

2011

General Affairs Committee

LR 301
Interim Study Report

**Interim Study to examine issues relating to
alcohol impact zones**

Nebraska Legislature
One Hundred Second Legislature
First Session

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE RESOLUTION 301

Introduced by Karpisek, 32.

PURPOSE: To study issues regarding alcohol impact zones. This study should include, but not be limited to:

- (1) A consideration of what constitutes an alcohol impact zone;
- (2) A review of alcohol impact zones or similar zones and their effectiveness in other states;
- (3) A review of the primary and secondary issues occurring in alcohol impact zones; and
- (4) A consideration of the impact of alcohol consumption on economically distressed areas.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SECOND LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the General Affairs Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

LR 301 Interim Study Hearing Summary

LR 301 was introduced by Senator Russ Karpisek. The issue of whether Nebraska should consider establishing alcohol impact zones as a means to addressing areas with high incidents of alcohol-related problems was brought to Senator Karpisek's attention by the Liquor Control Commission. This issue appeared in the Liquor Control Commission's legislative letter last year.

Senator Karpisek testified that Whiteclay and areas of Omaha may benefit from the establishment of alcohol impact zones. Senator Karpisek then asked Hobert Rupe, Executive Director of the Liquor Control Commission to testify next to explain how alcohol impact zones work in other states.

Hobert Rupe, Liquor Control Commission Executive Director, testified as to how the State of Washington has utilized alcohol impact zones. Downtown Seattle, downtown Tacoma, and portions of Spokane have been identified as alcohol impact zones. These zones consist of an area that deals with chronic inebriation, as well as the social consequences of such behavior. These issues have been a significant strain on society, specifically the police. A city would identify the troubled area and then recommend to the State Board or Commission that this area should be designated as an alcohol impact zone. This designation allows for the State Board or Commission to place restrictions on the liquor licensees, such as limiting the types of products they can sell.

Senator Bloomfield asked Rupe to clarify a reference he made to high-gravity beer. Rupe stated that the term high-gravity beer refers to the way that the beer is manufactured. These types of high-gravity beers are very cheap and for that reason appeal to people looking to get very drunk very fast. Senator Bloomfield also asked Rupe whether there would be a legal issue if in Whiteclay they refused to sell alcohol to Native Americans. Rupe replied that it would be discrimination, but that designating alcohol impact zones places the restrictions on what can be sold, not to whom you can sell it. Senator Bloomfield stated that the problem in Whiteclay is not really in Whiteclay, but on the Pine Ridge Reservation. Senator Bloomfield also stated that working to fix the problem in Whiteclay would only move the problem to Gordon, which would lead to more accidents on the road.

Senator Schumacher asked Rupe what criteria is to be used to determine whether an area qualifies as an alcohol impact zone. Rupe replied that in the State of Washington, the local municipality would first designate an area as an alcohol impact zone through an ordinance and have six months to address the issues before petitioning the State Board to recognize the alcohol impact zone. Throughout this process, there must be determinations made and rationales given as to why this area should be designated as an alcohol impact zone and specifically how the zone's borders were determined. Senator Schumacher also asked Rupe how the designation of an alcohol impact zone would be lifted. Rupe stated that the State of Washington has procedures outlined in its rules and regulations and Nebraska would also want an appeal process in place when the factors that caused an alcohol impact zone designation are eliminated.

Senator Larson asked Rupe to clarify that in Whiteclay, people would still be able to buy beer, just not the high-gravity beer. Rupe replied that an in-depth review would be done of an alcohol impact zone to determine which restrictions would best address the issues within the zone. That determination could mean high-gravity beer or even "flight" bottles (Legal Counsel Note: "Flight" bottles are the tiny liquor bottles often sold on airplanes and in convenience stores) because they are cheap and concealable could not be sold. But there could be other product restrictions as well as restrictions placed on the time of day when alcohol could be sold. Senator Larson also asked whether the State should have a role in limiting the free-market system. Rupe maintained that alcohol is different than other products due to its

societal impact. Senator Larson asked whether the State is picking winners and losers. Rupe responded that he did not think they were picking winners and losers, but instead trying to save areas by promoting temperance in a well-regulated and orderly market. Senator Bloomfield asked Rupe whether the restrictions placed on an alcohol impact zone could essentially prevent any alcohol from being sold there. Rupe replied that he did not think that could happen since such restrictions would have the same effect as canceling a liquor license, which can only occur for cause as decided by the Commission.

Senator Coash asked Rupe about the role of the local municipality in the creation of alcohol impact zones. Rupe replied that it is a partnership between the locals and the State with the locals getting first crack at addressing the problem. If the problem is not resolved, then the local can petition the State to place additional restrictions on the licensees within the alcohol impact zone. It is because of local control that that different alcohol impact zones across the State could all have different restrictions in place.

Senator Schumacher asked Rupe whether setting up a process for the establishment of alcohol impact zones gives too much power to certain groups to influence the local municipality. Rupe responded that the Commission is looking to give the local municipalities a tool, but the Commission would still be there to provide oversight. In the current licensing process, there have been times that the Commission has disagreed with a local municipality, but that's the way the system works. There would also be a set of criteria that the local municipality would have to satisfy before they could petition the Commission to get involved.

