TESTIMONY

HB 2206
An Act concerning alcoholic beverages; relating to retailer's licenses under the Kansas liquor control act.

Whitney Damron
Kansas Association for Responsible Liquor Laws, Inc.

March 7, 2013

Good afternoon Chairman Kleeb and Members of the Committee:

I am Whitney Damron and I serve as the legislative counsel to the Kansas Association for Responsible Liquor Laws, Inc., a coalition of approximately 25 liquor retailers from throughout Kansas that formed an association in 2012 to oppose the efforts of the grocery and convenience store interests seeking legislative authority to sell hard liquor, strong beer and wine. Several of our members are here with me today and a listing of our members is included with my testimony.

Kansas has a long history of moving carefully and deliberately when it comes to allowing for the sale and manufacture of intoxicating liquors. Kansas was the first state to pass a prohibition on the sale and manufacture of liquor in 1880. And while the United States repealed the 18th amendment to the Constitution in 1933, which "prohibited the manufacturer, sale, transport, import or export of alcoholic beverages," it was not until 1948 that the voters of Kansas adopted an amendment to our Constitution authorizing the Legislature to" regulate, license and tax the manufacturer and sale of intoxicating liquor."

Liquor-by-the-drink did not occur until our Constitution was amended again in 1986 and today, 63counties allow for liquor-by-the-drink with a 30% minimum food requirement; 29 counties allow for it with no minimum food requirement and 13 counties do not allow for liquor-by-the-drink whatsoever (12/31/12; Kansas Department of Revenue).

Critics of our state's 3-tier system for the sale of liquor products, including the Uncork Coalition suggest state laws relating to the distribution and sale of liquor products are archaic, hinder some or antiquated, but I would suggest that is exactly what the citizens of Kansas have always wanted and still do today. The Kansas Legislature has taken measured steps to regulate the sale of intoxicating liquors since our constitution granted them that authority in 1948 and legislators have created a regulatory framework that insures compliance with Federal, state and local laws and regulations relating to the manufacture and sale of these products.

Should the State approve HB 2206 or a similar proposal, let's review what Kansas would accomplish:

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1. Kansas would destroy more than 60 years of regulatory partnership with its retailers, who have responsibly sold intoxicating liquor products under a highly-regulated framework designed to insure compliance with state liquor laws.

2. The state would sanction the closure of more than half of the retail liquor stores in Kansas, devastating families and communities throughout our state – and this dire prediction is from the proponents own study. *An Economic Case for Increased Competition in the Sale of Beer, Wine and Spirits in the State of Kansas* by Dr. Art Hall (2011). As of January 4, 2013, Kansas had 761 active retailer licenses (Kansas Department of Revenue).

3. The state would choose sides with the largest corporations in the world against its own small business owners.

   - In 2012, *Fortune* magazine ranked Wal-Mart (Bentonville, AR) as the 2nd largest corporation in the United States with $447 billion in revenues in 2011.

   - Kroger, which owns Dillon's (Cincinnati, OH) is ranked by *Fortune* as the 23rd largest U.S. corporation in the U.S. with $90.4 billion in revenues in 2011.

   - Costco (Issaquah, WA) is ranked by *Fortune* as the 25th largest U.S. corporation with revenues of $89 billion in revenues in 2011. Costco is one of the most litigious companies in the U.S. in regard to liquor sales and distribution issues.

   - Walgreen's (Deerfield, IL) is ranked by *Fortune* as the 32nd largest U.S. corporation with $72.2 billion in revenues in 2011.

   - QuikTrip (Tulsa, OK) is ranked *by Forbes* magazine the 26th largest private company in the U.S. with $10.7 billion in revenues in 2011.

   - Hy-Vee (West Des Moines, IA) is ranked by Forbes as the 48th largest private company in the U.S. with $7.1 billion in revenues in 2011.

   - Casey's General Store (Ankeny, IA) is a *Fortune 500 Company* and had $7 billion in revenues in 2011.

The irony of all of this is the fact the big box retailers and the convenience stores get the state to pick up the tab for all of this transfer of wealth! The fiscal note prepared by the Division of Budget estimates the state's annual regulatory cost for this legislation will be $1.9 million with no increase in state revenues of sale of alcohol products.

4. Profits from current licensees are reinvested into the Kansas economy. Retailers use local insurance agents, attorneys, accountants, advertising agents, service providers and related vendors. Profits from the proponents of liquor-in-grocery/C-store legislation will by and large leave the state, most likely as soon as the credit card is swiped at the register and their use of professional services is dictated by their home office. Supplier and vendor contracts are likely to be sourced out of state as well.

