

MINUTES OF THE HOUSE INTERSTATE COOPERATION COMMITTEE

The meeting was called to order by Chairman Ray Merrick at 2:35 P.M. on February 16, 2006 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Dennis Hodgins, Kansas Legislative Research
Mary Torrence, Revisor of Statutes Office
Peter Freund, Committee Secretary

Conferees appearing before the committee:

Rep. Ann Mah
John Brewer, Wildwood Cellars
Larrie Ann Lower, Wine Institute
Tuck Duncan, Kansas Wine and Spirits Wholesalers Association
Norman Jennings, Kansas Grape Growers and Winemaker Association
Janet Forge, Grape and Winery Advisory Board
Howard Fricke, Department of Commerce (written only)
Amy Campbell, Kansas Association of Beverage Retailers
Philip Bradley, Kansas Licensed Beverage Association (written only)

The chair introduced Rep. Ann Mah who spoke in support of **HB 2811**, **An Act Concerning Wines.** (Attachment 1)

The chair introduced John Brewer who spoke in support of **HB 2811**. (Attachment 2)

The chair introduced Larrie Ann Lower who spoke in support of **HB 2811**. (Attachment 3)

The chair introduced Tuck Duncan who spoke in support of **HB 2811** with other recommendations. (Attachment 4)

The chair introduced Norman Jennings who spoke in support of **HB 2811**. (Attachment 5)

The chair introduced Janet Forge who spoke in support of **HB 2811**. (Attachment 6)

The chair brought attention to written testimony provided by Howard Fricke as a proponent of **HB 2811**. (Attachment 7)

The chair introduced Amy Campbell who spoke in opposition of **HB 2811**. (Attachment 8)

Philip Bradley provided written testimony only on **HB 2811**. (Attachment 9)

The hearing was closed on **HB 2811**.

The meeting was adjourned at 3:15 P.M.

STATE OF KANSAS

ANN E. MAH
REPRESENTATIVE, 53RD DISTRICT
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COMMITTEE ASSIGNMENTS
EDUCATION
FEDERAL AND STATE AFFAIRS
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TOPEKA
HOUSE OF
REPRESENTATIVES

Testimony HB 2811
Committee on Interstate Cooperation

Thank you for hearing this bill on direct shipping of wine. Now that the Supreme Court has issued its ruling, we can move forward to promote our growing Kansas wine industry. This bill allows direct wine shippers to ship wine into and out of Kansas. Kansas wineries may ship to customers in other states if they adhere to that state's laws. Wineries in other states may ship directly to Kansas customers' homes as long as they pay the taxes assigned by the law and follow rules to ensure that the wine is delivered only to those over 21 years of age.

Direct shippers will be licensed. Out-of-state shippers must report annually the amount of wine shipped into Kansas and pay gallonage and excise taxes. A case can be made that we should require the purchase to make a stop at a retail store on the way to the customer, but that will only encourage consumers to do what they're doing today – ordering wine online and having it shipped to their homes anyway, avoiding the collection of any taxes at all. By making this law user-friendly, it is more likely to be obeyed. It also fits the destination source tax model we are moving to nationwide. Kansas wineries retain all of their current sales channels, such as selling directly to retailers and drinking establishments.

There has also been a suggestion that we allow shipping into the state only wines that are not available in Kansas retail liquor stores. That would be difficult to regulate and unnecessarily cumbersome. There is a synergy at work here that will not hurt, but will help our Kansas retailers and stimulate the entire market.

There may be some suggested changes to the 24 case limit or to make some allowance for individuals to have the ability to ship gifts to friends or to themselves while away from home.

This bill will give our Kansas wine industry a boost and bring in revenue from out-of-state wineries. I appreciate your consideration.

INT. COOPERATION
AM. #1
FEB-16, 06

Wyldeewood Cellars, Inc.

Dr. John A. Brewer
President
PO Box 205
Mulvane, Ks 67110 USA

2-15-06

Telephone 316 554-9463
Fax 316 554-9191

The Honourable Ray Merrick
House Committee on Interstate Cooperation
Subject: HB2811

Dear Representative Merrick and Committee Members;

As the owner of the largest farm winery in Kansas, I believe your support of HB 2811 is not only vital to the growth of the Kansas wine industry and tourism, but is also essential for the Kansas consumer.

