

House Commerce Committee – April 4 2017 – HB 2282/SB 13 Substitute bill

(Disclaimer – notes are my best record of the committee meeting, not a transcript – some comments are summarized and most are not directly quoted.)

Committee Chair Les Mason opened the meeting by explaining that he had asked the proponents and opponents to meet to negotiate a reasonable solution and they have done that.

Rep. Davis – motion to adopt amendments as a Substitute to HB 2282 – seconded. Described the contents of the bill. Characterized the compromise as very delicate and asked that legislators support it as written.

Staff reviewed the contents of the proposal.

http://www.kslegislature.org/li/b2017_18/measures/documents/sb13_01_0000.pdf

Chair - Will begin by asking specific conferees to respond to two formal questions –

1. “Are you and the members of your organization in support of the Substitute Bill for HB 2282?”
2. “This legislation is a major, fundamental change in more than 60 years of state policy for the sale of intoxicating liquor products and is likely to have a marked impact on Kansas retailers as well as new licensees that will be allowed to sell CMB and a stronger beer product. The substitute bill contains a requirement for ABC to conduct a market study and present its findings to the Legislature ten years following this bill’s enactment. Do you and your clients believe this is a reasonable timeframe to allow for the impact of this law on all licensees to be measured before the Legislature considers additional, substantive changes to state law regarding where alcohol products are offered for sale?”

Whitney Damron, KARLL; Amy Campbell, KABR; Tom Palace, Uncork Kansas; and Dick Stoffer, HyVee were each individually asked these questions and all responded yes to both questions.

Later in the meeting Rep. Carmichael asked who the corporate entities were who were endorsing this moratorium and Tom Palace replied: Petroleum Marketers and Convenience Stores Association, Casey’s General Stores, QuikTrip, Dillons, HyVee and Walmart.

Further notes – please note, it wasn’t all captured because we were at the podium multiple times.

Rep. Carmichael – asked if ABC was represented in the room and had seen the amendments?

Director Debbi Beavers responded – have seen them but only today. Haven’t had a lot of time to review.

Carmichael – does this bill include the licensing problems from HB 2282 that would have allowed corporate licenses for liquor sales that would allow for those with criminal backgrounds to be part owners?

No, not included in this bill.

May be some conflict with 41-102 that declares cmb and liquor be separate. (Actually that section is deleted by the amendment.)

Provides oversight over the sale of beer up to 6% in the CMB retail stores and authority to regulate them for the purposes of maintaining an “orderly market”- we are not sure what it means specifically.

Anything in this bill to alleviate concerns about 18 years olds? Don’t see any changes – 18 year olds could sell it and no provision for 21 year olds to supervise. No. No changes for the age of clerks.

Claeys – This amendment allows 20% sales of other product for existing liquor stores – how is that calculated and enforced? What happens if they go over that limit?

Director Beavers – likely we would have to promulgate rules and regs for that. We have establishments that have to sell 30% food would have to report annually or per two years at renewal.

On premise licensees already have to report preceding 12 months liquor sales v. food sales in certain counties. When someone doesn’t meet the requirement, they have to change to a private club license to not meet that requirement. Then, that can be revisited when their sales change. Would probably do something like that.

How would that translate into this? Haven’t had time to establish that.

Revisor - This bill repeals the statute that declares cmb and liquor be separate, so that isn’t an issue.

Elliott – understand the spirit of the 10 year term. Does this mean that both sides have a moratorium on the wine side of this for ten years?

Damron – this bill is supposed to address the concerns about the future availability of 3.2 beer, but changing the beer laws will have a significant impact on the current beer sales. The parties are sensitive to those concerns and agreed that there should be a period of time that retailers can expect a stable regulatory system and adapt their businesses to suit that. The parties agreed.

Carmichael – Is anyone in the audience aware of any economic studies that might predict the effect of this kind of beer legislation on the survival of liquor stores?

Damron – aware of several studies – took those into consideration. Obviously, outcomes are worse if you include all strength beer, wine and spirits. Believe retailers are at risk under any liquor expansion change. My organization believes that creating this legislation in this context is better than the proposal that would come forward in the near future with the pressure from the 3.2 issue – the Legislature would do it for us, and we don’t usually like what they put together. Miss Campbell’s organization had more trouble and more voices to consider when coming to this decision, and ultimately they came to the same decision.