Senator Larson asked Rupe whether the entire City of Omaha would have to be declared an alcohol impact zone. Rupe stated that it would not and that the State of Washington specifically prohibits in statute a city-wide alcohol impact zone. Senator Larson also asked Rupe whether the creation of an alcohol impact zone would simply move the problem just beyond the boundaries of the zone. Rupe acknowledged that determining the boundaries of an alcohol impact zone may require some tweaking. Rupe also stated that many of the social problems are caused by those with chronic inebriation who tend to be homeless and don't own cars. Senator Larson asked specifically about Whiteclay, to which Rupe replied that the reason why Whiteclay has a problem is because it is within walking distance of the Village of Pine Ridge. Therefore it is unlikely that the social problems would end in Whiteclay and begin in another community like Gordon.

Senator LeRoy Loudon testified that there was a study conducted in California that suggests that limiting certain alcoholic products helped to alleviate some social problems in that area. Senator Loudon stated that there have been some self-imposed restrictions on the liquor licensees in Whiteclay, but it's not enough. For example, they only sell beer and only in cans since bottles can be used as weapons. They also stop selling beer at 11 pm. However, they start selling beer at 8 am and many people will buy the cheap, large single cans and will be drunk by noon. Senator Loudon would like to see the restriction that beer cannot be sold before noon and cannot be sold in single cans. The social problems in Whiteclay include public intoxication, pan handling, and fights.

Senator Bloomfield stated that the road between Pine Ridge and Whiteclay is lit at night like a city street in order to prevent accidents. Senator Loudon stated that if you include the area around the Village of Pine Ridge, the population is around 15,000 people with no liquor stores. There are four beer licensees in Whiteclay serving the entire area, which compared to other communities of 15,000 people, is not that many. So the number of beer licensees isn't the issue. The issue has more to do with the Pine Ridge Reservation being double dry – meaning alcohol cannot be sold or consumed.

Senator Lydia Brasch asked Senator Louden whether the issues of chronic alcoholism would be better addressed through Health and Human Services. Senator Louden replied that alcohol impact zones won't address the alcoholism issue and the Indian Health Service doesn't recognize alcoholism as a disease or sickness.

Bob Batt, Liquor Control Commission Chairman, testified that he's been to Whiteclay and there are serious alcohol-related issues there that an alcohol impact zone may help. Chairman Batt also mentioned that there are alcohol-related problems in Omaha. Chairman Batt stated that there is a particular Omaha neighborhood that would greatly benefit from restricting the sale of "airline" bottles and cheap, high-gravity beers. Chairman Batt also mentioned that the Commission has taken action in the past to remove products that mixed beer and caffeine and had them removed.

Mark Vasina, Nebraskans for Peace President, testified that he questioned whether the local municipality for Whiteclay, which would be the Sheridan County Board, would be willing to initiate the process of establishing an alcohol impact zone and that there may be the need to have the Commission step in and impose the alcohol impact zone for Whiteclay.

Diane Riibe, Project Extra Mile Executive Director, testified that there have been positive results in the State of Washington since it implemented alcohol impact zones. Riibe stated that she shares Vasina's concerns that the local municipality won't take action to implement an alcohol impact zone and that there may need to be procedures in place to allow the Commission to step in if necessary.

Senator Karpisek asked Riibe where should the line be drawn as to when local control should prevail? Riibe replied that there is a distinction between city councils and counties when it comes to their authority in passing ordinances.

Senator Bloomfield asked Riibe why would the restrictions of an alcohol impact zone solve a problem that an alcohol ban on the Pine Ridge Reservation has not solved? Riibe replied that research from the Centers for Disease Control shows that certain restrictions on the sale of alcohol results in a reduction in consumption and access by minors.

Tom Mumgaard, City of Omaha Deputy City Attorney, testified that the City of Omaha supports alcohol impact zone legislation. Mumgaard stated that Omaha has had limited success addressing alcohol-related problems through the licensing process given that the City only makes a recommendation to the Commission and the Commission makes the final decision. Mumgaard testified that alcohol impact zones would provide an additional tool for the City of Omaha. Mumgaard also recommended that any alcohol impact zone legislation should include a role for locally-elected officials since they are the ones who must answer to the citizens in their community.

CONCLUSION

There are no Committee recommendations at this time. Attached is a draft bill for consideration.

REQ 03518
MHF - 09/26/2011

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MHF - 09/26/2011

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL

Introduced by
Read first time
Committee:

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 section 53-103, Reissue Revised Statutes of Nebraska, and
3 section 53-101, Revised Statutes Supplement, 2011; to
4 define a term; to provide for alcohol impact zones; to
5 provide duties for the commission; to harmonize
6 provisions; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-101, Revised Statutes Supplement,
2 2011, is amended to read:

3 53-101 Sections 53-101 to 53-1,122 and sections 3 and 4
4 of this act shall be known and may be cited as the Nebraska Liquor
5 Control Act.

6 Sec. 2. Section 53-103, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 53-103 For purposes of the Nebraska Liquor Control Act,
9 the definitions found in sections 53-103.01 to 53-103.42 and section
10 3 of this act apply.

11 Sec. 3. Alcohol impact zone means a geographic area that
12 is located within a city, a village, or the unincorporated area of a
13 county and that is adversely affected by chronic public inebriation
14 or illegal activity associated with sales or consumption of alcoholic
15 liquor.

16 Sec. 4. The commission may place special conditions or
17 restrictions on a licensee under the Nebraska Liquor Control Act
18 having an establishment or otherwise conducting business within an
19 alcohol impact zone to discourage chronic public inebriation or
20 illegal activity associated with sales or consumption of alcoholic
21 liquor. The commission may adopt and promulgate rules and regulations
22 to carry out this section.

23 Sec. 5. Original section 53-103, Reissue Revised Statutes
24 of Nebraska, and section 53-101, Revised Statutes Supplement, 2011,
25 are repealed.