

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 March 3, 2004 in Room 231-N of the Capitol.

All members were present except:  
Senator James Barnett- excused

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:  
Philip Bradley, Kansas Licensed Beverage Association  
Neal Whitaker, Kansas Beer Wholesalers Association  
Amy Campbell, Kansas Association of Beverage Retailers  
Tom Groneman, Alcoholic Beverage Control, Department of Revenue  
Norm Jennings, Kansas Grape Growers and Wine Makers Association  
Patty Clark, Department of Commerce

Others attending:  
See Attached List.

Chairperson called the meeting to order. He then opened the confirmation hearing for Tom Groneman, Executive Director of the Alcoholic Beverage Control. He welcomed Mr. Groneman to the podium.

Mr. Groneman provided a brief biographical overview, an overview of the ABC, and his role as the Director of the ABC.

Chairperson Brungardt asked the committee for questions.

Senator Clark asked Mr. Groneman about his son-in-law's affiliation with Schatz Distributor.

Mr. Groneman answered that his son-in-law was a truck driver for Schatz, but that the ABC regulates the distribution.

Senator Clark asked Mr. Groneman about his son's affiliation with a bar and grill.

Mr. Groneman explained that it was a job his son had held since he was college. He further explained that his son worked at the bar and grill one night a week.

Senator Gilstrap made a motion to recommend the confirmation of Tom Groneman as Executive Director of the Alcoholic Beverage Control. The motion was seconded by Senator Clark. Tom Groneman was recommended for confirmation.

Chairperson Brungardt asked the committee to consider action on **SB 400, Law enforcement; training of part time law enforcement officers**. He asked Senator Huelskamp to the podium to provide an overview.

Senator Huelskamp provided written testimony from one of his constituents, Dwight Watson (Attachment 1).

Chairperson Brungardt asked the committee for questions. None were asked. He then asked the committee to take action on the bill.

Senator Clark made a motion to recommend **SB 400** favorable for passage. The motion was seconded by Senator Teichman. **SB 400** was recommended favorable for passage.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on March 3, 2004 in Room 231-N of the Capitol.

Chairperson Brungardt continued the hearing for **SB 402, Farm wineries; rights of licensees; fees; ownership restrictions**. He welcomed Philip Bradley to the podium.

Mr. Bradley presented testimony against **SB 402** (Attachment 2).

Chairperson Brungardt thanked Mr. Bradley and welcomed Neal Whitaker to the podium.

Mr. Whitaker presented testimony against **SB 402** (Attachment 3).

Chairperson Brungardt thanked Mr. Whitaker and welcomed Amy Campbell to the podium.

Ms. Campbell presented testimony against **SB 402** (Attachment 4).

Chairperson Brungardt thanked Ms. Campbell and welcomed Mr. Groneman to the podium.

Mr. Groneman presented the Alcoholic Beverage Control's testimony on **SB 402** (Attachment 5).

Chairperson Brungardt asked Mr. Groneman for the price of a temporary permit.

Mr. Groneman answered that a temporary permit would cost an individual 25 dollars.

Chairperson Brungardt asked Mr. Groneman if a person who owns a farm winery, according to the bill, could be involved in another tier of the three tier system.

Mr. Groneman answered that Chairperson Brungardt was correct.

Chairperson Brungardt asked the committee for questions. None were asked. He then explained to the audience the true intention of **SB 402**. He further explained the idea of increasing agri-business and the farm winery industry in the state of Kansas. He asked for suggestions from the audience.

Mr. Whitaker explained the availability for farm wineries to expand their exposure at festivals through a temporary permit. He stated his belief that the mechanism was already available for them to expand their exposure. Mr. Whitaker explained to the committee what would happen if the bill was passed as the farm wineries wanted.

Senator Teichman explained the idea of the bill supporting Kansas products. She emphasized the need to support Kansas products.

Ms. Campbell explained to the committee that she had a number of liquor store owners who would love to provide Kansas wine from their store for sampling at festivals. She further explained that current law prohibits them from doing so, but if the legislature provides that particular method of exposure to farm wineries, her liquor store owners would like that method too. She explained that her association also has problems with shipping reciprocity and its possible effects on retailers, tax, and regulation.

Chairperson Brungardt stated there may be problems with the amount of juice from Kansas in wines that farm wineries label as Kansas wines.

Norm Jennings stated that his association asks for one of two things. Either to leave the language the way it is, concerning Kansas juice in Kansas wines. Or add in language to have the Grape and Winery Council to work with the Director of the Alcoholic Beverage Control, to handle situations when it is appropriate to deviate from the 60 percent Kansas juice requirement.

