on a mandatory basis.

Thus, if the public policy is to curb excessive consumption and to stop injuries as a result, increased education is a better carrot than the stick of a Dram Shop Act.

This program will also benefit the operation of the Alcoholic Beverage Control. Anyone working in a licensed establishment will have to have proof having been trained (usually a picture I.D.).

This will eliminate the need for each licensee to register an employee. Rather than the A.B.C. doing record checks, such checks can be done through the sponsor, and in this way the state will receive payment for a service it now is doing without charge. The state increases its revenues and the A.B.C. reduces certain clerical functions so it can put its limited resources to other better uses, such as increased enforcement in preventing underage purchases.

Do we want to create a whole new cause of action in this state and reverse our efforts to encourage greater personal responsibility for one's own acts? We think not. The new legal battles would be immense. Is the law intended to provide for recovery from "any person" giving or selling intoxicating beverages? Is the law intended to create a cause of action against one who gives another the beverage as a mere act of hospitality or social courtesy, without any connection with the business of selling liquor or cereal malt beverage? Which classes of licensees are "in business" e.g. is a temporary permit holder (usually a charity) in the business --the permit allows sales, taxes are collected. Must not intoxication be the proximate cause of the injury rather than per se liability because one was intoxicated? How do we discern that it was the beverage alcohol or CMB sold by a particular defendant that caused the intoxication? If a person had drinks at more than one establishment or bought product at more than one liquor store are all possible defendants?

We respectfully suggest that personal responsibility and the alternative of mandatory server training are better approaches to meeting the concerns expressed.

Thank you.

## ABC SERVER



R.E. Duncan, II.  
214 SW 7th St.  
Topeka, Kansas

EXPIRES: 1-1-96

SIGNATURE

*R. E. Duncan II*

# **Kansas Wine & Spirits Wholesalers Association Report on Public Education**

**KWSWA, 214 S.W. 7th Street, Topeka, Kansas Telephone: (913) 233-9370 Fax: (913) 233-5657**

## **HERE'S LOOKING AT YOU KID NO ID - NO SALE - NO WAY**

The off-premise public information program conducted by the KWSWA, called the "front lines" campaign, is designed primarily to dissuade minors from attempting to make purchases of beverage alcohol and beer at Kansas' retail liquor stores. Initially the KWSWA distributed to the approximately 750 retail liquor stores a series of buttons, posters, brochures, case cards, and cash register point of sale materials advising minors that they were not welcome.

This initial distribution by Kansas wine and spirits distributors directly to each of the retail licensees was followed recently by the distribution of additional buttons, posters and other point of sale materials to the stores and at the industry's trade show. Literally, thousands of these items have been provided ... and are in use. Next Spring another direct distribution will be made by the KWSWA to the Kansas off premise licensees of new materials provided by the Century Council.

## **WHAT IS THE CENTURY COUNCIL?**

**THE  
CENTURY  
COUNCIL**

The Century Council is a nonprofit organization dedicated to reducing alcohol abuse and misuse across the United States. It is funded by vintners, distillers, brewers and wholesalers who are committed to reducing alcohol abuse. The Council investigates, funds and implements innovative approaches to address this crucial problem and builds alliances with other concerned organizations.

## **STAY ON THE RIGHT SIDE & BEFORE YOU CELEBRATE, DESIGNATE**

The on-premise public information program conducted by the KWSWA directed at Kansas clubs and drinking establishments asks patrons to stop and think if they've over consumed, take a cab, call a friend and "stay on the right side." Part of this program involves the distribution of server training brochures for distribution to club and drinking establishment employees.

This campaign was kicked-off in July, 1992 with a press conference at the Capitol. Present and supporting this program were former KU basketball star Danny Manning and KU head football coach Glen Mason. John Gavin, former U.S. Ambassador to Mexico, and Century Council Chairman, presided. Kansan Ed Asner, television star and former Screen Actors Guild president issued a statement in praise of the effort.

The KWSWA directly mailed to the approximately 1600 clubs and drinking establishments copies of the posters and brochures, provided by the Century Council. Many of the on-premise licensees have requested additional materials. A mailing was also made to the over 300 retail liquor stores which sell to on-premise establishments advising them of this effort. To further promote this consumer program, distribution of the **BEFORE YOU CELEBRATE, DESIGNATE** items is being made before the '93 holidays.

