

# A Brief Review of Alcoholic Beverages in Kansas

Part 1 - The Years Before Legalization

Part 2 - The Early Years

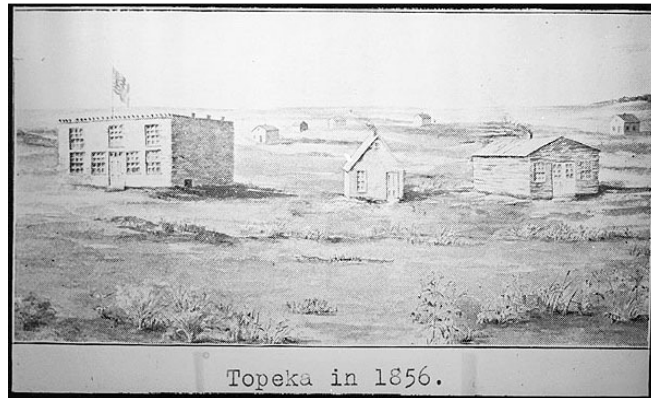
Part 3 - The Mid 60s through the Mid 80s

Part 4 - The Mid 80s to the Present

## Part 1 - The Years Before Legalization

The history of alcoholic beverage in Kansas is quite intriguing and probably a good place to start in supporting this publication with periodic articles. Let's start in November of 1880. During that year, voters in the state

adopted an amendment to the Constitution prohibiting the sale of intoxicating liquors, becoming the first state to do so. Although Kansas was officially "dry", the state was quite "wet" as the illegal trade of alcoholic beverages continued unabated. Enforcement was lacking and literally hundreds if not thousands of illegal liquor establishments flourished.



In 1900, Cary Nation begins "hatcheting" illegal liquor joints and campaigns for stricter enforcement with little success. The state attorney General cracked down on illegal joints in 1907 and by 1910 there were only three counties where open saloons were in operation. Sales of liquor for medicinal purposes was prohibited in 1909. This era of strict enforcement did not last long. In 1917, the Legislature passed the "Bone Dry Bill", prohibiting possession of liquor, ending direct shipments to consumers from out-of-state suppliers. This emboldened bootlegging and moonshining. In 1920 the 18th Amendment to the U.S. Constitution became the law of the nation. Now prohibition was nation wide, yet illegal activities continued uninterrupted in Kansas.

In 1933 the 21st Amendment to the U.S. Constitution was approved and national prohibition was overturned. Each state then had the opportunity to present the issue to its citizens through the ballot. On November 6th 1934, Kansas's voters rejected a proposed constitutional amendment authorizing the Legislature to regulate and tax liquor. Although still illegal, alcoholic beverages were produced,

transported into and used throughout the state. In 1937 the Legislature enacted the law that categorizes beer with an alcoholic content of 3.2% or less alcohol by weight as cereal malt beverage (CMB) which was excluded from the definition of intoxicating liquor. The law authorized the sale of CMB for both on- and off-premise consumption throughout the state and set the drinking age of CMB at eighteen.

Prohibition on alcoholic beverages continued into the 1940s with essentially lip service being played to enforcement. However, that was about to change! In 1946 Ed Arn became the state's Attorney General and his agenda was that the hypocrisy must end and if the laws were on the books they were going to be enforced. Citizens who purchased, sold or possessed alcoholic liquor were breaking the law and would be arrested and charged.

Several distinguished Kansans subsequently undertook an effort to end state prohibition. This campaign led to a proposal to end prohibition being placed on the General Election ballot in November of 1948 that passed by a vote of 422,294 to 358,310. This amendment of the Constitution authorized the legislature to regulate, license and tax the manufacture and sale of intoxicating liquor and regulate the possession and transportation of intoxicating liquor. This amendment also "forever prohibited" the open saloon which meant that packaged liquor could be authorized and regulated, but that the sale of liquor by the drink in public places was prohibited.