Chairperson Brungardt asked Mr. Jennings about the 125 dollar fee for a farm winery to serve wine for consumption on premise versus the 1000 dollar fee for an establishment to serve other alcohol for consumption on premise.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on March 3, 2004 in Room 231-N of the Capitol.

Mr. Jennings explained that the farm wineries would not receive a substantial part of their income from this kind of establishment. Versus other establishments who receive all of their income from the consumption of alcoholic beverages on premise. Mr. Jennings explained that it was not the intention of the association to go behind the back of the ABC Director. He further explained that the establishment should be regulated in the same manner as every other establishment that serves alcoholic beverages for consumption on premise.

Mr. Bradley explained that the opportunity to open a class of restaurants that serve Kansas wines exclusively already exists. He further explained, that the difference now, is that they want to lower the fee from 1000 dollars to 125 dollars. He also explained that a problem exist with regards to bond requirements.

Mr. Jennings stated that there is a bond requirement for farm wineries.

Mr. Bradley explained that a bond is on the manufacture, not on the drink tax.

Mr. Whitaker explained that the regulations on temporary permits are up in the air. He suggested a summer interim study of the issues.

Chairperson Brungardt thanked all who were in attendance and those who participated in the discussion.

The meeting was adjourned at 11:40 a.m. The next meeting is scheduled for March 4, 2004, at 10:30 a.m. in room 231-N.

Senate Federal and State Affairs Committee

Date: March 03, 2004

Name:

Representing:

Rae Seiber	Hein Law Firm
Greg Shipe	Self
Janna Dunbar	Commerce
Patty Clark	"
Norman Jennings	KGGWA
Phil Bradley	KLBA
Amy Campbell	<del>KABR</del>
Kyle Smith	KCAA & KBWA
Rebecca Rice	

## TESTIMONY - DWIGHT WATSON

To whom it may concern:

As you may be aware, there has been considerable dialog between the KLETC, and the City of Montezuma concerning the difficulties of obtaining training for a part time police officer for our city. Perhaps a more accurate description would be dialog concerning the definition of a "part time officer". It would seem obvious that a "full time police officer" would be one that spends at least a majority of his work period doing police related work. It would seem just as obvious that a "part time officer" would be one that would spend a minor part of the work period doing police work. As a matter of fact, the statutes state that a part time police officer can work no more than 1000 hrs. per year doing police work. That seems like a reasonable description of a "part time police officer". It seems that at one point an Attorney General for Kansas opined that where that part time officer worked the balance of his work period, outside of his police duties, would impact on whether or not that person is classified as a "part time officer", or a "full time officer".

In a small city such as Montezuma that employs 4 or 5 employees, the employees do many different job functions. If the same criteria were applied to the other employees as is applied to police officers, then the employee that changes the oil on his pick-up would be considered a full time mechanic, or the employee that cleans the shop when it needs it, even if his main job is being an electrical lineman, would be classified as a full time custodian. Of course both of these employees are full time employees, but to say that one is a full time mechanic, and the other a full time custodian would be ludicrous.

In my opinion, what might seem to be a complicated matter is in all reality a very simple matter. What it boils down to is that a small city has few choices under the current wording in the statutes for providing police protection for its citizens.

A city may hire a full time officer and send that officer for 560 hrs of training at the KLETC. During that period, the employee is prohibited, by statute, from working for the City. The city will bear the burden of not only the salary, but also the fringe benefits for over 3 months while that officer receives the training. The reality of the situation is that most small cities do not need, and cannot afford to hire a full time police officer.

A city may simply rely on the Sheriff's Office to provide law enforcement. I believe that if you have been following the news concerning some smaller towns in Kansas you have seen that this is at best a matter of some concern for the citizens and governing bodies of these towns. Apparently many Sheriffs feel that enforcing traffic laws, etc. in small towns in their county is not conducive to getting re-elected.

A city may hire a part time officer and send him to 2 weeks of training at KLETC. This may not sound like a difficult solution, but it does, in fact, create many problems. If the person is employed by a private sector employer, that employee must take 2 weeks off their primary job to obtain the KLETC training. Very few citizens with private sector full time employment have the latitude on their jobs to be effectively available for the duties involved in part time policing.

Many small towns in the past have hired older retired citizens to be part time police officers. With the 1000 hr. limitation on part time officers, these retired citizens are many times the only persons available to fill the position. Finding a retired senior citizen able or even willing to complete the 40 hr. training is difficult at best. There are many ways that older retired citizens are a great asset to a community. Due to the physical requirements of police work, utilizing them to fill this position would seem to put them and the citizens they are protecting at some risk. Anyone that grew up in small town Kansas can fondly

Senate Federal and State Affairs Com.

