

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman William Mason at 1:30 p.m. on March 18, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Tom Burroughs- excused

Committee staff present:

Russell Mills, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Dennis Hodgins, Legislative Research Department
Rose Marie Glatt, Secretary

Conferees appearing before the committee:

Representative Joe McLeland, 94th District
Thomas W. Groneman, Alcoholic Beverage Commission
Terry "Tuck" Duncan, Kansas Wine & Spirit Wholesalers Assn.
Norm Jennings, Kansas Grape Growers & Wine Makers Assn.
Amy Campbell, Kansas Association of Beverage Retailers
Neal Whitaker, Kansas Beer Wholesaler Association
Phil Bradley, Kansas Beverage Assn.

*written testimony

*Gregory Shipe, Devonport Winery

*Patty Clark, Department of Commerce, Agriculture Marketing Division

Others attending:

See Attached List.

HB 2637 - Purchase of wine from sellers in other states

Mr. Mills, Legislative Research Department briefed the Committee on **HB 2637**. The bill would allow for shipment of out-of-state wine to Kansas retailers, who would charge a 4% handling fee. Retailers would be responsible for age verification, collection of taxes and recording transactions.

PROPONENTS:

Representative Joe McLeland, 94th District, testified that not being able to ship wine into Kansas causes a problem for the State of Kansas and its citizens, as the State receives no revenue and the citizen breaks the law (Attachment 1).

Thomas W. Groneman, Alcoholic Beverage Commission, recommended language in Section 1 (a), page 1, line 19 -20 "*whether or not such wine is otherwise available for sale under the Kansas liquor control act*" be deleted (Attachment 2). They asked that the time requirement for retaining records be changed from two years to three years and the effective date would be no sooner than January 1, 2005.

Terry "Tuck" Duncan, Kansas Wine & Spirit Wholesalers Assn, testified that they support the concept of **HB 2637** (Attachment 3) with the two following amendments:

(1) Section 1. (a) On and after January 1, 2005, a resident of this state who is 21 or more years of age may purchase wine *not otherwise available in the State of Kansas*, from a person licensed to sell wine in another state, ~~whether or not such wine is otherwise available for sale under the Kansas liquor control act~~, if the purchase is for the purchaser's personal use and not for resale.

(2) K.S.A. 41-308 a is hereby amended to read as follows: the sale of wine, manufactured by the licensee, to licensed wine distributors, ~~retailers, clubs, drinking establishments and caterers~~; and pursuant to the provisions of Section 1(b) hereof, if the purchase is for the purchaser's personal use and not for resale. The purchase may be made in person, by telephone, by mail or on the internet.

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Norman M. Jennings, Kansas Grape Growers & Wine Makers Assn. rose in support of **HB 2723** (Attachment 4). Currently **SB 402**, which deals with the same items as in HB 2723 is currently being discussed in the Senate Federal and State Affairs Committee. He recommended that the language “*locally available*” be added to insure that someone in rural Kansas would not be blocked from having access to the same wine as those in a large store in a metropolitan area.

NEUTRAL:

Amy Campbell, Kansas Association of Beverage Retailers, cautioned the Committee to proceed cautiously when considering allowing alcoholic liquor to be delivered directly into the State (Attachment 5). She raised a question regarding the Attorney General’s position on whether or not the bill would create a federal court challenge. They support **HCR 5016** which utilizes a different framework to access a wider variety of products for Kansans.

OPPONENT:

Neal Whitaker, Kansas Beer Wholesaler Association, opposed **HB 2637**, stating that exceptions have made the Liquor Control Act subject to attack. He cited three examples of problems several states have experienced with similar laws (Attachment 6). His testimony included a joint statement sent to Congress on March 16, 2004, from the Wine and Spirits Wholesalers of America and the American Beverage Licensees, titled *Unaccountable Alcohol Sales: A Threat to Your Community*”.

The hearing was closed on **HB 2637**.

HB 2723 - Rights and authority of farm winery licenses.

Mr. Mills stated that farm wineries would be allowed to donate wine that they produced to non-profit, charitable or government-sponsored fundraising events. The licensee could serve samples or sale wine at industry seminars, festivals, the Kansas state fair, trade shows and charitable events. The bill alters the percentage of Kansas products required in the production of Kansas wines, and increases the gallon capacity of wine produced per year.

PROPONENTS:

Norm (Butch) Jennings, Kansas Grape Growers & Wine Makers Assn. rose in support of **HB 2723** (Attachment 7). The bill contained issues that farm wineries would like to see resolved which included: charitable donations; additional sales and tasting needs; increased outlets from 2 to 5; amount of Kansas fruit to be used in the production of wine; “cap” of 50,000 gallon annual production; fee for a farm winery restaurant license; and ownership in other farm wineries and provisions for the shipping of wines.

Thomas W. Groneman, Alcoholic Beverage Commission, stated that **HB 2723** would allow for numerous things that are currently prohibited under the Liquor Control Act and would constitute a significant departure from treatment of holders of other liquor license types. He described three changes in section 1 (a) and the new section 4 (Attachment 8).

It was noted that written testimony in favor of the bill had been distributed from Patty Clark, Department of Commerce, Agriculture Marketing Division (Attachment 9). Statutory barriers that currently exist, should be removed to allow Kansas vineyards and wineries to expand their markets, expand the industry, and garner tourism dollars to Kansas.

NEUTRAL:

Terry “Tuck” Duncan, Kansas Wine & Spirit Wholesalers Assn., stated that if they approve a policy of making charitable contributions or allowing sampling, then that opportunity should be afforded all suppliers (Attachment 10). He questioned the intent of altering the percentage requirements of Kansas produced products, as well as why a winery restaurant licensee should not have to conform to the provisions of the club and Drinking Establishment Act.

He proposed the following amendment on (pg 1, lines 18-19). K.S.A. 41-308a is hereby amended to read as follows: A farm winery license shall allow: (1) The manufacture of domestic table wine and domestic

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fortified wine and the storage thereof; (2) the sale of wine, manufactured by the licensee, to licensed wine distributors, ~~retailers, clubs, drinking establishments and caterers~~. The amendment was necessary to conform Kansas law to NAFTA, GATT and GATS.

OPPONENTS:

Phil Bradley, Kansas Beverage Assn. testified in opposition to the bill. Although they supported the farm wineries concept, they believed that they need to adhere to the same rules as other family businesses in Kansas (Attachment 11). The bill would legalize circumventing the procedures that have been crafted by the Legislature and tested by several state agencies over the years.

Mr. Bradley stated that **HB 2723** would allow a defacto Drinking Establishment, without the current licensing procedures and the current bonding. It would create a new fee structure, an uneven playing field and a new access point for retail beverage alcohol.

Amy Campbell, Kansas Association of Beverage Retailers, rose in opposition to **HB 2723**, stating that it clearly seeks to bypass the primary principles of the three tier distribution system and create exceptions for a few licensees. She cited three ways that businesses of retail liquor store licensees are threatened (Attachment 12).

Neal Whitaker, Kansas Beer Wholesaler Association, opposed **HB 2723** (Attachment 13). He stated that Kansas already had an established system for the sale and distribution of alcohol related products. If the bill were to pass, in it's present form, a major winery could establish a manufacturing facility in Kansas, set up retail outlets in major communities and effectively control wine sales to 70% of the population. He suggested that one provision that is already law, should be repealed. On page 1, line 19, the words *retailers, clubs, drinking establishments and caterers*, should be stricken.

It was noted that written testimony from Gregory A. Shipe, Davenport Orchards, that expressed his opposition to the bill had been distributed (Attachment 14).

The hearing on **HB 2723** was closed. The meeting adjourned at 3:10 p.m. The next meeting is on call of the Chairman.

JOE MCLELAND
REPRESENTATIVE, 94TH DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES**HB 2637**

Wine is an interesting beverage. It comes in different colors, different tastes, and different smells. These properties are the results the grape, or other berries, weather conditions, growing region, and many other factors that influence a bottle of wine. I am not here today to discuss the qualities of a good bottle of wine. I am here to ask you to support HB 2637.