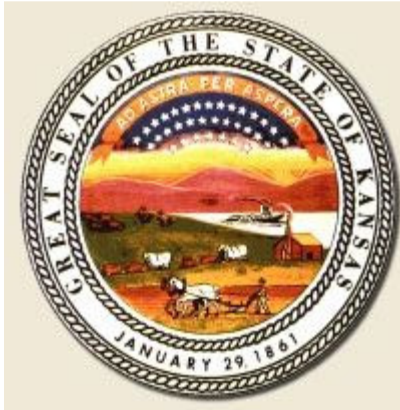


The following year the Legislature enacted the Liquor Control Act. This Act authorized the sale of liquor in counties in which the 1948 amendment had been approved. The Act created a system of regulating, licensing and taxing those package sales as well as creating the Division of Alcoholic Beverage Control to enforce the act. The drinking age for alcoholic liquor was set at 21 in the Act, while the drinking age for cereal malt beverage remained at 18. It is interesting to note that by 1949, forty-five of the forty-eight contiguous states had already legalized the sale of alcoholic liquor and the Legislature was challenged to create an Act that would protect Kansas from the influences of the other states who had many years head start in legalized sales.

The Division of Alcoholic Beverage Control continues to enforce the Liquor Control Act and today regulates over 2600 liquor licensees. It should be pointed out that ABC does not regulate and control the CMB licensees in the state as those licenses are authorized and regulated by cities and counties. There are over 4000 CMB licensees in business throughout the state. The original legal age set at 18 in 1937 was increased to 21 in 1985.

We at ABC continue to perform our statutory responsibilities and attempt to promote the highest degree of voluntary compliance with the state's laws through education, customer service and enforcement.

In the next article, we will review the early years of legalization.



## Part 2 - The Early Years

In part one of this series we left off after the passage of Liquor Control Act of 1949. The fifty plus years since 1949 have shaped the alcoholic beverage industry into what it is today and the focus of part two in this series is to look at what has happened during the years from 1949 to 1965.

In keeping with Kansas' history of controversy surrounding liquor laws, a contentious legislative session followed the voters' passage of the constitutional amendment lifting prohibition in 1948. The 1949 legislature quarreled over whether to adopt a private licensing system, as was the case in 28 states, or a state-controlled system where the distribution and sale of alcohol would be done by the state, as was the case in 17 states. In the end, legislators opted for the private enterprise system in part because of the belief that the constitution did not allow state control. Another contentious issue was how to tax and distribute tax moneys from the newly legalized industry. Many rural legislators switched from opponents of bills implementing the constitutional amendment to supporters with the discovery that local units of government would receive part of the proceeds from the taxation of liquor sales. A 2% "enforcement" tax was applied to retail sales and distributed locally in the same fashion as the state's sales tax. Taxes at the distributor level were applied on liquor entering Kansas. These included a \$2.00 per gallon tax on alcohol containing more than 100 proof (50% alcohol) and a \$1.00 per gallon tax on alcohol containing 100 proof or less.

The legislature was very concerned about elements of organized crime and out-of-state influences entering the Kansas liquor industry. A 10-year state residency requirement was put in place for liquor retailers and distributors. People were also prohibited from getting a liquor license if they were ever convicted of a felony or a crime involving liquor laws, gambling, prostitution, or other crimes against morality. A conviction for selling liquor to minors would require a license revocation. Because the constitutional amendment contained the notorious language "the open saloon shall be forever banned", consumers had only one place to legally buy liquor - retail liquor stores. Chain stores were prohibited as a

person could only own one liquor store, a law that survives today, and no liquor could be shipped into Kansas without a license, also still effective today.

On April 18th 1949, then Governor Carlson appointed the initial Director of the Alcoholic Beverage Control and the agency moved into temporary quarters on the third floor of the statehouse. The ABC office remained there until June 2nd 1949 when the office moved into its first permanent quarters in the National Bank of Topeka Building. When the Kansas Liquor Control Act was first enacted, many people throughout the state had doubts and misgivings as to the effect and workability of this act and Kansas' venture into legalized liquor after 69 years of prohibition. Although these concerns were initially warranted, the diligent efforts of the literally thousands of citizens from legislators, ABC employees and the alcoholic beverage industry ensured not only the initial success of the act but also through its changes over the years.

The initial applicants for retail liquor store licenses had to undergo a grueling licensing process administered by ABC to ensure that they met the strict requirements mandated by the legislature. The process included 44 questions about a person's life history, residency, moral character and criminal record, as well as a background investigation in field. The first legal sales of liquor occurred on July 18, 1949 after ABC issued the first 279 licenses. Many applications resulted in disappointment during the first year of legalization as 122 applications were denied because the license candidates did not meet all licensing requirements. However, during this same period were 824 retail liquor licenses issued.