**The Kansas Wine & Spirits  
Wholesalers Association is  
represented at the Capitol  
by R.E. "Tuck" Duncan and  
John Bottenberg.**

**K . A . N . S . A . S  
WINE & SPIRITS  
WHOLESALE ASSOCIATION INC.**

**NO I.D., NO SALE. NO WAY.**

**P.O.S items for retail liquor dealers:**

**I'd card my  
own mother.**

**NO I.D., NO SALE. NO WAY.**

**SPECIAL!!!**

**\$0<sup>00</sup>\***

\*IF YOU'RE UNDER 21, ALCOHOL WON'T COST  
YOU A CENT BECAUSE WE WON'T SELL IT TO YOU.

***"Before You Celebrate, Designate."***

***Materials for on-premise establishments:***

**BEFORE  
YOU CELEBRATE,  
DESIGNATE.**



**Stay on  
the right side.**

If you've had a couple of drinks, we'd like you to stop and think.

Stay with us for a while. Maybe have some food. Most of all, waiting a while before you drive will really help.

If you have to leave right away, let us call a cab or a friend to pick you up.

You're the reason we're in business. We'd hate to lose you.

**This establishment supports  
The Century Council**

# *Server/seller training act*

An act regarding server permits and alcohol server education programs.

## **New Section 1: Server permit required; waiver.**

(1) Except as otherwise provided on or after July 1, 1995:

(a) Any person employed by a licensee holding a license issued under the liquor control act, the club and drinking establishment act or the cereal malt beverage act who participates in any manner in the sale at retail by the package of alcoholic liquor or cereal malt beverage; or in the mixing, selling or serving of alcoholic liquor or cereal malt beverage for consumption on the premises where served or sold shall have a valid server permit authorized for issuance by the director of the alcoholic beverage control.

(b) No licensee shall permit any person to sell at retail by the package of alcoholic liquor or cereal malt beverage; or to mix, sell or serve any alcoholic liquor or cereal malt beverage for consumption on licensed premises unless such person has a valid server permit.

(c) A permittee shall make the server permit available at any time while on duty for immediate inspection by any agent employed by the alcoholic beverage control or by any other law enforcement officer.

## **New Section 2: Characteristics of permit; verification of identity of permittee.**

(1) A server permit shall be a purely personal privilege, valid only upon licensed premises, for a period of time stated thereon, and may be suspended or revoked for any reason set forth in section 5.

(2) No server permit shall be used by any person other than the person to whom it is issued. A licensee shall verify the identification of the permittee and determine that the permittee has in possession a valid, unexpired, server permit before allowing the permittee to mix, sell or serve alcoholic liquor or cereal malt beverage for

consumption on the licensed premises.

## **New Section 3: Server permit, expiration.**

Unless sooner suspended or revoked, a server permit issued after July 1, 1995, shall expire on the anniversary date of the permittee's birthday three years after the date of issuance of the permit; or if a temporary permit authorized by rules and regulations promulgated hereunder on the date of expiration of said temporary permit.

## **New Section 4: Application; requirements; fee.**

(1) An applicant for a server permit must be 18 years of age or over. The applicant must not have had a permit refused or revoked or be under suspension. A person may sell at retail by the package of alcoholic liquor or cereal malt beverage or may mix, sell or serve alcoholic liquor or cereal malt beverage for consumption on the licensed premises if the person completes the education required by section 7 and is issued a temporary or permanent permit by an approved instructor. The instructor shall after issuance of the permit immediately transmit the notice of issuance, on forms prescribed for that purpose, and a copy of the application, to the alcoholic beverage control, with the fee required by section 7.

(2) Application for a server permit shall be made on a form approved by the alcoholic beverage control. The applicant shall truly answer all questions, provide any further information required by rules and regulations promulgated by the director of the alcoholic beverage control, and pay such fees as may be required.

(3) The applicant must authorize a criminal records check to be conducted by the Kansas Bureau of Investigation, tender the appropriate fee, and on forms prescribed by the alcoholic beverage control for this purpose, authorize the release of the information to the instructor, subject to applicable laws, rules and regulations regarding disclosure of said records.



**New Section 5: Grounds for revoking or suspending permit or imposing civil penalty; responsibility of licensee.**

(A) The alcoholic beverage control may revoke or suspend a server permit, or impose a civil penalty in lieu of or in addition to suspension as provided herein, and may bring a proceeding, in accordance with the Kansas Administrative Procedures Act, to suspend to grant a server permit if it has reasonable grounds to believe any of the following to be true:

- (1) That the permittee has made false statements to the instructor in the permit application.
- (2) That the permittee is not eligible for employment for a licensee pursuant to the applicable provisions of the liquor control act, the club and drinking establishment act or the cereal malt beverages act.
- (3) That the permittee has not successfully completed the server education program.
- (4) That the permittee has performed or permitted any act which would constitute a violation of any provision of the liquor control act, the club and drinking establishment act or the cereal malt beverages act or any rule of the alcoholic beverage control.

