

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on March 21, 2006 in Room 313-S of the Capitol.

All members were present except:

Representative Melody McCray-Miller- excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees:

Robert "Tuck" Duncan - Kansas Wine & Spirits Wholesalers Association
Philip Bradley, Kansas Licensed Beverage Association
Pete Bodyk - Kansas Department of Transportation
Amy Campbell - Kansas Association of Beverage Retailers
Brian Flanery - Kansas Association of Beverage Retailers
Spencer Duncan - Kansas Retailer
Dennis Reynolds - Kansas Grape Growers & Winemakers Association
Tom Groneman - Director of Alcohol & Beverage Control
Neal Whitaker - Kansas Beer Wholesalers Association
Larrie Ann Lower - Wine Institute
Joan Wagnon, Secretary of Revenue

Others attending:

See attached list

Chairman Edmonds opened the meeting for bill introductions. There were none and the Chairman opened the floor for public hearing on **SB 555** - allowing club and drinking establishment patrons to carry partially consumed containers of alcoholic liquor.

Philip Bradley spoke for the Kansas Licensed Beverage Association in support of **SB 555**. They support the "doggie bag" bill which would allow patrons a way to take home unfinished beverages in a safe and controlled manner. They feel this would discourage consumers from finishing the entire bottle they had purchased just because it was illegal to remove it from the premises. They did request the bill be amended by deleting Section 2 (Page 1 line 36), Section 3 (Page 4 line 22) and rename Section 4 to Section 2 thereby eliminating any objections or questions. (Attachment 1) Mr. Bradley also included a copy of an article by *Elizabeth Beardsley of The Courier-Journal* relating to wine lovers who are faced with a half-empty bottle after a restaurant meal. (Attachment 2)

Robert "Tuck" Duncan, representing the Kansas Wine & Spirits Wholesalers Association, addressed the committee supporting **SB 555** known as the "doggy bag bill." This bill would allow customers to take home a partially consumed bottle of alcoholic beverage by having it re-corked and placed in a tamper proof plastic bag. (Attachment 3) Mr. Duncan made an amendment to address the concerns of Pete Bodyk, Chief of the Bureau of Traffic Safety for the Kansas Department of transportation that the partially consumed wine would be deemed an open container and possibly affect Kansas' compliance with federal requirements and, therefore, jeopardize federal funding received by Kansas. The amendment would be inserted on Page 2, Line 4:

"Or behind the last upright seat or in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk"

Pete Bodyk, Chief of the Bureau of Traffic Safety, stated that the Department of Transportation (KDOT) opposes **SB 555** as written because of expected consequences to highway construction funding. They related that Section 2 (b)(4) would cause Kansas to be out of compliance with federal requirements. (Attachment 4)

No other person wished to address **SB 555** and Chairman Edmonds closed the public hearing.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 21, 2006 in Room 313-S of the Capitol.

The Chairman opened the public hearing on **SB 370** - shipping of wines into and out of state.

First to address **SB 370** was Robert "Tuck" Duncan representing the Kansas Wine & Spirits Wholesalers Association gave a power point presentation explaining the "Three Tier System" which is a complex set of overlapping state and federal regulations. (Attachment 5). Mr. Duncan also provided an informational news article published by the Kansas Wine & Spirits Wholesalers Association. (Attachment 6)

Spencer Duncan is a member of the Board of Directors of the Kansas Association of Beverage Retailers (KABR) and owns a store in Lawrence Kansas. Mr. Duncan testified in support of **SB 370**. Mr. Duncan related that the decisions made on this issue will affect tax collection rates, daily operations of more than 700 retail liquor store owners as well as wholesalers, police forces, Alcoholic Beverage Control Officers, and delivery services. (Attachment 7)

Brian Flanery is a licensed owner of a retail liquor store and also serves as Treasurer of the Kansas Association of Beverage Retailers (KABR). In their testimony the KABR related the reasons for supporting **SB 370**. They also related some concerns which they have with the bill and provided amendments which they would like considered. (Attachment 8)

Amy Campbell, Executive Director of The Kansas Association of Beverage Retailers addressed the committee to show support for **SB 370**. They feel that this bill could be an excellent method to provide access to more products to their customers. Ms. Campbell related that the KABR does have some concerns about **SB 370** and would support amendments to address them. (Attachment 9)

Dennis Reynolds of the Kansas Grape and Winemakers Association offered testimony as a proponent of **SB 370**. He stated that they believe grape growing offers Kansas farmers an exciting and lucrative crop alternative and that the current farm winery statute affords the opportunity for Kansans to grow, produce market and sell a value-added Kansas agricultural product, while increasing agri-tourism within the state. This bill would allow Kansas Farm Wineries to ship their wines directly to consumers in other states that allow direct shipping. (Attachment 10)

Philip Bradley of the Kansas Licensed Beverage Association provided written testimony supporting **SB 370**. (Attachment 11)

Tom Groneman, Director of Alcohol & Beverage Control, testified as neutral to **SB 370**, however, they would make the suggestion that the implemental time be changed from July 1 to January 1. (No Written Testimony)

Neal Whitaker represented the Kansas Beer Wholesalers Association as an opponent to **SB 370**. They feel that the bill will prove a greater opportunity for Kansas to lose substantial, if not complete control over the alcoholic beverages. (Attachment 12)

Larrie Ann Lower from the Wine Institute provided comments as an opponent to **SB 370**. Ms. Lower stated that the Wine Institute is a trade association comprised of some nine hundred wineries. They strongly support the concept of granting Kansas consumers the ability and privilege to purchase and have wine shipped to them, however they do some concerns with the bill which she related in her testimony. (Attachment 13) Ms. Lower also included a copy of a language change which they have suggested. (Attachment 14)

With no other person wishing to speak to **SB 370**, Chairman Edmonds closed the public hearing.

The Chairman opened the floor for public hearing on **HB 2955** - Kansas flavored malt beverage.

Robert "Tuck" Duncan addressed the committee supporting **HB 2955** and relating that the Flavored Malt Beverage Act as set forth in this bill would preserve the current practice of classifying these products as malt beverages and recognize the federal labeling rules. (Attachment 15)

There were no other proponents or opponents to **HB 2955** and the Chairman closed the public hearing.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 21, 2006 in Room 313-S of the Capitol.

Chairman Edmonds opened the public hearing on **HB 2639** - liquor licenses required to be current in payment of taxes.-

Secretary of Revenue, Joan Wagnon, addressed the committee supporting **HB 2639**. It is their feeling that the bill addresses concerns previously raised by representatives of the liquor industry regarding whether a disputed or erroneous tax liability could trigger license revocation, or whether delinquent tax liability of a minority shareholder or officer of a liquor licensee could trigger license revocation. Secretary Wagnon also related that if **HB 2639** is enacted, the Department of Revenue projects a recovery of an additional \$570,000 in delinquent sales and withholding taxes from liquor licensees in FY 07. (Attachment 16)

Philip Bradley, Executive Director of the Kansas Licensed Beverage Association, testified before the committee as an opponent to **HB 2639**. Mr. Bradley related their concerns with the bill and recommended a change of language which he included with his testimony. (Attachment 17)

Amy Campbell, Executive Director of the Kansas Association of Beverage Retailers, stated that although parts of the **HB 2639** have been improved, they are still unable to support its passage. The KABR requests that all licensees be held to the same standard for the collection of taxes. The KABR would support the addition of language permitting the Department of Revenue to enforce similar requirements for other licenses. (Attachment 18)

There were no other proponents or opponents to wishing to address the bill and the Chairman closed the public hearing on **HB 2639**.

Public hearing was opened on **SB 403** - alcohol beverage licenses, procedures relating to violations; prohibitions against employing certain people.

Tom Groneman, Director of Alcohol & Beverage Control appeared before the committee to oppose **SB 403**. Mr. Groneman stated that the purpose of the bill is to clarify the administrative process as it relates to violations of the Liquor Control Act and the Club and Drinking Establishment Act and to prohibit those who have had a liquor license revoked from managing retail liquor stores and drinking establishments. They request favorable passage of **SB 403**. (Attachment 19)

Amy Campbell, Executive Director of The Kansas Association of Beverage Retailers presented testimony in opposition to **SB 403**. Ms. Campbell stated that the KABR opposes any changes that remove the requirement that an individual be notified of the citation within thirty days. They do support amending the statute to be certain that the agency is able to legally follow through with prosecutions, but does not support removing the requirement that the citations be timely. (Attachment 20)

Philip Bradley, Executive Director of Kansas Licensed Beverage Association related that they stand neutral to **SB 403** with a few language changes which were in his testimony. (Attachment 21)

Written testimony in opposition to **SB 403** was submitted by Ron Hein on behalf of the Kansas Restaurant and Hospitality Association. (Attachment 22)

There was no one else who wished to testify on **SB 403** and the Chairman closed the public hearing.

With no further business before the committee, Chairman Edmonds adjourned the meeting.



*Kansas
Licensed
Beverage
Association*

President
James "Jim" Fager

Vice Presidents
Tammy Davis
Tom Intfen
Robert Farha
Jim Hendricks
Curt Melzer
Richard Markle
Paul Boone
Billy Long
Leigh Watkins
Drew Mullen
Sean Haydock

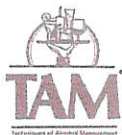
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Testimony on SB-555, March 21, 2006
House Federal and State Affairs Committee

Mr. Chairman, and Representatives of the Committee,

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

We support and asked for the introduction of this "Doggie Bag" bill that would allow patrons a way to take home unfinished beverages in a safe and controlled manner. Thereby discouraging consumers from finishing the entire bottle they had purchased just because it was illegal to remove it from the premise.

We have attempted to keep this measure simple, assure appropriate controls and yet allow for the future actions of the legislature and courts. The intent is to just solve this challenge and not create future problems.

According to the AP article attached, as of last summer, 33 states have similar laws. And 6 more are considering this issue this year including, Kentucky, Nebraska and Wisconsin.

Included in this measure are many conditions to assure that only legal products, within specific conditions may be "doggie bagged". And that the open container laws are met. After this bill had passed the Senate, KDOT expressed some concerns over the last portion that made this tamper-proof, sealed container able to be treated as an "unopened" vessel. We have been in touch and all parties believe this is solvable. If we don't have that solution by the time you work this bill we ask you to amend the bill by deleting Sec. 2 (pg. 1 line 36), Sec. 3 (pg. 4 line 22) and rename Sec. 4 to Sec. 2 thereby eliminating any objections or questions.

Regardless the first portion is not in question and we ask and urge your support.

We appreciate your consideration and ask you to please pass out favorably SB-555 as amended.

Thank you for your time.