Carmichael - Aren’t your members bigger? And maybe more able to deal with this change?

Damron – as we have testified many times, the investments of our members may be a little larger, but they are at risk whenever proposals come out to change where liquor products are sold. More

Carmichael – I’m told there are some large corporations that are not a part of this agreement – who are the folks that are ready to stand up and say they are a party to the agreement?

Tom Palace – Our members are PMCA – Quiktrip, Caseys, Walmart, Dillons and Hyvee

? - Is this agreement in writing somewhere?

Palace: We believe that would run into some antitrust issues if we did that, but we agreed to testify to this statement for the committee record.

Kessinger – isn't it true that tobacco is the highest sellers inside a convenience store? Don't you think giving liquor stores the ability to sell cigarettes and other products will make up for the loss of any beer sales? Isn't it true that cigarettes are your highest sales inside the convenience stores?

Palace – Tobacco is not highest sales profit wise, but definitely a traffic draw to bring customers inside.

Corbet- impact on sales of small stores?

Campbell - Yes – there will be an impact on liquor stores. Trying to make a narrow resolution to the 3.2 problem that has been broadly publicized. In order to do that, we have attempted to address some very important issues related to price nondiscrimination and some other opportunities for retailers. This bill does not eliminate the risk for liquor stores that occurs with sales changes, and that is why we have based our support on the full scope of the agreement, including the two year delayed implementation date and the moratorium to have some stability in future years. We are hopeful that by establishing a legislative record as to the intent of the proponents, we can make that a reality. We would also welcome statements by legislators to establish the legislative intent that this is a serious step that should last.

Baker – Does anyone have any real information that 3.2 is going away?

Watkins, Beer Wholesalers – our members are already receiving notices. Shinerbock is ending their 3.2 distribution. Constellation notified us that Corona Light is ending 3.2 version. Anheuser Busch and Miller Coors have sent notices that they are examining changes for their 3.2 packages and will be making changes when OK/CO enactment.

Baker – cross merchandising from the big guys will be the new thing/private labels in beer?

Duncan – no, because our state laws require that all products have to be sold at all retailers, so Olive Garden private label has to be sold at liquor stores too. Talked about the price equalization pieces of the proposal and their importance.

Additional question ? Something about moving quickly.

Duncan – We have spent hours crafting this language and have attempted to consider as many factors as possible. Will allow time for the rules and regs to be written which can show us where there might be issues and we will have two years before implementation and probably have time to fix it if there are . Have talked about running a cleanup bill before implementation if needed.

Seiwert – the only thing around here that is consistent is change. Appreciate the work of the parties to establish an agreement. Isn't it true that there are problems for small retailers when availability of cereal malt beverage is limited because they can't get it when the bigger retailers are able to get the products?

Campbell – true that is an issue for small retailers. This bill will not correct that, when allocated products are limited, they go to higher volume stores. Example for Boulevard chocolate beer.

No – I was talking more about cereal malt beverage retailers

Yes – the risk of decreasing availability of cereal malt beverage for the CMB retailers – including the small ones – define the CMB issue that this bill attempts to solve.

Phillips - want to make sure that legislators are aware that not all retailers are members of these groups, I learned when I called two of my local stores today they didn't know about this. Can you talk about how many know about this? Does your board represent small and large retailers?

Campbell – Yes. Our Board is divided into 12 districts from across the state. Membership ranges between 100 and 200 over the years -right now it is early in the year and not everyone has paid dues. But we email retailers across the state who want the information whether or not they choose to pay dues – so about 200 have received this information along with updates in the past two weeks. There are 750+ liquor stores in the state and so there are those out there who do not have the information. They are welcome to sign up for our emails on the KABR website.

Whipple – visiting with my retail liquor store about this, he is reluctantly supportive – does this ten year cease fire include prohibiting amendments to help the little liquor stores with legislation that could be helpful, such as dealing with liquor tastings like we have in the past five years or other issues?

Damron - If we see proposals to expand where products are sold by the people who have stood before this committee, that will be problematic. But what happens here certainly leads to collaborative discussions. Regarding issues like tastings and others, we think we could work collaboratively to explore changes that would be beneficial and wouldn't relate to the expansion of locations where liquor is sold.

