

NOTES from the hearing on county option amendment offered by Uncork proponents to HB 2200

May 4, 2015

These are my notes – not a transcript. This is a best effort at capturing a good portion of the meeting.

Re-opening discussion on house bill 2200 for the sole purpose of hearing a substitute bill that would allow for the local county option. Testimony is related solely to that amendment to this bill.

Begin with staff to explain the changes proposed to the bill.

Jason Long, Revisor: Basically going to try to explain the bill from the chart instead of the statutory changes because it will be easier.

Creates the County Option Retailers Act – CORA

County by county question on the ballot for putting beer, wine and spirits in grocery stores and strong beer in convenience stores.

May be raised by commission resolution or by petition with signatures of 10% of the electorate of the county. Goes on the General Election ballot.

If county holds no election or the vote is defeated, would have no change to the sale of retail liquor within the county.

Class A license: convenience store or grocery store

Class B license: Grocery store

Class C license: Liquor store

Definitions for convenience store, grocery store and liquor store = same as HB 2200 as originally passed by committee.

Day before the election = cap of liquor stores in the county. *(Note: interesting, since a petition would have to be submitted more than 90 days before election – plenty of time to have a friend or relative open a small store next to your grocery store that you could then purchase... would anyone do something like that?)*

On approval of the transfer, Director will cancel the Class C license purchased by the grocery store and issue the Class B license to the grocery store.

Class B can only acquire a license through transfer from a Class C retailer.

No residency requirement on Class A or Class B.

Class A and Class B can hold multiple retailer licenses; Class C can only hold multiple retailer licenses within the same county.

Ruiz – allows felony convictions anywhere in the grid?

No. Could not employ people to sell liquor who have felonies.

Ruiz – if counties adopt 2200, can they strengthen their authority or do they have to adopt in its entirety?

Only option for the county is in issuing the licenses for Class A or Class B. Everything else would be state regulated.

Corbet – what is the process?

If no petition is submitted, the county commission could pass a resolution to put it on the ballot.

Corbet – is that one commissioner, two? All of them?

Think it could be majority = two.

Ward – where are we procedurally?

Bill was referred back to the committee and the

Ward the only change would be the addition of the county option?

There are also some other small changes that are only relevant because

It's always those little changes that cause trouble. Are they only the definitional changes for the implementation of CORA?

Yes, basically. It just held together for implementation to put in place the separate licenses in order to make it work better.

The fee increases were all part of the original bill?

Yes, that is my understanding. And the transfer fee is the same.

Tietze – can the county commission choose not to submit it to their county?

Yes, they could choose to sit back and wait for a petition, or if there is no petition, could take no action.

Tietze – on Class C – employment restrictions. No employees with a felony conviction – doesn't say for selling alcohol only. If they want someone to come and clean, could they hire them?

No – current law restricts that.

A sub-contractor?

That would be up to ABC interpretation.

Tietze – we passed a bill here allowing owners to sample beverages they had never tasted before, don't know where that went? Would that be allowed for the other classes of retailers?

Distributor sampling. This provision here deals solely with the retailers providing samples on their premises. That is different, the distributor bill deals with retailers sampling from distributors.

Billinger – class A can be obtained by applying directly to ABC, does that mean they could buy dormant licenses?

Wouldn't have dormant licenses. There is no cap on the Class A licenses.

Billinger – would Class C still be required to be a 4 year state resident?

Yes.

Corbet – how long to acquire the 10% of electors on the petition?

Would have to look at petition laws...

Corbet – if the signatures are acquired, what are the commissioners options then?

No options, would put the question on the next general election.

Tietze – page 3 talks about transfer a valid license from one of the three existing liquor stores within close proximity to the current licensee – that could be across the county line? Doesn't that complicate things?

Jason – I suppose an amendment to that section, if it was the intent of the committee. I could also see the ABC interpreting the bill that way since the ordinance would be applying to the county and not the adjacent county. But, for clarification purposes, we certainly could put a clarifying amendment to it.

Tietze – so that would provide clear intent to the Director of ABC?

Yes

Frownfelter – liquor store could sell other items – no limits?

To the extent that they sell other goods and services, they need to continue to meet the definition of a liquor store in order to continue to have a Class C license. That could be carved out by ABC rules and regulations.

Frownfelter – currently there is a number of feet, a boundary, from which a retailer can't be near a church or daycare.

I do not see the proximity locations restrictions in this bill. The locals would have to amend local regulations for that.

Could also be set by rules and regulations.

Frownfelter – so the local rules and regulations will no longer enforceable?

Think they would still be enforceable.

Frownfelter - If the convenience or grocery store is within 100 feet and the liquor store is 500 feet away – can they buy the license and sell liquor within that 100 feet?

I don't think so – that statute isn't changed.