Date: MARCH 3, 2004

Attachment: # 1

recall the aging "night marshal" patrolling the town in his personal vehicle with a red light affixed to it in some manner. He could even at times be seen dozing behind the wheel at the end of Main Street on a slow night. Unfortunately those days are gone, along with the days of leaving the keys in the ignition of your car at night, and leaving the house unlocked just in case someone dropped by to visit while you were out.

The current interpretation of the statutes does provide us with another option. We can utilize volunteers to fill the position of reserve officers. These reserve officers are allowed to do all the duties of a police officer without any formal training at all. Many smaller cities have done this for many years.

The bottom line is, if a small city can't afford or doesn't need a full time officer, and the Sheriff isn't willing or doesn't have the staff to provide the service, and a qualified retired person isn't available, then most small towns use the last option which is a completely untrained volunteer to enforce our ordinances and traffic laws.

There appears to be one option that would address most, if not all of these problems. By allowing small communities to employ a part time officer that would work less than 1000 hrs. per year on law enforcement duties, and also utilize that employee in another completely separate department, the intent of the current statute would be satisfied. That employee would then be able to work the remainder of the time on other useful functions for the City. The employee would be able to make a livable income, have access to health insurance and other full time employee benefits, while the City would have the benefit of a trained qualified officer any time one is needed. Auditing the hrs. worked by this employee to ensure the 1000 hr. threshold for law enforcement duties is not exceeded would be a very simple matter. I believe if any intelligent, reasonable citizen was asked which was the better option, an untrained volunteer or a trained part time officer that by some stretch of the imagination might exceed the 1000 hr. limitation, the answer would be obvious. The worst that would happen with the trained officer is that he might exceed the 1000 hr. limitation, and then steps could be taken to correct that situation. But the larger issue is what could happen with a completely untrained volunteer? That is just a disaster waiting to happen. The result of such a disaster would obviously not be so easy to correct.

In the current environment when we all talk about homeland security and police presence, the utilization of untrained volunteers doing work as important as law enforcement is, at best, a band-aid fix, and at worst, a ridiculous option. Many people claim what happened on 9-11 taught us some lessons. Until the officials that are able to change these regulations see that changes need to be made, and made today, not tomorrow or next year or after another disaster, then we truly haven't learned anything.

In the AG's opinions there are several references to the intent of the legislation. I believe it is clear that the intent is to provide training for full time officers at one level, provide training for part time officers at a reduced level, and authorize the use of reserve officers to supplement the police presence. While the issue is bogged down in a long bureaucratic debate concerning the wording of the statutes and legal opinions, these small towns are utilizing the few remaining options available. As long as this situation is allowed to continue we are doing a huge disservice to the citizens of this state and inviting more disasters that we all pay lip service to trying to prevent. Common sense must prevail if we are going to provide the protection that our citizens have the right to expect, and we as their government have the responsibility to provide.

Thank you,  
Dwight Watson  
City of Montezuma Ks.

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*Kansas  
Licensed  
Beverage  
Association*

*President*  
Tom Intfen

*Secretary/Treasurer*  
Tammy Davis

*Vice Presidents*  
Robert Farha  
Glenda Dewey  
Jim Hendricks  
James Fager  
Curt Melzer  
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*Testimony on SB-402, February 24, 2004  
Senate Federal and State Affairs Committee*

Chairman, and Senators of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn., a group of 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 SB-402.**

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
  - create a new access point for retail beverage alcohol

The farm wineries and microbreweries procedures were created together, to help foster starting opportunities and businesses. Most microbreweries are now operating restaurants in addition to producing beer. They do this with the current licenses 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 SB-402.

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

*Philip Bradley*  
Dr. Philip B. Bradley  
Executive Director

Senate Federal and State Affairs Com.

Date: *MARCH 3, 2004*

Attachment: # *2*



**Additional Comments on SB 402/HB 2723, Kansas Beer Wholesalers Association  
February 25, 2004, Senate Federal and State Affairs Committee.**

We do not know what subsection (c), page 2 of HB 2723 means.

It could mean that..."In spite of" the availability of adequate quantities of fruit of the..."

- Making it appear that a farm winery could use imported juice whether or not they have a sufficient grape harvest.
- Also, the elimination of the requirement that the label state that the "Kansas" wine is grown from "Kansas" grapes might be a violation of consumer protection laws. If something is labeled "Kansas" beef but it is actually California beef that has been packaged here, is that misleading? Passage of this could be a legislative endorsement of consumer fraud.
- There appears to be a typo and the word "varietal" should be substituted for "varital" in line 13 of page 2 HB 2723.