Philip Bradley, Ph.D.
Executive Director



FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 1

From <http://www.winedoggybag.com/statelaws.htm> (color added and updates by PBB)

Black unknown or does not allow –

Blue allows - red uses doggie bags.-23/11

Green allowed unspecific language-10

Cabernet color under consideration-6

Canada Allows

ALABAMA
ALASKA
ARIZONA
ARKANSAS
CALIFORNIA
COLORADO - A DOGGYBAG STATE
CONNECTICUT - A DOGGYBAG STATE
DELAWARE
DISTRICT OF COLUMBIA
FLORIDA - A DOGGYBAG STATE
GEORGIA
HAWAII
IDAHO
ILLINOIS
INDIANA
IOWA
KANSAS
KENTUCKY
LOUISIANA
MAINE
MARYLAND
MASS. - A DOGGYBAG STATE (almost)
MICHIGAN
MINNESOTA
MISSISSIPPI
MISSOURI - A DOGGYBAG STATE
MONTANA

NEBRASKA - A DOGGYBAG STATE
NEVADA
NEW HAMPSHIRE - A DOGGYBAG STATE
NEW JERSEY
NEW MEXICO
NEW YORK - A DOGGYBAG STATE
NORTH CAROLINA
NORTH DAKOTA
OHIO
OKLAHOMA
OREGON
PENNSYLVANIA
RHODE ISLAND
SOUTH CAROLINA
SOUTH DAKOTA
TENNESSEE
TEXAS
UTAH
VERMONT - A DOGGYBAG STATE
VIRGINIA
WASHINGTON - A DOGGYBAG STATE
WEST VIRGINIA
WISCONSIN
WYOMING - A DOGGYBAG STATE

CANADA

*** While the above information has been taken from reliable sources, please remember that we are not attorneys and are not engaged in rendering legal or professional advice. No warranty of accuracy is given. Laws and regulations may have changed and we suggest that you speak with your professional advisors or verify policies and procedures with your state and local alcohol beverage control departments as other regulations may apply.

Kentucky: Bill would let diners bag up leftover wine

By Elisabeth J. Beardsley of the The Courier-Journal

Josh Grizzle is among those wine lovers who have faced the dilemma of a half-empty bottle after a restaurant meal.

Kentucky law doesn't allow someone to take leftover wine from a restaurant.

"You just kind of look at it and you think, 'You know what? Maybe I shouldn't have another drink,' but you've already paid for it," said Grizzle, 29, of Louisville.

"It would just be a lot more convenient for you and the restaurant if you could just bottle it up and take it with you."

That may happen. State lawmakers are considering a bill — dubbed "Merlot to go" by some — that would allow people to take home unfinished bottles of wine they purchase with a meal.

Senate Bill 56 would require the bottle to be resealed at the restaurant, placed in a tamper-proof container and accompanied by a dated receipt.

But the state open-container law would apply, which means open alcohol must be stowed in the trunk, a locked glove box or another place inaccessible to the driver.

Supporters say it's a way to let diners get their money's worth from a bottle of wine without having to drink it all on-site and possibly drive home drunk....

...As of last summer, 33 states, including Indiana, had similar take-home laws or regulations, according to the National Restaurant Association.

Kentucky's bill, which was introduced for the first time this year by Sen. Gary Tapp, R-Waddy, already has passed the Senate by a vote of 31-2. It now awaits action before a House committee....

...The take-home option also would be an alternative to refusing to open a bottle for a customer who may be able to absorb one glass but not an entire bottle, Slater said.

"We don't want to insult the guest, but we want to help them make smart choices," Slater said...

...Tapp and Roof cited the bill's other requirements that resealed bottles be placed in tamper-proof containers and then stowed in an inaccessible part of the car.

"There's plenty of safeguards," Tapp said...

Other states vary

The Kentucky bill is similar to a New York state law, in place since 2004, that requires the bottle to be resealed and then placed in a one-time use, transparent, tamper-proof plastic bag, according to the New York Division of Alcoholic Beverage Control Web site...

...Indiana has allowed patrons to take home unfinished wine since 1973, and there are no rules for resealing or packaging the bottle, said State Excise Police spokeswoman Jackie Robbins.

"They can carry it out with no cork in it," Robbins said.

But the state's open-container law prohibits possession of an alcoholic beverage container in a vehicle's passenger compartment if the container has been opened or unsealed or has some contents missing.

In Arizona, restaurants are required to reinsert the cork ..., said Susie Hamilton, an investigations services analyst for the Arizona Department of Liquor Licenses and Control.

...Indiana law enforcement agencies contacted, including Indianapolis and New Albany, say they haven't had trouble with the law.

Bill's future

The bill is before the House Licensing and Occupations Committee, whose chairman, Rep. Denver Butler, said he expects lawmakers to approve the take-home option.

"What's wrong with that? I mean, you paid for it," Butler, D-Louisville, said.

Vice-chairman Rep. Reginald Meeks, D-Louisville, added, "Obviously, we don't want people out in restaurants feeling like they have to drink everything that they have purchased and then get drunk and drive home and cause some accidents."

Thursday, December 23, 2004

No Reason to Chug

Law allows California restaurant patrons to bring home unfinished wine

By KATY McLAUGHLIN of The Wall Street Journal

It's the perfect ending to an elegant evening out at a restaurant: lugging the leftover wine home in a paper bag. For years, it's been illegal in most states for restaurants to send unfinished bottles of wine out the door with customers who bought them. But a wave of recent legal changes is making it possible in an increasing number of states. The latest state to jump on the doggie-bag bandwagon: New York state, which put its new law into effect in September. This past summer, Colorado adopted such a law, and last year, Connecticut, Utah, Hawaii and Pennsylvania all put similar statutes into effect. A doggie-bag bill is pending in Massachusetts, and liquor-authority staff members in a handful of other states say they expect more such laws will soon be proposed. The upshot: Though many restaurant-goers don't know it, 27 states, from California to Texas and Vermont, now allow people to re-cork their wine and take it home. Seven other states have no statewide law that addresses the issue, making it a gray area in some places - though it is forbidden by local ordinances in others. The legal changes are partly an effort to curb drunken driving. Letting diners take home unfinished wine removes some of the pressure to finish a bottle at the table before getting behind the wheel. Restaurant associations in various states have also lobbied for the changes. Their hope is that customers will be more willing to order bottles of wine (a profit center for restaurants) if they're free to leave with any leftovers. That's welcome news for wine lovers like Andrew Pollock, a New York architect who regularly orders a full bottle of wine when dining out with his wife - but then feels compelled to polish the whole thing off. "I always make sure I drink it, even if I have to stagger home," says Pollock. Considering the markup on restaurant wine, "It would drive me nuts to leave a bottle" unfinished on the table, he says. However, just because it's legal to doggie bag that Chianti doesn't mean every restaurant automatically allows it. It's usually voluntary for the restaurant to participate, and some opt out amid concerns that they could be liable if a driver toting wine home had a drinking-related accident. In addition, in some states, the rules vary by city or county. To avoid misunderstandings at the end of the meal, consumers should ask a restaurant about its policy before ordering. Some states, including Texas, Connecticut, North Carolina and Utah, require restaurants to offer the doggie-bag option. But even some of these laws don't explicitly say that restaurants will be punished if they don't allow it. And in Florida, restaurants need a combination of permits to doggie-bag wine, but few restaurants have them. In other states, your rights are less clear. There's nothing on the books to say you can't take it with you in West Virginia, for example. However, state law makes it illegal to have an open bottle of alcohol in any public place, which means theoretically you could be in violation of the law while walking through the parking lot to your car. Because of open-container laws - which prohibit people from having open bottles or cans of alcoholic drinks in the passenger area of their cars - it's a good idea (and the law in some places, including California) to stash the bottle in the trunk for the drive home. Most doggie-bag statutes have been written with open-container laws in mind. For instance, some require restaurants to reseal and repackage opened wine so carefully you would think people are transporting radioactive material. Arizona's law says that the wine cork has to be reinserted so fully that the top of the cork is flush with the lip of the bottle. A spokesman for the Arizona Department of Liquor Licenses and Control acknowledges that can be impossible and says this requirement isn't strictly enforced. New York's law requires restaurants to reseal or recork the wine, place it in a "one-time-use tamper-proof transparent bag," and then securely seal the bag. It may take time for the changes to fully take effect. On a visit to Locanda Vini and Olli, an Italian restaurant in Brooklyn on Sept. 10 - one day after the New York state doggie-bag law took effect - the restaurant told a group of diners they couldn't take home wine leftovers. Catherine de Zagon, a co-owner, says that her attorney advised her not to let customers take out wine until October since the police might not be aware of the change in law. She adds that, since New York law doesn't require restaurants to allow doggie bags for wine, she may continue to forbid them. Montrachet, a New York City restaurant with a 1,400-bottle wine list, also wasn't yet letting customers carry out wine as of September, because the restaurant says the state hadn't yet informed them exactly how the wine was to be resealed. But they say they intend to allow doggie bags soon. The New York State Division of Alcoholic Beverage Control says all the information is available on its Web site and that restaurants can immediately begin offering the doggie-bag option.

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**Kansas Wine & Spirits
Wholesalers Association**
212 SW 8th Avenue, Suite 202
Topeka, Kansas 66603

To: House Committee on
Federal & State Affairs
From: R.E. "Tuck" Duncan
RE: SB 555

**The Kansas Wine & Spirits Wholesalers
Association supports SB 555.**

Some of the states that have approved this type of legislation include: Colorado, Connecticut, Florida, Massachusetts, Missouri, Nebraska, New Hampshire, New York, Vermont, Washington, and Wyoming.



Some states like Arizona, Arkansas and California (and a number of others) allow a patron to take the partially consumed bottle home without the necessity of a "doggy bag."

This form of legislation will encourage moderate consumption of beverage alcohol and yet ensure compliance with the Kansas' open container laws.

Please approve SB 555 favorably.

Wine lovers are
**good
to
go**

Put a cork in it.
It's now legal to leave the
restaurant with a bottle
that has been opened.

By SCOTT JOSEPH
SENTINEL RESTAURANT CRITIC

Here are some words you may never have to utter to a waiter again: "May I see your list of wines by the glass?"
Instead, you may peruse the full wine list and select a bottle, have a glass or two, then add these words to your dining repertoire: "I'll take the rest with me."
You can thank the Florida Legislature — words you probably never thought you'd say — for a new law that states: "A restaurant licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a full-course meal and consumes a portion of the bottle of wine with such meal on the restaurant premises."
Wordy, wordy. And it goes on but the gist of it is that if you order a bottle of wine in a restaurant, but cannot or do not want to finish it, you can take it with

PLEASE SEE WINE, E3

If you have dined, says a new state law, you can take home leftover wine, recorked and sealed in a bag.
PHOTO ILLUSTRATION BY JOHN RAOUZ/ORLANDO SENTINEL

KANSAS

DEPARTMENT OF TRANSPORTATION
DEB MILLER, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

TESTIMONY BEFORE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

REGARDING SENATE BILL 555

Alcoholic liquor; relating to removal of partially consumed containers of alcoholic beverages from licensed premises

March 21, 2006

Mr. Chairman and Committee Members:

I am Pete Bodyk, Chief of the Bureau of Traffic Safety. On behalf of the Kansas Department of Transportation (KDOT), I am here to provide testimony regarding Senate Bill 555, removing alcoholic liquor from licensed premises. KDOT is opposed as written to this bill because of expected consequences to highway construction funding.

