

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 24, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Russell Mills, Legislative Research
Dennis Hodgins, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
John Beverlin, Committee Secretary

Conferees appearing before the committee:

Brad Smoot, Advance Insurance Company
Karl McNorton, Fire Marshal's Department
Trudy Aron, American Institute of Architects
Dianne Gjerstad, Wichita Public Schools
Jim Edwards, Kansas Association of School Boards
Norm Jennings, Kansas Grape Growers and Wine Makers Association
Dee Forge, Prairie Ridge
Patty Clark, Kansas Department of Commerce
Tuck Duncan, Kansas Wine and Spirit Wholesalers Association

Others attending:

See Attached List.

Chairperson Brungardt called the meeting to order and asked the committee to consider the approval of the minutes of January 28, January 29, February 3, February 4, and February 5.

Senator Teichman made a motion to approve the minutes. The motion was seconded by Senator Vratil. The minutes of January 28, January 29, February 3, February 4, and February 5 were approved.

Chairperson Brungardt called Brad Smoot to the podium for a bill introduction.

Mr. Smoot asked the committee to introduce a bill concerning Kansas life insurance laws (Attachment 1).

Senator Teichman made a motion to introduce the bill. The motion was seconded by Senator Vratil. The bill was introduced.

Chairperson Brungardt thanked Mr. Smoot and opened the hearing on **SB 41, School building construction standards; fire safety codes**. He called Dennis Hodgins to the podium to provide an overview of the bill to the committee.

Chairperson Brungardt called Karl McNorton to the podium.

Mr. McNorton presented testimony in support of **SB 41** (Attachment 2).

Chairperson Brungardt asked the committee for questions.

Senator Barnett asked how often the International Building Code is published.

Mr. McNorton answered that it is published once every three years.

Senator Barnett asked if there was any value in simply stating "the most recent" or if there was a reason in not stating "the most recent edition" in the bill.

Mr. McNorton answered that it was best to say the specific International Building Code year to be followed.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on February 24, 2004 in Room 231-N of the Capitol.

He explained that new codes may not be necessary or relevant to follow.

Senator Vratil asked about page 2 line 19. He asked Mr. McNorton to explain a code footprint.

Mr. McNorton explained that it was a code document that lists all points of exiting, any fire protection features that may be in the building, rated corridors and other life safety features. He explained the document enables the Fire Marshal to do a plan review in a shorter period of time.

Senator Vratil asked about the subsection E on page two. He wanted to know why community colleges, vocational schools, vocational-technical schools, technical colleges, and municipal universities, and any institution under the governance of the state board of regents are exempt from subsection C.

Mr. McNorton stated that he was unable to answer the question. He explained that the law had been in the statutes for as long as he could remember.

Senator Vratil stated that the subsection did not make sense to him, because they are required under federal law to provide for persons with disability. He asked why the state was exempting those institutions from having to apply to the International Building Codes.

Mr. McNorton explained that the state does not exempt them. He further explained that the only thing the institutions, mentioned above, were exempt from, were the requirement that they present their plan to the Department of Education.

Senator Vratil observed that K-12 schools submit plans to the state architect through the Department of Education for review.

Mr. McNorton explained the plans are submitted to the Department of Education, where they have an architect on staff that does the review. He further explained the architect also receives a code footprint.

Senator Vratil asked why there was a different procedure for review for K-12 schools and a different review for other institutions such as those under control of the Board of Regents.

Mr. McNorton explained he did not have an answer. Again he stated that it had always been that way in the statutes.

Senator Vratil explained that if the code footprint review is satisfactory for the K-12 schools, it should be satisfactory for the exempt institutions. He further explained that if the full plan review is appropriate for the exempt institutions, maybe it should also be satisfactory for K-12 schools.

Eric King, Director of Facilities for the Board of Regents, explained that he could not answer why subsection E exists in the statutes. He further explained there are statutes that required the Board of Regents institutions to have all the ADA requirements and all of the building code requirements. He stated that the institutions are using the International Building Codes. Mr. King explained that there was a process where plans are submitted to the Division of Facilities Management. He explained that there were also reviews done by the Fire Marshal.

Senator Vratil asked if Chairperson Brungardt could request the answers to his questions. He also wanted to know precisely what the higher education schools under the Board of Regents required by statutes to do to obtain authorization for construction of new buildings.

Chairperson Brungardt asked the researchers to carry out the request of Senator Vratil.