"Without forfeiting any rights or privileges" subsection (d) page 2 line 21 provides farm wineries an opportunity to exempt themselves from the attached statutes at will.

Finally the expansion to allow more outlets to sell off-premise on Sunday creates more legal problems. If the legislature and the courts prohibit the sale on Sunday for retailers, this will be a significant "exception". Coupled with the microbreweries, there will be lots of outlets selling off-premise. Everyone will be selling EXCEPT retailers and CMB

**41-701. Certain sales by distributors or manufacturers prohibited.**

(a) Except as provided in subsection (d), no spirits distributor shall sell or attempt to sell any spirits within this state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed spirits distributor; or

(2) a licensed retailer, as authorized by K.S.A. 41-306 and amendments thereto.

(b) Except as provided in subsection (d), no wine distributor shall sell or attempt to sell any wine within this state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed wine distributor;

(2) a licensed caterer; or

(3) a retailer, club or drinking establishment, licensed in this state, as authorized by K.S.A. 41-306a.

(c) Except as provided by subsection (d), no beer distributor shall sell or attempt to sell any beer or cereal malt beverage within this state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed beer distributor;

(2) a licensed caterer; or

(3) a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto or a club or drinking establishment, licensed in this state, as authorized by 41-307 and amendments thereto.

(d) (1) If any spirits distributor refuses to sell spirits which such distributor is authorized to sell or refuses to provide any service in connection therewith to any licensed retailer as authorized by K.S.A. 41-306 and amendments thereto, it shall be lawful for any other licensed spirits distributor to sell such spirits to such retailer.

(2) If any wine distributor refuses to sell wine which such distributor is authorized to sell or refuses to furnish service in connection therewith to any licensed retailer, as authorized by K.S.A. 41-306a, it shall be lawful for any other licensed wine distributor to sell such wine to such retailer.

(3) If any beer distributor refuses to sell beer or cereal malt beverage which such distributor is authorized to sell or provide service in connection therewith to any retailer licensed under this act or under K.S.A. 41-2702 and amendments thereto, as authorized by K.S.A. 41-307 and amendments thereto, it shall be lawful for any other licensed beer distributor to sell such beer or cereal malt beverage to such retailer.

(e) No manufacturer of alcoholic liquor or cereal malt beverage shall sell or attempt to sell any alcoholic liquor or cereal malt beverage within this state except to a licensed manufacturer, licensed distributor or licensed nonbeverage user.

(f) No supplier, wholesaler, distributor, manufacturer or importer shall by oral or written contract or agreement, expressly or impliedly fix, maintain, coerce or control the resale price of alcoholic liquor, beer or cereal malt beverage to be resold by such wholesaler, distributor, manufacturer or importer.

(g) Any supplier, wholesaler, distributor or manufacturer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$500 and not more than \$1,000, to which may be added not to exceed six months' imprisonment. In addition, any supplier, wholesaler, distributor, manufacturer or importer violating the provisions of this section relating to fixing, maintaining or controlling the resale price of alcoholic liquor, beer or cereal malt beverage shall be liable in a civil action to treble the amount of any damages awarded plus reasonable attorney fees for the damaged party.

**History:** L. 1949, ch. 242, § 64; L. 1974, ch. 195, § 3; L. 1979, ch. 153, § 4; L. 1987, ch. 182, § 45; L. 1987, ch. 182, § 46; Jan. 1, 1988.

**41-702. Gifts and credit from manufacturer or distributor prohibited.**

(a) Except to the extent permitted pursuant to K.S.A. 41-703 and amendments thereto, no licensed retailer, club, drinking establishment or caterer, or any officer, associate, member, representative or agent thereof, shall accept, receive or borrow money or anything else of value, or accept or receive credit, directly or indirectly, from:

- (1) Any manufacturer or distributor;
- (2) any person connected with, in any way representing or a member of the family of a manufacturer or distributor;
- (3) any stockholders in a manufacturer or distributor; or
- (4) any officer, manager, agent or representative of a manufacturer or distributor.

(b) Except to the extent permitted pursuant to K.S.A. 41-703 and amendments thereto, no manufacturer or distributor shall give or lend money or anything of value or otherwise loan or extend credit, directly or indirectly, to any retailer licensed under this act or under K.S.A. 41-2702 and amendments thereto, or to any licensed club, drinking establishment or caterer, or to the manager, representative, agent, officer or director thereof.