According to the National Highway Traffic Safety Administration (NHTSA), language in Section 2(b)(4) would cause Kansas to be out of compliance with federal requirements. NHTSA has stated that partially consumed bottles of alcohol, regardless of whether they are re-corked and sealed in tamper-revealing bags, must be treated as open containers. This bill would allow a person to transport the partially consumed alcoholic liquor (i.e. open container) anywhere in the vehicle.

In order to remain in compliance with federal requirements resealed alcoholic liquor must be treated as an open container. Also, an amendment should be added to address vehicles not equipped with a trunk.

Noncompliance with federal requirements would result in a transfer of funds from highway construction to safety programs. Based on current federal funding levels in SAFETEA-LU, approximately \$7 million per year would be transferred out of construction funding or \$30 million over the remaining life of the Comprehensive Transportation Program (CTP).

It is vital that Kansas remain in compliance with these requirements so that we are able to use the federal construction funds for completing the CTP projects as promised.



Alcohol Regulations: *Where Do We Go From Here?*

R.E. "Tuck" Duncan
Executive Secretary & General Counsel
Kansas Wine & Spirits Wholesalers Association



In a nut shell the Court said
"States have broad power to regulate liquor under Section 2 of the Twenty-first Amendment." *Granholm.*

The peanut of the case is:

"...the three-tier system itself is 'unquestionably legitimate.'..."

If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms."



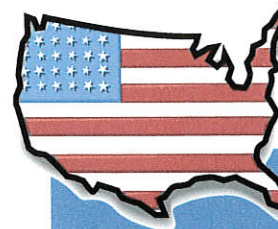
Three Tier System

"...is preserved by a complex set of overlapping state and federal regulations. For example, both state and federal laws limit vertical integration between tiers. *Id.*, at 5; [27 U.S.C. § 205](#); see, e.g., *Bainbridge v. Turner*, 311 F.3d 1104, 1106 (CA11 2002). We have held previously that States can mandate a three-tier distribution scheme in the exercise of their authority under the Twenty-first Amendment. *North Dakota v. United States*, [495 U.S. 423](#), 432 (1990); *id.*, at 447 (Scalia, J., concurring in judgment).



The question is...

“Does a State’s regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of §2 of the Twenty-first Amendment?”



“The differential treatment between in-state and out-of-state wineries constitutes explicit discrimination against interstate commerce.”

The court stated that:



“States have broad power to regulate liquor under §2 of the Twenty-first Amendment. This power, however, does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on *evenhanded terms*.”

The Choice begins HERE !



- **Ban all alcohol shipments outside the regulated system; or**
- **Permit alcohol sales outside the regulated, accountable, state-created system... or**
- **Equalize treatment by imposing “evenhanded” restrictions on all.**



Public Policy Issues

- Collecting taxes
- Ensuring age compliance
- Minimizing paperwork
- Preserving three-tier system
- Preserving local wet/dry options

Face-to-Face Model for Direct Sales

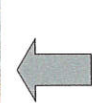
Friendly Consumer orders from winery product not otherwise available



Winery ships to distributor



Distributor delivers to retailer



Consumer pick-ups, pays tax & has ID checked



Sec. 3 of SB 370 should be applied to all direct shipping transactions.

Future implications



SB 370, the face-to-face direct shipping bill, preserves our three-tier system & other KS laws enacted in the past 57 years regarding trade practices designed to preserve an orderly market, including KS' at-rest laws, primary American source laws, labeling laws and taxation so all industry members are treated evenhandedly and fairly. This bill allows the consumer to gain access to products not otherwise available in Kansas and does so without being disruptive to our existing statutory scheme.

Alcohol Regulations Where Do We Go From Here?

R.E. "Tuck" Duncan
Executive Secretary & General Counsel
Kansas Wine & Spirits Wholesalers Association

From there



here !



Questions ?

Some years back the Kansas Wine and Spirits Wholesalers Association produced a quarterly newsletter directed to Kansas' beverage alcohol retailers. That newsletter, called *Distributors' Dispatch*, served a useful function of communicating regarding industry issues of common concern. The KWSWA has determined that it should again periodically communicate with the industry's front line - the retailer - about matters of importance to the entire beverage alcohol family. This newsletter begins that tradition anew...

Volume 1, Issue 1

March, 2006

We're coming to the
WEB www.kwswa.org

KANSAS WINE & SPIRITS WHOLESALERS ASSOCIATION

Distributors' Dispatch

Preserving the Three Tier System

Since the passage of the 21st Amendment to the United States Constitution repealed Prohibition and granted each state the right to control the importation, distribution, and use of alcoholic beverages within its borders, Kansas has relied upon the three-tier alcohol distribution system to ensure alcohol is distributed and consumed safely in our state. Our alcohol distribution system has evolved over time, and here is a historic overview of how our three-tier system has evolved to what it is today. In 1933, the 21st Amendment repealed Prohibition and granted states the authority to control the importation, distribution and use of alcoholic beverages within its boundaries. Kansas, initially enacted a law providing for the sale of cereal malt beverages in 1936. Not until 1949 did Kansas repeal its constitution's prohibition amendment, but like many other states, then decided to create a regulated three-tier system to distribute alcohol that would prevent the abuses seen

prior to Prohibition—and would respect those local communities that decided to remain "dry," which meant alcohol sales were banned or restricted. Between the supplier and the retailer, Kansas legislators required a new Kansas-based "tier" to be created — the independent licensed distributor. The

Continued p.4



Overstocked and Seasonal Items

Recently the KWSWA advised its members that the Alcohol and Tobacco Tax and Trade Bureau and the Kansas Division of Alcoholic Beverage Control have very specific laws regulating the

types of products that can be exchanged or returned to a distributor by a retail licensee.

Title 27 of the Code of Federal Regulations Part 11 provides that: "It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any trade buyer to purchase,

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FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 6

Article 41-728 of the Kansas Liquor Control Act states that "sales are final" ...

Overstocked and Seasonal Items

offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person or other products from the trade buyer or the agreement to acquire other products from the trade buyer."

This federal regulation specifically lists the following exchanges and returns that can be made for ordinary and usual commercial reasons:

- *Defective products
- *Error in products delivered
- *Products which may no longer be lawfully sold
- *Termination of business

- *Termination of franchise
- *Change in product
- *Discontinued products
- *Seasonal dealers – dealers who are only open for a portion of the year and

*The retailer has obtained approval from the ABC Director to close out the product

*A supplier has required the distributor to buy back the product

*The distributor was notified within twenty-four (24) hours after the product was delivered.

Members of the KWSWA are advised to make every effort to comply with all federal, state and local laws regulating our industry.

Thus, retailers need to be aware that wholesalers are not allowed by law to take back or exchange product because a customer is overstocked or because the product did not sell as well as expected. Also, wholesalers cannot take back seasonal product because the season did not generate the anticipated volume of business.



where the product may go bad from season to season if not returned

Article 41-728 of the Kansas Liquor Control Act states that "sales are final" and a distributor may only buy back or exchange products from a retail licensee under the following conditions:

Distributor'
Dispatch
Editor:
Tuck Duncan
Ex. Secretary &
General Counsel
KS Wine & Spirits
Wholesalers Assn.

NEW FLAVORED MALT BEVERAGE RULES

~ TAX INCREASE UNLESS LEGISLATURE ACTS ~

The TTB, formerly ATF, announced new rules for flavored malt beverages (FMBs). As a result the Department of Revenue has announced that unless the Legislature acts to maintain the current beer tax on FMBs it will impose the spirits tax.



The current tax rate is .41 a case and if the Legislature does not act the rate will be \$5.94 a case. This means that a six pack will increase from \$6.99 retail to \$9.23 retail. HB 2955 has been introduced in the Kansas

House to create the Flavored Malt Beverage Act which will preserve the current tax rate and the way these products are sold in Kansas. Retailers who agree that the state should keep the tax rate at current levels can call and tell their legislator to support HB2955.

Kansas Beverage Alcohol Industry Pays Millions in Taxes

2004 & 2005 LICENSEES BY CATEGORY

	2004	2005
Retail liquor stores	717	724
Class "A" clubs	317	315
Class "B" clubs	158	155
Drinking Establishments	1,509	1,565
Caterers	111	117
Beer Distributors	44	44
Spirits Distributors	7	7
Wine Distributors	10	11
Microbreweries	9	12
Farm Wineries/Outlets	19	22
Manufacturers	5	6
Temporary Permits	338	309
Supplier Permits	556	547
Total	3,807	3,841



In FY2003, Kansans contributed \$81,708,115 million in taxes on purchases of alcohol through excise taxes, gallonage and enforcement taxes. In FY2004 \$85,485,266 and in FY2005 \$90,246,471 (a 5.5% increase over the prior year) according to an A.B.C. memorandum dated January 10, 2006. These collections do not

include the millions paid by the three tiers for: Federal alcohol permits, state alcohol permits, standard business taxes paid by Kansas-based wholesalers and retailers, including: Kansas franchise taxes, motor fuels taxes, sales and use taxes, unemployment compensation taxes and local property taxes. Wholesalers paid \$18.5 million in state gallonage taxes for 2004. Kansas based retailers (tier 3) collect an enforcement tax of 8% and drinking establishments collect an excise tax of 10% on the drink price. Collection for 2004 & 2005 are as follows:

	2004	2005
Enforcement 8%	40,256,465	41,903,994
Drink 10%	28,614,009	29,770,339

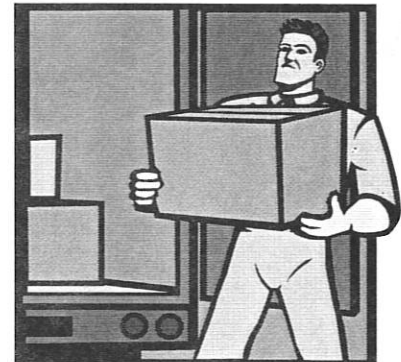
So, what do wholesalers do ?

Throughout the state, Kansas consumers over the age of 21 have access to wine, spirits and beer from around the world, largely due to the role that Kansas-based wholesalers play in responsibly distributing alcohol between suppliers and retailers. In this role, these Kansas-based companies:

- Consolidate orders for both manufactures and retailers,
- Promote and market alcoholic beverages to properly licensed retailers in the state—big or small
- Warehouse tens of thousands of distinct alcoholic beverage products from around the world in Kansas buildings for easy and timely delivery to Kansas-based retailers
- Provide retailers with prod-

ucts—both in-stock and special-order—to meet the demands of customers

- Pay gallonage taxes for the state
- Ensure alcohol is sold only in "wet" areas of the state by limiting the channel of alcohol from distributor to properly licensed retailers
- Provide accountability and responsibility for the safe delivery of alcohol in Kansas, thereby supporting efforts to stop underage drinking and impaired driving.
- Provide thousands of quality local jobs that are not transferable out of the community (distributors must, by necessity, be near their retail customers)
- Are responsible, philanthropic members of their respective communities, accounting for quality jobs, millions of dollars



in charitable donations, and thousands of hours of community service, including sponsoring numerous charitable wine tastings.