We have over 100,000 visitors to our facilities each year, with over 40 % coming from out of state. The multi-colored pins in the attached map of the United States show the distribution of our visitors and where our wine has been taken back to their homes during the past two years from only our main facility near Mulvane. For the people outside of Kansas to reorder our wine without HB2811, Wyldeewood Cellars would have to have a wholesale distributor in every state. Approximately 60% of a wholesaler's income is from beer sales, 30% from liquor sales and 10% from wine sales. With the mass consolidation of wholesalers, it is almost impossible for 96% of the wineries in the US to obtain wholesalers in one state other than their own, much less 49 states. We have tried for nine years to get a distributor in Missouri without success because we could not prove to them that the sales of our wines would be large enough for them to "fool with", despite a long list of liquor stores that want to carry our wines. Wyldeewood wines are distributed in Kansas by Standard Beverage and we have a very good working relationship with them. Allowing Kansas farm wineries to ship wine out of Kansas, is the only way that we will be able to satisfy our out of state repeat customers and would generate about 30 - 40% growth in our sales. In 2005, Wyldeewood Cellars operations generated over \$300,000 in gallonage, liquor enforcement, sales, employment, and property taxes for the state of Kansas.

In the Fiscal Note for HB2291, the Kansas Department of Revenue indicated that delivering wine directly to a Kansas consumer from an out of state winery does not constitute a taxable sale in Kansas. HB2811 solves this problem and satisfies the Supreme Court Ruling by creating a wine direct shipper's license for both in and out of state wineries. Under HB2811, all wine sold within or into Kansas will generate both gallonage and liquor enforcement tax with a minimum of additional effort at Alcoholic Beverage Control.

The Medicinal benefits of moderate wine consumption are well established and are becoming more proven every day. There are many Kansas consumers who wish to enjoy the benefits of moderate wine consumption, but they are unwilling or unable to go to a liquor store to purchase wine. HB2811 is a consumer's rights law as it allows all consumers the same access to the medicinal benefits of moderate wine consumption as they now have for the medicinal benefits of prescription drugs, delivery to their home under supervision of appropriate law. It also allows Kansas consumers to repurchase the unique wines that they have found while travelling outside the state of Kansas, and Kansas gets the benefits of the taxes not the other state. The thirty six employees of Wyldeewood Cellars encourage you to support HB2811 and thank you for your time and efforts.

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Att. #2
Feb 16, 06*





WINE INSTITUTE

CHARLES E. MCGRIGG
CENTRAL STATES COUNSEL

February 16, 2006

TO: MEMBERS OF THE INTERSTATE COOPERATION COMMITTEE
FROM: CHUCK MCGRIGG, LARRIE ANN LOWER
SUBJECT: HB 2811 SALE AND SHIPMENT OF WINE

Mister Chairman and members of the Committee. We appreciate the opportunity to provide comments on HB 2811 granting Kansas consumers the ability and privilege to purchase and have wine shipped to them.

The Wine Institute is a trade association comprised of some nine hundred wineries. The Wine Institute strongly supports HB 2811. It appears to be very similar to model legislation passed in several states and currently being considered in several other states. Our experience shows enactment of this legislation will successfully lead to the direct sale and shipment of wine to consumers in Kansas.

This legislation also appears to address many, if not all of the issues raised in a recent US Supreme Court Case addressing in state wineries and out of state wineries ability to ship directly to consumers. The Court held that state laws allowing in-state wineries to ship directly to consumers but not allowing out of state wineries to do so violates the Commerce Clause. *Granholm v. Heald* 544 US ____ (2005) Docket number: 03-1116. This case has led many states with laws similar to those involved in the Granholm case to address their wine shipping laws, including Kansas.

The Wine Institute has advocated for an effective change to direct shipping limitations for over twenty-five years and the legislation before you successfully accomplishes this change by allowing all wineries to directly ship to the citizens of Kansas. Thank you for your interest in this topic, we will try to answer any questions you may have.

*Interstate Cooperation
Att #3
Feb 16,
2006*

**Kansas Wine & Spirits
Wholesalers Association
212 SW 8th Avenue, Suite 202
Topeka, Kansas 66603
785-233-9370**

**R.E. "Tuck" Duncan
Executive Secretary and
General Counsel**

February 16, 2006

To: House Committee on Interstate Cooperation
From: R.E. "Tuck" Duncan
RE: HB 2811

We support improving access to Kansans for beverage alcohol products not otherwise available. A bill that reflects do same and substantially preserves the three-tier system of distribution in Kansas is SB 370 currently in the House Federal and state Affairs Committee. Thus while we support increasing consumer opportunity, we do oppose the methodology in HB 2811.