(c) If any licensed retailer, distributor, manufacturer, club, drinking establishment or caterer violates any provision of this section, the license of such retailer, distributor, manufacturer, club, drinking establishment or caterer shall be suspended or revoked by the director in the manner provided by law for revocation or suspension for other violations of this act.

**History:** L. 1949, ch. 242, § 65; L. 1987, ch. 182, § 47; July 1.

**41-703. Gifts, loans and interest in customer's business by manufacturer or distributor prohibited, exceptions.**

(a) Except as provided by subsection (d), no manufacturer or distributor shall directly or indirectly:

- (1) Sell, supply, furnish, give, pay for, loan or lease any furnishing, fixture or equipment on the premises of a place of business of a licensee under the club and drinking establishment act or a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto;
- (2) pay for any such licensee's or retailer's license, or advance, furnish, lend or give money for payment of such license;
- (3) purchase or become the owner of any note, mortgage or other evidence of indebtedness of any such licensee or retailer or any form of security therefor;
- (4) be interested in the ownership, conduct or operation of the business of any such licensee or retailer; or
- (5) be interested, directly or indirectly, or as owner, part owner, lessee or lessor thereof, in the licensed premises of any such licensee or retailer.

(b) Except as provided by subsection (d), no manufacturer or distributor shall, directly or indirectly, or through a subsidiary or

affiliate or by any officer, director or firm of such manufacturer or distributor, furnish, give, lend or rent any interior decorations or any signs, for inside or outside use, for use in or about or in connection with the licensed premises of a licensee under the club and drinking establishment act, or a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto products of the manufacturer or distributor are sold.

(c) No manufacturer or distributor shall directly or indirectly pay for or advance, furnish or lend money for the payment of any license of another under the club and drinking establishment act, the Kansas liquor control act or K.S.A. 41-2702 and amendments thereto.

(d)(1) A manufacturer or distributor may furnish things of value to a licensee under the club and drinking establishment act or to a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto to the extent permitted by rules and regulations adopted by the secretary pursuant to subsection (e).

(2) Notwithstanding any other provision of law to the contrary, an owner, officer, stockholder or director of a distributor may have an interest in the licensed premises of a club, a drinking establishment or a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto, if such premises are located outside the geographic territory of the distributor's franchise.

(e) The secretary shall adopt rules and regulations permitting manufacturers and distributors to furnish equipment, signs, supplies or similar things of value to licensees under the club and drinking establishment act or to a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto. Such rules and regulations shall limit the furnishing of such things of value so that they are not conditioned on or an inducement to the purchase of any alcoholic liquor or cereal malt beverage. In adopting such rules and regulations, the secretary shall consider and, to the extent the secretary determines suitable, base such rules and regulations on the standards of the bureau of alcohol, tobacco and firearms of the United States treasury.

**History:** L. 1949, ch. 242, § 66; L. 1987, ch. 182, § 48; L. 1991, ch. 141, § 2; July 1.

#### **41-704. Manufacturers; interest in business of distributor prohibited.**

No manufacturer of alcoholic liquors holding a manufacturer's license under this act and no manufacturer of alcoholic liquors outside of this state manufacturing alcoholic liquors for distribution and sale within this state shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage or lien on any personal or real property, as guarantor, endorser or surety, be interested in the

ownership, conduct, operation or management of any alcoholic liquor distributor holding an alcoholic liquor distributor's license under this act; nor shall any manufacturer of alcoholic liquors holding a manufacturer's license under this act nor any manufacturer of alcoholic liquors outside of this state manufacturing alcoholic liquors for distribution and sale within this state, be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director or employee thereof, or by stock ownership, interlocking directors or trusteeship in the premises upon which the place of business of an alcoholic liquor distributor holding an alcoholic liquor distributor's license under this act is located, established, conducted or operated in whole or in part.

**History:** L. 1949, ch. 242, § 67; March 9.

**41-705. Violation of 41-703 or 41-704; effect.**

Any licensee who shall permit or assent, or be a party in any way to any violation or infringement of the provisions of K.S.A. 41-703 or 41-704 shall be deemed guilty of a violation of this act, and any money loaned contrary to a provision of this act shall not be recovered back, or any note, mortgage or other evidence of indebtedness, or security, or any lease or contract obtained or made contrary to this act shall be unenforceable and void.

**History:** L. 1949, ch. 242, § 68; March 9.

**41-709. Authorized sale or delivery by manufacturer or distributor; withdrawal of samples from warehouse; license revocation for violations.**

(a) No manufacturer or distributor shall sell or deliver any package containing alcoholic liquor manufactured or distributed by such manufacturer or distributor for resale, unless the person to whom such package is sold or delivered is authorized to receive such package in accordance with the provisions of this act.

