

Approved: 2-21-06 Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 24, 2006 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Tom Groneman, Alcoholic Beverage Control

Others attending:

See attached list.

Senator Gilstrap requested a bill introduction that concerns elections and fees of county treasurers compensation.

Senator Wilson made the motion that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried..

Final Action:

SB 317 - Kansas state high school activities association; prohibiting limitation of student participation in certain sports

Senator Vratil moved to pass SB 317 out favorably, seconded by Senator Reitz, the motion carried.

Senator Ostmeyer wanted to be recorded as voting no on the bill.

SB 320 - Native American tribal law enforcement jurisdiction; liability insurance coverage; proof of

Senator Vratil moved to pass SB 320 out favorably, seconded by Senator Reitz, the motion carried..

SB 370 - Wine manufacturers permitted to sell wine directly to consumers subject to requirements to maintain three-tier distribution system

Chairman Brungardt opened the hearing on **SB 370.**

Tom Groneman, Kansas Department of Revenue, Alcoholic Beverage Control, appeared before the committee with amendments to the bill. (Attachment 1) The proposed amendments are:

- in section 2, line 25 strike c (3)
- in section 4, page 2, line 14-19 strike (g)
- in section 5 page 2 line 21, strike “annually and at any other time when requested”
- in section 5, page after 30 add”and (6) any other information required by the director”
- in section 9, page 4, lines 12-14 strike, “(a) a personal consumer shall not receive more than 24 bottles of wine in total from one or more direct wine sellers in a calendar month.”

Mary Torrence, Revisor of Statute office, provided the committee with a balloon amendment, which also

includes the amendments from Department of Revenue. (Attachment 2)

The committee discussed the changes and requested that on page 2 line 12 section (f) not be removed, other changes include: page 4 starting on line 3 new language in (c), page 4 sec. 9 removing (a) and renumbering, and also a new section 15 and renumbering.

Staff will continue to research and clean up bill to include changes; the bill will be worked next week.

Chairman Brungardt closed the hearing on **SB 370**.

The meeting was adjourned at 11:40 am. The next scheduled meeting is January 25, 2006.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE Tues JAN 24, 2006

Lindsey Douglas	Hein Law Firm
DANIEL WARD	SLOUGH CREEK VINEYARD
FRANK RILEY	KVWA
Gregory Shippe	Davenport Winery
Dennis Reynolds	Somerset Ridge Winery
RICH BRYAN	KANSAS VITICULTURE ASSN.
Norm Jennings	KGGVIA x Smoky Hill Winery
Jo Ann Kuhlmann	Eagle Creek Vineyard
C. E. 'PEP' SOLBERG / SELVAN	BLUEJACKET CROSSING VINEYARD
Janna Dunbar	KDOC
Erik Wisner	KDA
Charles E. McGehee	WINE INSTITUTE
TERRY FORSYTH	KNETA
Steve Weatherford	Leawood, KS
BILL Brady	C.S.
HALLI JOHNSON	A.B.C.
Phil Wilkes	KDOR
Brad Burke	ABC
Tom Groneman	ABC
Bill Sneed	State Farm
Amy Musselman	KS HRA Exec Dir
Philie Sandy	KLBA
Mel Whitaker	KBWA
Trill Duncan	Muswa
Kath Bradford	Inter-faith Ministries



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL

KATHLEEN SEBELIUS, GOVERNOR

Testimony on Senate Bill No. 370

Concerning wine; providing for certain sales and shipment

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

January 24, 2006

Mr. Chairman, members of the committee, thank you for extending the hearing and allowing me to appear before you today regarding Senate Bill 370 which creates the Kansas direct wine sellers act.

The agency has reviewed the bill and would like to submit the following for your consideration.

Proposed Amendments

In section 2, line 25, **STRIKE** (c) “(3) *does not hold an alcoholic beverage license in this state;*” If a license is held by a corporation, LLC or other business entity, the language as written would not prohibit an individual behind the business entity from qualifying as a “personal consumer.” Only those with a license in an individual’s name would be prohibited from qualifying as a “personal consumer.” The discrepancy does not seem to be justified. Additionally, the language in Section 2, (c)(4): “**intends to use wine purchased pursuant to this act for personal consumption and not for resale or other commercial purposes,**” is sufficient to preclude licensees, or anyone else, from purchasing wine in this manner and reselling it.