(B) When there has been by the permittee a violation of the liquor control act, the club and drinking establishment act or the cereal malt beverages act or any rule of the alcoholic beverage control, the alcoholic beverage control may revoke or suspend either the server permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permittee and the licensee.

(D) Civil fines not to exceed \$1000.00 under this section may be imposed in lieu of suspension or revocation.

**New Section 6. Duplicate or new permit; fee.**

- (1) If a server permit issued hereunder is lost, mutilated or destroyed, the permittee shall apply immediately for a duplicate permit on a form to be supplied by the alcoholic beverage control and submit a fee of \$25.00.

(2) If a permittee changes name by marriage or otherwise, the permittee shall apply immediately for a new server permit by forwarding the permit and evidence of the change of name to the alcoholic beverage control with an application and a fee of \$25.00.

(3) The director of the alcoholic beverage control may issue the duplicate permit or cause a duplicate to be issued by an instructor, in accordance with rules and regulations promulgated to implement this act.

**New Section 7: Alcohol server education program required; content; fees; how program provided.**

(1) The alcoholic beverage control shall require licensees and permittees under the liquor control act, the club and drinking establishment act and the cereal malt beverages act, to complete an approved alcohol server education program and examination in order to qualify or requalify for a license or permit unless a probationary extension is granted for hardship reasons. After the completion of an initial alcohol server education program and examination, licensees and permittees shall complete an alcohol server education program and examination every three (3) years unless a probationary extension is granted for hardship reasons. The alcoholic beverage control by rule may exempt licensees who do not participate in the management of the business.

(2) The standards and curriculum of alcohol server education programs shall include but not be limited to the following:

(a) Alcohol as a drug and its effects on the body and behavior, especially driving ability. Instruction shall include information regarding: (i) physiological and behavioral effects of alcohol use, (ii) absorption rate factors, (iii) laws affecting servers and sellers of alcohol, (iv) potential alcohol-related problems in professional or social settings and (v) strategies for dealing with problem situations.

(b) Effects of alcohol on combination with commonly used, legal prescription or nonprescription, drugs and illegal drugs.

(c) Recognizing the problem drinker and community treatment programs and agencies.

(d) State alcohol beverage laws such as prohibition of sale to minors and sale to intoxicated persons, sale for on-premises or off-premises consumption, hours of operation and penalties for violation of the laws.

(e) Drunk driving laws and liquor or cereal malt beverage liability statutes.

(f) Intervention with the problem customer including ways to cut off server, ways to deal with the belligerent customer and alternative means of transportation to get the customer safely home, including \* focus on how to assess and evaluate situations and behavior and \* discussion of both effective and ineffective intervention techniques.

(g) Advertising and marketing for safe and responsible drinking patterns and standard operating procedures for dealing with customers.

(3) The alcoholic beverage control shall impose a fee not to exceed \$10.00 a year for each permittee subject to the alcohol server education requirement, to be used for administrative costs in certification of instructors.

(4) The alcoholic beverage control shall provide the program through independent contractors, private persons or private or public schools certified by the alcoholic beverage control.

(5) The alcoholic beverage control shall adopt rules and regulations for the administration of the alcohol server education program, for the issuance of server permits and for the certification of instructors. The rules and regulations shall establish the length of training

programs, the qualifications for "instructor" certification, maintenance of "instructor" certification, permittee and instructor certification examinations, program administration quality control, and for such other matters as required to implement the provisions of this act.

New Section 8: **Effective date:** This Act shall be effective upon publication in the statute book.



# KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION

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My name is George Puckett and I represent the Kansas Restaurant and Hospitality Association.

I appear today in opposition to HB 2785 or any other form of a dram shop law. It remains the position of KRHA that current Kansas laws are quite adequate for enforcement of the violation of serving of liquor or cereal malt beverage to minors, or any other customer for that matter, and they should be strictly enforced. If necessary, existing laws even provide for license termination if a business is deemed irresponsible in its dispensing of alcoholic beverages. The right to sue and collect appropriate damages already exists if any server of alcoholic beverages demonstrates gross negligence leading to property destruction or harm to an individual.

