Kansas Association of Beverage Retailers

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Working together to keep Kansas jobs

Testimony to oppose HB 2282 Big Box Liquor Bill

Chairman Les Mason and Members of the House Commerce, Labor and Economic Development Committee –

The Kansas Association respectfully opposes passage of HB 2282.

"It is a privilege, not a right, to have a Kansas Liquor License. The responsibilities of selling this highly regulated product were made clear to me when I invested in this business. It is according to this agreement – this contract with the State of Kansas – that I have invested in the liquor store business and maintained those obligations in good faith.

Shouldn't Kansas honor my investment by maintaining a stable and reliable business environment – instead of changing the rules mid-stream?"

Dennison Woods, Ken-Mar Liquor, Wichita

Please oppose Big Box Liquor legislation.
The 761 locally owned Kansas liquor stores employ thousands of Kansans and are important strengths of their communities and pillars of the Kansas economy. Locally owned liquor stores are accountable, boost local economies, employ and use local vendors, strengthen communities, and ensure that alcohol access to minors is limited.

Those who want to change Kansas liquor laws are primarily out-of-state entities focused on profit, not the Kansas economy, the safety of its citizens or its communities. The 2011 economic study predicting additional jobs and revenue for the State of Kansas was seriously flawed.

The Kansas Liquor Retail System is a Good Balance

- The Kansas regulatory system was designed for regulation – not to "protect retailers". It effectively limits corruption, provides inexpensive oversight, while providing a level but competitive private marketplace.
- Anyone who meets the licensing requirements can open a liquor store, and many independent convenience stores and grocery stores have done so.
- Regulation of Kansas retailers is stronger than that of corporate retailers – including forfeiture of licenses, closing the entire store for violations, and hiring only 21 year olds to work in liquor stores. Individual accountability is effective.
- There is no "monopoly" for liquor stores. 765 completely independent businesses cannot be a monopoly. But Uncork proposals will create oligopolies with no limits on the number of licenses

that can be held by the Big Box chains. This will create an immediate imbalance in product availability and wholesale services.

A Loss of Kansas Businesses and Kansas Jobs

- This initiative favors out-of-state grocers and big-box stores, and will put hundreds of Kansan-owned small businesses out of business and thousands of Kansans out of work. KABR has shared several economic studies with legislators predicting the loss of a minimum of 241 stores and up to more than 375 stores based on strong beer sales expansion alone.
- The impact of beer sales on numbers of liquor store per capita are easily seen in neighboring Oklahoma. The change in liquor laws there have not yet been implemented and will not happen until 2018. However, 90% of the beer (CMB and strong beer) in the state is ALREADY sold by grocery and convenience stores due to their distributor laws. Because exclusive franchise agreements are not allowed under the law prior to 2018, big breweries like Anheuser-Busch and Coors-Miller would not sell their beer in liquor stores. As a result, Oklahoma already has significantly fewer liquor stores per capita = 660 for 3.79 million people. On the other hand, Kansas has 761 liquor stores for 2.87 million people. Under the new beer and wine law, if implemented, liquor retailers expect to lose 1/3 of their stores.
- While liquor stores currently exist in a very competitive but regulated environment, the legislation creates an immediate disadvantage for existing stores who must manage their businesses under current zoning regulations, lease agreements and space restrictions. Grocery and Big Box Store leases commonly include exclusivity provisions and there is no protection for existing stores to keep their leases.
- Losing the neighborhood liquor store is more than just the loss of a few jobs. Locally owned businesses spend three times more of their income within the immediate community than out-of-state businesses. Local banks, insurance agencies, POS vendors, employment agencies, and property owners are supported by locally owned businesses.
- Liquor store jobs are adult jobs – for people 21 or older. Many employees receive benefits and earn full time wages. Many family owned stores provide a living to not only the owner, but several family members and managers as well.