(b) Notwithstanding any other provision of the Kansas liquor control act, a distributor may withdraw from the distributor's inventory alcoholic liquor or cereal malt beverage for use as samples in the course of the business of the distributor or at industry seminars. The withdrawal of such alcoholic liquor or cereal malt beverage shall be in accordance with rules and regulations adopted by the secretary in accordance with K.S.A. 41-210 and amendments thereto and shall be subject to the tax imposed by K.S.A. 79-4101 et seq. and amendments thereto based on the applicable current posted bottle or case price.

(c) The director shall revoke the license of any manufacturer or distributor who violates the provisions of this section.

**History:** L. 1949, ch. 242, § 72; L. 1987, ch. 182, § 49; L. 1996, ch. 154, § 6; July 1.

## RE: PROPOSAL NO. 28 — FARM WINERIES\*

Proposal No. 28 directed the Special Committee on Federal and State Affairs to review the licensure and regulation of farm wineries under the Liquor Control Act, consider any needed changes in these statutes, recommend any desirable incentives to foster the development of farm wineries in Kansas, and review the amendments enacted in 1985 H.B. 2250.

Background

The 1983 Kansas Legislature enacted legislation to authorize and regulate farm wineries in Kansas. Sub. for H.B. 2561 amended the Kansas Liquor Control Act (K.S.A. 41-101 et seq.) to provide for the licensure of farm wineries. "Farm winery" means a winery licensed to manufacture, store, and sell domestic table wine, which is wine made from agricultural products grown in Kansas, containing not more than 14 percent alcohol by volume. Farm wineries are allowed to manufacture and sell domestic table wines to consumers for off-premise consumption and to licensed liquor distributors. The wine manufactured by a farm winery is subject to a 15 cent per gallon gallonage tax, and sales to consumers are subject to the 8 percent liquor enforcement tax, as are other retail liquor sales. The bill set the annual fee for a farm winery license at \$1,100.

The 1984 Legislature enacted a technical bill (H.B. 3110) to clarify that the 8 percent liquor enforcement tax will apply to sales by farm wineries.

The 1985 Legislature enacted legislation which made several amendments to the farm winery statutes. H.B. 2250 made several changes in the statutes concerning farm wineries, including reducing the annual license fee from \$1,100

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\* S.B. 409 accompanies this report.

to \$250, reducing the residency requirement for applicants to two years in the county and four years in the state, reducing the required performance bond from \$25,000 to \$2,000, allowing farm wineries to be located in areas zoned for agricultural purposes, requiring only 60 percent of the grapes and products used in making the wine to be Kansas products, and authorizing a farm winery to sell to a licensed retailer.

There are no licensed farm wineries operating in Kansas at present.

#### Committee Activity

The Committee received a staff briefing on the Kansas law relating to farm wineries and heard testimony of interested conferees.

Dr. R. G. Rizza, Villarizza Vineyards, Halstead, suggested several amendments to the farm winery law, which are summarized below:

1. K.S.A. 41-308a requires that domestic table wine containers carry a label clearly setting forth the statement that the wine was manufactured from agricultural products grown in Kansas. Dr. Rizza stated that this provision requires a separate label spelling out that the wine is a Kansas product, with the specific proportions of the products grown in Kansas. He suggested that this information could be included on the front and back label, and that the specific proportion requirement be deleted.
2. K.S.A. 41-310(e) sets \$250 as the annual license fee for a farm winery. Dr. Rizza suggested that this fee may be too high, and also expressed the concern that this statute allows cities and townships to assess additional occupational and license taxes on farm wineries.

3. K.S.A. 41-311(f) requires that an applicant for a farm winery license must have been a resident of Kansas for four years and of the county for two years. Dr. Rizza felt that this time period is excessive and could make it difficult to sell a farm winery in the future. He suggested that the section be amended to require only Kansas residency.

This section also requires that all shareholders of a farm winery corporation meet the same eligibility requirements as the licensee. Dr. Rizza suggested that this be changed to a requirement that the majority of the stock of the corporation be owned by Kansas residents.

4. Under current law and the Kansas Constitution, the on-premise consumption of wine at a farm winery is prohibited. Dr. Rizza stated that the potential success of Kansas farm wineries will revolve on the question of wine tasting at the winery.
5. Dr. Rizza expressed concern that any increased property taxes on farm wineries may stifle the new industry.
6. Dr. Rizza recommended that a "Governor's Advisory Council on Grape and Wine Production in Kansas" be appointed by the Governor to review the status, needs, and incentives to promote grape growing, wine making, and other grape utilizations in the state.