As proponents of responsible alcohol distribution, Kansas' wholesalers support laws and standards that discourage alcohol sales to minors, drunk driving and other unsafe and illegal uses of alcohol. The responsibilities of wholesalers allow the state to do its job of ensuring the safe distribution and sale of alcohol within its borders

That's what wholesalers do !

Three Tier System, continued

independent in-state distributor (tier 2) was created to serve as a "buffer" between the other two tiers. In addition, this new business created a new Kansas entity to put a local "face" on the alcoholic beverage industry. Furthermore, legislators could ensure safeguards were followed by providing the Kansas-based distributor an enormous incentive in not losing his or her license to distribute. Kansas distributors were (and still are) required to follow strict guidelines and procedures for distribution of alcoholic beverages, and provide valuable services to businesses

and consumers that reach far beyond the simple pick up and delivery between supplier and retailer. While the three-tier system has evolved since its creation, it continues to provide customers a choice of thousands of products, at the same time ensuring the safe, acceptable delivery of alcohol. The three-tier system continues today to ensure that alcohol is not sold or delivered through unlawful channels — which means alcohol is delivered responsibly to the people who are licensed to sell it and who are of legal age to buy it. The threat to Kansas based wholesalers or Kansas based retailers of losing their license to do business in

Kansas is an enormous incentive for these companies to comply strictly with Kansas law. The same cannot be said for those companies seeking to bypass the three-tier system through direct shipment of alcoholic beverages by selling products across state lines, over the Internet or through catalogue sales to anyone with a credit card. The Internet's lack of in-state enforceable responsibilities and a clear chain of accountability as provided by the three-tier system means companies are less likely to pay taxes or ensure minors or households in "dry" areas are not receiving alcoholic beverages illegally.



Send your comments
or questions to:
kswswa@yahoo.com

Drink Responsibly.
Drive Responsibly.

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION

212 SW 8th Avenue, Suite 202

Topeka, Kansas 66603



March 21, 2006

To: House Committee on Federal and State Affairs
From: Spencer Duncan
RE: SB 370

Thank you for taking time today to listen to the issues that surround the shipping of wine in and out of Kansas.

My name is Spencer Duncan. I am a member of the Board of Directors of the Kansas Association of Beverage Retailers. My store is World Wine & Beer, LLC, located in Lawrence, Kansas.

The issue of wine shipping is a complicated matter. However, various entities and individuals have attempted to make this matter seem simple. This issue is not simply the act of allowing the shipment of wine in and out of Kansas. I want to stress to you that while some may want you to believe the issue is as simple as allowing an individual to order wine via the Internet or by mail order, that there is significantly more to this matter.

The decisions made by you on this issue will have far reaching economic and social implications. It will affect tax collection rates. It will effect daily operations of more than 700 retail liquor store owners, all of whom are small businesses. It will affect wholesalers, and their relationships with retail store owners and wineries. It will affect police forces, Alcoholic Beverage Control Officers, and delivery services, and all who are trusted to continually ensure this regulated product does not fall into the hands of minors.

The second point I want to make is this: The members of my organization, all of whom are small, locally owned Kansas businesses, support the status quo. It is our preference that no changes are made at this time, and that life continues with business as usual. We understand that occasionally an individual would like to purchase a product that may not be readily available in a Kansas retail liquor store. However, let me stress, the number of these occasions is minuscule. There are already more than 1,200 wineries selling more than 5,000 wines in Kansas, and the majority of consumers that we work with on a face-to-face, daily basis, are satisfied with this selection.

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The reason certain wines are not currently sold in retail liquor stores in Kansas is rarely the fault of the retailer, wholesaler or the laws of the state of Kansas. Sometimes, there simply is not enough wine to go around. Often, the reason a consumer is unable to purchase a bottle of wine in Kansas is because an importer, producer or winery simply makes a decision that they only have so many bottles to go around, and Kansas is not viewed as a priority market.

Kansas wineries exemplify this problem. In my retail store, I currently sell wines from two Kansas wineries: Smoky Hill and Wyldewood Cellars. In the past two months, I have contacted 10 other Kansas wineries - all have refused to sell me any product to sell in my store. The reason they give is that they do not produce enough wine to provide my store with any. This includes a winery just 20 miles down the road from my store. And, it should be noted, Smoky Hill and Wyldewood periodically run out of a few of their wines we carry from their wineries.

Forget for a moment what current laws dictate. My point is this: If a consumer in California called one of these Kansas wineries today and wanted to order a case of their wine, then according to the Kansas wineries themselves, based on what they tell me and other members of my organization, these wineries would be unable to sell them that case because they simply do not have enough product to sell. It's not a matter of what the winery wants to do, it is a matter of what they are currently able to do.

This same principle applies the other way. Just because a Kansas consumer wants to purchase that bottle of wine from that small winery in California that they visited, does not mean the winery is actually able to ship said Kansan a bottle. I have a Master's Degree in Business Administration, but even I do not need it to know this is a simple case of supply and demand. And in many cases, there is simply not enough supply to meet demand.

The current system works, and it is OK to want to preserve something that is clearly not broken. Having said that, I come to my third and final point.

Whatever action you take, I implore you to make sure the decision you make includes a step in which the product must be picked up at a Kansas Retail Liquor Store, as provided for in Senate Bill 370. I urge this for the following reasons:

- 1) It is the only way in which the state of Kansas can guarantee tax collection takes place. Kansas retail stores collected more than \$40 million in taxes for the state of Kansas in 2005. That is a number that has increased for six consecutive years.

- 2) It is the only way to guarantee minors do not order this product. Retail Liquor stores are licensed and regulated by the state and federal governments. Our business is required - rightfully so - to ensure no one under the age of 21 purchases this regulated product. Having this product pass through the retail liquor store is the responsible act for Kansas to take to continue to keep alcohol out of the hands of minors.
- 3) Do not forget: every retail liquor store in Kansas is locally owned and operated by one individual or family. That is more than 700 small businesses which tend to pay higher than minimum wage. That is more than 700 small businesses that keep their tax dollars and other income in the local economy. That is more than 700 small businesses that include a constituent in every voting district.

Allowing direct shipping into Kansas directly to the front door will have a negative economic impact on these more than 700 small businesses, shifting some of these dollars from the Kansas economy to various out-of-state entities. Passing a wine shipping bill such as Senate Bill 370 that includes the retailer still allows consumers to order products over the Internet and by mail order, while ensuring that locally owned Kansas retail stores retain some earnings. It also allows the state to continue to regulate the sale of alcohol in an orderly manner.

I thank you for your time today.



The Kansas Association of Beverage Retailers

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Larry Knackstedt, President

Amy A. Campbell, Executive Director

Senate Bill 370

Thank you, Mr. Chairman and members of the Committee, for the opportunity to talk to you today about Senate Bill 370. My name is Brian Flanery and I own Top Cellars Select in Overland Park. I am a licensed owner of a retail liquor store and also serve as Treasurer of the Kansas Association of Beverage Retailers.

Senate Bill 370 amends the Kansas Liquor Control Act to create a legal process for Kansas customers to order wine not currently available in Kansas. It is designed to solve the problem for individuals who have said they need a legal way to order certain wines which they are unable to purchase in their local stores.

The bill provides this opportunity to Kansans over the age of 21 who order the wine to be shipped to a retail liquor store for pickup. The customer will pay the out of state shipper for the wine and then pay the retail liquor store the enforcement tax and a handling fee of \$5.00. Customers may only purchase wine for personal use and not for resale. Customers must pick up the wine within thirty days or it will be disposed in a manner prescribed by ABC.

The out of state winery who ships the product must purchase a shipping permit from the ABC and be a licensed wine manufacturer in another state. The shipper will pay the gallonage taxes to the State of Kansas.

The bill will continue current Kansas law which prohibits Farm Wineries from shipping wine to customers in Kansas, but the bill specifically adds the ability to ship out of state to their license. This is important in light of the recent U.S. Supreme Court decision which says that any state which allows their in-state wineries to ship in their state must also allow out of state wineries to ship in their state. We do not support anything which would allow large out of state wineries to bypass the sales and tax system in Kansas.

KABR supports 370 because:

1. 370 provides a legal manner for customers to get wines which are currently not available.
2. 370 preserves the role of the retail liquor store as the face to face point of sale for alcoholic liquor.
3. 370 provides the opportunity for the retailer to bring the customer into his or her store and provide service, including the opportunity to assist the customer in finding comparable wines which are available in Kansas as well as creating a regular customer for other products.

KABR does have some concerns about 370 and would support amendments to address the following:

1. We would prefer the bill allow flexibility with fees associated with deliveries. I would like to be able to waive the fee for regular customers, especially if they are purchasing additional items while in my store. And I should not be expected to handle an order for a wedding or party for only \$5.00. (Suggestions: The retailer may charge the purchaser a handling fee of \$5.00 or up to \$1.00 per bottle for each delivery.) OR (The retailer may charge the purchaser a handling fee of \$5.00 or up to 10% of the retail cost of the delivery.)

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2. The original legislation would have had the product shipped to the wholesaler who would then put the product on a delivery truck. This has several advantages: (1) the retailer would know when these shipments were to be expected and will have someone on hand to check in the product; (2) out of state wine shippers would be assured that the delivery arrives at a licensed retail liquor store - what will they do if the address provided on the order form is not a licensed store? Wholesalers can only deliver to licensed stores. Will the Fed Ex deliveryman feel obligated to return it? and (3) the wholesalers have volunteered to provide this service free of charge.
3. If Farm Wineries are able to deliver to retailers - acting as wholesalers - shouldn't they be required to not discriminate between retailers? This is required of wholesalers by K.S.A. 41-1101.

I am here to ask you to think of your local small businesses when looking at wine shipping proposals. Support the businesses that employ people in this state and pay taxes in this state. As a retail liquor store owner, I must follow very strict rules and regulations regarding the sale of alcoholic liquor – including wine. ABC agents can enter my store to review records, inspect inventory and receipts, and check my customers – day or evening. Prior to renewing my license, all of business taxes are reviewed and must be current. We are visited by Department of Revenue auditors. And the State sends in underage individuals to attempt to buy liquor to test me and my employees. Any mistake will result in an administrative violation and fine against my license and also a criminal charge.

I am not here to complain about this oversight. This is part of my obligation as a licensee. I am not here to ask for any legislation. But if the Legislature is going to change the way that alcohol is sold in Kansas, please remember the efforts of liquor store owners like me and be careful not to harm good Kansas businesses.