2008 DISCUS Analysis of Strong Beer Impact

- *"Currently, the 726 package stores allowed to sell full strength beer sell an estimated 17,600 cases per year. Accounting for both the new beer volumes and the new number of full strength beer licenses, the average number of cases sold per outlet will decline to around 4,480 cases per year.'*
- *For the new full strength beer licensees, most of the new volume will be incremental (except that volume which is replacing 3.2 beer sales). Thus, grocery and convenience stores will be able to sell comparatively low volumes of .. beer profitably. Obviously, this does not preclude large supermarkets from selling tremendous volumes. What it does mean, however, is that the 3,790 convenience and grocery stores in the state will be able to take sales away from traditional package stores."*
- *"Accounting for both the lost spirits sales and lost beer sales, total package store revenues would decline from $461.3 million to $254.6 million – a 45% reduction."*
- *"Clearly, not all businesses could withstand a 46% decline in revenues. As a result, we*

would expect a decline in the number of package stores."
"The $254.6 million in total package sales would support a total of 509 package stores. Thus, 217 package stores are projected to go out of business. Naturally, as the number of package stores declines, the availability of spirits will decline as well."

- *(The analysis relies on Kansas sales statistics, market analysis by Gallup Organization, Sept. 29, 2006; and tax receipts by the Kansas Department of Revenue.)*

Colorado Economic Impact Assessment by Summit Economics, LLC, 2011

- *"The Colorado Liquor Stores will lose 50 percent of full-strength beer sales to supermarkets and convenience stores in the first year alone. They will lose 70 percent of beer sales within 3 to 5 years. It is estimated that 40 percent or 700 of the stores will be forced to close within the first 3 years. This will result in the loss of 4,830 wage and self- employment jobs. Overall the Colorado Liquor Stores will lose $700 million in annual revenues, resulting in a permanent $90 million loss in annual wages and proprietor income earnings. These losses will continue through the fifth year. After the fifth year the new market structure will stabilize with 900 fewer stores. There will be 5,500 fewer jobs in the industry, resulting in a loss of $120 million annually in employee and proprietor earnings."*

Contents of the Bill

- Creates procedure to license retail sales of strong beer and wine at businesses specified in the bill as grocery and convenience stores (approximately 1476 current CMB licensees eligible) July 1, 2018. *We should not assume that every business will change. There are communities and dry counties that will prefer to stay 3.2. There are business owners who will prefer to avoid the cost, regulation and new tax structure associated with the sale of stronger products.*
- Requires new license to be issued to a grocery or big box store based on definitions including NAICS codes that are not limited to typical grocery stores. *According to the Department of Revenue, up to 4000 businesses file tax returns under the NAICS codes specified in the legislation. If Kansas chooses to carve out this license privilege, the underlying definition should be clear. Other states have already seen court challenges in this area.*
- Changes licensing for both liquor stores and the new wine and beer licensees.
- Includes background requirements for corporate applicants owning more than 1 5 %, this is a significantly lesser standard than currently required for other corporate licensees in the Liquor Control Act that sell to the public (such as Drinking Establishments) at 5%. *For the first time, individuals with felony backgrounds could be owners of retail liquor businesses.*
- Removes the 21 years of age requirement for employees and substitutes a minimum 18 years of age – for selling strong beer, wine and spirits.
- Continues to provide un-level playing field in terms of enforcement / penalties. *Penalties on the licensee should have equal impact. Closing a cooler is not the same penalty as having the full liquor store closed. Individual owners cannot get any liquor license if they have lost a license due to violations, corporate entities can simply reorganize.*
- This legislation does not include any of the prior bills language to attempt to mitigate harm to current retailers or public safety associated with proliferation of outlets and increased density. There are no perimeters or license purchasing provisions, such measures are a part of the new

Colorado law.

- The fee for the new wine and beer licensee is $1500 for two years. The bill does not specify the products to be sold in the new licensed store, nor any specifics associated with where the products can be sold and displayed. Therefore, we can expect to see the products displayed at the registers, alongside general grocery products and throughout.
- Sampling will also be allowed.