John Lamb, the Director of the Division of Alcoholic Beverage Control, stated that ABC had no requests for amendments to the farm winery laws.

A representative of the Wine Institute reviewed for the Committee a 1984 United States Supreme Court case in which

a liquor excise tax in Hawaii was held to be unconstitutional (*Bacchus Imports, Ltd. et al. v. Dias, Director of Taxation of Hawaii*, 104 S. Ct. 3043, June 29, 1984). The representative noted that Hawaii imposes a 20 percent excise tax on sales of liquor at wholesale, but exempts from the tax both a native brandy and fruit wine (pineapple) manufactured in the state. Hawaii liquor distributors filed legal action seeking a refund of taxes paid under protest and alleging that the tax is unconstitutional because it violates the Commerce Clause. The Hawaii Supreme Court rejected this constitutional claim and upheld the discriminatory tax. However, the United States Supreme Court reversed the Hawaii court and held:

1. the tax exemption for native brandy and fruit wine violates the Commerce Clause, because it has both the purpose and effect of discriminating in favor of local products;
2. it is irrelevant that the Legislature's motivation was the desire to aid the makers of the locally produced beverages rather than to harm out-of-state producers; and
3. the tax exemption is not saved by the 21st Amendment because the central purpose of the amendment was not to empower states to favor the local liquor industry by erecting barriers to competition.

It was noted that the Kansas legislation on farm wineries (K.S.A. 41-501) also contains a discriminatory tax in that domestic table wines are subject to a gallonage tax of \$.15 per gallon, while all other table wines are taxed at \$.30 per gallon. The representative of the Wine Institute stated that, on the basis of the *Bacchus* case, the entire liquor gallonage tax may be in jeopardy should litigation be filed regarding the tax differential on domestic wine. It was suggested that the gallonage tax rate on table wines be made uniform in Kansas.

#### Conclusions and Recommendations

The Committee concludes that the current Kansas law regarding farm wineries is, in general, adequate and requires no major amendments. But the Committee agrees with several changes suggested by conferees and recommends legislation to:

1. modify the current residency requirement for farm winery applicants (four years in state, two years in county) to a requirement that the applicant must have been a Kansas resident for two years at some time preceding the date of application;
2. clarify that domestic wine containers need not carry a separate label indicating that the wine is a Kansas product; and
3. require that only a majority of stockholders of a farm winery corporation must meet the same qualifications as the licensee (under current law, all stockholders must meet the same qualifications as the licensee).

The Committee also recommends, in light of the *Bacchus* case summarized earlier in this report, that K.S.A. 41-501 be amended to provide for a uniform gallonage tax on all table wines at \$.30 per gallon by deleting the discriminatory tax structure which currently taxes domestic table wine at a lower rate. Such an amendment would serve to protect the remainder of the Liquor Gallonage Tax from litigation. This change will result in no revenue loss as no tax revenues have been collected to date on wine produced in Kansas.

With regard to the property tax issue raised by one conferee, the Committee recommends that the Legislature be very cautious on the issue of taxation of farm wineries in order that this fledgling industry may develop in Kansas. The Committee recommends that the standing Assessment and Taxation Committees review the current tax status of farm



wineries, in particular taxation based on use value of vineyards.

Finally, the Committee recommends that the Special Commission on a Public Agenda for Kansas review the issue of developing farm wineries in Kansas and the issue of diversification of agricultural products in Kansas, and consider the creation of a "Governor's Advisory Council on Grapes and Wine Production in Kansas."

Respectfully submitted,

November 25, 1985

Rep. Robert Vancrum, Chairperson,  
Special Committee on Federal  
and State Affairs

Sen. Ben Widrickson,  
Vice-Chairperson  
Sen. August Bogina  
Sen. Norma Daniels  
Sen. Roy M. Ehrlich  
Sen. Phil Martin

Rep. Clinton Acheson  
Rep. Clarence Love  
Rep. Gayle Mollenkamp  
Rep. Kerry Patrick  
Rep. Jim Patterson  
Rep. Kathryn Sughrue  
Rep. John Sutter