Senator Clark asked about page two, line 13. He wanted to know what was considered a foreign institution.

Mr. McNorton stated he was unfamiliar with that provision.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on February 24, 2004 in Room 231-N of the Capitol.

Senator Clark stated he was unsure whether the bill covers all private parochial schools.

Mr. McNorton stated the intention was to cover all K-12 schools in the state, regardless of whether private or public.

Mr. McNorton then returned to the issue of the difference between K-12 schools and post secondary institutions. He stated that the institutions were viewed as places of business while the K-12 schools were viewed differently because of the age of the individuals who frequent the buildings.

Chairperson Brungardt thanked Mr. McNorton and welcomed Trudy Aron to the podium.

Ms. Aron presented testimony in support of **SB 41** (Attachment 3).

Senator Vratil asked why the state would want a more extensive review of plans for the construction of a building that is not owned by the state, than the state would want with a building it did own.

Ms. Aron stated she believed the processes are the same, but there is a different authority who is reviewing the construction plans.

Senator Vratil explained that the committee was just told the code footprint review was the less extensive of the review of plans.

Ms. Aron explained that the code footprint only makes it easier to identify everything in the plans. She further explained it is currently required on all state buildings. She explained that the Department of Education does a whole review of the plans for construction of K-12 schools, while the Fire Marshall reviews the code footprint for life safety items.

Senator Vratil explained that he did not read the bill in that manner.

Senator O' Connor asked if there were other code books besides the IBC that are used by the industry.

Ms. Aron explained the history of building codes. She stated that most of the code books had been melted into the IBC, which was first published in 2000.

Chairperson Brungardt thanked Ms. Aron and welcomed Dianne Gjerstad to the podium.

Ms. Gjerstad presented testimony against **SB 41** (Attachment 4).

Chairperson Brungardt thanked Ms. Gjerstad and welcomed Jim Edwards to the podium.

Mr. Edwards presented testimony against **SB 41** (Attachment 5).

Chairperson Brungardt thanked Mr. Edwards and asked the committee for additional questions.

Senator O' Connor had a question for Ms. Gjerstad. She stated that she had no problem amending **SB 41** to include a grandfather clause. Senator O' Connor asked Ms. Gjerstad what exemptions were made when Wichita adopted the 2000 IBC.

Ms. Gjerstad stated she was not sure, but would find out the information from the City of Wichita. She also stated that a grandfather clause would not work because of the way the bonds for the project were financed.

Chairperson Brungardt closed the hearing on **SB 41** and opened the hearing on **SB 402, Farm wineries; rights of licensees; fees; ownership restrictions**. He asked Theresa Kiernan to provide an overview of the bill.

Ms. Kiernan explained the bill to the committee. She further explained that the Kansas Grape Growers and

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on February 24, 2004 in Room 231-N of the Capitol.

Wine Makers Association, who originally introduced the bill prefer the language in **HB 2723** concerning the shipment of wine and the ingredients in the wine. She suggested to the committee that they use the language from **SB 305** to include the tax and record keeping requirements, if they decide to include the direct shipment of wine.

Chairperson Brungardt thanked Ms. Kiernan and welcomed Norm Jennings to the podium.

Mr. Jennings presented testimony in support of **SB 402** (Attachment 6).

Chairperson Brungardt thanked Mr. Jennings and welcomed Dee Forge to the podium.

Mr. Forge stated that he grows grapes on the Prairie Ridge Farm. He explained to the committee how Kansas and his farm would benefit with the implementing of **SB 402**.

Chairperson Brungardt thanked Mr. Forge and welcomed Patty Clark to the podium.

Ms. Clark presented testimony in support of **SB 402** (Attachment 7).

Chairperson Brungardt thanked Ms. Clark and welcomed Tuck Duncan to the podium.

Mr. Duncan presented testimony against **SB 402** (Attachment 8).

Chairperson Brungardt thanked Mr. Duncan. He explained to the committee and the audience that the hearing on **SB 402** would have to be continued at the next meeting.

The meeting was adjourned at 11:55 a.m. The next meeting is scheduled for March 3, 2004, at 10:30 a.m. in room 231-N.