Carmichael – There has been some talk here about establishing legislative intent and a legislative record, it looks to me like we have got a letter from Standard Beverage, they're not a signatory, then I look to Tuck Duncan's association and it refers to the liquor associations, and it looks to me that they are not putting their name into the legislative record on the agreement, and then we have Mr. Damron's statement and Ms. Campbell's statement – so, where is the statement from my friend Mr. Palace and Mr. Stoffer – where is their statement?

Palace – when we were talking with our new friends, there was sensitivity to the issues we would face. To sign a written statement would not be appropriate for us according to our members' various legal counsel. So we put forward those questions - The Chair has the questions asked to myself and the parties involved in the negotiations for the 3.2 issue to be put into the minutes of the message. We are doing our best here, in good faith, we are standing before the committee, we have answered the questions, and they will be in the minutes

Terrell – to Campbell, you say you are cautiously supportive but your statement seems like it is barely supportive.

Campbell – that would be a good assessment. Our support depends on the full agreement and we are aware that the legislative process can bring forward various changes. This is a tenuous agreement and a careful balance. We could change our support if needed.

Terrell – I am conflicted about this because what I hear from my constituents is that they want to buy wine at the grocery store. So, I guess we will vote this out for the full House to consider and I can consider how I want to vote there.

Clayton – I heard something said about legislative intent, but are you suggesting that there is something in here that would stop a legislator from proposing changes in the future?

Campbell – no, even if we were putting something into the legislation that said that, any new legislator can change the statutes during a legislative session. We are hoping that legislators will see and appreciate the sensitivity of this agreement and the impact that it will have on small businesses, and agree that it is worth supporting the moratorium.

Amendment offered by Rep. Carmichael:

Pertaining to Section 13 – provisions requiring that sale of 6.0 percent beer be made at no less than acquisition cost. Amendment would require the sale at no less than acquisition cost plus ten percent minimum markup.

Asked revisor to draft an amendment to a bill that I hadn't seen so it isn't perfect.

Whipple – second the amendment

Claeys – would be interested in hearing from proponents and opponents about the amendment.

Duncan – Kansas had a minimum markup law. New York had a decision that minimum markup was unconstitutional. Kansas Attorney General ruled it unconstitutional, then it went to court - cited the ruling by Judge ____.

Not that the unconstitutionality is an impediment to actions of the Legislature, but would respectfully cite the case.

Carmichael – by best evidence, this puts 200 liquor stores out of business. This markup gives small retailers some coverage for cost of overhead. The large retailer can sell toilet paper at markup and use the beer as a loss leader. This is an attempt to keep these folks in business. If we pass this bill and roughly 200 retail liquor stores are jeopardized, want to help. I think the vote at Ms. Campbell's organization was 9-6 and I may be incorrect about this. Then, we have little stores go out of business, and then the wine and spirits guys come and say they need to sell wine at the grocery stores and then we have put the rest out of business. You know what, if this goes to the federal district court and this is ruled unconstitutional, I don't really care.

This is my attempt to save the small liquor stores, the businesses in the small community and you're going to see the closed signs and you can explain why you didn't do anything to save their businesses.

Amendment failed on voice vote.

Motion to adopt the Substitute in 2282 was adopted by voice vote – single no.

Davis motion to strike the contents of SB 13 and insert the substitute language –

SB 13 was a Senate Judiciary bill for civil procedure code. Was referred to House Judiciary and the contents were removed and the bill was sent to Appropriations. (This is a “gut and go”)

Carmichael – contents for SB 13 are alive and well in conference, would not be a reason to not do this.

Davis motion to move out House Substitute for SB 13 favorable for passage. Claeys second.

Claeys – we have talked about legislative intent that it is clear that when we speak about ABC and rules and regulations for the 20% rules the regs be corrective and not punitive. I don’t want to see a bunch of liquor stores forced to be a grocery store.

Carmichael – I respectfully disagree, and would intend that the sale of liquor is a serious issue and the regulation by the ABC should be serious and reflective of the intent of the Legislature that this be taken very seriously and especially as it relates to the sale of these products to underage and other issues. And I hope the committee record will reflect that.

Motion passes to insert the contents in SB 13 and pass the bill – Substitute for SB 13 adopted on voice vote. Carmichael asked to be recorded as a “no” vote.

Meeting adjourned.