Because the sale of liquor for consumption on the premises was not allowed, some establishments got around the prohibition by allowing and, in some cases, encouraging the continuance of "brown bagging." This practice was common during the era of prohibition. Customers would bring their liquor into the establishment in brown paper bags and place them under their table or chair. They would order mixers and retrieve their illegal bottles long enough to mix their favorite drink.

There were a few "speakeasy" bars that illegally sold liquor by the drink. Many customers would often wrongly assume that the establishment had some "immunity" from prosecution. This "immunity" seemed to vary from county to county. These establishments would sometimes close for a time when "the heat was on."



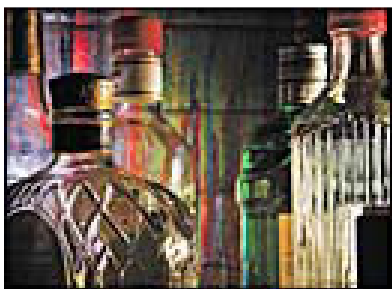
During the 1950's the focus of ABC's effort to enforce the liquor laws was on background investigations on applicants and on

unlicensed sales of liquor by the drink to the public. ABC also pursued illegal moonshine operations, particularly in southeast Kansas.

During these early years, the price of liquor was governed at both the distributor and retail level by regulations promulgated by the ABC Director. The courts ruled that ABC did not have the authority to set prices without a corresponding statute in 1958.

Liquor distributors, retailers and dry forces all wanted price controls, although for different reasons. Industry representatives wanted to maintain an orderly market and the dry forces wanted to promote "temperance" in the hopes of controlling the rates of alcoholism. The odd coalition convinced the legislature in 1959 to enact the "minimum price law." This law gave the responsibility of setting minimum prices for distributors and retailers to the ABC.

During the 1960s the problem of illegal sales of liquor at bars and restaurants grew out of control as bottles gradually started coming out from under tables and out of their brown bags. A proliferation of "private clubs" emerged where liquor for consumption on the premises were sold. Customers began placing their bottles in the custody of the bartender with their name on it. Because this system was difficult to manage when the bar was busy, a "coupon" system was established where a club would designate several brands they wished to feature. Customers could then buy coupons for their choice of those brands. The club would then act as an agent of the coupon purchasers to buy the bottles. Since these operations were "private," law enforcement agencies had no authority to take action. Gambling and prostitution began flourishing at many of these clubs.



In response to this liquor law enforcement problem, the legislature passed the Private Club Act in 1965. This law provided for the licensure and regulation by ABC of liquor sales in private clubs. These licensed establishments had to allow ABC and other law enforcement officers immediate access to their premises. These clubs were allowed despite the constitutional prohibition against open saloons because they were not open to the general public. In order to buy a drink, a person had to pay a membership fee and wait 10 days from the date of applying for membership before being served their first drink.

These licensed clubs would issue membership cards to patrons for a fee. Customers would then deposit money into a "liquor pool" account. The club owner would buy liquor for the patrons at a retail liquor store. When customers

visited the club, they would buy the mix to add to the liquor that they owned in the pool.

The frustrations about getting a drink continued with each change as momentum built for changing the constitution again to allow for liquor-by-the-drink.

In the next article, we will discuss the evolution of liquor laws from 1965 to 1985.

### **Part 3 - The Mid 60s through the Mid 80s**

Following passage of the Private Club Act in 1965, ABC's enforcement focus shifted to private club violations. Because it was profitable to operate as a virtual liquor-by-the-drink establishment (open to the public), many private clubs did so initially, prompting ABC to dedicate resources to detecting these violations. The new law required members to not only pay a \$10 fee but to also wait 10 days from the time they applied before they could get their first drink. People had to purchase a separate membership for each club that they wanted to drink in. While this law allowed for legal purchase of liquor for consumption on the premises for the first time, many believed that there were still too many hoops to jump through for a person to go to a bar and order a drink. The situation was particularly difficult for travelers from other states who were often perplexed and often disappointed at Kansas' liquor laws.

Given the opportunity in 1970 to pass a constitutional amendment to legalize liquor-by-the-drink, however, voters said no thanks by slimmest of margins - 50.8% to 49.2%. The sale of liquor for consumption on the premises would continue to be prohibited.