The United States Supreme Court ruled on May 16 that states must treat in-state producers of alcohol the same as out-of-state producers of alcohol. Initially this decision did not have an immediate impact on Kansas, but this ruling requires that laws on the books in our state not give a preference to in-state alcohol producers over out of state producers. Our state is now faced with a stark choice: to allow unregulated, unaccountable alcohol sales -- which is clearly unacceptable -- or develop an alternative system where all alcohol sales be sold in face-to-face transactions through the state's licensed system, a system that has served Kansas well since 1949.

Some of the proponents of unregulated alcohol sales characterized the Supreme Court's decision inaccurately as their spin was that the Court endorsed the concept of the direct sale of alcohol. Nothing could be further from the truth. Those who so proclaimed have a vested interest in loosening restrictions on alcohol and we believe it has become clear that their goal is to cripple Kansas' and other the states' licensed system of sales and distribution. In reality the decision of the Court clearly reaffirmed the principle that the 21st Amendment to the Constitution gives states "virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system." However, it also made clear that state authority does not extend to giving "discriminatory preference" to in-state producers.

Kansas now has a policy decision to make. We recognize that alcohol is a socially sensitive product and no segment of the industry should be allowed to bypass our licensed system

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while avoiding our taxes. As such all alcohol sales should be done face-to-face, where a retailer licensed by the state to sell to the consumer checks IDs. In addition, out-of-state retailers in some states are demanding the right to ship directly to in-state consumers. Neither did the recent decision did not sanction out-of-state retailers not licensed by Kansas to ship to Kansans when Kansas law does not permit Kansas retailers to ship to Kansans.

Kansans do not want to eliminate alcohol regulation thereby creating an "alcohol anarchy" in our markets leaving the state with little ability to track sales, collect taxes, keep alcohol away from minors, or ensuring orderly markets. In substantial part Sub. SB370 allows consumers to order wine directly from a winery while requiring the delivery to be completed in a face-to-face transaction through a licensed retail establishment. This non-discriminatory approach, consistent with the new FDA bioterrorism rules for tracking beverage alcohol is also applied to instate producers as well as out-of-state producers. HB2811 does not provide the same secure system that preserves Kansas' values.

By taking action in this manner, you will both respond to the concerns of the Court and still protect the Kansas's right to regulate alcohol sales through the "unquestionably legitimate" three-tier system. In doing so, you will also ensure the integrity of our revenue collection system and keep important barriers in place to keep beverage alcohol out of the hands of those who consume it irresponsibly or who are too young to purchase it legally.

If you have any questions regarding this matter please do not hesitate to give me a call. *Thank you for your attention to and consideration of this matter.*

Attached Granholm Presentation



Alcohol Regulations Post Supreme Court: *Where Do We Go From Here*

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

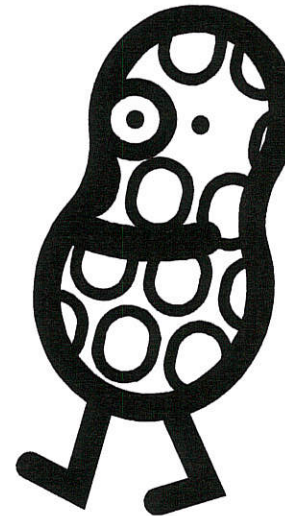


In a nut shell the Court said

“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).

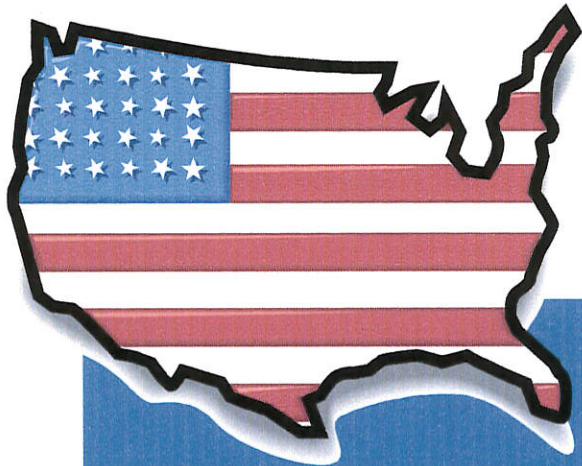


The question is...