5. HB 2206 would allow felons to own, invest, manage or otherwise participate in the retail sale of alcoholic liquor products just as long as they did not own more than 25 percent of the licensed business.

6. The state would allow corporate entities to become licensed as a retailer. Under current law, only individual's can be licensed as a retailer to insure licensees do not hide behind a corporate shield or shell companies to hinder or evade compliance with state liquor laws.

The New York Times uncovered and reported on corruption by Wal-Mart in Mexico: *The Bribery Aisle: How Wal-Mart Got Its Way In Mexico* {*New York Times*, December 12, 2012}. That article and a series of related articles goes into great detail as to how Wal-Mart allegedly used payoffs to get what the law otherwise prohibited, which was the ability to construct a store near pyramids in San Jaun Teotihucan, Mexico. The bribery charges were reported by the *New York Times* was uncovered in 2012, but according to media reports, including reports by *CNN Money* on January 10, 2013, Wal-Mart knew about the scandal as early as 2005 as the retailer's general counsel informed company executives of the illicit behavior and the company has now opened its own investigations to determine if similar illegal activities have occurred in other markets, including India, China and Brazil.

Under our current system, if the ABC Director requests a retailer to come to Topeka and answer for a violation of our state's liquor laws, you can bet the owner will come to Topeka. Their name is on the license and if they are sanctioned by a temporary or permanent closure order, they are through in the liquor business. No matter what the infraction or the seriousness of the charge, the Director is not going to get Michael Duke, President/CEO of Wal-Mart to come to Topeka to answer for his company's business practices.

7. Teenagers would be allowed to sell and deliver liquor (18 years and older). Current law prohibits minors (under 21 years of age) from working in liquor stores, selling or delivering intoxicating liquors.

A headline from *Q13 Fox News* in Washington: *Private retailers seeing more thefts of liquor bottles.* This story came forth after the State of Washington got out of the liquor business and grocery stores were allowed to sell liquor products.

8. Kansas would increase the availability of intoxicating liquor products to as many as 3,000 additional locations (or more) without increasing the volume of sales. The North American Industry Classification Codes (NAIC) listed in these bills identify who can become a retailer (grocery and convenience stores) as generally defined by NAICS codes. The codes referenced would include grocery, convenience stores, pharmacies, supermarkets, gas stations, drug stores, department stores, warehouse clubs and etc. Regardless, the sections are written in a way where they are descriptive, not necessarily limiting ("predominantly" and "included, but not limited to" language).

9. Under these proposals, under a formula specified in the legislation, cities and counties would receive a rebate of three percent of the privilege tax collected from the sale of alcohol products as "reimbursement" for their loss of sales tax and license fees on CMB. If the state is charged with regulating the sale of alcohol products, why do the proponents propose to divert state revenues to local units of government?

10. Increasing the number of potential retailers in Kansas by a factor of 400% or more would appear to be contradictory to the state's investment in three years of study that led to the most comprehensive rewrite of state DUI laws ever undertaken (DUI Commission/2009-2011) and SB 6 implementing certain recommendations of the DUI Commission was approved by the Legislature in 2011 by a vote of 121-0 in the House; 39-0 in the Senate).

11. Similarly, the public's increasing concerns with "social hosting" would appear to be contrary to these proposals, which would only increase the opportunity for unlawful youth access to liquor products.

Lawrence Journal-World editorial: Safety Measures. It's nice to see statistics on alcohol-related traffic deaths moving in the right direction (January 11, 2013).

12. The K-State Study, *USDA RBOG Project: Rural Grocery Sustainability Project*, conducted extensive research involving more than 200 rural grocery stores and included surveys of store owners and customers. That report lists the primary challenges identified by storeowners for remaining competitive in small towns, which was the small town grocers cannot compete with the big box retailers located in relative close proximity to rural Kansas. Nothing in the study suggests the sale of alcohol will improve the bottom line or make small town grocers more competitive. K-State Rural Grocery Initiative: www.ruralgrocery.org

The K-State studies beg the question: "If the small grocers can't compete with Wal-Mart, Sam's, Dillon's and Hy-Vee when neither sells alcohol, what logic suggests they can compete if they both sell alcohol?"