During the 1960's, ABC was granted the authority to issue administrative citations against liquor licensees for violations for the first time. Prior to then, criminal prosecution provided the only avenue for liquor violations.

A victory was given to beer drinkers and liquor retailers in 1970 when the Kansas Supreme Court ruled that chilling beer did not constitute an illegal inducement. For the first time, Kansans could buy cold strong beer to go.

During the 1970's the perception grew that state control of prices at the distributor and retail level guaranteed profits for the industry while simultaneously maintaining artificially high prices for consumers. The law would survive until the latter years of the 1980's,





however, under the theory that it maintained an orderly market and promoted temperance.

Until 1973, the Alcoholic Beverage Control was a stand-alone agency. It was then that the Legislature made the Alcoholic Beverage Control a division of the Department of Revenue. By that time, the liquor gallonage tax that ABC administered was generating more than \$5.5 million per year.

The focus of ABC's Enforcement Bureau during the decade of the 1970's shifted from traditional criminal enforcement to compliance activity. Rather than looking for criminal violations of the Liquor Control Act, the agency spent more time performing routine inspections of licensed premises.

The on-premise problem persisted. Under the private club system, customers were being served liquor that they had technically already purchased through their contribution to the "liquor pool." Club owners bought the liquor from retail liquor stores as an agent of their members. This was commonly known as "liquor-by-the-wink."

The 1978 Legislature authorized private clubs that were restaurants (defined as establishments deriving more than 50% of their gross receipts from the sale of food) to sell liquor-by-the-drink. This law, which was to go into effect in those counties where the voters approved such sales during the 1978 election, was struck down by the courts.



The following year, the legislature authorized private clubs to sell liquor-by-the-drink to their members and members' guests. The law eliminated "liquor pools" and permitted clubs that derived 50% of their gross receipts from the sale of food to establish reciprocal relationships with other private clubs. A person could gain access to many clubs by being a member of one.

The 10-day waiting period and \$10 membership fee remained, as pressure continued to mount to allow liquor-by-the-drink to the general public.

The 10 percent Liquor Drink Tax was also enacted in 1979. This tax replaced the sales tax for liquor consumed on the licensed premises. One-third of the proceeds from this tax was distributed the state's general fund, one-third to a special parks and recreation fund at the local level and the other third to a special alcohol programs fund at the local level.

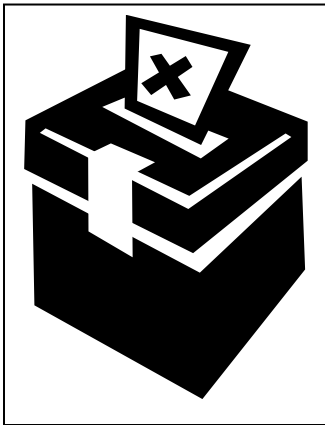
From the beginning in 1949, the distribution of liquor in Kansas was governed by an "open wholesale system". Under the open wholesaling system, distilleries,

brewers and wineries had to offer all of their products to all licensed distributors at the same price. By the late 1970's, only Kansas and Oklahoma maintained an open wholesaling system. Because the Oklahoma liquor industry was experiencing volatility, the Kansas legislature replaced the system with an exclusive territorial franchise system. Under this system, each supplier (distiller, winery, brewery) would grant a franchise for a particular territory to a distributor who have exclusive access to the supplier's products. In exchange for this change, distributors agreed to give up price controls at their level. Minimum price markups continued at the retail level.

In 1983, the Legislature increased the Liquor Enforcement Tax (the tax paid at retail liquor stores) from 4 percent to 8 percent. This tax is in lieu of the retailer's sales tax. This marks the last time liquor taxes have been increased.

In the next article, we will discuss the evolution of liquor laws from 1985 to present.

#### **Part 4 - The Mid 80s to the Present**



The 1985 Legislature passed three provisions that would prove to have a profound impact on the sale of alcoholic beverages in Kansas. Laws were passed to raise the drinking age for 3.2 beer from 18 to 21 and to prohibit "happy hours". The legislature also approved a referendum for the voters of Kansas to once again decide whether to allow the sale of liquor-by-the-drink to members of the public during the 1986 general election. A Liquor Law Review Commission was established that would conduct a comprehensive review of the liquor laws and recommend changes to overhaul the Liquor Control Act should the voters approve the liquor-by-the-

drink constitutional amendment.