Senate Federal and State Affairs Committee

Date: ~~FEBRUARY~~ 24, 2004

Name:

Representing:

Norman Jennings

KGGWMA

Dee Forge

KGGWMA

Patty Clark

~~KDOC~~

Janet Forge

KGGWMA

Ken Krauss

KGGWMA

Megan Chaffin

Purges & Associates

Keel McWorton

KSFMO

RICK FRY

KSFMO

Trudy ARON

AmInst of Architects

Charli - Kell

Hein Law Firm

Jana Dunbar

Commerce

TERRY ROBBINS

~~KGGWMA~~

Ed Kotlinski

KSDF

Pat Lehman

KFSA

Dan McLaughlin

KSFMO

Diana Hutchison

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LARRY W. LOABHAN

KSFMO

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**Statement of Brad Smoot
Legislative Counsel
Advance Insurance Company
Senate Federal & State Affairs Committee
February 24, 2004**

Mr. Chairman and Members

On behalf of the Advance Insurance Company, I am requesting a bill introduction involving Kansas life insurance laws. Advance is a wholly owned subsidiary of Blue Cross and Blue Shield of Kansas. It is domiciled in Arizona with a group trust arrangement established under Missouri law. We provide group life insurance to 125,000 Kansans through their employment. We would like to move our company to Kansas and these amendments to existing law will enable us to do so.

This proposal comes to you late because we have been awaiting approval of the language from the Kansas Insurance Department. That endorsement has now been received.

A copy of the bill draft is attached to my testimony and we would be pleased to forward it electronically to the Revisor of Statutes for your convenience.

Thank you.

Senate Federal and State Affairs Com.
Date: FEBRUARY 24, 2004
Attachment: # 1



K A N S A S

JOSEPH P. ODLE
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS
GOVERNOR

**Testimony in support of SB 41
Senate Federal and State Affairs Committee
Relating to Construction Standards of School Buildings**

Date: February 24, 2004

By: Karl W McNorton, Chief Deputy State Fire Marshal

Senate Bill 41 amends the current statute K.S.A. 31-150 concerning fire safety and prevention; relating to standards for school construction.

SB 41 updates Section 1 of the referenced building code for construction of school buildings from the 1985 Uniform Building Code to the 2003 International Building Code, line 19. The Uniform Building Code is no longer published and isn't available even in later versions the last published in 1997. The bill strikes the referenced codes including the Uniform Mechanical and Plumbing Codes. The text was replaced with the most current editions of the International Building Code as well as current editions of the Uniform and International Mechanical and Plumbing Codes. However, after the bill was introduced last year there was some concern raised about the plumbing and mechanical code references. The

Senate Federal and State Affairs Com.

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Date: FEBRUARY 24, 2004

Attachment: #

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mechanical and plumbing codes in subsection 1 part (a) lines 19 through 22, 25 through 29, and subsection (b) lines 33 through 37.

Subsection (b) is updates the requirements for mobile classrooms to the 2000 edition of the Life Safety Code as published by the National Fire Protection Association.

Subsection (c) requires all school buildings to comply with provisions for accessibility to persons with disability.

Subsection (d) requires submission of building plans to the State board of Education for approval.

Subsection (e) exempts Regent facilities and municipal universities from subsections (c) and (d). Those facilities will have to submit their plans to the State Fire Marshal for approval. There are some technical changes to subsection (e) to reflect those changes made when the community colleges and others came under the Board of Regents.

Subsection (f) exempts relocation of school buildings from provisions in subsection (b).

Subsection (g) line 25 & 26 we recommend this date to be amended to January 1, 2005.

Subsection (h) gives the state fire marshal the authority to adopt rules and regulations to adopt subsequent editions of the codes.

SENATE BILL No. 41

By Committee on Federal and State Affairs

1-22

AN ACT concerning fire safety and prevention; relating to construction standards of school buildings; amending K.S.A. 2002 Supp. 31-150 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 31-150 is hereby amended to read as follows: 31-150. (a) Except as otherwise provided in subsection (b), the construction of school buildings shall comply with the requirements of the 1985 edition of the uniform building code, volume I, and the 1985 edition of the uniform mechanical code, of the international conference of building officials 2000 edition of the international building code, of the international code council and the 2000 edition of the uniform mechanical code as published by the international association of plumbing and mechanical officials or the 2000 edition of the international mechanical code as published by the international codes council. All electric wiring shall conform to requirements of the 1984 1999 issue of the national electric code of the national fire protection association. Minimum plumbing requirements shall meet the 1985 2000 edition of the uniform plumbing code issued by the international association of plumbing and mechanical officials or the 2000 edition of the international plumbing code as published by the international codes council.