“ ‘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?’ ”



“[S]tate laws violate the Commerce Clause if they mandate “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.”



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

Nonetheless...

- The two States, however, contend their statutes are saved by §2 of the Twenty-first Amendment, which provides:
- “The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.”
- The States’ position is inconsistent with our precedents and with the Twenty-first Amendment’s history. Section 2 does not allow States to regulate the direct shipment of wine on terms that discriminate in favor of in-state producers.

The court stated that:



“The aim of the Twenty-first Amendment was to allow States to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use. The Amendment did not give States the authority to pass nonuniform laws in order to discriminate against out-of-state goods, a privilege they had not enjoyed at any earlier time.”

“Our more recent cases, furthermore, confirm that the Twenty-first Amendment does not supersede other provisions of the Constitution and, in particular, does not displace the rule that States may not give a discriminatory preference to their own producers.”



Therefore: “The States argue that any decision invalidating their direct-shipment laws would call into question the constitutionality of the three-tier system. This does not follow from our holding. “The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.” *Midcal, supra*, at 110. A State which chooses to ban the sale and consumption of alcohol altogether could bar its importation; and, as our history shows, it would have to do so to make its laws effective. States may also assume direct control of liquor distribution through state-run outlets or funnel sales through the three-tier system. We have previously recognized that the three-tier system itself is “unquestionably legitimate.” *North Dakota v. United States*, 495 U.S., at 432. See also *id.*, at 447 (“The Twenty-first Amendment ... empowers North Dakota to require that all liquor sold for use in the State be purchased from a licensed in-state wholesaler”). State policies are protected under the Twenty-first Amendment when they treat liquor produced out of state the same as its domestic equivalent.”

In conclusion

“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.**

Kansas Grape Growers & Wine Makers Association

February 13, 2006

To: House Interstate Cooperation Committee
From: Norman M. Jennings (Smoky Hill Vineyards & Winery)
On behalf of: Kansas Grape Growers & Wine Makers
Kansas Farm Winery and Viticulture Association

RE: HB2811

Mr. Chairman and members of the committee, thank you for the opportunity to offer this testimony. The grape and wine industry in Kansas is one that has the potential to be a major contributor to the state agritourism and value-added agricultural industries, as well as state alcohol tax revenue sources. We are a young industry that has seen substantial growth in the past few years.

We fully support this bill as well as SB-370, currently on the House floor also dealing with wine shipping. Close to half of the guests stopping at a Kansas farm winery customers are located from other states. We therefore receive many requests to ship our wines to these other states, after these customers return home. Passing such legislation would be a major assistance to Kansas wineries.

Following are the three main points captured within this bill and SB-370.

1. Adding the ability for Farm wineries to ship to customers in other states adhering to their laws.
2. Adding ability for Kansans to have wine shipped from wineries within or outside Kansas either to a retailer (SB-370) or direct (HB-2811).
3. Farm wineries retain the ability to sell direct to retailers and restaurants.

Additionally we would like to address items raised by those opposing this legislation.

1. Age verification is being obtained for wine shipments in other states through formal programs within carriers like Fed Ex and UPS. These programs have signature requirements along with the age verification and package identification. The same companies use similar programs for prescription medications.
2. Tax collection is currently being facilitated in other states that allow residents to have wine shipped. These states require wineries to submit reports summarizing volume along with the payments of taxes to be collected. For Kansas maintaining the collection of the gallonage and excise taxes can be done in the same fashion.

We ask for your consideration of this bill that would support the emerging grape and wine industries in Kansas and would give the citizens of Kansas a straight forward and simple means of getting wine shipped to them. We thank you for your time and the opportunity to appear before this committee.

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Topeka, Kansas
February 13, 2006

To All Kansas State Representatives

Re: SB-370

Dear Representative:

Currently there are two bills in the legislature dealing with direct shipping of wine into Kansas and out of Kansas by our wineries. SB-370 was passed by the Senate just last week and forwarded to the House. House bill 2811 is the other direct shipping bill that is pending.

The Kansas Grape Growers and Winemakers Association and Kansas Viticulture and Farm Winery Association support both bills, but prefer the direct shipping provisions of HB-2811. Following are the main points we see within this legislation:

1. Adding the ability for Farm wineries to ship to customers in other states adhering to their laws.
2. Adding ability for Kansans to have wine shipped from wineries within or outside Kansas either to a retailer (SB-370) or direct (HB-2811).
3. Farm wineries retain the ability to sell direct to retailers and restaurants.