Many good wines are only available for purchase from the winery. Wine makers take pride in the quality of their product and only produce a limited amount. Others do not have the resources for a national distribution of their product. Many good wines are not available for purchase in Kansas.

Not being able to ship wine into Kansas causes a problem for the State of Kansas and its citizens. The problem is wines are purchased and shipped into Kansas every day, the State receives no revenue on these wines, and the citizen breaks the law. HB 2637 resolves this problem. It will be legal to ship wine into Kansas, the State of Kansas will receive the liquor taxes due on the wine, the liquor store will receive revenue for handling the wine and collecting the taxes, and finally the citizen will not be breaking the law.

I urge you to support HB 2637, work the bill, and pass it out of this committee favorably.

Thank you,

Testimony on House Bill No. 2637
Concerning wine;
Providing for certain purchases from persons licensed in other states;
Prescribing certain restrictions thereon
To
The House Committee on Federal and State Affairs
By
Tom Groneman, Director
Alcoholic Beverage Control

March 18, 2004

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today regarding House Bill 2637. In reviewing the bill as written, there are several areas we would like to see revised.

We would ask that the language in Section 1 (a) [page 1, line 19-20] “.....*whether or not such wine is otherwise available for sale under the Kansas liquor control act*,.....” be deleted. This language is contrary to the three-tier distribution system and discriminatory against Kansas’s licensees and could open up the liquor control act to a possible lawsuit.

Also, we ask that the time requirement for retaining records be changed from two years to three years. Currently, retail liquor stores are required to maintain their records for three years (three months on premise). This change would be consistent with present practices.

In addition, we would ask that the effective date of the bill be no sooner than January 1, 2005. This will give us the needed time to adopt the necessary rules and regulations to implement and enforce the provisions of the bill.

Thank you.

Kansas Wine & Spirits Wholesalers Association

To: House Federal & State Affairs Committee

From: R.E. "Tuck" Duncan
Kansas Wine and Spirits Wholesalers Association

RE: H.B. 2637

March 18, 2004

The Kansas Wine & Spirits Wholesalers Association supports the concepts set forth in H.B. 2637.

This issue is one that has been the subject of considerable litigation across the United States. Last year I presented a treatise to the House Judiciary Committee reviewing the legal issues surrounding this topic entitled: "Challenges to State's Rights Under the 21st Amendment," which reflected the complicated interplay between states rights (police powers) and the commerce clause. In that presentation I advised that committee that:

"The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 445 U.S. 97, 110 (1980). (doc: 96 KB)

"The States enjoy broad power under § 2 of the Twenty-first Amendment to regulate the importation and use of intoxicating liquor within their borders . . . Indeed, "[t]his Court's decisions ... have confirmed that the Amendment primarily created an exception to the normal operation of the Commerce Clause." . . . § 2 reserves to the States power to impose burdens on interstate commerce in intoxicating liquor that, absent the Amendment, would clearly be invalid under the Commerce Clause." Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 712 (1984). (doc: 74 KB)

"The Court has made clear that the States have the power to control shipments of liquor during their passage through their territory and to take appropriate steps to prevent the unlawful diversion of liquor into their regulated intrastate markets . . . In the interest of promoting temperance, ensuring orderly market conditions, and raising revenue, the

State has established a comprehensive system for the distribution of liquor [t]hat . . . is unquestionably legitimate.” North Dakota v. U.S., 495 U.S. 423, 413-32 (1990). (doc: 160 KB)

“§ 2 of the twenty-first amendment empowers Indiana to control alcohol in ways that it cannot control cheese. . . No longer may the dormant commerce clause be read to protect interstate shipments of liquor from regulation. . . Every use of sec.2 could be called “discriminatory” in the sense that plaintiffs use that term, because every statute limiting importation leaves intrastate commerce unaffected. If that were the sort of discrimination that lies outside state power, then sec.2 would be a dead letter. No decision of the Supreme Court holds or implies that laws limited to the importation of liquor are problematic under the dormant commerce clause.” Bridenbaugh v. Freeman-Wilson, 227 F.3d 848, 851-53 (7th Cir. 2000) cert. denied sub nom Bridenbaugh v. Carter, 121 S. Ct. 1672 (2001).

Despite a wealth of Supreme Court and appellate court opinions upholding a State's right under the 21st Amendment to control the importation and distribution of alcohol, lawsuits have been filed over the past several years in eight different States challenging alcohol regulatory systems prohibiting the unlicensed interstate direct shipment of alcohol to consumers. Litigation has occurred in: Indiana, Texas, Florida, Virginia, New York, Michigan, Washington, and North Carolina. The Michigan case is on appeal to the U.S. Supreme Court.

In a substantial victory for the 21st Amendment, state rights and enumerated powers, on April 23, 2001, the Supreme Court denied a petition for certiorari arising out of a 7th Circuit ruling that the dormant commerce clause may not be used to shield interstate shipments of alcohol from state regulation. Bridenbaugh v. Freeman-Wilson

In the 7th Circuit opinion, Judge Frank Easterbrook (Williams, J., concurring) held that in a battle between the 21st Amendment "which appears in the constitution, against the dormant commerce clause, which does not," the 21st Amendment prevails.

The most recent case upholding state's rights is from New York. In that case the Federal Court said: "Presence ensures accountability. Records of sales and compliance with New York's regulatory requirements must be available for inspection by SLA officials. Violations are subject to disciplinary measures carried out in New York, including fines imposed against the bond all license

holders are required to post. . . In 2000 there were over 2,100 wineries in the country, a 275% increase since 1975. Requiring New York officials to traverse the country to ensure that direct sales to consumers (no matter how small) comply with New York law would render the regulatory scheme useless." Swedenburg v. Kelly, Docket No. 02-9511, 03-7089 Con (2nd Cir, 2004).

"Under section 2, states have the authority to be proactive as well as reactive," and the state has a legitimate interest in requiring a physical presence for the purposes of "auditing company records, monitoring compliance with the ABC laws, monitoring licenses, checking tax forms for audits, etc." Swedenburg v. Kelly, Docket No. 02-9511, 03-7089 Con (2nd Cir, 2004).

"New York's regulatory regime falls squarely within the ambit of section 2's grant of authority. The statutory scheme regulates only the importation and distribution of alcohol in New York. New York's prohibition of the sale and shipment of wine by unlicensed wineries directly to New York consumers serves valid regulatory interests. The statute allows the state to monitor the distribution and sale of alcoholic beverages by permitting such distribution and sale only through state licensed entities supervised by, and accountable to, the SLA." Swedenburg v. Kelly, Docket No. 02-9511, 03-7089 Con (2nd Cir, 2004).

"Changes in marketing techniques or national consumer demand for a product do not alter the meaning of a constitutional amendment." . " Swedenburg v. Kelly, Docket No. 02-9511, 03-7089 Con (2nd Cir, 2004).

Thus, a system that works without discrimination would pass muster. In the various states where cases have been filed and the Courts ruled against the states (such as Michigan and Texas) it has been because the state established a discriminatory system -- it treated in-state producers different (better) than the out-of-state producer.

I propose two amendments:

Section 1. (a) On and after January 1, 2005, a resident of this state who is 21 or more years of age may purchase wine not otherwise available in the State of Kansas from a person licensed to sell wine in another state, ~~whether or not such wine is otherwise available for sale under the Kansas liquor control act,~~ if the purchase is for the purchaser's personal use and not for resale. The purchase may be made in person, by telephone, by mail or on the internet.

This amendment cures the complaint of those who desire internet or catalog purchasing, it allows access of products NOT otherwise available in this state. Product available in

this state will continue to be sold through the existing proven system of beverage alcohol distribution.