(b) The construction of mobile, modular, portable or relocatable school buildings shall conform to the requirements of the 1985 2000 edition of the life safety code as adopted as published by the national fire protection association. Minimum plumbing requirements shall meet the 1985 2000 edition of the uniform plumbing code issued by the international association of plumbing and mechanical officials or the 2000 edition of the international plumbing code as published by the international codes council.

(c) The construction of all school buildings shall conform to the provisions for making buildings and facilities accessible to, and usable by, persons with a disability, as required by K.S.A. 58-1301 through 58-1311, and amendments thereto.

(d) No contract shall be let for the construction of any school building, and it shall be illegal to pay out any public funds for the construction

line 19 replace 2000 with 2003.

lines 19 through 22 strike out all references to the mechanical and plumbing codes.

lines 25 through 29 strike out all references to the mechanical and plumbing codes.

lines 33 through 37 strike out all references to the mechanical and plumbing codes.

1 of a school building until the plans for such building shall: (1) Bear the
2 seal of an architect or a professional engineer licensed by the state board
3 of technical professions of the state of Kansas certifying that the plans
4 meet the applicable requirements of this act; and (2) be submitted to the
5 state board of education for approval as to compliance with such
6 requirements.

7 (e) The provisions of subsections (c) and (d) of this section shall not
8 apply to any building or structure operated or used for any purpose by,
9 or located upon the land of any community college, area vocational school,
10 area vocational-technical school, technical college, ~~or municipal univer-~~
11 ~~sity,~~ institution under the governance of the state board of regents *or*
12 *other institutions of post secondary education as defined by K.S.A. 74-*
13 *3249, and amendments thereto.* Prior to construction of any new building
14 or remodeling of any existing building, all community colleges, area vo-
15 cational schools, area vocational-technical schools, technical colleges and,
16 *any municipal university,* institutions under the governance of the state
17 board of regents *or other institutions of post secondary education as de-*
18 *finied by K.S.A. 74-3249, and amendments thereto,* shall submit to the
19 state fire marshal a code footprint for evaluation and approval of the fire/
20 life safety features of such buildings.

21 (f) The relocation of school buildings to which the provisions of sub-
22 section (b) apply shall not be construed to be construction or reconstruc-
23 tion under the provisions, or for the purposes, of this section.

24 (g) The construction or reconstruction of any school building to
25 which the provisions of this section were applicable prior to ~~January 26,~~
26 ~~1992 July 1, 2003,~~ shall be governed by the provisions of this section
27 which were in effect on the date *on which* the contract for such construc-
28 tion or reconstruction was entered ~~into~~.

29 (h) The state fire marshal shall adopt rules and regulations specifying
30 those subsequent editions of the codes enumerated in subsections (a) and
31 (b) which the state fire marshal has determined provide protection equiv-
32 alent to those editions specified herein. Compliance with any subsequent
33 edition specified by such rules and regulations shall be considered com-
34 pliance with the edition of the code specified by this section.

35 Sec. 2. K.S.A. 2002 Supp. 31-150 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the statute book.

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February 24, 2004



President
Rich Bartholomew, AIA
Overland Park
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Mark Franzen, AIA
Overland Park
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Emporia
C. Stan Peterson, AIA
Topeka
Jennifer Rygg, Assoc, AIA
Wichita
Jason Van Hecke, AIA
Wichita
Kyle Wedel, AIAS
Manhattan

TO: Senator Brungardt and Members of the Senate Federal and State Committee

FROM: Trudy Aron, Executive Director

RE: **SUPPORT OF SB 41**

Good Morning Senator Brungardt and members of the Committee. I am Trudy Aron, executive director, of the American Institute of Architects in Kansas (AIA Kansas.) I appreciate the opportunity to testify in support of SB 41.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients including justice facilities, schools, hospitals and other health facilities, industrial buildings, offices, recreational facilities, housing, and much more. The rest of our members work in industry, government and education where many manage the facilities of their employers and hire private practice firms to design new buildings and to renovate or remodel existing buildings.

SB 41 updates the building code used on K-12 schools. This change is needed as the code formerly used is no longer being updated and has been replaced by the International Building Code (IBC.) The State of Kansas and many local jurisdictions have adopted the International Building Code.

AIA Kansas urges you to report SB 41 out of committee favorably. I'll be happy to answer any questions you may have. Thank you.