The public will nationwide is to reduce unnecessary litigation from the System. The Kansas legislature recently demonstrated this fact with workers compensation reform and KRHA appreciates the fine efforts that are already being seen as a result of that insight and hard work. HB 2785 would increase litigation and therefore goes against the public will. It would open the door to unlimited multi-million dollar lawsuits and would be a virtual inexhaustible gold mine for those involved in receiving legal fees, ... at the expense of business.

Another extremely serious consequence of dram shop laws is what it does to a restaurant operator's liquor liability insurance premium. Dram shop laws sends these premiums through the ceiling and would force many restaurants with on-premise liquor licenses operating on a tight profit margin to close because they could not afford to pay these astronomical premiums.

I would ask the Committee to oppose HB 2785. The current legal system in Kansas works and the true offenders are convicted, if guilty, without endangering the livelihood of many small businesses.

House Judiciary  
Attachment 8

2-15-94

TESTIMONY PRESENTED TO THE  
HOUSE JUDICIARY COMMITTEE  
re: HB 2785

February 15, 1994

by: Rebecca Rice  
Legislative Counsel for Kansas Retail Liquor Dealers Association

Thank you Mr. Chairman and members of the committee, my name is Rebecca Rice and I appear before you today on behalf of the Kansas Retail Liquor Dealers Association. Thank you for allowing me to appear as an opponent of House Bill 2785.

Chairman O'Neal and members of the committee, as you would expect, the Kansas Retail Liquor Dealers are opposed to legislation which increases their liability for the acts of another, over whom they have no control.

This legislation is less onerous than traditional dram shop laws due to the fact it is limited to sales to underage individuals. However, imposing liability due to the fact the liquor was purchased illegally, remains inherently unfair. The scenario contemplated by this legislation always involves two wrongs being done. The first wrong is the minor's purchase of the liquor in the first place. This legislation shifts the responsibility of underage purchasers of alcoholic beverages away from the individual to the retail liquor dealer. The second wrong is whatever damage the legislation contemplates the individual will cause. We do not understand why the retailer must be held responsible for those two wrongs in which the retailer did not intentionally participate.

We accept responsibility to take reasonable action to prevent underage purchasing. Our members go to great lengths to prevent such crimes. As Mr. Duncan indicated this summer, the wholesalers and retailers work together to educate both the public and the servers regarding underage purchases. However, we will never be able to eradicate such crime. This legislation fails to acknowledge the difficulty in outsmarting those under the age of 21 and shifts the focus of the crime committed from the underage purchaser to the innocent retailer.

The Kansas Retail Liquor Dealers Association is noticing an increasing trend on the part of the Kansas Legislature to hold them responsible for the acts of individuals who misuse the legal product which association members retail. This seems inconsistent with the Legislature's rhetoric regarding attempts to increase individual responsibility for illegal acts. We do not see a corresponding effort on the part of legislators to hold other manufacturers and retailers responsible for the legal products they sell which are frequently misused by the purchaser, i.e. guns, automobiles, etc. In fact, rarely is a negligence theory advanced in this type of situation where the retailer is not a licensed professional.

As Mr. Duncan stated this summer, our industry is supportive of mandatory server training. Our association presently provides regular training sessions on a voluntary basis. We believe mandatory training is a far better solution than encouraging litigation.

We see this bill as a mechanism to hold someone/anyone financially responsible for a tragedy caused by a separate individual or individuals who have no financial means. The idea that this legislation will make retailers more careful in avoiding sales to minors is illogical. It will cause retailers to buy additional insurance. Retailers are already under the threat of losing their business due to sanctions under the criminal statute and corresponding licensing limitations for underage sales. Such loss is a far greater threat than mere financial hardship brought about by increasing insurance costs.

The Legislature has acknowledged previously that retailers are limited as to the options available for identifying underage purchasers. The Legislature gave retailers the defense of not being guilty of selling to an underaged individual when such minor presents a photo I.D. meeting certain criteria which any reasonable person would consider valid. It is essential that these types of protection be inserted in this legislation as a complete defense to any liability. Those under the age of 21 are quite brilliant at finding ways to consume this legal product which we have determined is harmful to them. The Kansas retail liquor dealer should not be held responsible for the many ingenious ways these individuals obtain alcohol.

Mr. Chairman, we respectfully request this legislation be defeated in its entirety as we believe it only lessens individual responsibility, becomes a bonanza for insurance companies and litigation attorneys, and sends the wrong message to underage purchasers and their parents. We would, as an alternative, urge this committee to consider mandatory server training.

Thank you.