The second amendment:

K.S.A. 41-308a is hereby amended to read as follows: 41-308a. (a) A farm winery license shall allow:

- (1) The manufacture of domestic table wine and domestic fortified wine and the storage thereof;
- (2) the sale of wine, manufactured by the licensee, to licensed wine distributors, ~~retailers, clubs, drinking establishments and caterers;~~ and pursuant to the provisions of Section 1(b) hereof, if the purchase is for the purchaser's personal use and not for resale. The purchase may be made in person, by telephone, by mail or on the internet.

This will treat in-state and out-of-state producers the same without discrimination, meet consumer demands, and "not alter the meaning of a constitutional amendment." *Swedenburg, supra*.

Thank you for your kind attention to and consideration of these matters.



Mr. Duncan is the Executive Secretary and General Counsel, Kansas Wine and Spirits Wholesalers Association (KWSWA). University of Kansas, B.S., Journalism '73; Washburn University J.D. '76. Secretary and Chief Counsel, Kansas Board of Tax Appeals '76-'78; Assistant Attorney General, Kansas Alcoholic Beverage Control, '79-'81; Assistant City Attorney, City of Topeka, KS, '81-'83. Private practice 1983 to present. Admitted to practice in Kansas, Federal District Court, Circuit Courts of Appeal, and the United States Supreme Court. Mr. Duncan has made numerous presentations to regional and national NCSLA conferences on beverage alcohol law, and is a frequent speaker for server training programs. Mr. Duncan currently sits as a Judge *Pro Tem*, Shawnee County District Court for Domestic Violence matters. Mr. Duncan represents the KWSWA, the Kansas Occupational Therapy Association and American Medical Response before the Kansas Legislature. Previous activities include: President Topeka Friends of the Zoo, Member and Vice-Chairman Topeka Public Schools Board of Education; Chairman Kansas Expo Centre Operating Board; President Voluntary Action Center (a United Way agency); Member, Topeka and Kansas Bar Associations; Life Member Washburn Law School Association; Life Member, University of Kansas Alumni Association; Life Member Topeka/Shawnee County Friends of the Library; 2004 President Shawnee County Historical Society; 2002-2003 Chairman Topeka Postal Service Customer Advisory Council; and Chairman, Topeka Housing Authority 1999-2004. Senior Warden, St. David's Episcopal Church. Married 29 years to Kathleen Allen Duncan, father two adult sons and proud grandfather to granddaughter Tessa, age 5.

Kansas Grape Growers & Wine Makers Association

March 18, 2004

To: House Federal & State Affairs Committee
From: Norman M. Jennings, Legislative Chair

RE: HB2723

Mr. Chairman and members of the committee, thank you for the opportunity to offer this testimony. The Kansas Grape Grower & Wine Maker Association (KGGWMA) is the state association established by the growers and wineries of Kansas. The grape and wine industry in Kansas is one that has the potential to be a major contributor to the state tourism and value-added agricultural industries, as well as state alcohol tax revenue sources. The fact that this industry is comprised of farmers and wineries that offer more than either the single acts of distributing or selling alcohol within the state, speaks to the need of legislation that is unique.

✓ The Kansas Grape Grower & Wine Makers Association supports HB2723. Currently SB402, which deals with some of the same items as HB2723 is being discussed in the Senate Federal & State Affairs committee. Following is a discussion of each proposed change to the existing laws that govern our industry.

- A. The new items 6 through 8 proposed under Section 1a are all items that address charitable donations, additional sales and tasting needs. These items will help support charitable organizations, broaden the sales and tasting, as well as allow for sales by the drink within a restaurant at the winery. We acknowledge permits would be needed for the off-site activities and understand through the director that similar mechanisms exist, although they are designed for "by the drink" sales versus tasting and unopened container sales. We also recognize the opposition that states a donation or tasting would avoid taxation. This is not the intent of the changes proposed and, although small in amount these taxes can be facilitated in similar fashion as the withdrawals from inventory allowed for distributors under K.S.A. 41-709. It is also assumed that the sales of the winery wines at the on-site restaurant would require adherence to the same regulation that governs a drinking establishment.
- B. Section 1b is being changed to increase the number of outlet from 2 to 5 and allow for joint outlets. A joint outlet (multiple wineries at one outlet location) would form single locations for tasting and sales of the wines of Kansas, which could have a substantial tourism impact.
- C. Section 1c deals with the amount of Kansas fruit to be used in the production of wines. Further review of HB2723 reveals that the proposed changes could allow for a winery to operate solely and continually utilizing out of state fruit. This would not promote the growth of the agricultural growing side of this industry and thus would not be supported by our association. The need for changes to this section is to deal with the availability, quality and varietal of the fruits required for producing the wines of each winery. These three items directly impact the production of high quality wines. Fruit of the quantity and varietal must be available from the grape grower at a quality that allows for separate lot

productions. Because of the problems noted above, we request that the changes to this section be as follows.

Not less than 60% of the products used in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas, except when a lesser portion is authorized by the *grape and wine advisory council, as developed under K.S.A. 74-552*, and the director based on *their joint* findings and judgment. ~~The label of domestic wines and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas.~~

The grape and wine advisory council is comprised of members from the commercial grape grower industry, farm winery industry, wine distribution industry, retail liquor industry as well as agriculture and tourism. This council possesses a full understand of the issues that impact growing of grapes and wine production and therefore when working with the director would be able to oversee the requirements of this section.

- D. Section 1d, by including K.S.A. 41-701, places a "cap" of 50,000 gallon annual production on the farm wineries. We are opposed to something that would limit our potential to grow and impact further the agricultural and tourism industries of the state. The federal small producer credit is set at under 250,000 gallon annual production. The level placed by Kansas is the lowest of any level currently in place. Under this section a winery would be forced to stop growing or completely change their business model, restructure its workforce (likely resulting in the elimination of many positions) and closing locations.

You will be told that this "cap" exists as the state desires these wineries be small operations and not large manufacturing operations. 5000 gallons is contained within a tank that takes up no more than 7' by 7' space. You may also be told that the wineries are no where near 50,000 gallons and do not need this change. When additional grapes are required to meet increase in production, the plants must be ordered 5 years before the first full yield will be realized. Currently, there are 2 wineries in Kansas that will be at or above 50,000 within the next 5 years if they continue their current rate of growth. They need to know now if they are going to be allowed to grow and therefore encourage farmers to grow as well.

- E. Section 2e adds the fee for a farm winery restaurant license.
- F. The changes to section 3a and b allow for ownership in other farm wineries, as a minority owner. This facilitates for the opening of additional wineries in cooperation with experienced knowledgeable industry professionals allowing for a more seamless establishment of new quality wineries. This could apply to a family member opening a winery in a different part of the state or allow a person wishing to start a winery that has little or no knowledge of winemaking to partner with an existing winery.
- G. Provisions allowing for the shipping of wine are proposed under new section 4 of HB2723. The majority of the states allowing for shipping of wine do so as reciprocal acts. When a state allows for reciprocal wine shipments, it declares the right of other states to ship, so long as they allow for the same. This section was taken directly by the reviser from the Missouri and Arizona statutes.

Shipping has been put forward in a few different bills during the recent sessions. They have all used the same language. We do not support this form of shipping legislation. It stipulates wines can be shipped into the state if they are not "otherwise available for sale in the state". This does not speak to "locally available" and therefore would create a situation whereas a very small quantity of a wine is placed in a large store in a large metropolitan area only and therefore blocking the ability of someone in rural Kansas from having access to the same wine. Additionally this wording excludes the ability of in-state farm wineries from shipping to other states.

Opposition may suggest that some of these changes would circumvent taxes and fees that Kansas so desperately needs. Should there be taxes or fees required by the legislature in some of the areas, we are confident that the structure exists to properly impose and collect these items. We would offer that these changes would only increase the agricultural and tourism industries of the state, as well as the growth in alcohol tax revenues based on the growth of the wineries. Opposition will also suggest that we are seeking special treatment that could jeopardize the ability of the state to regulate and enforce alcohol laws. With the exception of shipping and minority ownership, all of the items exist and we are seeking to expand or clarify those parts of the laws.