If I can be of assistance to you on this or any other issue, please call me.
Thank you for your consideration.

Brian Flanery
Top Cellars Select
11720 Quivira Road
Overland Park, KS 66210
913-825-9354



The Kansas Association of Beverage Retailers

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Amy A. Campbell, Executive Director

TESTIMONY PRESENTED TO THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

March 21, 2006

Amy A. Campbell, Executive Director

Thank you for the opportunity to represent the Kansas Association of Beverage Retailers regarding Senate Bill 370. The Association represents Kansas licensed retail liquor store owners. Our members are Kansas citizens who own Kansas businesses.

Retailers are happy to seek new solutions to provide access to more products for our customers. It appears that Senate Bill 370 could be an excellent method to do so. We are aware that there is great interest in passing some kind of wine legislation. There is also support to provide some assistance to Kansas farm wineries. KABR encourages the Legislature to help Kansas farm wineries by passing language to allow them to sell their products out of state. But we urge caution in the development of wine shipping legislation.

Our members must oppose any efforts to allow wide open direct shipping. Most proposals do not provide for the safe and legal sale of the product to someone of legal age. They bypass the three tier distribution system and suggest an honor system for collecting the taxes. Open shipping bills create an impossible duty for the Division of ABC to collect taxes and monitor compliance. If these issues are truly unimportant, we suggest the regulations of the Division of ABC and the Department of Revenue could be vastly simplified as they pertain to the 725 Kansas licensed retail liquor stores in this state.

Kansas should not allow wide open "direct shipping" because it could create a loss of revenue to the state, in addition to asking UPS deliverymen to be responsible for the safe and legal sale of alcoholic beverages. This is unrealistic.

It is very important that we do not create an incentive for manufacturers who sell their products in Kansas legally now to suddenly change their marketing plan to bypass State regulation and taxation. We support and need a healthy market for wines, but do not want to implement policy which could make it harder to put some brands on our shelves. It would create a disadvantage for those Kansas owned businesses who make their living by following the rules.

Additionally - we must remember that whatever rules you make for "wine" could eventually be expanded to beer, vodka, whiskey, etc. Perhaps not by you - but by the courts.

KABR is willing to participate in efforts to provide a method for Kansans to get their hands on hard-to-get vintages. There is a potential solution for you in the language of Senate Bill 370.

1. SB 370 provides a legal manner for customers to get wines which are currently not available.
2. This service model preserves the role of the retail liquor store as the face to face point of sale for alcoholic liquor.

FEDERAL AND STATE AFFAIRS

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3. It benefits the retailer by bringing the customer into his or her store and provide service, including the opportunity to assist the customer in finding comparable wines which are available in Kansas as well as creating a regular customer for other products.

KABR does have some concerns about SB 370 and would support amendments to address them – if this committee has an interest in pursuing that model. Original bill language which required deliveries to be handled by the wholesalers should be returned to the bill.

As Kansas retailers, we are still a bit uneasy, primarily due to the possibility of unintended consequences. We would be most comfortable maintaining the current prohibition on shipping direct to Kansas consumers for the in-state wineries and the out-of-state wineries because we know that the United States Supreme Court has upheld our current law. Do we seem cautious? It is because we are.

If it is imperative that Kansas law be altered, KABR encourages the Kansas House and Senate to pass a joint resolution to establish a task force which would include the state agencies who are responsible for enforcing and defending the Liquor Control Act: the Division of ABC and the office of the Attorney General. The task force would also include parties who would be participants in any altered distribution system. The “buy-in” of the entities charged with implementing, enforcing and providing a legal defense to new state law is very important.

We do not want to go down another legislative trek which creates unforeseen penalties against retailers who must make their livelihood within the system created in this process.

Three years ago, KABR testified in support of House Concurrent Resolution 5016 which charged the Attorney General and the Division of ABC with the task of studying wine shipment laws and reviewing the potential impact to Kansas. That Task Force was never convened – at least in part due to the pending Supreme Court decision. There are no simple answers to the questions that arise related to shipping, and we are willing to participate in a cooperative process to review the options and learn from the experiences of other states.

Thank you again for the opportunity to speak to this issue. As you consider this and other legislation which will change the way adult beverages are sold in the state of Kansas, please keep in mind the Kansas owned, Kansas licensed retail liquor stores.

Please feel free to contact me to discuss this or any other issue:

Amy A. Campbell

Mobile: 785-969-1617

Kansas Viticulture and Farm Winery Association
&
Kansas Grape Growers and Winemakers' Association

March 20, 2006

To: House Federal & State Affairs Committee
From: Dennis Reynolds & Norm Jennings
On behalf of: Kansas Viticulture and Farm Winery Association
and
Kansas Grape Growers and Winemakers' Association

RE: SB370-Proponent

Mr. Chairman and members of the committee, thank you for the opportunity to offer this testimony. The Kansas Viticulture and Farm Winery Association and the Kansas Grape Growers and Winemakers' Association are separate organizations that count among their two memberships all Kansas farm wineries and all commercial vineyards in the state, as well as numerous Kansas grape and wine enthusiasts.

We support the growth of grape growing and winemaking in Kansas. We believe grape-growing offers Kansas farmers an exciting and lucrative crop alternative and that the current farm winery statute affords the opportunity for Kansans to grow, produce, market and sell a value-added Kansas agricultural product, while increasing agri-tourism within the state.

The primary interest of our members is to encourage the growth of the grape growing and winemaking industry in Kansas. To that end, we support having all sales channels available to promote and sell Kansas wine. Currently, Kansas Farm Wineries are prohibited by state law from directly shipping to consumers either within or outside of the state. This makes no economic or regulatory sense. Our Kansas wineries get literally thousands of requests yearly to ship our wines all over the state and the country. We lose significant sales of Kansas product and Kansas tax revenues every year because of this prohibition.

SB 370 addresses this problem by allowing Kansas Farm Wineries to ship their wines directly to consumers in other states that allow such direct shipping.

SB 370 also allows a limited form of in-state shipping through Kansas retail liquor stores. While we do not view this procedure as ideal, it is an improvement over the current total prohibition.

For these reasons, our two groups support passage of SB 370.

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It should be noted that in reference to shipping wine into and within Kansas, we prefer the direct-to-consumer shipping model contained in HB 2811. It would allow Kansas Farm Wineries to ship directly to consumers within Kansas, as well as out of state. We also feel that the provisions in HB 2811 are fairer to all consumers in Kansas and better reflect the trend and consensus nationwide on this issue.

Thank you again for the opportunity to offer testimony on these issues.



*Kansas
Licensed
Beverage
Association*

President
James "Jim" Fager

Vice Presidents
Tammy Davis
Tom Intfen
Robert Farha
Jim Hendricks
Curt Melzer
Richard Markle
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Testimony on SB-370, March 21, 2006
House Federal and State Affairs Committee

Mr. Chairman, and Representatives of the Committee,

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

We support a workable legal bill that would allow for state control, equal regulation on underage access, appropriate tax collection and access to all sectors.

A level playing field for those who sell alcohol is essential. Currently a seller of beverage alcohol is held criminally responsible for an underage person accessing their product, **knowingly or unknowingly**. The same **standards should be applied** to these direct sales as well.

We also urge you to create access to unavailable products to those licensees who wish to feature a particular label for a small batch purchase. Many of our fine Kansas hospitality venues have customers that are requesting these products and would like to promote small vineyards for their patrons.

Of course we support the appropriate steps necessary to achieve all of these goals and still have a workable system. It appears that this measure in it's current form needs adjustment to meet those criteria.

Thank you for your time.

Philip Bradley
Executive Director



FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 11



800 SW Jackson, Suite 1017, Topeka, Kansas 66612

Testimony Substitute for Senate Bill 370
House Federal & State Affairs Committee
March 21, 2006

Regardless of what you have been told, wine is an alcoholic beverage. Kansas, since the 1880's has heavily regulated alcoholic beverages through laws that restrict where, when and to whom they can be sold.

Last year the US Supreme Court ruled on wine shipping in the *Granholm* decision. Essentially they said that states could not discriminate between in-state and out-of-state suppliers. So nothing changed for Kansas because the state has never allowed shipping directly to consumers from suppliers.

The *Granholm* decision did point out one flaw in Kansas law that should be corrected. Kansas farm wineries are allowed to sell directly to retailers. This fact alone puts the state at jeopardy of a lawsuit from out-of-state suppliers to allow them to ship directly to retailers. A successful action would result in Kansas losing control of the tax stream created by requiring all alcoholic beverages be shipped to a distributor where the gallonage tax is paid. Also inventories and sales to retailers are reported to the state creating an audit trail for retail tax audits. Our system also insures that counterfeit products are kept out of the State thereby protecting the public from products that could be harmful and even lethal.

Sub for SB 370 places the Kansas Liquor Control Act in the middle of a perfect storm almost guaranteeing a supplier lawsuit against the state. This bill allows Kansas farm wineries to ship directly to consumers in this state. It discriminates against out-of-state wineries by requiring their consumer sales go through a distributor and retailer.

Sub for SB 370 should be amended to prohibit all shipping to consumers and require Kansas farm wineries to sell through distributors to protect the state's right to continue to regulate distribution, sale and consumption of *all* alcoholic beverages.

Many of you don't like the fact that we have Sunday sales in Kansas. Sunday sales are the result of the legislature ignoring the industry's warnings that the Liquor Control Act was not uniform, and therefore, placed at risk the state's control over alcoholic beverages. The court agreed with the industry and allowed local governments to control days of sale, i.e. allowing Sunday sales.

Sub for SB 370 will provide the a greater opportunity for Kansas to lose substantial, if not complete, control over alcoholic beverages. Sub for SB 370 constitutes a major change in Kansas' alcoholic beverage policy and should be treated as such. The state can choose to continue to regulate alcoholic beverages through thoughtful, studied changes or can rush into ill-advised changes – such as Sub for SB 370 – and allow the Courts to establish its policy.

FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 12



WINE INSTITUTE

CHARLES E. MCGRIGG
CENTRAL STATES COUNSEL

March 21, 2006

TO: MEMBERS OF FEDERAL AND STATE AFFAIRS COMMITTEE
FROM: CHUCK MCGRIGG, LARRIE ANN LOWER
SUBJECT: SUB FOR SB 370 SALE AND SHIPMENT OF WINE

Mr. Chairman and members of the Committee. We appreciate the opportunity to provide comments on SB 370, which attempts to allow the sale and shipment of wine into the state of Kansas.

The Wine Institute is a trade association comprised of some nine hundred wineries. The Wine Institute strongly supports the concept of granting Kansas consumers the ability and privilege to purchase and have wine shipped to them. However, we do have several concerns with Senate Substitute for SB 370. We will focus on a few of those concerns.