Both SB-370 and HB-2811 provide for the above. HB-2811 is cleaner as it allows for the wine to be shipped directly to the customer, thus removing a fee (SB-370) of up to \$5 per bottle (shipment) that can be charged or waived by the retailer. As well HB-2811 does not have the confusion surrounding whether or not the wine ordered is currently available within Kansas.

Thank you for your time and consideration.

Norman Jennings
Legislative Chairman - KGGWA

Dennis J. Reynolds
Legislative Chairman - KVFWA

Testimony in Support of HB 2811
To
The House Interstate Cooperation Committee

By Janet Forge
Chairperson
Kansas Grape and Wine Industry Advisory Council
February 16, 2006

Mr. Chairman, and members of the committee, my name is Janet Forge. My husband and I own and operate Prairie Ridge Vineyards near St. George. We are strictly a grower and do not own a winery. I also serve as the chairperson of the Kansas Grape and Wine Industry Advisory Council, as appointed by Secretary of Agriculture Adrian Polansky. The Council meets quarterly to discuss issues facing viticulture and wine making in our state. I want to thank you for allowing me to take this opportunity to express our support for HB 2811.

New Section 1 provides for the orderly shipment of wine from wineries in this state, or outside the state, to consumers in Kansas. This section allows for the collection of gallonage taxes, records of direct wine shippers, and delivery to consumers who are over the age of 21.

Section 1 is important for the continued growth of this industry. Currently, Kansas farm wineries cannot ship wine directly to consumers either within, or outside the state. This severely restricts the potential to increase sales. Consumers in today's society expect the convenience of having items shipped directly to their door. Over half of the 200,000 visitors to Kansas farm wineries each year are from outside the state. Many of these customers arrive home, experience Kansas wines and will call to have more shipped to them. However, wineries are unable to fulfill their requests under current law.

The grape and wine industry in the state of Kansas has shown incredible growth in the past year. At the beginning of 2005, there were seven wineries operating in the state. By December, six more had opened their doors, almost doubling the number in only one year. At present, three more are in the process of opening. Direct shipment of Kansas wines would significantly help the growth of this value added, agricultural industry. Kansas farm wineries have experienced over 22% growth in sales this past year and are now producing 70,000 gallons of wine.

Likewise, the Kansas Grape and Wine Industry Council also supports Section 2, number 2, "the sale of wine, manufactured by the licensee, to licensed wine distributors, retailers, clubs, drinking establishments, and caterers."

The continuation of self-distribution of Kansas farm wines is critical to the sustained growth of this industry. Farm wineries with limited production can best increase their

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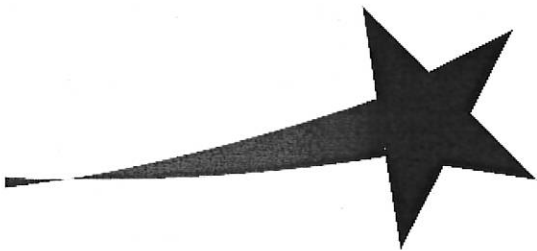
growth through the ability to sell directly to retailers, and restaurants and caterers. Some of our farm wineries have built their businesses around self-distribution; to change this right would be detrimental to their livelihood.

Kansas vineyards and wineries are working to expand their markets, expand the industry, and garner tourism dollars to our state. They exemplify rural entrepreneurship, but growth should not be stagnated by outdated laws and prohibitions. Therefore, we ask this Committee to consider HB 2811 and pass the bill out favorably. Thank you.



KANSAS
DEPARTMENT OF COMMERCE

Howard R. Fricke, Secretary



Testimony on HB 2811

House Interstate Cooperation Committee

February 16, 2006

For more information on this topic contact:
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Fax: (785) 296-3776
e-mail: pclark@kansascommerce.com

www.kansascommerce.com

*Interstate Cooperation
A# #7
Feb 16,
2006*

**Testimony in Support of HB 2811
To
The House Interstate Cooperation Committee**

**By Patty Clark
Director of Ag Marketing
Kansas Department of Commerce
February 16, 2006**

Good afternoon, Chairman and members of the Committee. I am Patty Clark, Director of the Ag Marketing Division of the Kansas Department of Commerce, and I want to thank you for this opportunity to offer our support for HB 2811.