Concluding we again thank the committee for allowing this testimony and request with all due respect that you help to assist the growth and survival of this industry by supporting these changes. The grape and wine industry, through our value-added agriculture, tourism and alcohol tax revenues can be an industry with a meaningful impact on the economy of Kansas.

Kansas Grape Grower Wine Maker Association

Industry Information Prepared March 18, 2004

The grape growing and wine making industry of Kansas has roots as far back as the founding of the state. Prior to prohibition, Kansas had over 5660 acres of grapes and produced in excess of 205,000 gallons of wine. Just over 2 decades ago, the industry began to re-develop the grape growing and wine making industry in Kansas. Today the largest vineyard is approximately 14 acres, with just over 140 acres being grown statewide.

Our industry is one that impacts agriculture with viable highly value-added crop. Based on the current grape varieties, vineyard management and new technology we have seen that grape growing can provide enough income to support a family of 6 people farming less than 20 acres. We impact the state economy through tax revenues and are becoming a valuable partner in the tourism industry.

The industry is one that currently impacts statewide tourism and has to potential to have a much greater impact. Many states that have focused on grape growing and wineries as tourism destinations have seen as much as a 20 fold growth in the tourism impact in a mere 3 years.

Following are a few statistics of the industry as developed by surveys of the state association.

1. The state currently has 7 wineries and over 20 vineyards.
2. In 2003 the wineries produced a combined total of 49,000 gallons of wine. This represented approximately nine-tenths of a percent (0.9%) of the total wine consumed in Kansas. Our total sales of wine averaged just under \$1,000,000 over the last 3 years.
3. The wineries produced over 120 different wines in 2003.
4. Currently there is over 140 acres of grapes within the state.
5. The industry currently has 63 families that are dependent on it for either all or part of their income.
6. There are 25 full-time people employed within this industry.
7. There are 63 part-time people employed within this industry.

The grape growing and wine making industry of Kansas is one that is very proud of our tradition and is excited about our future. Our industry can be a viable contributor to the state economy through the value-added agriculture and agritourism.

Data Sources:

1. 13th BI-annual reports of Kansas Agricultural Department, 1901-2
2. Growing and Vintage survey of KGGWMA, 2003



The Kansas Association of Beverage Retailers

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Martin Platt, President

Amy A. Campbell, Executive Director

**TESTIMONY PRESENTED TO THE
HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
MARCH 18, 2004**

BY AMY A. CAMPBELL, EXECUTIVE DIRECTOR

Thank you, Chairman and members of the Committee. My name is Amy Campbell and I appear before you today on behalf of the Kansas Association of Beverage Retailers to speak regarding HB 2637. The bill offers a creative solution to the barriers some of our customers face when seeking certain limited production and estate wines. KABR supports a progressive look at this issue, and hopes to participate in an eventual solution - however there are aspects to this bill which cause some concern.

Retail liquor store licensees are very concerned that the State of Kansas proceed cautiously when considering allowing alcoholic liquor to be delivered directly into the state. As the licensed point of sale in Kansas, retailers meet a long list of State imposed standards and regulations. This role should be preserved for the best interests of Kansas as it pertains to collecting and remitting State enforcement taxes and safely delivering the product to legal consumers. HB 2637 preserves that point of sale and insures payment of the taxes on the product. However, the bill does not specify how the retailer is to know the price paid on the product. This is important as to the calculation of the 8 percent enforcement.

KABR would like to know the position of the Attorney General's office as to whether or not this bill would create the risk of a federal court challenge to Kansas prohibition on the direct shipping of liquor by creating an exception to our laws for certain wineries. There is a great deal of disagreement among attorneys as to whether or not HB 2637 creates such a risk. Ultimately, it is the Attorney General who would be called upon to defend the law. Our members would like to be assured that the Attorney General is confident that they could and would defend this language.

Exactly one year ago today, I stood before the House Judiciary Committee to testify in support of House Concurrent Resolution 5016 which charged the Attorney General and the Division of ABC with the task of studying wine shipment laws and reviewing the potential impact to Kansas. Reviewing and comparing the systems of other states most similar to Kansas will provide the background that is so important when considering possible change and avoiding lengthy and costly federal court battles.

We hope the Senate will pass HCR 5016, and would forward to working with the Attorney General and the Division of ABC to examine possibilities for utilizing a different framework to access a wider variety of products for our customers. There are a variety of models being used in other states - unfortunately, allowing certain exceptions can result in federal court challenges which are in progress today. There are no simple answers to the questions that arise related to direct shipment, and we are willing to participate in a cooperative process to review the options and learn from the errors of others.

Without some reassurance as to the risks presented by the bill, KABR is uneasy about supporting any change in Kansas prohibition against direct shipments by common carrier. The study recommended in HCR 5016 may help us to move toward a model which preserves the important relationship between the licensee and customers, open access to less available products, and maintains the partnership between the State and its licensees.

Neal Whitaker



800 SW JACKSON, STE 1017, TOPEKA, KANSAS 66612

EXCEPTIONS HAVE MADE THE LIQUOR CONTROL ACT SUBJECT TO ATTACK FROM INTERESTS OUTSIDE OF KANSAS.

HB 2637

KANSAS HAD A STATUTE THAT BARRED NON-RESIDENT COMPANIES AND INDIVIDUALS FROM BECOMING SPIRITS, WINE OR BEER WHOLESALERS. THEN A STATUTORY EXCEPTION WAS MADE: A LICENSE WOULD BE GIVEN TO NON-RESIDENTS WHO HAD HELD A LICENSE – AS A RESIDENT – FOR 10 CONSECUTIVE YEARS. THAT EXCEPTION WAS USED AGAINST THE STATE AS A PRIMARY ARGUMENT BY THE PLAINTIFFS - AND REFERENCED BY THE JUDGE - IN THE *GLAZER* LITIGATION. THE JUDGE SUBSEQUENTLY STRUCK THE RESIDENCY REQUIREMENT FOR WHOLESALERS. IT COST THE STATE HUNDREDS OF THOUSANDS IN LEGAL FEES. WE STRONGLY ADVISE AGAINST EXCEPTIONS THAT MIGHT CAUSE SIMILAR PROBLEMS IN THE FUTURE.

ACTIONS THAT HIGHLIGHT OUR CONCERNS REGARDING "SPECIAL LEGISLATION FOR A FEW" INCLUDE:

- MICHIGAN RECENTLY LOST A U. S. COURT OF APPEALS CASE THAT WILL FORCE THE STATE TO ALLOW DIRECT SHIPPING OF WINE TO ANYONE OF LEGAL AGE OR TO ANY BUSINESS. MICHIGAN – BECAUSE OF THE APPEALS DECISION – APPEARS TO HAVE UNREGULATED WHOLESALE DISTRIBUTION OF ALCOHOLIC BEVERAGES. KANSAS HAS JOINED IN A PETITION TO APPEAL THIS CASE TO THE UNITED STATES SUPREME COURT.
- AT LEAST SIX OTHER STATES HAVE BEEN SUED – AND LOST - IN FEDERAL COURT OVER THE PROHIBITION OF WINE SHIPMENT.
- AN ATTACK AGAINST THE ENTIRE WASHINGTON STATE DISTRIBUTION AND REGULATORY SYSTEM HAS BEEN LOBBED BY COSTCO, A GIANT MULTI-STATE, NATIONAL RETAILER.
- WE FEAR THAT THE LANGUAGE IN HB 2637 THAT CREATES AN ELABORATE EXCEPTION FOR OUT-OF-STATE WINE SHIPMENT IS THE EXCEPTION THAT WILL ATTRACT A DORMANT COMMERCE CLAUSE LAWSUIT.
- AND, IF AN EXCEPTION IS ALLOWED FOR BOTH IN-STATE AND OUT-OF-STATE WINE SHIPMENTS, HOW WILL THE STATE SUCCESSFULLY DEFEND THE REMAINING DISTRIBUTION SYSTEM WHEN THE SPIRITS AND BEER MANUFACTURERS DECIDE THEY WANT TO SELL "DIRECT" AS WELL. ONCE THE STATE BEGINS TO LOSE BITS AND PIECES OF CONTROL OVER THE DISTRIBUTION SYSTEM, THE ABILITY TO COLLECT TAXES AND CONTROL WHO CONSUMES WILL EVENTUALLY BE LOST.