BEGIN THE HEARING

Proponents:

David Dillon, Kroger/Dillons – We want the customer to be the center of this debate. Three specific things I would like to call out:

Why county option: In Kansas, we have several times turned to a county option to solve liquor questions. Allows local views to have effect in those communities. It also answers the question of do voters really want this passed?

It is hard to answer that question – we can run polls and other have done that. But it isn't easy to know. This actually answers the question. If they want it – it will pass.

The opposition brings forward smoke and mirrors, hypotheticals, and even eggs in a bowl.

But we don't have to rely on these guesses. We have dozens of states where supermarkets carry these products. We don't have to guess. In those states, supermarkets have responsibly sold the products.

Liquor stores successfully co-exist in these markets – they compete in ways that allow them to be successful.

Testimony keeps saying that profits for Dillons go out of state. That is a way to inflame this conversation. Illustrates a misunderstanding of how profits work. Can be used to pay down debt. Has not been Krogers choice lately. Can be used to increase dividends to shareholders. Do some of that. Biggest part in Kansas has been to spend more than \$200 million in expansion and investment in our stores in this state. And the payroll in our state for our thousands of employees.

Basic belief that competition makes us better. Please help by supporting this bill.

Ruiz – one of the untruths out there that you refer to is one that I have been told, stating that if the bill does not go through, there will be lost jobs in the grocery stores. How many jobs will be lost?

I am not familiar with that – where did you hear that?

That is what some of your colleagues have told me.

I haven't heard that statement and don't believe that statement to be true. I do think that grocery stores in smaller communities have a tougher time. Grocery stores operate on a razor thin margin and rely on volume. So, there are times when grocery stores end up closing.

Ruiz - What is the percentage of employees this bill would increase in your industry?

Several employees in every location. In our stores where we sell liquor – have several employees engaged in stocking and ordering, some stores have a wine steward, and then additional checkers.

Corbet – What about the issue of leasing tenants in shopping centers? How does that work?

We are in numerous centers – sometimes own the center and we are often tenants ourselves. There are generally exclusives for some products in the leases and sometimes for others in the center for their products. That lease would preside where they exist.

Corbet – what is the increase in dollars that this could mean for your business?

5% is a good estimate. It depends what would pass in the county. Whether it would be beer, beer and wine, or beer wine and spirits. In some counties, I'm not sure the sales would be very strong. We might not approach it in those areas. *(Note: there is no provision in this proposal to allow counties to pass a beer ordinance nor a beer/wine ordinance. Seems to indicate they may be offering that amendment on the floor if they need to?)*

We will focus on counties where our customers want it. The focus has been more on beer and wine. That is what we generally hear.

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Mike O'Neal, Kansas Chamber – Thank you – do appreciate the somewhat limited time today. Honored to follow my friend David Dillon – great story of success of Dillons corporation, a business that has succeeded in spite of competition from the big box stores and others.

Government did not ask for this exclusive body of law that sells you can only sell a certain body of product in certain locations. We are here to ask to open that up. Why? Because the consumers have asked for it. We are not only trying to provide what the consumers want, but also have to create something that the Legislature will adopt. The suggestion for county option has come from the Legislature. This is how a body of liquor laws has come to be over time.

I didn't hear Jason talk about the 90 day rule. If that petition gets to the county commissioners within 90 days of the next general election, they can't have that vote during that public election. There has to be enough time to educate the public on the topic. My hair was a different color when we adopted local option in the Legislature.

We all know that you have your personal preferences.

Your personal preferences may be colored by a relationship you have with a person who enjoys the benefits of the current law. We understand that – we are asking you to embrace the representative form of government and adopt this county option proposal.

Going door to door, some of the people are very vocal about wanting to be able to vote. And some of them would really like to vote no. But they would all be able to vote.

Corbet – do you think Kansas would benefit financially from this change?

Yes – consumption grows over time, doesn't matter what the product is. Consumer demand continues to grow – cited the change of the few locally owned hardware stores, grown into a Home Depot and now with a Lowes across the street.

There were others.

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Amy Campbell – Kansas Association of Beverage Retailers – read testimony.

Added comments: Recognize that the idea of the cap is to provide value, but the proposal is fatally flawed because of the Class A licenses. They are unrestricted. Could be up to 1775 of them. As Mr. Dillon pointed out, a key to the success of the grocery store is customer traffic. Guess what brings traffic to the liquor store? Beer. ... Led into the discussion of the strong beer issue and studies.

At the end... added.

Although I thought I basically understood the amendments when I read it last Friday, the significance of the third license – the Class C license – was not completely clear to me until I heard the revisors description and saw the chart. It is much worse than I thought. The purposes of our residency laws and restrictions on chains are important in the current system because – number one – they improve the regulatory oversight. Provides for efficient and inexpensive oversight. Secondly, it creates an even playing field. No monopoly, no oligopolies. These are lost when we choose, as a state, to transfer a large part of the marketplace to the corporate chains. To keep these provisions for the liquor stores only is to completely disadvantage them in the new system. It appears here that the only way to open a liquor store in a county that has adopted the bill is if there are open licenses. No ability to purchase them? Also no ability to own multiple stores in multiple counties? Why is that? Much different than HB 2200 in multiple ways.