Testimony on  
House Bill 2785

before

The Committee on Judiciary

by

Neal Whitaker

February 15, 1994

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear this afternoon in **opposition** to **House Bill 2785**. This bill is just one more message to minors that they do not have to be responsible for their own actions. Restaurant, bar and club owners are in a constant battle throughout this state daily to keep minors who have high quality fake I.D.'s from entering their establishments. The Senate Federal and State Affairs Committee heard testimony last week from bar owners in Lawrence about the extremes to which they have to go to keep minors out of their establishments and how unsuccessful those efforts are. Besides keeping a person at the door to check I.D.'s, this bar video tapes every person and their I.D. as they enter the establishment. Even with those efforts they have faced at least five charges of sale to a minor in recent months.

The whole concept of dramshop is wrong. It releases the person from responsibility of his or her own acts and places that responsibility on another. Granted, K.S.A. 21-3610 and 21-3610(a) provide a defense to licensed retailers, clubs, drinking establishments and caterers or temporary permit holders if they have reasonable identification establishing that their age is more than 21 years. But, what about the social host? There is no defense. There's no defense for persons organizing alumni association

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House Judiciary  
Attachment 10  
2-15-94

events, organizers of political fundraisers or any other event that does not fall into the narrow categories of a licensed retailer or required to hold a temporary permit.

**House Bill 2785** says to the youth of this state that you can perpetrate a fraud upon another person and then have that person pay the consequences of your actions.

Until the state can issue a tamper-proof I.D., legislation like **House Bill 2785** is unfair to responsible citizens. If **House Bill 2785** is passed it must have a provision that the licensee can recover damages from the minor. Finally, you will note in 21-3610(a) paragraph (c) that the crime does not apply to the furnishing of cereal malt beverage by a parent to their own child. A continuation of the dual standard, only in this case if the child subsequently injures a person not only is the child exempt but the furnisher is exempt as well. Mr. Chairman and Members of the Committee, the Kansas Beer Wholesalers Association opposes this legislation as the wrong concept at the wrong time.

In the years since the federal government forced the passage of the 21 year old drinking age this industry has invested millions of dollars to educate minors that they must wait until they are of legal age to purchase alcoholic beverages. In addition, there are publications available from almost every brewery directed at parents to assist them in assuming some responsibility for teaching their children to be responsible citizens.

NW/km

## MEMORANDUM

TO: The Honorable Mike O'Neil, Chairman  
House Judiciary Committee

FROM: William W. Sneed  
Legislative Counsel  
The State Farm Insurance Companies

DATE: February 15, 1994

RE: H.B. 2785

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Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am legislative counsel for The State Farm Insurance Companies. Please accept this memorandum as my client's testimony in regard to H.B. 2785.

Please be advised that my client does not take a position in regard to "dram shop" legislation. My client supports efforts to reduce accidents in which alcohol plays a part; however, we believe it important to inform the legislature of all potential effects of legislation like this so that the legislature will have all the pertinent information before it when evaluating any dram shop proposal and evaluating whether such a proposal should be moved forward.

Specifically, my client is concerned as to whether H.B. 2785, as written, will expand potential coverage under homeowners. In reviewing K.S.A. 21-3610 and K.S.A. 21-3610A, it would appear that such criminal violations can occur beyond transactions involving commercial vendors. Thus, if the transaction occurs in a private home, the issue then becomes whether an individual's homeowners policy would have to provide coverage for any resulting liability.



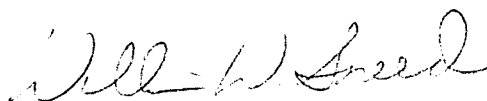
Certainly, if such coverage is afforded the coverage will be computed within the rate bases. However, when proposals such as this are presented they are evaluated from the perspective of punishing the wrongdoer. Certainly this is a laudable goal. However, the goal may be somewhat lost if the punishment of the individual has been avoided by virtue of purchasing insurance.

Additionally, we have some concern as to how an "aggrieved party" is the only individual who can assert this violation within the aspects of comparative negligence. Inasmuch as the individual who caused the injury to the aggrieved party may not be the named insured of a homeowners policy, it would appear that the defense of the case may be somewhat hampered if only the aggrieved party may submit such evidence to the court.

As stated earlier, we applaud the legislature's recent work on accidents involving the use of alcohol. However, we respectfully request that the legislature move cautiously in this field and evaluate all the ramifications before moving forward with this legislation.

Again, we appreciate the opportunity to present this information, and if you have any questions, we would be happy to attempt to respond to them.

Respectfully submitted,



William W. Sneed