WE ASK THE COMMITTEE TO REPORT HB 2637 ADVERSLY AND AVOID ANOTHER LAWSUIT.

HS Federal & State Affairs
March 18, 2004
Attachment 6

WE WOULD LIKE TO REMIND THE COMMITTEE THAT KANSAS IS 0-2 SO FAR IN DEFENDING THE LIQUOR CONTROL ACT AND MAY BE 0-3 BEFORE TOO LONG. WE DO NOT BELIEVE THE RISK IS WORTH THE DESIRE OF A FEW WHO FIND THE VAST WINE SELECTION IN KANSAS TO BE INSUFFICIENT.

THE PREVIOUSLY MENTIONED WINE SHIPMENT CASES DID NOT RESULT IN THE COURTS STRIKING THE UNCONSTITUTIONAL STATUTES AND PROHIBITING THE SHIPMENT OF ALL WINE. THE COURTS, INSTEAD, OPENED THE DOOR TO *ALL* WINE SHIPMENTS. IN THE MICHIGAN CASE, THE STATE IS UNCERTAIN WHAT CONTROL, IF ANY, IT HAS OVER LIQUOR DISTRIBUTION. WE DON'T BELIEVE THAT MEMBERS OF THE KANSAS LEGISLATURE WANT THAT OUTCOME. AND NEITHER DO WE. AND WE THINK THE SUPREME COURT WILL FIND IT INTERESTING THAT EVEN THOUGH KANSAS HAS JOINED MICHIGAN IN THE APPEAL, THE STATE LEGISLATURE IS ATTEMPTING TO THE VERY SAME ACTION THAT CAUSED THE CASE IN MICHIGAN.

THANK YOU,
NEAL WHITAKER, EXECUTIVE DIRECTOR
KANSAS BEER WHOLESALERS ASSOCIATION



Wine and Spirits Wholesalers of America



March 16, 2004

Unaccountable Alcohol Sales:
A Threat to Your Community

Dear Members of Congress:

Today on Capitol Hill, a closed briefing is being hosted by the "Coalition for Free Trade," a special interest organization seeking to undermine and destroy seventy years of reasonable regulation of licensed beverages. Legal and legislative decisions are being considered that will affect how beer, wine and liquor is bought and sold in your community.

Although the debate is being characterized as something seemingly innocuous called "the interstate shipments of wine," the effort underway is really about dismantling a nationwide system of reasonable, state-based regulation that ensures taxes are collected, an orderly marketplace is maintained and that children cannot purchase and consume alcohol.

A few members of the wine industry advocate a system of online, catalog and telephone transactions which will open the door to shadow alcohol sale of not only wine, but also beer and liquor. Direct-to-consumer sales will undo the more than 70-year-old system of safe and responsible local controls over how alcohol is sold in our communities.

The 21st Amendment to the Constitution repealed Prohibition and specifically instructed states to regulate licensed beverages. The Constitution allows the states to reflect the will of their citizens when it comes to allowing and restricting the sale of beverage alcohol.

The special interests are proposing alcohol sales that will make it virtually impossible for state regulators to perform their jobs. What

those advocates are seeking constitutes the first step in a march to end the practice of face-to-face transactions involving a controlled product between a consumer and a licensed, regulated retailer.

Undermining the licensed system will mean taxes on products will not be paid, local control will be disregarded, and regulations restricting access to those under 21 years of age will be ignored.

Collectively, the Wine and Spirits Wholesalers of America (WSWA), the National Beer Wholesalers Association (NBWA) and America's Beverage Licensees (ABL) represent over 20,000 family-owned businesses committed to ensuring that you know the serious and dramatically negative consequences to undermining the 21st Amendment and your state laws and regulations.

Consider just a few of the consequences that will occur if these special interests get their way:

1. You will have – Untracked, unaccountable alcohol sales:

- Create a virtual vending machine for beer, wine and liquor: **point-click-drink**.
- Give minors a simple, risk-free way to get alcohol without verifiable ID checks.
- Result in packages being shipped in unmarked boxes and left on doorsteps or delivered without adult signature.
- Rob states and communities of vital tax revenues.
- Remove safeguards ensuring product purity.
- Make a mockery of local efforts to create and enforce barriers to underage access.

2. You will be asked to undermine the U.S. Constitution:

The 21st Amendment to the United States Constitution, enacted in 1933, clearly states: "The transportation or importation into any State, Territory or possession of the United States for the delivery or use therein of intoxicating liquors in violation of the laws thereof, is hereby prohibited."

3. The danger to children is real – and can only get worse:

In recent years, media, state attorneys general offices and other entities have conducted stings of Internet and toll-free alcohol vendors and revealed the growing threat from shadow alcohol sales.

The Michigan Attorney General's office conducted a series of stings where minors purchased alcohol online. According to former Assistant Attorney General Irene Mead, "...most alcohol sellers were far more concerned about the validity of the credit card number than the age of the purchaser.

Virtually none of the sellers were concerned about Michigan laws precluding such shipments. The alcoholic beverage products available for sale ranged from fine wines to 194 proof grain alcohol... about one in three websites contacted during these stings agreed to sell alcohol to the minor purchaser with no more age verification than a 'click' of the mouse."

4. Congress will be thrown into ongoing litigation:

- On January 30, 2004, the Michigan Attorney General's office filed a petition with the U.S. Supreme Court to reconfirm the state's right to regulate the distribution of alcohol as guaranteed by the U.S. Constitution. This is an appeal of the August 6, 2003 U.S. Circuit Court of Appeal ruling that overturned the state's longstanding ban on alcohol shipments to consumers that occur outside of Michigan's regulated alcohol tracking and distribution system. Thirty-six state attorneys general have joined the state of Michigan in urging the U.S. Supreme Court to reaffirm a state's right to regulate the distribution and sale of alcohol.

Michigan law currently prohibits unlicensed and unregulated out-of-state alcohol producers and retailers from selling and delivering alcoholic beverages directly to the state's residents, in accordance with Section 2 of the 21st Amendment. Michigan's existing law is still enforced.

- On February 12, 2004, the 2nd Circuit Court of Appeals, New York, citing the 21st Amendment, acted unanimously to protect the state's alcohol regulatory system. The court confirmed the fact that unregulated and unaccountable alcohol shipments to consumers would destroy government controls on alcohol:

"Changes in marketing techniques or national consumer demand for a product do not alter the meaning of a constitutional amendment."

"In 2000, there were over 2100 wineries in the country, a 275% increase since 1975. Requiring New York officials to traverse the country to ensure that direct sales to consumers (no matter how small) comply with New York law would render the regulatory scheme useless."

The Bottom Line:

Eliminating the system of face-to-face transactions between consumers and licensed, regulated retailers erodes more than 70-years of local control and poses a threat to the safety of your community.

As you hear from those special interests that are trying to circumvent the licensed alcohol distribution system and turn back the clock to a period where regulation was nonexistent, please feel free to contact us to get the entire story. We hope that you will stand with the membership of our three associations and protect your community's ability to control the distribution and sale of alcoholic beverages.

Sincerely,



Juanita D. Duggan
President/CEO
WSWA
202-371-9792



David K. Rehr
President
NBWA
703-683-4300



Harry Wiles
Executive Director
ABL
301-656-1494

Kansas Grape Growers & Wine Makers Association

March 18, 2004

To: House Federal & State Affairs Committee
From: Norman M. Jennings, Legislative Chair

RE: HB2723

Mr. Chairman and members of the committee, thank you for the opportunity to offer this testimony. The Kansas Grape Grower & Wine Maker Association (KGGWMA) is the state association established by the growers and wineries of Kansas. The grape and wine industry in Kansas is one that has the potential to be a major contributor to the state tourism and value-added agricultural industries, as well as state alcohol tax revenue sources. The fact that this industry is comprised of farmers and wineries that offer more than either the single acts of distributing or selling alcohol within the state, speaks to the need of legislation that is unique.