Q & A

Scott Schwab – why should we protect retailers? Future is unpredictable – cited numerous cases where government has issued decisions that harm businesses.

Not asking to protect us- just asking you to be fair.

Suellentrop – asked about the difference between 3.2 and strong beer.

Answered 3.2 ABW and liquor store beer is ABV – craft products are up to 10% and even 15%. Probably needs to be a closer look at that definition and what is appropriate. (I stumbled over ABW and ABV – have a hard time remembering which is which!)

Suellentrop - asked about other liquor policies by county option, any problems with them? How did we establish liquor stores? Liquor by the Drink? Are there negative consequences for businesses?

Yes – there are some. Local enforcement can be a challenge. This is an issue for retailers who are near another business who is not receiving the same level of oversight. County lines can lie between businesses who have different privileges – days of sale. Hours of sale.

Tried to clarify that other liquor policies do cause some enforcement confusion – even the Sunday sales ordinance has created situations where local law enforcement doesn't know when are the legal hours of sale or days (Easter is illegal). Basically, most questions are clear cut – either you have liquor store sales or you don't. Either you have liquor by the drink or you don't. This proposed system is a mish-mash.

Ruiz – funny this should be by county option – would have liked my county to have local control for gun laws.

No comment on that one.

How would the grocery stores sell their products – would it be separated? What about hours of sales? 24 hours a day?

Restricted hours of sale are more difficult to define in a 24 hour environment. We already have members who call because the convenience store across the street is selling outside of allowed hours. Current bill suggests segregating wine and spirits away from the door, but would be more comfortable if it was enclosed with a door and beer was there too. Then, there wouldn't be confusion and the space could be closed.

Corbet – Asked strong questions. When I walked door to door, none of my constituents suggested I should take difficult votes and send them to the county commission.

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Tuck Duncan, KWSWA - Not a simple amendment for county option. Took the revisor thirty minutes to describe it.

Has a whole new license in it – with different rules and fees for the different licenses.

On the question of more revenue = no. We've been the 34<sup>th</sup> state in consumption for many years. That won't change. All you are going to do is spread it out.

This is not fair to you folks to be honest. You get a new bill here in the veto session.

You had HB 2200 – which was at least more fair than this version.

In counties that do not opt in, there is an unlimited number of licenses for liquor stores. In counties that pass it, we cap it. Why did we cap it in the first place? To attempt to provide some equity to current retailers.

There will be counties in the opt-in that will have a large base. The retailer in the next county won't have that. No value.

We will not have the caps that were created for the equity.

County option was not for pro-uncork or anti-uncork. You can be pro-Uncork and find reasons to oppose the county option.

There will be consumer confusion. First, repeals the distinction between 3.2 and strong beer in opt-in counties. What does that mean? We have 1400 on-premise cereal malt beverage licensees. Over 100 are in Johnson County.

There is confusion, because I challenge you to tell me the difference between a can of Bud Light that is CMB and one that isn't. It is on the top of the can. 4% ABV is 3.2% ABW and I have members who sell beer that is 15% ABV.

Issue is Sunday Sales. Why did that happen? Happened because Wyandotte County decided they wanted to enact Sunday Sales by local ordinance. The court ruled it was allowed and you all hurried back here and made the liquor control act uniform.

Today, neither the liquor control act nor the liquor by the drink act allows home rule.

This Legislature has determined that liquor law is best when the law is controlled by the state. There are only a few examples of local authority.

This thing could take thirty years. Thirty years later, we still have dry counties. If you think Uncork is a good policy, then pass it. Don't pass the buck. Do it by setting those caps so these people have those caps – these people need the equity. This is going to be in transition for decades.

You have written testimony by Mr. Damron – quoted.

Uncork has stated in the Senate hearings that this bill is nothing like any other state. In all of my years of working in liquor law, I can say that it is true. No other state is doing anything like this and there is a reason for that. It is not good legislation.

Mr. Dillon references Oklahoma – they have not passed anything yet. The refrigerated beer issue is being held over to next year.

The Beer Wholesalers submitted testimony in the Senate – do oppose a regulatory system where supermarket and c-stores carry two levels of beer. Quoted the Senate testimony.

There is no validity to statements that county option is a better way to implement this policy – it is truly a death by one thousand cuts.



Schwab – on Sunday sales – correction – took a couple of years to adopt Sunday sales – we didn’t rush back up here and pass the state law. *(Note: I believe the representative is mistaken. While the Legislature did reject Sunday sales a couple of times. They acted quickly to pass the uniformity law once the court had ruled.)*

What is your point about confusion – can’t tell the difference between 3.2 and strong beer? Doesn’t that just make the point that there isn’t a difference?