New Section 1 requires wineries that manufacture less than 100,000 gallons of wine per year to ship to retailers. Then consumers arrange to pick up the wine within 30 days from the retailer. New Section 3 requires wineries that hold a large winery shipping permit to ship to distributors who then deliver it to retailers. Consumers then arrange to pick up the wine from the retailer. Neither of these sections truly allows the direct shipment of wine to the consumers of Kansas and insure failure of meaningful direct shipping.

The concept of the gallonage cap is also being considered by Arizona. The lawyers in the recent Supreme Court Case on the issue of direct shipping have already advised Arizona that another lawsuit will be filed should the legislation be enacted.

The second concept is that the product must somehow pass through the distributor and/or a retailer before it gets to the consumer. Two examples of this approach are Texas and Maryland. Texas law required that the product pass through a retailer. After two years of experience, the Texas retailers requested a change and helped draft the current direct shipping legislation that allows the product to flow straight to the consumer. A few years ago Maryland enacted a law very similar to Substitute for SB 370. Only one direct shipping permit has been issued (see attachment).

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Also, both sections require that the wine must be wine not otherwise available for sale in Kansas. These provisions lack an enforcement mechanism and leads to consumer and winery confusion. No other state has this requirement in their direct shipping laws.

The Wine Institute has advocated for a change to direct shipping limitations for over twenty-five years. However, it is our belief that the legislation before you does not realistically allow for the direct sale and shipping of wine to Kansas Consumers. We will be happy to continue to work with the Committee and the interested parties on this issue and would suggest the language of HB 2811 recently heard by the Interstate Cooperation Committee or similar language be substituted for the language in this bill before you. Thank you for your interest in this topic, we will try to answer any questions you may have.

State Gross Revenue from Alcohol Permits

Permits Issued FY 2005		Revenue Annual Fee	Collected	Total
22	Alcohol Awareness Program	\$15.00	\$330.00	
324	Alcohol Awareness Instructor	5.00	1,620.00	
16	Public Storage	75.00	1,200.00	
14	Public Storage and Transportation	100.00	1,400.00	
447	Public Transportation	75.00	33,525.00	
12	Import and Export	75.00	900.00	
1,036	Non-Resident Dealer	100.00	103,600.00	
49	Individual Storage	50.00	2,450.00	
2,049	Solicitor's	50.00	102,450.00	
302	Bulk Transfer	100.00	30,200.00	
52	Change of Domicile	5.00	260.00	
10	Non-Beverage	50.00	500.00	
55	Individual Transportation	10.00	550.00	
53,265	Vehicle Identification Cards	10.00	532,650.00	
1	Wine Exhibition	50.00	50.00	
17	Non-Resident Storage	500.00	8,500.00	
10	Charity Wine Auction	10.00	100.00	
2	Family Beer and Wine	400.00	800.00	
1	Direct Wine Sellers	10.00	10.00	
2	Private Bulk Sale	25.00	50.00	
15	Winery Special Event	25.00	375.00	
<hr/>				
57,701				
Grand Total Permits Issued				<u><u>\$821,520.00</u></u>

Note: The permit year begins November 1st and ends the following October 31st.

HOUSE BILL No. 2811

By Committee on Federal and State Affairs

2-2

9 AN ACT concerning wines; authorizing sale and shipping within, into
10 and out of the state under certain circumstances; amending K.S.A.
11 2005 Supp. 41-308a and repealing the existing section.
12

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

14 New Section 1. (a) Notwithstanding any other provision of law to the
15 contrary, a person who is currently licensed in this or any other state to
16 manufacture wine and obtains a wine direct shipper license as provided
17 in this section may ship wine directly to a resident of this state who is at
18 least 21 years of age for such resident's personal use and not for resale.

19 (b) Before shipping any wine to a resident of this state pursuant to
20 this section, a person shall first:

21 (1) File an application for a wine direct shipper license with the di-
22 vision of alcoholic beverage control;

23 (2) pay to the division a \$100 license fee;

24 (3) provide to the division a true copy of the person's current alco-
25 holic beverage license issued in this or any other state; and

26 (4) obtain from the division a wine direct shipper license.

27 (c) A wine direct shipper licensee shall:

28 (1) Not ship more than 24 nine-liter cases of wine annually to any
29 resident of this state for such person's personal use and not for resale.

30 (2) Not ship to any address in an area identified by the division as an
31 area where the sale at retail of alcoholic liquor in the original package is
32 not allowed pursuant to the Kansas liquor control act.

33 (3) Ensure that all containers of wine shipped directly to a resident
34 in this state are conspicuously labeled with the words "CONTAINS AL-
35 COHOL: SIGNATURE OF PERSON AGE 21 OR OLDER RE-
36 QUIRED FOR DELIVERY."

37 (4) If located outside this state, report annually to the division the
38 total amount of wine shipped into the state during the preceding calendar
39 year.

40 (5) If located outside this state, annually pay to the department of
41 revenue all gallonage taxes and excise taxes due on sales to residents of
42 this state during the preceding calendar year, the amount of such taxes
43 to be calculated as if wine were manufactured and the sale were made in

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1 this state.

2 (6) If located within this state, provide to the division any additional
3 information the division deems necessary beyond that already required
4 for the license held by the person to ensure compliance with this section.

5 (7) Permit the division or the department of revenue to perform an
6 audit of the wine direct shipper licensee's records upon request.

7 (8) Be deemed to have consented to the jurisdiction of the division,
8 the department of revenue, any other state agency and the Kansas courts
9 concerning enforcement of this section and any related laws and rules
10 and regulations.

11 (d) A wine direct shipper licensee annually may renew its license with
12 the division by paying a \$50 renewal fee and providing the division a true
13 copy of its current alcoholic beverage license issued in this or another
14 state.

15 (e) After notice and an opportunity for hearing in accordance with
16 the provisions of the Kansas administrative procedure act and upon a
17 finding that the licensee has violated the provisions of this section or rules
18 and regulations adopted hereunder, the director may suspend or revoke
19 a wine direct shipper license or may impose a civil penalty as provided in
20 K.S.A. 41-328, and amendments thereto.

21 (f) Shipment of wine directly to a consumer in this state by a person
22 who does not hold a current wine direct shipper license issued by the
23 division is a crime. Any person who knowingly makes, participates in,
24 transports, imports or receives such a shipment is guilty of a class B
25 misdemeanor.

26 (g) The secretary may adopt rules and regulations to effectuate the
27 purposes of this section.

28 (h) This section shall be part of and supplemental to the Kansas liquor
29 control act.

30 Sec. 2. K.S.A. 2005 Supp. 41-308a is hereby amended to read as
31 follows: 41-308a. (a) A farm winery license shall allow:

32 (1) The manufacture of domestic table wine and domestic fortified
33 wine and the storage thereof;

34 (2) the sale of wine, manufactured by the licensee, to licensed wine
35 distributors, retailers, clubs, drinking establishments and caterers;

36 (3) the sale, on the licensed premises in the original unopened con-
37 tainer to consumers for consumption off the licensed premises, of wine
38 manufactured by the licensee;

39 (4) the serving free of charge on the licensed premises and at special
40 events, monitored and regulated by the division of alcoholic beverage
41 control, of samples of wine manufactured by the licensee or imported
42 under subsection (f), if the premises are located in a county where the
43 sale of alcoholic liquor is permitted by law in licensed drinking establish-

1 ments; ~~and~~
2 (5) if the licensee is also licensed as a club or drinking establishment,
3 the sale of domestic wine, domestic fortified wine and other alcoholic
4 liquor for consumption on the licensed premises as authorized by the
5 club and drinking establishment act; *and*
6 (6) *the sale and shipping, in the original unopened container, of wine*
7 *manufactured by the licensee to consumers outside the state, provided*
8 *that the licensee complies with all relevant laws and rules and regulations*
9 *of the jurisdiction into which the wine is shipped.*
10 (b) Upon application and payment of the fee prescribed by K.S.A.
11 41-310, and amendments thereto, by a farm winery licensee, the director
12 may issue not to exceed three winery outlet licenses to the farm winery
13 licensee. A winery outlet license shall allow:
14 (1) The sale, on the licensed premises in the original unopened con-
15 tainer to consumers for consumption off the licensed premises, of wine
16 manufactured by the licensee; and
17 (2) the serving on the licensed premises of samples of wine manu-
18 factured by the licensee or imported under subsection (f), if the premises
19 are located in a county where the sale of alcoholic liquor is permitted by
20 law in licensed drinking establishments.
21 (c) Not less than 60% of the products utilized in the manufacture of
22 domestic table wine and domestic fortified wine by a farm winery shall
23 be grown in Kansas except when a lesser proportion is authorized by the
24 director based upon the director's findings and judgment. The label of
25 domestic wine and domestic fortified wine shall indicate that a majority
26 of the products utilized in the manufacture of the wine at such winery
27 were grown in Kansas.
28 (d) A farm winery having a capacity of 100,000 gallons per year or
29 more which sells wine to any distributor shall be required to comply with
30 all provisions of article 4 of chapter 41 of the Kansas Statutes Annotated
31 and of K.S.A. 41-701 through 41-705 and 41-709, and amendments
32 thereto, in the same manner and subject to the same penalties as a
33 manufacturer.
34 (e) A farm winery or winery outlet may sell domestic wine and do-
35 mestic fortified wine in the original unopened container to consumers for
36 consumption off the licensed premises at any time between 6 a.m. and
37 12 midnight on any day except Sunday and between 12 noon and 6 p.m.
38 on Sunday. If authorized by subsection (a), a farm winery may serve sam-
39 ples of domestic wine, domestic fortified wine and wine imported under
40 subsection (f) and serve and sell domestic wine, domestic fortified wine
41 and other alcoholic liquor for consumption on the licensed premises at
42 any time when a club or drinking establishment is authorized to serve
43 and sell alcoholic liquor. If authorized by subsection (b), a winery outlet

1 may serve samples of domestic wine, domestic fortified wine and wine
2 imported under subsection (f) at any time when the winery outlet is au-
3 thorized to sell domestic wine and domestic fortified wine.

4 (f) The director may issue to the Kansas state fair or any bona fide
5 group of grape growers or wine makers a permit to import into this state
6 small quantities of wines. Such wine shall be used only for bona fide
7 educational and scientific tasting programs and shall not be resold. Such
8 wine shall not be subject to the tax imposed by K.S.A. 41-501, and amend-
9 ments thereto. The permit shall identify specifically the brand and type
10 of wine to be imported, the quantity to be imported, the tasting programs
11 for which the wine is to be used and the times and locations of such
12 programs. The secretary shall adopt rules and regulations governing the
13 importation of wine pursuant to this subsection and the conduct of tasting
14 programs for which such wine is imported.

15 (g) A farm winery license or winery outlet license shall apply only to
16 the premises described in the application and in the license issued and
17 only one location shall be described in the license.