Level Playing Field

- Enforcement – license the whole premises = whole premises suspension
- Tax abatements – tax increment financing districts
- Purchasing power – big box and grocery stores have the benefit of space and volume. This gives them an advantage relating to purchasing during sale periods and access to allocated products. They also use national purchasing contracts, sell shelf space and advertising.
- The concept of retail liquor stores competing with big box grocers by selling soda pop or other products is not realistic. Small retailers cannot buy soda pop at wholesale for less than the big grocers sell it at retail.
- The 20% limitation on "other products" sold in retail liquor stores – what is the basis of this limit. Colorado has created a similar limitation but it does not include tobacco or lottery.

"The proponents of this bill talk about level playing fields and say that liquor stores are "protected" by Kansas law. They repeatedly call liquor stores – who, by the way, are in direct competition with each other – a "monopoly". This shows a lack of understanding in the Kansas retail liquor licensing system, which is already privatized and encourages competition. Even the cities can't limit the number of liquor licenses issued in their borders.

In Manhattan, there was a huge controversy about the downtown development project that helped to bring a Hy-Vee to our town. That project involved the city using eminent domain for the property, getting approval for the State of Kansas and the City of Manhattan to issue STAR bonds for public portions of the development, and using Tax Increment Financing for building the retail development. Tax Increment Financing means that the sales tax collected at the store is used to pay off the costs of the building project instead of going into the city and county sales tax fund or the State General Fund. Of course, at that time, Hy-Vee wasn't going to be allowed to sell liquor. Can you imagine that Kansans would ever support using public funding to build a liquor store? Is this the free market they are talking about?"

Michael Towne, The Library, Manhattan

What about Beer and Wine?

- Beer and Wine are defined in statute as alcoholic liquor.
- Many states that do allow strong beer or wine to be sold through corporate outlets
- have restrictions on alcohol content for the wine and the beer that can be sold.
- Every alcohol product is defined by alcohol content – whether the product is made from fruit or grain is irrelevant.
- Regardless of how often the lab tests comparing cmb Budweiser to strong Budweiser are repeated = strong beer is stronger than cereal malt beverage.

- Even with the differing units of measurement – alcohol by weight vs. alcohol by volume – strong beer is stronger than cereal malt beverage.
- Strong beer products include extensive product lines, with craft beers and newer beer/wine based products reaching must stronger alcohol content. 10% is not uncommon and there are stronger products as well.
- Economic analysis of simply moving the strong beer products to approximately 2300 additional outlets shows a loss of 217 retail liquor stores.
- **Do not expect to save Kansas jobs and businesses by preserving spirits on their shelves. Any type of retailer can tell you that sales depend on traffic. Customer traffic will be reduced if their highest volume products are sold elsewhere. Spirits sales statewide will predictably decrease under this plan.**

State Regulatory Licensing –

- There are a wide variety of state policies relating to how liquor is sold, and they reveal both the priorities of that state and the history of how prohibition was repealed in that particular state. <u>Kansas has a particular issue relating to its constitution which makes changes to the definition of cereal malt beverage potentially unconstitutional as it changes the definition of alcoholic liquors / intoxicating liquors – a reference included in our constitution</u>.
- Kansas represents an excellent balance between the desires of those who would expand access and availability and those who would prefer a more regulated model.
- Many states have distance or population restrictions for the number of liquor licenses issued. These are often controlled at the local government level, although some manage the sale of licenses at the state level. Kansas only has the restriction of prohibiting a liquor license within 200 feet of a church, school or college.
- Oklahoma and Colorado are now moving into broad system change, with beer and wine changes effective in Oklahoma in 2018 if implemented (there are legal challenges underway). Colorado cereal malt beverage changes will be effective in 2019 depending on the recommendations of a statutory working group. That group is expected to recommend a licensing transition for current cereal malt beverage retailers with regulatory measures to mitigate their impact.
- There are 17 control states. Of those, 6 states have city owned retail liquor stores and rarely allow private providers. 10 states have only state owned retailers, which allow no one but the state to sell spirits and/or wine. This may be paired with the sale of beer through licensed outlets.
- Many states differentiate the sale by packaged stores and convenience stores or grocery stores and the products they may carry, whether it is allowing wine in grocery stores, or 3.2 cereal malt beverages only.
- It is not correct to paint Kansas as the most strictly regulated of these states. In my research, one analysis painted New York as having very lenient liquor laws – and yet, New York does not allow wine or liquor sales in grocery stores.
- New Mexico has a system that allows for the transfer/sale of licenses because it has only 1000 licenses for the sale of spirits, wine and beer (on AND off premise). There are no other types of off premise licenses available. That restriction hasn't changed for 25 to 30 years and the result

is that it can cost $300,000 to $700,000 to buy one of these licenses. Recently, NM created a restaurant license for selling wine and beer.