In an effort to reduce the incidence of drunk driving, federal legislation was passed that would end the flow of dollars to the states for highway construction unless the states raised their drinking age for alcohol to 21. The drinking age for 3.2 beer was set at 18 when it (cereal malt beverage) was legalized in 1937. The drinking age for strong beer, wine and spirits was set at 21 when they were legalized in 1949. Kansas, like every other state, did in fact, raise the drinking age for 3.2 beer to 21, phasing it in one year at a time. By July 1, 1987, the change in the drinking age was complete. This change had a major impact on the retail sale of alcoholic beverages and on the focus of liquor enforcement efforts. The legislature authorized five new agent positions for the Alcoholic Beverage Control (ABC) to enforce the new law.



In another attempt to make the highways safer, the 1985 legislature enacted the ban on happy hours. The new law required bars and restaurants to maintain the same price for each drink throughout the business day. This eliminated two-for-the-price-of-one deals, 25 cent shots and other price-changing attempts to draw a crowd for a short period of time, e.g., right after work. The provisions of the happy hour law that prohibited persons from having more than one drink in front of them at a time or possessing pitcher of beer for one person's consumption were deleted by the 1986 Legislature.

The liquor-by-the-drink resolution was a result of a compromise between the Senate which wanted a statewide up or down vote and the House which wanted a range of restrictions. The resolution included provisions that would allow liquor-by-the-drink only in those counties where voters approved it and only in establishments that maintained at least 30% of their gross sales of food and beverages in the sale of food. It also would allow voters in counties that voted for liquor-by-the-drink (wet counties) to remove the 30% food requirement during subsequent general elections.



After decades of battling, liquor-by-the-drink was finally passed by the voters in the 1986 election by a 59.9% to 40.1% margin. Bars and restaurants in the 36 counties approving the measure could legally sell liquor to members of the public for the first time since 1880.

The 1987 legislature approved legislation implementing the constitutional change consistent with the recommendations of the Liquor Law Review Commission. Drinking establishments were created as a category of licensees allowed to sell liquor-by-the-drink. The new law also provided for the sale of liquor-by-the-drink on unlicensed premises by licensed caterers and by persons holding temporary permits issued by ABC, a measure not recommended by the commission. The legislature enacted several other recommendations made by the Liquor Law Review Commission including a ban on licensees selling liquor below acquisition cost, the creation of the microbrewery license type, allowing distributors to sell bulk wine directly to drinking establishments and private clubs, and permitting liquor retailers to deliver products to drinking establishments and clubs in their counties and adjacent counties. Sunday sales of 3.2 beer were legalized for establishments that maintain at least 30% of their gross receipts of food beverages in the sale of food. The prohibition against price and brand advertising was lifted.

Through the state's general election in November of 1998, a total of 11 counties have voted in liquor by the drink with no food requirements, 48 have voted in liquor by the drink with a 30% food requirement and 46 have not voted in liquor by the drink. Those 46 counties are the ones often referred to as "dry counties."

Another change that produced a dramatic change in the retail sale of liquor was produced by a Kansas Attorney General's opinion that the law requiring liquor retailers to mark up their prices a certain percentage was an unconstitutional violation of anti-trust laws. This opinion followed a U.S. Supreme Court decision that struck down similar laws in New York state. The lack of competition and the artificially high prices that this law caused resulted in created a situation where Kansas had a high number of retail liquor stores per capita compared to other states. When the minimum price markup law was rescinded, the number of liquor stores dropped sharply.

Changes in the liquor laws have been few and relatively insignificant since 1987. The minimum liquor container size law was repealed in 1993, allowing for the sale of "miniature" bottles. The election day ban on the sale of alcoholic beverages for off-premise consumption was removed in 1994. Hotels that are licensed as drinking establishments were allowed to have mini bars in guest rooms in 1995. The spouse of a retail liquor licensee was allowed to obtain a license in 1996.



Throughout the state's history, the regulation of alcoholic beverages in Kansas has been a source of controversy with change efforts often producing a heated dialogue. As we move into our fifty-second year of regulating alcoholic beverages in Kansas, we at ABC look forward to the challenges that lie ahead in the 21st Century.

Source: Kansas Alcoholic Beverage Control