13. Proponents suggest current retailers can sell other products as allowed for under the bill to make up for any lost sales. This is a fallacy, as most retailers have stores that are sized-right for the sale of liquor products. They cannot easily be retrofitted for sales of cigarettes, potato chips, pop and related sundry items. Retailers do not have the ability to contract for shelf space as do the big box retailers and they don't have the national sales and advertising contracts with grocery retailers to help drive traffic to their stores.

14. Given the current state of the economy, even if a retailer wanted to expand or move their store to a better location to compete against Wal-Mart/Sam's, QuikTrip, Hy-Vee, Walgreen's, Dillon's and the like, can anyone imagine a banker in their right mind would look favorably on a loan application from a liquor store owner who wants to compete against these retailing giants? More likely their current loan would come under review, they would be required to pledge additional capital or security or their loan would be called altogether. HB 2206 will necessarily transition retail liquor sales in our state to the big box grocers, large convenience stores and chain stores.

15. How many Kansas retailers are in long-term leased or owned space that cannot be renegotiated with the landlord or lender? How many retailers will not be able to extend their leases that are located within strip malls and shopping centers effectively controlled by the big box retailers that exert market pressure onto the landlord or management company not to renew a lease to a current licensees tenant when the law is changed so they can be the only retailer at the site?

A February 9, 2013 *Kansas City Star* article highlighted the concerns the City of Bonner Springs has in seeing a new Wal-Mart Supercenter under construction in Shawnee, given the very real possibility Wal-Mart may close their store in favor of the new one. Wal-Mart and the other proponents of this legislation make these kinds of decisions on a profit & loss statement with little, if any regard to what they will leave behind when they close a store. Many communities have a vacant Wal-Mart, closed when a new store is opened with little chance for redevelopment. The same will be true for the hundreds of liquor stores that are likely to close if HB 2206 is passed, creating vacant storefronts throughout Kansas with little opportunity for re-lease or sale.

16. Kansas consumers are not clamoring for this legislation. Yes, there are consumers being encouraged to contact their legislators and urge its passage, but by and large that is being driven by a carefully orchestrated effort by the promoters who are spending hundreds of thousands of dollars to purse their never-ending quest for profit and margin. Look at Uncork's website and you see examples of how to write letters to the editors and letters to newspapers – not exactly a groundswell of support from the masses, but rather a carefully orchestrated multi-million dollar campaign to advance a legislative initiative.

Each of you should have received a copy of a poll conducted by Public Opinion Strategies, a well-respected pollster that had great success in the 2012 Kansas elections. The survey was commissioned by Keep Kansans in Business.

Highlights of the survey include:

- 66% oppose changing the state's liquor laws; 29% support changes.
- 77% do not believe minors should be allowed to sell and handle alcohol products.
- 78% do not believe the state should ease restrictions on the sale of alcohol.
- 61% believe local stores should be in charge of the sale of alcohol in their community.
- 70% do not believe a change in the liquor laws would be good for the Kansas economy.

17. The Kansas Legislature has made incremental changes to the marketing and sale of intoxicating liquor products over the years, including allowing for Holiday and Sunday sales, direct shipment of wine to a residence, use of credit cards and etc. However, these have been done within the 3-tier system and the broad enforcement powers of the state have been maintained. Changes proposed by the proponents of this legislation would destroy more than 60 years of carefully developed liquor laws that are primarily crafted to protect the public, not insure increased sales for the liquor merchants.

Concluding Remarks.

The advocates of HB 2206 want the Legislature to consider their proposal as nothing more than a statutory imposition of free market economics on a generic commodity. That may be appropriate for the sale of bread and butter, but it not appropriate for the sale and marketing of a product Kansans have demanded be carefully regulated in its manufacture and sale since 1948. The Legislature has made incremental changes in the sale of alcohol products to address the desire of the consumer, but these changes have been instituted without dismantling the state's 3-tier system.

HB 2206 and the proposals being advocated for by *Uncork* will pave the way for some of the biggest corporations in the world to destroy Kansas small business, kill careers and jobs, take profits out of state, stick taxpayers with a $2 million annual regulatory tab while radically altering the sale of adult-only products to suit their own desire for market share and margin.

On behalf of the Kansas Association for Responsible Liquor Laws, we believe these proposals should be rejected in favor of our current regulatory system for the sale of alcohol products that has served our state and its citizens well for more than sixty years.

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Attachment: KARLL Membership List

Kansas Association for Responsible Liquor Laws, Inc. (KARLL)

Membership Roster by City as of March 7, 2013

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