In section 4, page 2, line 14-19, **STRIKE** “(g) *passes a background check to ensure no past violations of any federal laws.....*” The department suggests that the background check requirement be removed and that we require only that the applicant for a direct wine sellers permit have a valid liquor license in the state where they are domiciled, as already provided for in Section 4(c). The FBI does not provide the department access to its criminal records for

licensing inquiries, and checking the criminal database in all 50 states would be costly and time consuming.

In section 5, page 2, line 21, **STRIKE** “*annually and at any other time when requested*” and insert **in such form, method and at such frequency as requested**. This would allow for electronic filing of the direct shipment information in the future and give us flexibility in determining the optimum filing frequency.

Also, in section 5, page 2, after line 30, add “**and (6) any other information required by the director.**” Again this will give us the necessary flexibility to develop a workable business process.

In section 9, page 4, lines 12-14 **STRIKE** “*(a) a personal consumer shall not receive more than 24 bottles of wine in total from one or more direct wine sellers in a calendar month.*” This provision would be extremely difficult and costly to enforce. All the information we receive will be after the shipment has been made. It would be impossible for a direct wine seller in California to know if a personal consumer had ordered wine within that calendar month from another direct wine seller in California or elsewhere.

Additional concerns

The bill does not state what action should occur if the consumer does not pick up the wine from the retail liquor store. The department suggests that a provision be added that limits how long a retailer must maintain the wine for a consumer and what action a retailer would take if the wine is not picked up by the consumer.

Also, we would like to request that you consider delaying the implementation of the bill for 3-6 months to give the department time to develop the business processes, create forms and adopt any necessary rules and regulations.

The bill will require several other statutes to be amended. Those identified so far include :

KSA 41-306a Wine distributor’s license; rights of licensee.

KSA 41-308 Retailer’s license; rights of licensee

KSA 41-308a Farm winery licensee; rights of licensee

KSA 41-501 (b)(2) Gallonage tax imposed

KSA 41-717 (a)(2) Certain sales on credit, in trade or by check prohibited.

SENATE BILL No. 370

By Committee on Federal and State Affairs

1-17

9 AN ACT concerning wine; providing for certain sales and shipment of
10 wine.

; amending K.S.A. 41-308a
and repealing the existing
section

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) This act may be cited as the Kansas direct wine sellers
14 act.

15 (b) This act shall be part of and supplemental to the Kansas liquor
16 control act.

17 Sec. 2. As used in the Kansas direct wine sellers act:

18 (a) "Direct wine seller" means the holder of a direct wine seller's
19 permit issued pursuant to this act.

20 (b) "Permit year" means the period beginning on July 1 and ending
21 on June 30 of the following year.

22 (c) "Personal consumer" means an individual who:

and

23 (1) Is at least 21 years old;

24 (2) is a resident of the state;

25 ~~(3) does not hold an alcoholic beverage license issued in this state;~~

26 and

27 ~~(4) intends to use wine purchased pursuant to this act for personal
28 consumption only and not for resale or other commercial purposes.~~

29 Sec. 3. (a) Subject to the requirements of this act, a direct wine
30 seller's permit shall allow the holder of the permit to:

31 (1) Sell wine to a personal consumer by receiving and filling orders
32 transmitted by a personal consumer by electronic or other means; and

33 (2) ship such wine to a licensed distributor, who shall deliver the wine
34 to a licensed retailer, designated by the personal consumer, for ultimate
35 delivery to the personal consumer at the retailer's licensed premises.

36 (b) The term of a direct wine seller's permit shall begin on July 1 or
37 the date upon which the permit was issued, whichever is later, and shall
38 expire on June 30 of the following year.

39 (c) A direct wine seller's permit may be renewed annually for one-
40 year terms in accordance with rules and regulations adopted by the sec-
41 retary of revenue.

42 (d) The annual direct wine seller's permit fee shall be \$25.

43 Sec. 4. The director may issue a direct wine seller's permit to a per-

1 son or entity which:

2 (a) Is domiciled within or outside this state;

3 (b) is engaged in the manufacture of wine;

4 (c) holds and acts within the scope of any alcoholic beverage license
5 or permit required: (1) In the state where the applicant is domiciled; and
6 (2) by the alcohol and tobacco tax and trade bureau of the United States
7 department of the treasury;

8 (d) agrees to submit to the jurisdiction of this state for any matters
9 related to the direct wine seller's permit; and

10 (e) agrees that the point of sale for any transaction conducted pur-
11 suant to this act shall be deemed to be within this state; .