Duncan – I’m saying that when I go to a convenience store now, I know it is 3.2. After this bill, the consumer won’t know in those counties when the county option passes. Kwik Shop in Shawnee County – if it doesn’t pass here – and the Kwik Shop in Douglas County – if it passes there – will be selling different products. And there will be consumer confusion.

So, you are saying the consumers won’t know.

There is no rule to say that convenience stores or grocery stores have to change to strong beer. So, I am saying that a consumer will not know what they are buying.

Hutton – Couldn’t the store post that information? Possibility that rules and regs could require the stores to post that information.

Corbet – one thing that doesn’t come up is the unofficial customers, the products that walk out the liquor store door without an actual purchase. We’ve read about the issues of shoplifting in the big stores. Stole \$500,000 from Walmart and they didn’t blink an eye.

That is an important issue. The State of Washington opened up private sales and you have to be a Costco sized retail store in order to sell it. The loss of inventory became so bad that law enforcement actually proposed legislation to require retailers to report their losses, just so they could get a handle on the actual problem. I’m not sure that passed.

Suellentrop – I’ve been here six years and heard this thing over and over. Don’t you think it is time for this to go to the floor for a vote?

Ward – I’m a big fan of floor debates. I’d like to debate important policy on the floor. Ready to debate things like a budget, like taxes, Medicaid. I’m ready for some floor debates. Do you think there is any chance on God’s green earth that we will take up this bill and have a debate on the floor?

I was invited to a meeting in the Speaker’s office and I was told a couple of things. One – to cooperate, and I have tried to do so. Two – that there would be an up or down vote on this issue this year and it would be done one way or another. I thought we were going to have that, but it didn’t happen and here we are again.

Then I saw an email that said the “House is now waiting on the Senate to take action.”

I have learned one or two things for certain - If this was marijuana, we wouldn’t be talking about county option, two: don’t count the votes until the votes are counted.

No more questions.

Chairman Hutton: We are going to go ahead and work this bill.

Ward – point of order Mr. Chairman. Typically, when you hear a bill it usually lays over a day and usually takes a vote to move ahead.

We've had some discussion on this with Legislative Research, I will let Reid address that.

How this committee plans to proceed is up to the Committee. This bill has already had a hearing. What you have had today is a discussion on the amendment.

Rules of the House say it takes 2/3 vote to report out a bill on the day it was heard and not regarding amendments.

Rep. Claeys – move the amendment described by the revisor. Let me revise that, want to adopt the Substitute Bill as described by Revisor Long.

Rep. Schwab – second. And with Rep. Claeys permission, motion should be move the amended bill and the substitute bill becomes Sub. for HB 2200.

Rep. Tietze – this is not just a technical or simple amendment. This amendment apparently has more to it than just what we were able to learn in just a short time. Voting on it today is not something I am comfortable with, want to read it, consider it, and consider what my constituents have told me.

Rep. Frownfelter – I am going to ask this committee to vote no. Let's take this bill seriously. They asked us to come together and discuss the bill and they asked one side what they are willing to give up. It's not how it is supposed to be done. Supposed to come forward with the proposal and take it up or down and now we are back for a second bite of the apple.

Some of my liquor stores sell 70% beer, and the convenience stores and grocery stores who can jump into this business of selling strong beer don't have to do anything – no transfer fee. Yet – they are going to be closing down a lot of these stores. There is no reason that they should be getting off scott free. Bothers me.

And we just walked through how many issues that the Director is supposed to take care of? ABC Director is going to make up all these rules – who wants this job?

That's over 2000 extra businesses to license. We have not addressed these issues. We have not had them bring us anything that is good. If we are going to get serious, let them sit down and write a bill that we don't have to haggle over.

Vote is 7-7. Chair votes aye.

Billinger – can I ask the head of the ABC a question?

Sure.

If this would pass on the floor – how many additional personnel will it take to enforce the laws?

Our original fiscal note called for roughly \$1.2 million effective 2018. Based on projections of what would happen in the marketplace.

If a liquor store is caught selling to a minor, do they have to close for a couple days?

Yes, depending on their history.

So, will you close all of the Dillons stores in the state?

What we would do is suspend their ability to sell alcohol in the one particular store that had the violation as opposed to all of the others.

After the meeting, there was a great deal of discussion from press, observers and committee members whether or not the motion to create the substitute bill actually included the additional motion to pass the bill out of committee. Appears some think so, but it doesn't appear to be true according to the language of the amendment.

Later in the evening, at a legislative reception, the Chairman informed me he will take another vote in the Commerce committee on Tuesday to pass the bill out of committee, "just to be certain it is done correctly."