Session of 1986

## SENATE BILL No. 409

By Special Committee on Federal and State Affairs

Re Proposal No. 28

12-19

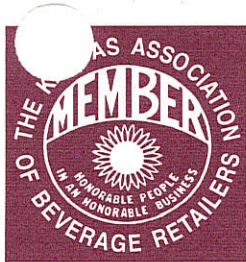
0017 AN ACT relating to farm wineries; concerning regulation of such  
0018 wineries and taxation of their products; amending K.S.A. 1985  
0019 Supp. 41-308a, 41-311 and 41-501 and repealing the existing  
0020 sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1985 Supp. 41-308a is hereby amended to  
0023 read as follows: 41-308a. (a) A farm winery license shall allow the  
0024 manufacture, storage and sale of domestic table wine. The li-  
0025 cense shall allow sales: (1) On the licensed premises of the  
0026 winery, in the original unopened container, to consumers for  
0027 consumption off the licensed premises; (2) to licensed distribu-  
0028 tors; (3) to licensed retailers; and (4) to licensed nonbeverage  
0029 users.

0030 (b) Not less than 60% of the products utilized in the man-  
0031 ufacture of domestic table wine by a farm winery shall be grown  
0032 in Kansas except when a greater proportion is authorized by the  
0033 director based upon findings that such products are not available  
0034 in this state. A winery shall affix to each container of domestic  
0035 table wine to be offered for sale a separate label clearly stating  
0036 each by a farm winery shall have on its label a clear statement  
0037 of the proportion of the products utilized in the manufacture of  
0038 the wine which was from agricultural products grown in Kansas.

0039 (c) A farm winery having a capacity of 50,000 gallons per year  
0040 or more which sells wine to any distributor shall be required to  
0041 comply with all provisions of article 4 of chapter 41 of the Kansas  
0042 Statutes Annotated and of K.S.A. 41-701 through 41-705 and  
0043 41-709, and amendments thereto, in the same manner and sub-  
0044 ject to the same penalties as a manufacturer.



# The Kansas Association of Beverage Retailers

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*Martin Platt, President*

*Amy A. Campbell, Executive Director*

**TESTIMONY PRESENTED TO THE  
SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS  
re: SB 402  
FEBRUARY 24, 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 SB 402. 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, SB 402 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?

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.

Thank you, Mr. Chairman, for allowing us to testify regarding our concerns regarding Senate Federal and State Affairs Com.

Date: MARCH 3, 2004

Attachment: # 4

Testimony on Senate Bill No. 402

Concerning intoxicating liquors;  
Relating to farm wineries

To

The Senate Federal and State Affairs Committee

By

Tom Groneman, Director  
Alcoholic Beverage Control Division

February 24, 2004

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Mr. Chairman, members of the committee, thank you for allowing me to appear before you today regarding Senate Bill 402.

Senate Bill 402, as written, would allow for numerous changes to the liquor control act that are currently prohibited and would constitute a significant departure from treatment of holders of other liquor license types.

Section 1, 41-308a (a) (6) [page 1, lines 31-32] would allow farm wineries to donate product to nonprofit, charitable and government sponsored fundraising events. 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 language in Section 1, 41-308a (a) (7) [page 1, lines 33-37] allows farm wineries to serve and sell products at festivals, trade shows and charitable events. This 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

Senate Federal and State Affairs Com.

Date: **MARCH 3, 2004**

Attachment: # **5**

allowed to serve samples and sell their product in a variety of unlicensed locations that they be required to obtain a temporary permit.

Section 1, 41-308a (a)(8) [page 1, lines 38-41] creates a new license type. Currently, a farm winery licensee may hold a drinking establishment license, enabling them to sell their wines by the drink for consumption on the licensed premises. This bill would allow farm wineries to obtain a “farm winery restaurant license” with an annual fee of \$125.00 (Section 2, 41-310 (e) [page 4, line 4] instead of a drinking establishment license (the fee for which is \$1,000.00) and they would not be subject to the same rules as drinking establishment licensees. For instance, drinking establishment licensees are required to permit immediate entry to any law enforcement officer for inspection of the licensed premises, whereas, farm winery restaurant licensees would not. If this new license type enables a farm winery restaurant licensee to operate virtually like a drinking establishment, they should be subject to all the same rules and regulations.]

Kansas has always followed a very well defined three-tier system. Striking the current language of Section 1, 41-308a (d) [page 2, lines 17-22] would exempt farm winery licensees from the prohibition of holding other license types under the liquor control act.

Striking “microbrewery or farm winery” from Section 3, 41-312 (a) [page 5, line 13] again would be contrary to the three-tier system. It would allow microbreweries and farm wineries to be involved in and hold ownership interests in multiple tiers. They would be able to hold a manufacturer, distributor and/or retailer license, in addition to the microbrewery or farm winery license they already hold.

I will be glad to try and answer any questions.