

March 24, 2015

Kansas Legislature
Senate Standing Committee on Federal and State Affairs

RE: HB 2125

Mr. Chairman and Members of the Committee:

I am James Rankin and I am a lawyer in the firm of Foulston Siefkin, LLP. Our firm represents ITO Wines, LLC d/b/a Traveling Vineyard. Traveling Vineyard is based in the Massachusetts area and is a federally and state licensed and bonded winery. I am here as a proponent of HB 2125 as amended by our proposed revision to K.S.A. 41-350(d) which we have added as a balloon to the existing bill.

The Traveling Vineyard is a leading marketing brand that offers consumers the ability to learn more about wine through educational, private, invitation-only in home tasting events hosted by a local person through encouragement by an ITO marketing agent. These events are never open to the public, nor ever conducted in a public venue. Consumers interested in hosting a tasting are encouraged to gather together a small group of their relatives, friends and neighbors to attend an "invitation only" event at the host's private residence. The marketing agent orders the tasting materials from ITO Wines. Tasting materials include one bottle each of five different wines, are paid for by the marketing agent, and are shipped from or on behalf of the winery directly to the marketing agent via UPS or other approved carrier. As with all of our wine shipments, an ID verified adult signature is required to consummate the delivery. The marketing agent is then invited to the host's home. Their role during the tasting is to educate the guests and answer any questions about the wines being tasted, other ITO Wines products, provide education regarding food pairings and answer questions about wine generally. There is never a charge to attend or an obligation to purchase.

At the conclusion of each in-home tasting, attendees are offered an "interest form." Attendees are not obligated to fill-out the interest form. Those interested in hosting a future wine tasting, joining the Traveling Vineyard wine continuity program, or purchasing any of the wines that were served at the tasting may complete the form and mail it to ITO Wines or simply access the ITO Website. The marketing agent does not have the authority to solicit or make sales. The sale occurs after the order is taken at ITO and the purchaser's age is verified and purchase money is received. The in-home host invites guests to his or her home and provides the tasting as a social host, not as a commercial proprietor. The host does not sell the sample wines to the consumers. The wine tasting event is free to invitees and does not constitute an offer for a sale because neither the marketing agent nor the in-home host holds title to the product or is capable of delivering product or accepting an order.

The internet has made the business model of my client (internet based point of sale) a growing trend in the wine industry. In fact, there are other wineries using a similar business marketing model. The internet allows smaller wineries the opportunity to market their product to a larger group of consumers and increase their sales. Even though ITO Wines is based in Massachusetts, ITO is a Kansas taxpayer. Our client pays Kansas gallonage and sales tax on all orders shipped to Kansas residents. Furthermore, ITO contracts with Kansans interested in

“work-from-home” opportunities. Successful wine marketers earn a marketing fee and in this way ITO creates jobs.

K.S.A. 41-350 as it currently stands raises questions regarding point of sale and the nature of the term “order.” Also unspecified is how an order might properly be encouraged and placed either on the internet or otherwise. The statute only deals with taking an “order” and shipment. It does not indicate what might constitute an “order” and it does not define an “order.” Further, the statute does not use the term sale except in conjunction with collection and payment of the Kansas liquor tax. Based upon this, one could only conclude that the sale occurs at the same point where the tax is collected and paid. K.S.A. 41-350, in its current form is confusing on this point and we believe our proposed amendment helps clarify how wineries may market and encourage orders. Also, we believe the very modest change we propose to K.S.A. 41-350 helps avoid potential constitutional First Amendment problems which might arise from liquor law enforcement activity against what can only be described as commercial speech.

Therefore, in order to clarify K.S.A. 41-350, we have proposed an addition to HB 2125, creating a new section 14, explicitly allowing wineries holding a special order shipping license to market their product and receive orders via the internet, phone, through the efforts of compensated agents participating in private premises, in state, wine tastings or otherwise and that such marketing activity shall not fall within the definition of “to sell” under K.S.A. 41-102(bb).

On behalf of our client, we respectfully request the Committee amend House Bill 2125 to include our suggested clarifications to K.S.A. 41-350(d).

Respectfully Submitted