The Kansas Grape Grower & Wine Makers Association supports HB2723. Currently SB402, which deals with some of the same items as HB2723 is being discussed in the Senate Federal & State Affairs committee. Following is a discussion of each proposed change to the existing laws that govern our industry.

- A. The new items 6 through 8 proposed under Section 1a are all items that address charitable donations, additional sales and tasting needs. These items will help support charitable organizations, broaden the sales and tasting, as well as allow for sales by the drink within a restaurant at the winery. We acknowledge permits would be needed for the off-site activities and understand through the director that similar mechanisms exist, although they are designed for "by the drink" sales versus tasting and unopened container sales. We also recognize the opposition that states a donation or tasting would avoid taxation. This is not the intent of the changes proposed and, although small in amount these taxes can be facilitated in similar fashion as the withdrawals from inventory allowed for distributors under K.S.A. 41-709. It is also assumed that the sales of the winery wines at the on-site restaurant would require adherence to the same regulation that governs a drinking establishment.
- B. Section 1b is being changed to increase the number of outlet from 2 to 5 and allow for joint outlets. A joint outlet (multiple wineries at one outlet location) would form single locations for tasting and sales of the wines of Kansas, which could have a substantial tourism impact.
- C. Section 1c deals with the amount of Kansas fruit to be used in the production of wines. Further review of HB2723 reveals that the proposed changes could allow for a winery to operate solely and continually utilizing out of state fruit. This would not promote the growth of the agricultural growing side of this industry and thus would not be supported by our association. The need for changes to this section is to deal with the availability, quality and varietal of the fruits required for producing the wines of each winery. These three items directly impact the production of high quality wines. Fruit of the quantity and varietal must be available from the grape grower at a quality that allows for separate lot

productions. Because of the problems noted above, we request that the changes to this section be as follows.

Not less than 60% of the products used in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas, except when a lesser portion is authorized by the *grape and wine advisory council, as developed under K.S.A. 74-552*, and the director based on *their joint* findings and judgment. ~~The label of domestic wines and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas.~~

The grape and wine advisory council is comprised of members from the commercial grape grower industry, farm winery industry, wine distribution industry, retail liquor industry as well as agriculture and tourism. This council possesses a full understand of the issues that impact growing of grapes and wine production and therefore when working with the director would be able to oversee the requirements of this section.

- D. Section 1d, by including K.S.A. 41-701, places a “cap” of 50,000 gallon annual production on the farm wineries. We are opposed to something that would limit our potential to grow and impact further the agricultural and tourism industries of the state. The federal small producer credit is set at under 250,000 gallon annual production. The level placed by Kansas is the lowest of any level currently in place. Under this section a winery would be forced to stop growing or completely change their business model, restructure its workforce (likely resulting in the elimination of many positions) and closing locations.

You will be told that this “cap” exists as the state desires these wineries be small operations and not large manufacturing operations. 5000 gallons is contained within a tank that takes up no more than 7’ by 7’ space. You may also be told that the wineries are no where near 50,000 gallons and do not need this change. When additional grapes are required to meet increase in production, the plants must be ordered 5 years before the first full yield will be realized. Currently, there are 2 wineries in Kansas that will be at or above 50,000 within the next 5 years if they continue their current rate of growth. They need to know now if they are going to be allowed to grow and therefore encourage farmers to grow as well.

- E. Section 2e adds the fee for a farm winery restaurant license.
- F. The changes to section 3a and b allow for ownership in other farm wineries, as a minority owner. This facilitates for the opening of additional wineries in cooperation with experienced knowledgeable industry professionals allowing for a more seamless establishment of new quality wineries. This could apply to a family member opening a winery in a different part of the state or allow a person wishing to start a winery that has little or no knowledge of winemaking to partner with an existing winery.
- G. Provisions allowing for the shipping of wine are proposed under new section 4 of HB2723. The majority of the states allowing for shipping of wine do so as reciprocal acts. When a state allows for reciprocal wine shipments, it declares the right of other states to ship, so long as they allow for the same. This section was taken directly by the reviser from the Missouri and Arizona statutes.

Shipping has been put forward in a few different bills during the recent sessions. They have all used the same language. We do not support this form of shipping legislation. It stipulates wines can be shipped into the state if they are not "otherwise available for sale in the state". This does not speak to "locally available" and therefore would create a situation whereas a very small quantity of a wine is placed in a large store in a large metropolitan area only and therefore blocking the ability of someone in rural Kansas from having access to the same wine. Additionally this wording excludes the ability of instate farm wineries from shipping to other states.

Opposition may suggest that some of these changes would circumvent taxes and fees that Kansas so desperately needs. Should there be taxes or fees required by the legislature in some of the areas, we are confident that the structure exists to properly impose and collect these items. We would offer that these changes would only increase the agricultural and tourism industries of the state, as well as the growth in alcohol tax revenues based on the growth of the wineries. Opposition will also suggest that we are seeking special treatment that could jeopardize the ability of the state to regulate and enforce alcohol laws. With the exception of shipping and minority ownership, all of the items exist and we are seeking to expand or clarify those parts of the laws.

Concluding we again thank the committee for allowing this testimony and request with all due respect that you help to assist the growth and survival of this industry by supporting these changes. The grape and wine industry, through our value-added agriculture, tourism and alcohol tax revenues can be an industry with a meaningful impact on the economy of Kansas.

Kansas Grape Grower Wine Maker Association

Industry Information Prepared March 18, 2004

The grape growing and wine making industry of Kansas has roots as far back as the founding of the state. Prior to prohibition, Kansas had over 5660 acres of grapes and produced in excess of 205,000 gallons of wine. Just over 2 decades ago, the industry began to re-develop the grape growing and wine making industry in Kansas. Today the largest vineyard is approximately 14 acres, with just over 140 acres being grown statewide.

Our industry is one that impacts agriculture with viable highly value-added crop. Based on the current grape varieties, vineyard management and new technology we have seen that grape growing can provide enough income to support a family of 6 people farming less than 20 acres. We impact the state economy through tax revenues and are becoming a valuable partner in the tourism industry.

The industry is one that currently impacts statewide tourism and has to potential to have a much greater impact. Many states that have focused on grape growing and wineries as tourism destinations have seen as much as a 20 fold growth in the tourism impact in a mere 3 years.

Following are a few statistics of the industry as developed by surveys of the state association.

1. The state currently has 7 wineries and over 20 vineyards.
2. In 2003 the wineries produced a combined total of 49,000 gallons of wine. This represented approximately nine-tenths of a percent (0.9%) of the total wine consumed in Kansas. Our total sales of wine averaged just under \$1,000,000 over the last 3 years.
3. The wineries produced over 120 different wines in 2003.
4. Currently there is over 140 acres of grapes within the state.
5. The industry currently has 63 families that are dependent on it for either all or part of their income.
6. There are 25 full-time people employed within this industry.
7. There are 63 part-time people employed within this industry.

The grape growing and wine making industry of Kansas is one that is very proud of our tradition and is excited about our future. Our industry can be a viable contributor to the state economy through the value-added agriculture and agritourism.

Data Sources:

1. 13th BI-annual reports of Kansas Agricultural Department, 1901-2
2. Growing and Vintage survey of KGGWMA, 2003

Testimony on House Bill No. 2723

Concerning alcoholic liquor;
Relating to farm wineries
To
The House Federal and State Affairs Committee
By
Tom Groneman, Director
Alcoholic Beverage Control Division

March 18, 2004

Mr. Chairman, members of the committee, thank you for allowing me to appear before you today regarding House Bill 2723.

House Bill 2723, as written, would allow for numerous things that are currently prohibited under the liquor control act and would constitute a significant departure from treatment of holders of other liquor license types.