- In fact, the majority of states do not have unrestricted licensing systems regarding allowing strong beer, wine and spirits to be sold by grocery and convenience stores

The Case for Compliance

- Kansas retail liquor stores have proven compliance rates in preventing underage sales – typically ranging from **80% to as high as 88%. There are <u>no statewide compliance rates</u> for grocery and convenience stores.**
- Now, the proponents would have you believe that they are better than liquor stores at checking I.D.s. They use tobacco compliance numbers to make this case. National statistics show that convenience and grocery stores have a worse record than liquor stores as it relates to selling alcoholic beverages.
- Tobacco sales = inventory separate from other items for sale. Theses are 18 year olds selling to 18 year olds not 18 year olds having to deny 18 year olds.
- The Kansas ABC does not track underage alcohol-sale compliance in convenience and grocery stores. It only tracks underage alcohol-sale compliance for Kansas owned retail liquor stores. Anyone who makes this claim is comparing convenience and grocery store tobacco compliance rates to Kansas liquor store alcohol compliance rates. This is comparing apples to oranges.
- What is a fact is that convenience and grocery stores have a much higher failure rate nationally than liquor stores when it comes to selling alcohol to minors. The National Research Council Institute of Medicine found 70% of minors nationwide purchase their alcohol from grocery and convenience stores.
- It also took the state of Kansas hundreds of thousands of dollars in order to get convenience stores to reach a high compliance rate! In 2005, Kansas convenience stores had a tobacco sales compliance rate of 62%.
- At that time, this forced Kansas to choose between taking a $5.4 million reduction in SRS block grant funds or pay a $2.2 million penalty to be used to raise the compliance rate. Is Kansas prepared to make the same investment again to develop compliance rates for the new category of licensees?

Examples

A Lawrence Liquor Store spotted new state-of-the-art fake I.D.s when KU students returned to school. The new I.D.s featured holograms and an electronic strip on the back. The store rejected the sale and informed law enforcement of the new I.D.s.

A clerk from a liquor store in Junction City called KABR to verify that she had done the right thing in denying a sale to a mother who brought her teenage son into the store to pick out the products he wanted for a party. It was obvious he was making the selections. When the clerk denied the sale, the mother was upset and yelled at her. But this clerk did the right thing and complied with current rules. If she hadn't, she would have been violating the law.

A store in Topeka often has an ABC agent parked in their lot watching 21 year olds coming over from the parking lot across the street where young people like to hang out. According to the agent, he knows the liquor store cards people, but he is able to watch the 21 or 22 year olds go across the street and give their purchases to the underage kids who are hanging out there. He was able to issue more than one citation from this practice.

The COST to Kansas (2015) *We will update when new numbers are available.*

- Sales Tax Reduction $1.9 million (from lost sales of CMB)
- Reduces revenue to local governments and to the State Highway Fund.
- State General Fund loss unless sales are increased = ($1,845,000) 3% transfer to city/county each year. 3% local fund from enforcement tax is subject to appropriation and based on population
- $657,967 FY 18 expenditure for ABC
- $1,293.494 FY 19 expenditure for ABC, offset by license fees
- This does not include lost property taxes, payroll taxes and other direct revenue from the businesses that will close
- Indirect loss to the small businesses that serve current stores

Thank you for the opportunity to speak to you regarding the latest version of the Big Box Liquor Proposal. We respectfully request that you reject this legislation. For Kansas to restructure an industry for the benefit of out of state businesses over the current in state businesses, there should be an incredible reason. This bill does not meet that test.

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