Executive Director
Trudy Aron, Hon. AIA, CAE
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Senate Federal and State Affairs Com.
Date: FEBRUARY 24, 2004
Attachment: # 3



Senate Federal and State Affairs
Senator Brungardt, chair

S.B. 41 – School construction codes
February 23, 2004

Presented by: Diane Gjerstad
Wichita Public Schools

Mr. Chairman, members of the committee:

I rise in opposition to S.B. 41 for reasons similar to those I shared with this committee two years ago. The Wichita Public Schools successfully passed a \$284.5M bond issue in April 2000. The bond issue is running ahead of schedule and within budget. Historically low interest rates have benefited the taxpayers. The downturn in the economy has been buffered somewhat by bond issue construction projects. All the work has stayed local, all the architects are local and the contractors are local. The bond issue accounted for 35% of all the construction in Sedgwick County in 2003.

We rise in opposition because this bill changes the rules in mid-stream. After passage of the bond issue the district met with the KSFM, KSDE architect, Wichita fire department, Wichita central inspection and Sedgwick county code enforcement. All parties agreed to follow the 1997 UBC and related codes throughout the life of the bond issue. S.B. 41 would void that agreement and increase cost, add confusion for the architects, engineers, contractors and all other parties at a critical point in bond work. S.B. 41 would impact:

- 18 bond projects under construction which were bid and contracted for on or after July 1, 2003;
- 7 more projects currently out for bid or in final design and scheduled to bid by May 5, 2004;
- 16 Phase 3 projects to be designed and bid with scheduled completion December 2005;
- **Totaling 41 school bond projects** in Wichita, plus additional non-bond (capital outlay projects) planned in coordination with bond construction.

The city of Wichita recently adopted the 2000 IBC code; however, the city studied the issue for over a year and made a number of exceptions *before* adopting the code. The city sought input from groups throughout the community. S.B. 41 would supercede the city's code; forcing the fire department who inspects our schools and is the sole responder to an event, to follow a different code criteria for schools. We can only imagine the confusion when the city, county or fire department reviews school construction plans or makes inspections.

Strict interpretation of 2000 IBC codes would significantly increase construction and remodeling costs, especially in districts like Wichita where the average school is over 50 years old. One example would be a new requirement for sprinklers in gymnasiums. Costly to install, maintain, repair and especially costly when the inevitable leaks occur or the system is inadvertently activated.

A further concern is current language on page 2 lines 29 to 34, when applied after passage of S.B. 41 it would appear to give the KSFM the latitude to unilaterally adopt stricter rules on school construction.

Adoption of the 2000 IBC codes without study and exceptions will increase the cost of school construction. A cost which will be borne by the taxpayers and the state (through increased bond and interest state aid).

Mr. Chairman, members of the committee, the local jurisdictions have an incentive to work together under the current law and procedures. It is in everyone's best interest, and most importantly the safety of the students, for the local school district to have an effective working relationship with the local fire department. It is the local fire department who inspects and ultimately responds. S.B. 41 pre-empts local working arrangements, is costly, and sets a dual set of standards within the same community.

Mr. Chairman, the Wichita Public Schools would urge the committee to Senate Federal and State Affairs Com.
long standing public policy which allows local fire departments and communities

Date: FEBRUARY 24, 2004
Attachment: # 4



Testimony on **SB 41**
before the
Senate Federal and State Affairs Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

February 24, 2004

Chairman Brungardt and members of the Committee:

I appreciate the opportunity to appear in front of you today to visit about concerns we have with **SB 41**, a measure that would update the building, mechanical, plumbing and life safety codes for school construction, remodeling or additions.

Safety is a concern to all district school boards but so is the ability to fund the projects themselves. Most districts would feel much more comfortable if they knew exactly what this legislation was going to cost them in their construction projects. There still is no firm fiscal note for this bill, as noted in the communications received last year by this committee, "***SB 41 may increase construction costs at educational institutions. The bill would not have a fiscal effect on state appropriations. School districts and postsecondary institutions would have to fund the additional costs, if any, with their own funds.***"

School districts would also feel just as comfortable, and their patrons might also, if the provisions of subsection (e) could also be used in K-12 public school construction projects. Safety concerns are important for all facilities, whether they be an institution of higher education or an elementary or secondary school.

I thank you for the opportunity to appear before you today and would be happy to answer any questions you might have.

Kansas Grape Growers & Wine Makers Association

February 24, 2004

To: Senate Federal & State Affairs Committee
From: Norman M. Jennings, Legislative Chair
Dee Forge, Grower Representative
RE: SB402

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 a state revenue source. The fact that this industry is comprised of farmers and wineries that offer more than either the single acts of moving or selling alcohol within the state, lends to the need of legislation that is inherently different from that which governs that of the distribution, wholesale or retail of alcohol. Our industry is not seeking special treatment, only that which reflects the diversity of our agricultural, tourism and alcohol revenue components.