18 (h) No farm winery or winery outlet shall:

19 (1) Employ any person under the age of 18 years in connection with
20 the manufacture, sale or serving of any alcoholic liquor;

21 (2) permit any employee of the licensee who is under the age of 21
22 years to work on the licensed premises at any time when not under the
23 on-premise supervision of either the licensee or an employee of the li-
24 censee who is 21 years of age or over;

25 (3) employ any person under 21 years of age in connection with mix-
26 ing or dispensing alcoholic liquor; or

27 (4) employ any person in connection with the manufacture or sale of
28 alcoholic liquor if the person has been convicted of a felony.

29 (i) Whenever a farm winery or winery outlet licensee is convicted of
30 a violation of the Kansas liquor control act, the director may revoke the
31 licensee's license and order forfeiture of all fees paid for the license, after
32 a hearing before the director for that purpose in accordance with the
33 provisions of the Kansas administrative procedure act.

34 (j) This section shall be part of and supplemental to the Kansas liquor
35 control act.

36 Sec. 3. K.S.A. 2005 Supp. 41-308a is hereby repealed.

37 Sec. 4. This act shall take effect and be in force from and after its
38 publication in the statute book.

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION

March 21, 2006

To: House Federal and State Affairs Committee:
From: R.E. "Tuck" Duncan
Kansas Wine & Spirits Wholesalers Association
RE: HB 2955

The Committee currently has pending before it HB 2955 regarding flavored malt beverages. This bill will preserve the *status quo* in Kansas regarding these products; however, without action the Kansas Department of Revenue has informed the industry that it will classify these products as spirits. Flavored malt beverages have been produced and marketed in the United States for many years. Although the direct addition of distilled spirits is not permitted in the production of any malt beverage, the Trade and Tax Bureau, Dept. of Treasury, (formerly ATF) has permitted the addition of flavoring materials that are alcohol based under the definition of malt beverage in the Federal Alcohol Administration Act (FAA Act).

A new federal regulation effective in January, 2006, permits the addition of flavors and other nonbeverage materials containing alcohol to beers and malt beverages. Malt beverages that contain not more than 6% alcohol by volume may derive no more than 49% of their alcohol content from flavors and other nonbeverage materials. The new rule also requires an alcohol content statement on the label of any malt beverage that contains any alcohol derived from added flavors or other added nonbeverage ingredients (other than hop extract) containing alcohol.

Since these products may contain alcohol that was originally distilled and is part of the flavoring, the Kansas Department of Revenue has indicated that absent direction from the Kansas Legislature it will classify these products as spirits inasmuch as they interpret current law to so require. Obviously, when the Kansas law was written this circumstance was not anticipated.

Thus, the Flavored Malt Beverage Act as set forth in HB 2955 merely preserves the current practice of classifying these products as malt beverages and recognizes the federal labeling rules.

For additional information you will find Frequently Asked Questions about Regulation TTB TD-21 – Flavored Malt Beverage and Related Regulatory Amendments at: http://www.ttb.gov/alcohol/info/faq/flavored_malt.htm

Thank you for your attention to and consideration of this matter.

www.kswa.org

FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 15



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the House Committee on Federal and State Affairs
Joan Wagnon

March 21, 2006

House Bill 2639

Chairman Edmonds and Members of the Committee:

The Department of Revenue strongly supports House Bill 2639. With me today to address questions are Tom Groneman, Director of the Alcohol Beverage Control (ABC) Division, and Dedra Platt, Civil Tax Enforcement Manager for the Division of Taxation.

We have increased our compliance efforts, in order minimize the amount delinquent tax liability. House Bill 2639 will help to accomplish that objective. This proposal addresses tax compliance for liquor licensees. The licensing statute currently does not allow denial of liquor licenses based on noncompliance with sales or withholding tax.

Section 1

Section 1 amends K.S.A. 2003 Supp. 41-311 to require a liquor licensee to be current in payment of all taxes relating to the liquor-licensed business (which would include income, withholding, sales and liquor taxes) before the license can be issued or renewed. Current law requires liquor licensees be current only in liquor tax payment. Requiring liquor licensees to remain current in payment of withholding and sales tax will significantly improve tax compliance, increase tax revenue, and enable the Department of Revenue to maintain a more level playing field among liquor licensees.

This bill addresses concerns previously raised by representatives of the liquor industry regarding whether a disputed or erroneous tax liability could trigger license revocation, or whether delinquent tax liability of a minority shareholder or officer of a liquor licensee could trigger license revocation. Our proposal focuses on collecting delinquent sales and withholding taxes owed by businesses with liquor licenses. If the tax liability is in dispute and under appeal or subject to a current payment plan, the license non-renewal provisions are not triggered. We are also not interested in triggering the license non-renewal provisions simply because an individual associated with the business has an outstanding individual tax liability.

Sales and withholding taxes are trust taxes. For the privilege of making retail sales in this state, businesses must register with the Department to collect on behalf of the state sales tax from purchasers and remit it on the 25th day following the month of the sale. Similarly, businesses are required to withhold a percentage of their employees' wages and remit those employer

withholding taxes to the state on behalf of their employees. Licensees that pocket the sales tax collected from consumers or wages withheld from their employees rather than remitting it to the Department of Revenue are not only misappropriating money from the state. They give themselves an artificial competitive advantage over compliant liquor licensees.

The license renewal process is by far the most cost-effective and least intrusive compliance tool. Our collection efforts include phone calls, letters, assessment notices, tax warrants, bank account levies, garnishments, seizure of money from cash registers and, in some circumstances, seizure and sale of inventory and other property. We have in the past seized retail liquor store inventory. Collecting delinquent taxes through the license renewal process gives the licensee a simple choice: either pay your tax obligations to the state or close your liquor business.

At least 16 states require some sort of tax clearance before issuing or renewing liquor licensees. California, Oregon, Washington, Minnesota, and Missouri employ a tax clearance process for professional licenses. Those states indicate the tax clearance process for licenses is an excellent tax compliance tool.

Similar successful tax compliance requirements are currently in place in Kansas for:

- Lottery retailers
- Cigarette retailers
- Each director and officer of an organization licensed under the Kansas Pari-mutuel Racing Act
- Pari-mutuel facility owner and facility manager Occupation Pari-mutuel licensees
- Pari-mutuel Concessionaire licensees
- Racing or wagering equipment or services Pari-mutuel licensees

Legislation enacted in 2004 mandated revocation of a motor vehicle dealer's license if the dealer is sufficiently delinquent in remitting sales tax. As a result of our highly successful efforts to implement this legislation with our motor vehicle dealer licensing project, the compliance rate for 3,372 registered motor vehicle dealers has increased from 74% to 92%.

We expect similar results when implementing House Bill 2639, if enacted, and would seek to achieve a compliance rate of at least 90% among liquor licensees on recovery of delinquent sales and withholding tax. The following summarizes the current compliance status for sales/withholding tax owed by liquor licensees:

Liquor License Accounts:	2,884
Balances on filed sales tax periods:	\$680,873
Accounts with sales tax balances:	71
Accounts with non-filed sales tax periods:	271
Balances on filed withholding periods:	\$169,214
Accounts with withholding balances:	82
Accounts with non-filed withholding periods:	189
Total balances owed:	\$850,087
Accounts with balances or non filed periods:	553

If House Bill 2639 is enacted, we project recovery of an additional \$570,000 in delinquent sales and withholding taxes from liquor licensees in FY 07.



*Kansas
Licensed
Beverage
Association*

President
James "Jim" Fager

Vice Presidents
Tammy Davis
Tom Intfen
Robert Farha
Jim Hendricks
Curt Melzer
Richard Markle
Paul Boone
Billy Long
Leigh Watkins
Drew Mullen
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House Federal and State Affairs- HB-2639 March 21, 2006
Mr. Chairman, Representatives and Staff,

HB-2639 has a worthy purpose; to recover taxes rightfully owed our State. The KLBA supports that goal. In fact, SB-345 was introduced in the 2001/2002 session to accomplish this very purpose. In the 2004 session this issue resurfaced in HB 2680, 2648, 2776 and in SB 414, 468. In the 2004 Interim Assessment and Taxation committee this issue was studied and in 2005 bills were introduced that represented the consensus. All of the above listed efforts failed.

In the KLBA testimony at that time we raised 3 points that the Legislators found to have merit and the committees acted upon.

1) That the delinquent taxes in question must be those that apply directly to the business which holds the license. That has been addressed in this bill.

2) That this condition for renewal of licenses and permits controlled by the state, should apply to all of the businesses and individuals that the state issues licenses/permits to, and further that these should be treated equally, enacted at the same time and in the same manner. We ask that all businesses be treated the same in regard to the payment of owed taxes. The DOR has agreed at the 2004 hearing on SB-414. They endorsed the amendments that we suggested from the work done in the 2002 session. We both agreed that they would be appropriate for all businesses. Further our licenses are currently *now not renewed if we have outstanding taxes*. We were the first and the only until gaming and now auto dealers were added in 2005. We believe that is just and fair to bring all other license and permit holders up to this standard. In 2005 this was introduced and discussed. The bills never made it out of committee. Other groups argued that they should not be held to that standard and warned of consequences if it was enacted. ***All other license and permit holders have been "left out" of this bill.***

3) A concern was raised and the Committees determined it to also have merit. That is, if only one stockholder in a corporation operating this license, was delinquent that he not penalize the entire business. And so they adopted the following language.



FEDERAL AND STATE AFFAIRS

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If the licensee is a corporation, partnership, trust or association, the individual officers, directors, stockholders, partners, managers or other individual members shall not be required to be current in the payment of the taxes specified in paragraph (1) of this subsection.

This is not the same language in this bill. Specifically the text below in red is changed:

*and if the licensee is a corporation, partnership, trust or association, the individual officers, directors, stockholders, partners, manager or other individual members shall not be required to be current in the payment of their **own individual taxes** as a condition of issuance or renewal of any such entity's license.*

This does not fully address the concerns. What if an individual was a stockholder in more than one business, and one of those held a liquor license? And his second business was arrears in some tax through no fault of his own the liquor license would not be renewed under this language because they are not their *own individual taxes*.

We support these corrections and would ask the committee to do the same. We support all taxes owed being paid on time and in full by all of our citizens. *We ask for current tax compliance percentages for all businesses and professions. It would be beneficial to know the extent of the challenge and where to begin.*

It is noteworthy that in the hearings in 2004 on HB-2860 and SB-414 the **DOR endorsed these amendments and combining SB's 414, 468 & HB's 2860, 2648, 2776.**

It is also noteworthy that in the fiscal note that is attached to this bill states, **"The Kansas Department of Revenue states that passage of HB 2639 would not affect tax revenues."**

Thank you for your time.

Philip Bradley
Executive Director





The Kansas Association of Beverage Retailers

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kabr@amycampbell.com

Larry Knackstedt, President

Amy A. Campbell, Executive Director

House Federal and State Affairs Committee

March 21, 2006

Amy A. Campbell, Executive Director

Mr. Chairman and Members of the Committee, I am speaking to you today on behalf of the Kansas Association of Beverage Retailers. Although there are parts of HB 2639 which have been improved since 2002, it is unfortunate that we are still unable to support passage of this bill.