Section 1, (a) (6) [page 1, line 31-32] would allow farm wineries to donate product; currently, all liquor license holders are prohibited from selling product at below cost or giving it away. Licensees are allowed to make a monetary donation to a charitable entity, which in turn can purchase the licensees' product from a licensed retailer. This ensures the enforcement tax is paid on the product.

The new language in Section 1, (a) (7) [page 1, lines 33-37] would make farm winery licenses "portable" and the state would not be able to track or regulate the events where farm winery licensees are serving samples or selling their products. Currently, obtaining a temporary permit is the only way for alcoholic beverages to be sold on unlicensed premises. Application for a temporary permit must be submitted for approval to the Director of ABC 14 days in advance of a scheduled event. This enables the state to monitor activity at such events to ensure compliance with all liquor laws. We request that if farm wineries are allowed to serve samples and sell their product in a variety of unlicensed locations that they be required to obtain a temporary permit. The current provision for a temporary permit allows for

**Testimony in Support of HB 2723
To
The House Federal and State Affairs Committee**

**By Patty Clark
Director of Ag Marketing
Kansas Department of Commerce
March 18, 2004**

Good morning, Chairman Mason and members of the Committee. I am Patty Clark, Director of the Ag Marketing Division of the Kansas Department of Commerce, and I want to thank you for this opportunity to offer our support for HB 2723 and the Kansas Grape Growers and Winemakers Association, the producer organization requesting these statutory changes.

Our Division has a statutory obligation to assist with the domestic and international marketing of Kansas agricultural commodities and processed food products. Because of that responsibility, we are acutely aware of the competitive disadvantage under which our Kansas wineries currently operate.

Kansas has had seven wineries for at least a decade, and if we expect to see those wineries expand and prosper as value added agricultural operations, we need to remove statutory barriers that currently exist regarding tastings, number of retail outlets, sale of wine by the glass, carafe or opened bottle at restaurants contiguous to the winery, donation of product to charitable events, and ownership in other farm wineries in the state.

Our Division is working closely with existing Kansas vineyards and wineries to expand their markets, expand the industry, and garner tourism dollars to our state. They exemplify rural entrepreneurship, but growth should not be stagnated by outdated laws and prohibitions. Therefore, we ask this Committee to consider HB 2723 and pass the bill out favorably. Thank you.

Kansas Wine & Spirits Wholesalers Association

To: House Federal & State Affairs Committee

From: R.E. "Tuck" Duncan

Kansas Wine and Spirits Wholesalers Association

RE: H.B. 2723

March 18, 2004

HB 2723 would amend current law regarding farm wineries. This bill would allow farm wineries to donate farm-produced wine products to nonprofit, charitable, and government sponsored fundraising events; serve samples to promote the wine at festivals, trade shows, and charitable events, including the Kansas State Fair where the sale of alcoholic liquor is legal; and sell wine by the glass, carafe, or opened bottle at the farm winery or a licensee-owned restaurant that is located on property contiguous to the winery. (page 1, lines 31-41). Should you approve a policy of making charitable contributions or allowing sampling, then for the reasons set forth herein that opportunity should be afforded all suppliers. Kansas' wine and spirits wholesalers are not asking for this privilege.

It appears that HB 2723 would alter the requirements that winery products be made from at least 60.0 percent Kansas grown products. (page 2, lines 12-13). Candidly, I am not sure of the intent of the revision. However, we believe Kansas produced products should contain a majority of Kansas grown fruit, and we should be proud to so label same. The bill allows a farm winery licensee to own an interest in another farm winery, but the ownership interest would have to be less than 50.0 percent. (page 5, lines 23-24). The bill would allow for the issuance of up to five winery outlet licenses to a single farm winery licensee (p.2 line 1). The current maximum is two. These are policy questions on which we have no opinion. The bill would create a new farm winery restaurant license for an annual fee of \$125.00. We believe that any on-premise establishment should conform to the provisions of the Club and Drinking Establishment Act and the rules and regulations promulgated hereunder.

Kansas has a three-tier system, where one is prohibited from having an ownership interest in more than one tier, such as manufacturing, wholesaling and distributing, and retailing to the consumer. Under current law, a farm

winery business must have a drinking establishment license in order to sell wine. Passage of this bill would circumvent the required annual \$1,000 drinking establishment license fee and would eliminate the requirement for a temporary permit when the winery makes sales off the licensed property at a scheduled event. Farm wineries should be treated like other licensees and conform to those statutes..

To that end, we propose the following amendment (page 1, lines 18-19):

K.S.A. 41-308a is hereby amended to read as follows: 41-308a. (a) A farm winery license shall allow:

- (1) The manufacture of domestic table wine and domestic fortified wine and the storage thereof;
- (2) the sale of wine, manufactured by the licensee, to licensed wine distributors, ~~retailers, clubs, drinking establishments and caterers;~~

This amendment is necessary to conform Kansas law to NAFTA, GATT and GATS. Kansas' three-tier system is consistent with that found in the license states. Creating and maintaining exceptions gives us pause for concern regarding their effect as these exceptions potentially open the door for foreign suppliers to circumvent our state rules under NAFTA and GATT and GATS. These treaties do in some ways undermine police powers of the states in alcohol control policy. Experts tell us that trade treaty rules now cover all levels of government and most matters that government perform. "GATS has the potential for more intrusive rulings that could adversely effect the alcohol control and licensing regimes of sub-national governments. NAFTA's investment provisions are the most important within the broader treaty covering alcohol control and licensing provisions. WTO would significantly increase the risk of challenges against alcohol control and licensing measures." How Sub-National Governments Are Affected by International Trade Treaties, Noel Schacter, Trade Policy Researcher, March 2003. Therefore, KSWA asks the committee to avoid exceptions that expose the three tier system of distribution to challenge by foreign suppliers under treaty law, and to adopt policies applicable to all members of a given tier.

Thank you for your kind attention to and consideration of these matters.



*Kansas
Licensed
Beverage
Association*

President
Tom Intfen

Secretary/Treasurer
Tammy Davis

Vice Presidents
Robert Farha
Glenda Dewey
Jim Hendricks
James Fager
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Testimony on HB-2723, March 18, 2004
House Federal and State Affairs Committee

Mr. Chairman, and Representatives of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn., the men and women, in the hospitality industry, who own and manage bars, clubs, caterers, restaurants and hotels where beverage alcohol are served. Thank you for the opportunity to speak today.

We oppose HB-2723.

Although we support the farm wineries concept, we believe that they need to adhere to the same rules as other family businesses in Kansas. There is a procedure, carefully crafted by the Legislature over many years and tested by the Department of Revenue, Alcohol Beverage Control, local law enforcement & thousands of businesses to assure accountability, compliance, tax collection, protection of the states' interests and the safety of the public. This bill would legalize circumventing of all those procedures.

This bill will;

- Allow a defacto Drinking Establishment
 - w/o the current licensing procedures
 - w/o the current bonding
 - create a new fee structure, an "uneven playing field"
 - create a new access point for retail beverage alcohol

The farm wineries and microbreweries procedures were created to help foster starting opportunities and businesses. Most microbreweries are now operating restaurants in addition to producing beer. They do this with the current license structure and within the current laws and regulations and have been for years.

Additionally, if the gifts to charities, etc. section is appropriate then it should be applicable to all retailers of beverage alcohol.

We urge you not to pass HB-2723.

As always we are available for questions. Thank you for your time.

Dr. Philip B. Bradley
Executive Director



The Kansas Association of Beverage Retailers

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Martin Platt, President

Amy A. Campbell, Executive Director

TESTIMONY PRESENTED TO THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

MARCH 18, 2004

BY AMY A. CAMPBELL, EXECUTIVE DIRECTOR

Thank you, Chairman and members of the Committee. My name is Amy Campbell and I appear before you today on behalf of the Kansas Association of Beverage Retailers to oppose HB 2723. The Kansas Association of Beverage Retailers represents the State licensed owners of retail liquor stores. Currently, there are approximately 700 stores in the state of Kansas.