The Kansas Grape Grower & Wine Makers Association supports SB402. As discussed on February 10, 2004 SB402 and HB2723 are very similar. Both bills contain items that will assist the growth and survival of the Kansas Grape and Wine Industry. HB2723 more completely represents the needs of the Grape & Wine Industry of Kansas. We would recommend that SB402 be changed to adopt the language of HB272.

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. 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.

Section 1b is being changed to increase the number of outlet from 2 to 5 and allow for joint outlets. A joint outlet would form single locations for tasting and sales of the wines of Kansas, which could have a substantial tourism impact.

Section 1c deals with the amount of Kansas fruit to be used in the production of wines. Further review of both SB402 and 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

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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 distributors industry, retail liquor industry as well as agriculture and tourism. This council should fully understand 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.

Section 1d places additional requirements on the operation of the winery. Though the wineries have no opposition to additional requirement deemed necessary by the legislature or director, we are opposed to something that would limit our potential to grow and impact further the agricultural and tourism industries of the state. K.S.A. 41-701 defines the sales allowed by a distributor or manufacture as such that would inherently remove direct retail sales at the wineries or outlets as well as sampling. At that time the winery would be forced to either completely change their business model, restructure its workforce (likely resulting in the elimination of many positions) and closing locations or require that the winery stop growing.

Section 2e adds the fee for a farm winery restaurant license.

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.

Provision allowing for the shipping of wine either within or out of the state is 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.

Opposition may suggest that some of these changes would circumvent taxes and fees that Kansas so desperately needs. 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. 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.

Concluding we again extend our thanks 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 February 20, 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 in Support of SB 402
To
The Senate Federal and State Affairs Committee**

**By Patty Clark
Director of Ag Marketing
Kansas Department of Commerce
February 24, 2004**

Good morning, Chairman Brungardt 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 SB 402 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 SB 402, amend it to mirror HB 2723, and pass the amended bill out favorably. Thank you.

Senate Federal and State Affairs Com.

Date: FEBRUARY 24, 2004

Attachment: #

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Kansas Wine & Spirits
Wholesalers Association

To: Senate Federal & State Affairs Committee

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

RE: SB402

February 24, 2004

SB 402 would amend current law regarding farm wineries. Farm wineries were intended to promote Kansas agricultural products. This bill would allow farm wineries to donate farm-produced wine products to nonprofit, charitable, and government sponsored fundraising events. KWSWA opposes this provision as it is not something that is appropriate public policy for any tier of the industry. The bill would allow farm wineries to 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. Again this is contrary to the public policy that is applied to other licenses and KWSWA opposes same. The bill allows farm wineries to 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. We oppose this change as it eliminates the drinking establishment license. If that is eliminated then the provisions of the club and drinking establishment act might not apply to the farm winery. As an establishment serving beverages by the drink, the general laws should also apply. KWS#WA opposes this change as well.

SB 402 would delete the requirements that winery outlet products be made from at least 60.0 percent Kansas grown products and that the winery's yearly capacity be a minimum of 50,000 gallons. Eliminating these provisions defeats the concept behind the farm winery. A gain, farm wineries are intended to promote Kansas agricultural products, not be vintners for out-of-state grapes. Further, this might afford out-of-state suppliers the opportunity to set up fronts for the distribution of their products in Kansas which would then by-pass the three tier system of distribution. Thus we oppose these provisions and the provision to expand the number of retail outlets.

SB402 would allow the farm winery licensee to own an interest in another farm winery, but the ownership interest would have to be less than 50.0 percent and SB 402 would delete current language that prohibits farm winery licensees from holding any other type of license under the Liquor Control Act. Kansas has a three-tier system, where an individual is prohibited from ownership interest in

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more than one tier, such as manufacturing, wholesaling and distributing, and retailing to the consumer. All these excepts and primarily these last exceptions give us pause for concern regarding the effects they 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, KWSWA opposes exceptions that expose the three tier system of distribution to challenge by foreign suppliers under treaty law.

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



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 Expocentre 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; President-Elect and Board Member Shawnee County Historical Society; 2002-2003 Chairman Topeka Postal Service Customer Advisory Council; and Chairman, Topeka Housing Authority 1999-present. 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.