12 ~~(f) registers with the office of the secretary of state to do business
13 within this state; and~~

*add
back
in.*

14 ~~(g) passes a background check to ensure no past violations of any
15 federal laws and regulations, or any state or local laws or rules and reg-
16 ulations in any jurisdiction in which the person or entity is domiciled or
17 distributes alcoholic beverages, or both, as well as to satisfy the director
18 of alcoholic beverage control that the person or entity will comply with
19 all laws and rules and regulations of this state.~~

20 Sec. 5. (a) A direct wine seller shall maintain records of each sale
21 made pursuant to a permit issued pursuant to this act. Such records shall
22 be provided to the director annually and at any other time when requested
23 by the director. Such records shall include:

24 (1) The name of the personal consumer making the purchase;

25 (2) each product sold;

26 (3) the wine distributor and the retailer to whom the product was
27 delivered for ultimate delivery to the personal consumer;

28 (4) the price of each product sold; and

29 (5) the information obtained in order to verify the personal con-
30 sumer's age.

31 (b) A direct wine seller shall record the information required by sub-
32 section (a) on a shipping invoice approved by the director, resulting in
33 the creation of an original shipping invoice, plus four copies. The direct
34 wine seller shall retain the original invoice, use one copy as the packing
35 slip to be included with the shipment and provide copies of the invoice
36 to each of the following:

37 (1) The licensed wine distributor to whom the purchased product will
38 be delivered;

39 (2) the licensed retailer to whom the purchased product will be de-
40 livered by the distributor; and

41 (3) the personal consumer purchasing the product.

42 (c) The director may disapprove an application for renewal of a direct
43 wine seller's permit or revoke a direct wine seller's permit for failure of

1 the holder of the permit to:

2 (1) Remit any applicable fee when due to the state;

3 (2) provide any report or invoice as required in subsection (a) or (b);

4 or

5 (3) after receiving notice, comply with any state or federal law, any
6 regulation adopted by the alcohol and tobacco tax and trade bureau of
7 the United States department of the treasury or any rules and regulations
8 of the secretary of revenue.

9 (d) Immediately upon any decision to revoke or deny renewal of a
10 direct wine seller's permit, the director shall notify all distributors doing
11 business in this state of the decision. Upon receiving such notice any
12 distributor in possession of, or later receiving any shipment of, any prod-
13 uct from such direct wine seller shall refuse to complete shipment to the
14 retailer for delivery to the personal consumer.

15 Sec. 6. (a) It shall be a condition of a wine distributor's license that
16 the wine distributor consents to acting as a facilitator for consumers to
17 receive shipments from a direct wine seller pursuant to this act.

18 (b) A distributor who receives a shipment from a direct wine seller
19 pursuant to this act shall keep a record of the shipping invoice for a period
20 of three years to assist in tracking the product in the event of any health
21 or welfare recall.

22 (c) A distributor who receives a shipment from a direct wine seller
23 pursuant to this act shall not enter the wine into the distributor's inventory
24 but shall deliver the wine on the distributor's next delivery date to the
25 retailer designated by the direct wine seller, as shown on the shipping
26 invoice.

27 Sec. 7. (a) It shall be a condition of a retailer's license that the retailer
28 consents to acting as facilitator for consumers to receive shipments from
29 a direct wine seller pursuant to this act.

30 (b) A retailer to whom a distributor delivers a shipment from a direct
31 wine seller pursuant to this act bears the responsibility of ensuring, prior
32 to delivery of the shipment to the personal consumer, that the personal
33 consumer is 21 years of age or older, just as if that consumer were pur-
34 chasing a product from the retailer and not pursuant to this act.

35 (c) Within three days after delivery by a distributor of a shipment
36 from a direct wine seller pursuant to this act, the retailer shall notify the
37 personal consumer that the personal consumer's purchase has arrived at
38 the retailer's licensed premises.

39 Sec. 8. (a) At the time of contact with a direct wine seller to place a
40 wine order, the personal consumer shall notify the direct wine seller of
41 the identity and location of the retailer at whose licensed premises the
42 personal consumer desires to take delivery of the purchased wine.

43 (b) The personal consumer shall take delivery and possession of the

1 shipment at the licensed premises of the retailer promptly on receiving
2 notice from the retailer that the purchase has arrived at the retail location.

3 ~~(c) At the time of purchase, in addition to the purchase price of the
4 wine and any delivery fees charged by the direct wine seller, the personal
5 consumer shall remit to the licensed Kansas retailer at whose licensed
6 premises the personal consumer desires to take delivery of the purchased
7 wine the following:~~

- 8 (1) The appropriate state gallonage tax on the purchase;
- 9 (2) the appropriate state excise tax on the purchase; and
- 10 (3) a nontaxable retail service fee payable to the retailer in the amount
11 of \$5.