KABR has appeared before you in the past to support some of the initiatives proposed by farm wineries and continues to support the sale of locally grown and manufactured wines. Our members sell these products in our stores and hope to continue to do so.

However, HB 2723 clearly seeks to bypass the primary principles of the three tier distribution system and create exceptions for a few licensees. This threatens the businesses of retail liquor store licensees by:

1. creating loopholes in Kansas liquor law which make the state vulnerable to questions of fair competition under the Commerce clause of the United States Constitution;
2. expanding the number of retail outlets for farm wineries from two to five while liquor store owners may hold one retail license; and
3. blurring the lines of separation between manufacturer, distributor, and retailer - to the point of reducing potential tax receipts to the State.

If these measures are passed, what is to stop Beringer from seeking to open its own chain of sampling and retail outlets in Kansas shopping centers? If these exceptions are provided to the wineries, will the microbreweries be next? Retail liquor stores are Kansas owned businesses. What is the policy logic for providing multiple exceptions from state regulation for one type of Kansas business over another?

As members of the Federal and State Affairs Committee, you are more aware than most policymakers of the complexities of Kansas liquor laws. Certainly, it may be true that elements of the law could be altered without drastic consequences. Perhaps a few of the proposals would be helpful. However, we would respectfully ask that there be a comprehensive review of the potential impacts of such changes with the participation of relevant interest groups at the table before such attempts are pursued in the Legislature.

The recodification of Kansas liquor laws was pursued by a dedicated group of volunteers which spent weeks and months analyzing the significance of the laws which are in effect today. Yet, even that effort which was designed simply to streamline the Act rather than effect policy change was delayed. KABR requests the Committee require extensive evaluation and input to the policy initiatives in this bill.

HS Federal & State Affairs
March 18, 2004
Attachment 12

Neal Whitaker



800 SW Jackson STE 1017, Topeka, Kansas 66612

AN ACT concerning intoxicating liquors; relating to farm wineries;

The first line of HB 2723 should be an indication that this bill requires more inspection than most. We told the committee in testimony on HB 2637 about the Michigan wine case ...

- MICHIGAN RECENTLY LOST A U. S. COURT OF APPEALS CASE THAT WILL FORCE THE STATE TO ALLOW DIRECT SHIPPING OF WINE TO ANYONE OF LEGAL AGE OR TO ANY BUSINESS. MICHIGAN – BECAUSE OF THE APPEALS DECISION – APPEARS TO HAVE UNREGULATED WHOLESALE DISTRIBUTION OF ALCOHOLIC BEVERAGES.

They lost this case because of exceptions to regulatory acts covering wine.

Kansas has its own defeats in Federal court because of exceptions...

KANSAS HAD A STATUTE THAT BARRED NON-RESIDENT COMPANIES AND INDIVIDUALS FROM BECOMING SPIRITS, WINE OR BEER WHOLESALERS. THEN A STATUTORY EXCEPTION WAS MADE: A LICENSE WOULD BE GIVEN TO NON-RESIDENTS WHO HAD HELD A LICENSE – AS A RESIDENT – FOR 10 CONSECUTIVE YEARS. THAT EXCEPTION WAS USED AGAINST THE STATE AS A PRIMARY ARGUMENT BY THE PLAINTIFFS - AND REFERENCED BY THE JUDGE - IN THE *GLAZER* LITIGATION. THE JUDGE SUBSEQUENTLY STRUCK THE RESIDENCY REQUIREMENT FOR WHOLESALERS. IT COST THE STATE HUNDREDS OF THOUSANDS IN LEGAL FEES. WE STRONGLY ADVISE AGAINST EXCEPTIONS THAT MIGHT CAUSE SIMILAR PROBLEMS IN THE FUTURE.

Finally, we suggested to the committee that exceptions for in-state-wineries have been the basis for 5 successful challenges to state regulatory authority over wine...

- AT LEAST SIX OTHER STATES HAVE BEEN SUED – AND LOST - IN FEDERAL COURT OVER THE PROHIBITION OF WINE SHIPMENT

So now we have HB 2723 which creates numerous exceptions.

- Serving samples at festivals, trade shows, charitable events and the Kansas State Fair. The legislature has fought for years over serving alcohol by the drink at the State Fair.
- Selling bottles of wine at festivals, trade shows, charitable events and the Kansas State Fair directly to consumers.
- Selling wine by the glass in a non liquor-by –the- drink county in the winery’s restaurant.
- Expansion of retail outlet stores to 5.
- Elimination of the requirement that even one grape used to manufacture the wine be grown in Kansas.
- Addition of the exemption language on page 2, lines 21-23.
- Establishing a special farm winery restaurant license that would allow sale by the glass of alcoholic beverages by the glass anywhere there is a farm winery.

From this list the only item that can be considered is sampling and then only for the entire industry.

If HB 2723 were to pass in it’s present form a major winery could establish a manufacturing facility in Kansas and set up retail outlets in Johnson County, Lawrence, Topeka, Salina, and Wichita and effectively control wine sales to 70% of the population. All without a lawsuit.

Planning for the Future

One provision that is already law and should be repealed is on page 1, line 19. The words, retailers, clubs, drinking establishments and caterers, should be stricken.

Thank You,

Neal Whitaker
Kansas Beer Wholesalers Association

TESTIMONY OF GREGORY A. SHIPE
"In opposition to HB2723"
By committee on Agriculture
"An act concerning Farm Wineries"

House committee on Federal and State Affairs
Chairman Mason

March 18, 2004

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Past president of Kansas Grape Growers and Winemakers Association

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"In opposition to HB 2723" by the Committee on Agriculture "an act concerning Farm Wineries"

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Past president of Kansas Grape Growers and Winemakers Association.

Thank you for considering my testimony in opposition to HB 2723.

HB 2723 will allow a licensed FARM WINERY [KSA 41-102(1)] to operate like a MANUFACTURER [KSA 41-102(n)(1) with all the benefits and none of the restrictions of a Farm Winery (KSA 41-308a) except unlike SB 402 the 60% Kansas product requirement is left in with the wineries given four reasons why they can reject grapes from Kansas growers then proceed to purchase grapes or juice from out of state. If you look at page 2 line 12 of the HB 2723 you see the four reasons to reject Kansas product.

Farm Winery statute is an agricultural statute. The statute was developed to help Kansas farmers who need other crops to raise other the three main grain crops. Let the wineries control the use of grapes and you soon will have few grapes grown in Kansas except for the ones who believe in a Kansas wine from Kansas grapes.

HB 2723 will also allow a system of multiple ownerships of wineries and with the many outlets and shared outlets (HB 2723 pg 2 line 1 and pg 5 line 23) could lead to a few people owning many wineries and outlets. This system would be a way to by-pass the three tier system altogether.

There is a MANUFACTURER license available in Kansas [ABC 252 (9-96)] that does not have the requirement to use Kansas product. A manufacturer is equivalent to a brewery and all their products must be sold through the three tier system. A Farm Winery is equivalent to a Microbrewery.

As a Farm Winery I grow 99% of my product and the other is purchased from growers in Kansas. We can grow very good grapes in Kansas as we did in the year 1901 with 5668 acres (Thirteenth Biennial Report of the State Board of Agriculture Kansas Vol. XIII 1901-1902). Today Kansas has about 140 acres of grapes.

Worst case if HB 2723 passes would be the development of several wineries that use nothing but outside grapes and juice. A few people could own most all the wineries. They could develop multiple outlets and shared outlets which would give them their own distribution system all over Kansas that feature nothing but the wines that are MANUFACTURED by the so called Farm Wineries using other state grapes and juice. Wines from other states are available in the liquor stores now. There is so much that the Farm Wineries need but this bill is so full of problems that it would be best to send it back to the writers to introduce a new bill next year.

HB 2723 and SB 402 were never approved by the Kansas Grape Growers and Winemakers Association. I am not on the board anymore but I am not aware of the board approving the bills. My testimony does represent another winery and at least 5 growers. I have not made an effort to contact others.

Thank You

Gregory Shipe