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

The past two years, the Kansas Grape & Wine Industry Advisory Council sponsored a survey of the current marketplace. The results showed the possibility of a prosperous industry. In 2004, over 150,000 people visited a Kansas farm winery and 213,000 in 2005. This represents a remarkable 70% increase in visits. Wine receipts alone were \$1.5 million in 2005, a 22% increase over the prior year. There were 42 full-time employees a year ago, and 60 today. Part-time employee numbers have increased from 66.5 to 70 in 2005. Many of the vineyards rely heavily on volunteer labor and tourists to prune and harvest their fruits.

The wineries serve an important role in the State Agritourism initiative by providing festivals, dinners, music, theatre, and harvesting opportunities to their guests. Ten of the 16 wineries are registered agritourism businesses with the Department of Commerce.

The survey also showed the possibilities for growth in the next five years. The Department of Commerce hosted a Grape Growing Seminar in November 2005. This seminar was for beginner and potential grape growers. There were 80 people in attendance and another 23 on the waiting list. These attendees reported they would plant 100 acres of grapes, and our current vineyards intend to plant 167 acres within the next five years.

The Department of Commerce has been following the growth of the vineyards and wineries the past four years. Substantial growth has occurred more in the past year than ever before, and will continue if Kansas farm wineries are given the opportunity to freely sell their products to their customers across the United States. Our society has become one that seeks high quality, unique consumable goods, and Kansas wines fit this niche. Therefore, we ask this Committee to consider HB 2723 and pass the bill out favorably. Thank you.



The Kansas Association of Beverage Retailers

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Larry Knackstedt, President

Amy A. Campbell, Executive Director

**TESTIMONY PRESENTED TO THE
HOUSE COMMITTEE ON INTERSTATE COOPERATION
February 16, 2006
Amy A. Campbell, Executive Director**

Thank you for the opportunity to represent the Kansas Association of Beverage Retailers regarding House Bill 2811. The Association represents Kansas licensed retail liquor store owners. Our members are Kansas citizens who own Kansas businesses.

Our members must oppose the proposed legislation. This process does not provide for the safe and legal sale of the product to someone of legal age, it bypasses the three tier distribution system, and suggests an honor system for collecting the taxes. If these issues are truly unimportant, we suggest the regulations of the Division of ABC and the Department of Revenue could be 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. 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.
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.

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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 for both the in-state wineries and the out-of-state wineries because we know that the United States Supreme Court has upheld our current law.

However, 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.

Without the "buy-in" of the ABC and Attorney General, the new system will prove ineffective and possibly inefficient. The ABC will need to be able to provide retailer information to the wine sellers in an efficient manner and information about the wine sellers to the retailers. We do not want to go down another legislative trek which creates unforeseen enforcement issues against retailers who accept shipments from the wrong seller or perhaps the wrong buyer. This bill suggests that a restaurant owner could not purchase wine from a direct wine seller for his or her own use. This is probably a good policy, but who enforces it? Would the retailer be expected to refuse such a sale? Would the ABC be required to follow up on a complaint of this nature? What happens if the customer does not pick up the product?

Does the Attorney General's office feel confident that this language would stand up in federal court? What about manufacturers who want to sell their distilled spirits or specialty beers? Does the bill need a definition of wine?

Retailers are happy to seek new solutions to provide access to more products for our customers. It appears that this could be an excellent method to do so.

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 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. Please be aware that more information may be forthcoming as our members have the opportunity to review the language of this legislation.

*Please feel free to contact me to discuss this or any other issue:
Amy A. Campbell
Mobile: 785-969-1617*



**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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Testimony on HB-2811, February 16, 2006
House Interstate Cooperation Committee

Mr. Chairman, and Members 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. We believe this bill does not meet that criteria.

A level playing field for those who sell alcohol is essential. If current laws and policies are what is best for Kansas then they should be best for these new sellers of beverage alcohol as well. Currently a seller of beverage alcohol is held criminally responsible for any underage person accessing their product, *knowingly or unknowingly*. The same standards should and must apply to these sales. In addition all sellers of alcohol in Kansas are required to post bonds in order to assure the state that all alcohol taxes will be paid. These sellers should be required to do the same. These are just two of many conditions that our industry must adhere to in order to have the privilege of selling these products.

We also urge you to create access to unavailable products to 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.

There currently is another bill on this issue that has passed the Senate. Although that bill does not meet these standards either, I urge you to consider them together.

Thank you for your time.

Philip Bradley
Executive Director



*Interstate Cooperation
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