KABR fully supports the collection of these revenues. Retailers expect the agency to assist the industry in maintaining an even playing field in the marketplace by enforcing the laws equally. The members of KABR support efforts which strengthen the relationship between the licensee and the State. As retailers support the State by collecting and remitting various categories of taxes, the State should support retailers by promoting positive communication and education and applying enforcement policies evenly.

KABR supports language which specifies the taxes to be collected are directly related to the business for which the license has been issued. It would not be proper to place a license renewal in jeopardy for unrelated debts. We have been assured that this is the intent of the legislation. Unfortunately, not all of our concerns about this proposed statutory requirement have been addressed by the drafters of the bill.

It is unfair that this proposal does not attempt to reject all State issued licenses for nonpayment of taxes. If this is an attempt to target liquor stores for collections, then we are interested in the numbers which show that collections from liquor stores have become a problem for the department.

Retail liquor stores have been through detailed audits which served to bring the stores into excellent compliance. In fact, several stores were rightfully shut down. Liquor stores have been through more extensive examination than any other retail operation as far as tax records are concerned. We should not be punished for delinquencies by other types of licensees.

Have these audit efforts been made for other types of licensed businesses?

Sharing department data will also assist our association in educating our members to meet their obligations. KABR works very closely with the Division to maintain our positive position as the responsible sellers of alcoholic beverages. The last time we were able to review a report, the liquor stores were doing a good job keeping their accounts current. We request the department's support to be able to maintain those positive numbers in the future. Viewing tax payment reports by license and tax categories and distributing this information to our members can go a long way in maintaining awareness for licensees.

KABR respectfully requests that all licensees be held to the same standard for the collection of taxes. The bill does not include licensees which sell cereal malt beverages. There does not seem to be a distinct reason for this omission. KABR would support the addition of language permitting the Department of Revenue to enforce similar requirements for other licenses

FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 18



K A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL

Testimony on Senate Bill No. 403

Concerning Alcoholic Beverages

To
The House Federal and State Affairs Committee
By
Tom Groneman, Director
Alcoholic Beverage Control Division

March 21, 2006

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today regarding Senate Bill 403. The purpose of the bill is to clarify the administrative process as it relates to violations of the liquor control act and the club and drinking establishment act and to prohibit those who have had a liquor license revoked from managing retail liquor stores and drinking establishments.

The agency requested that SB 403 be introduced and we strongly support this legislation. The bill before you today was amended in the Senate to address certain industry concerns. We feel the amended bill will accomplish the goal of clarifying K.S.A. 41-106 and also address industry concerns in Section 2 and 3 of the bill regarding certain employment prohibitions.

The intent of Section 1 of SB 403 is to decrease litigation over the definition of "citation" and streamline the notification process for the licensee.

The term "citation" in K.S.A. 41-106 causes confusion because ABC routinely issues "citations" to licensees for administrative violations of the liquor control act and the club and drinking establishment act. These "citations" are rarely issued at the time of the alleged violation but when the agency initiates administrative action. ABC agents and other law enforcement officers issue a "notice to appear" pursuant to K.S.A. 22-2408 for criminal violations of the liquor control act and the club and drinking establishment act. The proposed changes to K.S.A.

41-106 will make it clear that ABC agents and other law enforcement officers will issue a "notice to appear" to the person allegedly committing a violation of liquor control act or the club and drinking establishment act at the time of the violation, while allowing ABC to continue to issue "citations" for administrative violations.

Section 1 of SB 403 also provides the manner in which notice of the alleged violation can be served on the licensee. Currently, personal service of the alleged violation to the licensee is not sufficient notice under K.S.A. 41-106. If ABC is afforded the option of personal service of notice, in addition to the current requirement of mailing notice, the administrative process will be streamlined and the licensee's right to timely notice will be maintained.

Finally, the last sentence of Section 1 clarifies the consequences of noncompliance with K.S.A. 41-106 on the ABC.

Sections 2 and 3 of the bill addresses persons who have had a liquor license revoked. Currently, there is nothing prohibiting a person who as had a liquor license revoked from operating/managing a retail liquor establishment in Kansas. It is not uncommon for ABC to revoke a liquor license and then find out shortly thereafter that the individual who had been unwilling or incapable of complying with the liquor control act or the club and drinking establishment act, to be managing the very same business with a "new" owner and license. The current language in Sections 2 and 3, would restrict the employment of such a person in any retail liquor establishment. ABC acknowledged industry concerns on this issue and we agreed that a compromise to limit the prohibition to the "operation" of a retail establishment was reasonable. The bill as amended by the Senate will restrict any person who has had a liquor license revoked from participating in the management of a licensed retail liquor establishment but it will permit an individual with a revoked liquor license to work in a non-management position.

Thank you for your consideration, and I request that you favorably pass SB 403 as amended.



The Kansas Association of Beverage Retailers

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Larry Knackstedt, President

Amy A. Campbell, Executive Director

TESTIMONY PRESENTED TO THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

Re: SB 403

March 21, 2006

By Amy A. Campbell, Executive Director

Mr. Chairman and members of the committee, my name is Amy Campbell and I appear before you as an opponent to this legislation on behalf of the Kansas Association of Beverage Retailers. Senate Bill 403 is written to amend two important rules regarding the licensing of businesses under the Liquor Control Act.

The amendments to Section 1 of the bill are not clear. We understand the need for the agency to have the ability to cite a licensee properly, but are concerned that some of the proposed changes may go too far.

KABR opposes any changes that remove the requirement that an individual be notified of the citation within thirty days. The violations being cited under this provision involve a unique situation where the employer must be able to manage his store, identify the problem, and correct it immediately.

At the time these provisions were placed into law, the Division of ABC was not in good working order. The agency personnel was being drawn into other duties at the Department of Revenue. Funding which had been appropriated for technological upgrades was not shared with the Division of ABC. The Division was being starved for resources and it was clear to the licensees.

A Legislative Post Audit study showed that licensee prosecution records were not being kept properly. In some cases, the agency could not show how many citations had been issued to a single licensee. The prosecution of violations was inconsistent. Citations were being issued more than six months after the violation had occurred. These delays made it impossible for a liquor store owner to address the problem. Often, the employees in question had moved on to other employment.

As a result of the Post Audit and strong pressure from the Kansas Legislature, the Division of ABC set up a progressive penalty grid, designed to make prosecutions fair and consistent. In addition, the Legislature established the language in this statute to force the process to be timely.

KABR supports amending the statute to be certain that the agency is able to legally follow through with prosecutions, but does not support removing the requirement that the citations be timely.

Regarding Section 2, KABR supports prohibiting individuals who have lost their licenses from running another licensed business. KABR has worked with the agency on amendments to the section that would allow that individual to continue to be gainfully employed. After all, some licensees may have been working in the industry for many years. The new language appears to address our concerns and still prevent individuals from sidestepping the intent of our licensing statutes. We are pleased the agency has been willing to talk to us about this bill.

Thank you, Mr. Chairman, and members of the Committee for your kind attention.

FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 20



*Kansas
Licensed
Beverage
Association*

President
James "Jim" Fager

Vice Presidents
Tammy Davis
Tom Intfen
Robert Farha
Jim Hendricks
Curt Melzer
Richard Markle
Paul Boone
Billy Long
Leigh Watkins
Drew Mullen
Sean Haydock

Treasurer
Mark Barrett

National Director
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Testimony on SB-403, March 21, 2006
House Federal and State Affairs Committee

Mr. Chairman, and Representatives of the Committee,

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

We ask for changes to SB-403.

First we appreciate the cooperation of Asst Attorney General Brad Burke in discussing the his bill and working to address our concerns. We continue the conversation and some if not all of these issues may be resolved by the time of this hearing. Those changes include three issues.

First this bill creates a new prohibition to employing anyone who has had a liquor or CMB license revoked for specific jobs. We understand the intent, to ensure that there is no phantom ownership or surrogate operation by anyone who has had their license revoked. However because of the peculiarities of Kansas statutes a bartender may be considered to be "supervising" other servers if they are not 21 and are waiting on customers. We suggest using the term "*managing*" to avoid this unintended consequence. We would ask you to consider a *time limitation* on the specific job prohibition. In current law if you may not employ or continue to employ a person that has had an alcohol related conviction for 2 years. We believe that a similar term would be appropriate for this situation to allow a person that has made mistakes, been punished, and served years limited in their employment opportunities in this industry have the chance to make amends and advance to at least the supervisor and possibly manager level. We believe the proposed changes are overly broad and the consequences harsh.

Second we do not see a need to change the language at the end of KSA 41-106. we believe that it has the effect of the authoring and approving legislative bodies to make sure that notice on the all the violations are made in a timely manner. We ask that the original language as indicated in the attached remain.

Third the definition in the first paragraph may limit the effect of the notification clause to criminal only. This is not the intent of the original law or this modification. Please fix this oversight.

Therefore, we ask for the above amendments.

Thank you for your time.

Philip Bradley
Executive Director



FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 21

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**Testimony Re: SB 403
House Federal and State Affairs Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
March 21, 2006**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is the Kansas professional association for restaurant, hotel, lodging and hospitality businesses in Kansas.

The KRHA supports the intent of SB 403, but must oppose the bill unless the restrictions are tightened further. This bill would prohibit any individual whose license to operate a club and drinking establishment has been revoked from being hired for certain jobs involved in the operation of a club and drinking establishment. There are a variety of reasons why a licensee could have their license revoked, including non-payment of taxes. This bill appears to prohibit such individuals from getting jobs in industries involving alcohol, including restaurant and lodging facilities for the rest of their lives.

Although this bill could also apply to felonies, crimes of moral turpitude, or serious alcohol law violations that might justify such a significant punishment against the individual, the licenses can be revoked for other reasons not involving such serious offenses. Although we appreciate that this bill is not as broad as the original version, the prohibition involved in this bill still seems to be unfair, broad and unreasonable in its scope.

Although we have not done the legal research necessary to support the contention that legislation of this nature treads on personal rights and responsibilities guaranteed by the Constitution, we would at least raise the question as to whether this legislation would have any due process, freedom of speech, or other personal freedoms, ramifications.

The changes we feel would be appropriate would include the following: 1) The lifetime prohibition would only apply to revocations based on specific statutory violations such as commission of a felony or crimes of moral turpitude; 2) Enactment of a procedure to review and expunge or otherwise adjust the prohibition; and, 3) Restricting the prohibition further, including specifically the provisions regarding supervision of employees.

If this legislation is amended to make it more restrictive, and to target the specific violations which are intended, the KRHA would withdraw its opposi

FEDERAL AND STATE AFFAIRS

Date 3-21-06

Attachment 22

Thank you very much for permitting me to testify, and I will be happy to yield to questions.