12 Sec. 9. ~~(a) A personal consumer shall not receive more than 24 bot-
13 tles of wine in total from one or more direct wine sellers in a calendar
14 month.~~

(a) ~~(b)~~ A direct wine seller shall not sell in this state a wine that is dis-
15 tributed in this state by a licensed wine distributor.

(b) ~~(c)~~ Participation by a distributor in a transaction conducted pursuant
17 to this act shall in no way alter any franchise or distribution rights which
18 such distributor possesses pursuant to K.S.A. 41-410, and amendments
19 thereto, pursuant to contract, federal or state statute or common law.

20 Sec. 10. Wine delivered to a personal consumer pursuant to this act
21 shall be:

- 22 (a) Shipped freight prepaid to the distributor;
- 23 (b) delivered by the distributor to the retailer identified by the per-
24 sonal consumer, as shown on the label and shipping invoice; and
- 25 (c) shipped in containers bearing labels approved by either this state
26 or the alcohol and tobacco tax and trade bureau of the United States
27 department of the treasury, which labels shall include, at a minimum:
28 (1) An identifying number that the distributor shall record for pur-
29 poses of tracking the shipment;
- 30 (2) the name and contact information of the personal consumer mak-
31 ing the purchase;
- 32 (3) the distributor and retailer facilitating the transaction;
- 33 (4) a verification that the personal consumer is 21 years of age or
34 older, the information providing such verification being contained on the
35 packing slip included with the shipment; and
- 36 (5) a clear and conspicuous label providing the following: "THIS
37 PACKAGE CONTAINS ALCOHOL AND SHALL NOT BE DELIV-
38 ERED TO ANY PERSON UNDER THE AGE OF 21."

39 (d) The distributor and retailer facilitating a transaction pursuant to
40 this act shall act solely as facilitators in the shipping process and do not
41 have title to the wine vested in them, such title being vested in the
42 consumer.
43

If the personal consumer fails to take delivery and possession of the wine within 30 days after the wine is delivered to the retailer, the retailer may dispose of the wine in any manner not contrary to law.

The personal consumer shall pay the direct wine seller the purchase price and cost of shipping the wine. The personal consumer shall pay the following to the licensed Kansas retail at whose licenses premises the personal consumer takes delivery of the wine:

1 Sec. 11. The distributor and the retailer facilitating a sale pursuant
2 to this act shall not bear the risk of loss and shall not be liable for any
3 product defect, product contamination or other product or packaging
4 damage except for damage that the distributor or retailer may cause.

5 Sec. 12. (a) The director, in accordance with the Kansas administra-
6 tive procedure act, may revoke, suspend or refuse to issue a direct wine
7 seller's permit to any person or entity found to have violated any provision
8 of this act or any rules and regulations adopted hereunder.

9 (b) If a direct wine seller violates the provisions of this act or rules
10 and regulations adopted hereunder, the director may report the violation
11 to the alcohol and tobacco tax and trade bureau of the United States
12 department of the treasury or other states in which the direct wine seller
13 is permitted or licensed to sell alcoholic liquor or cereal malt beverage.

14 Sec. 13. The secretary of revenue may adopt rules and regulations
15 to carry out the provisions of this act.

16 Sec. 14. If any provision of this act or its application to any person
17 or circumstance is held invalid, the invalidity shall not affect any other
18 provision or application of the act which can be given effect without the
19 invalid provision or application. To this end the provisions of this act are
20 severable.

21 Sec. 15. This act shall take effect and be in force from and after its
22 publication in the statute book.

Insert attached sections
and renumber the
remaining section
accordingly

Sec. 15. K.S.A. 2005 Supp. 41-308a is hereby amended to read as follows: 41-308a. (a) A farm winery license shall allow:

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

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

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

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

(5) if the licensee is also licensed as a club or drinking establishment, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act;

(6) the sale and shipping, in the original unopened container, to consumers outside this state of wine manufactured by the licensee, provided that the licensee complies with applicable laws and rules and regulations of the jurisdiction to which the wine is shipped.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a farm winery licensee, the director may issue not to exceed three winery outlet licenses to the farm winery licensee. A winery outlet license shall allow:

(1) The sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee; and

(2) the serving on the licensed premises of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments.

(c) Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director's findings and judgment. The label of domestic wine and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas.

(d) A farm winery having a capacity of 100,000 gallons per year or more which sells wine to any distributor shall be required to comply with all provisions of article 4 of chapter 41 of the Kansas Statutes Annotated and of K.S.A. 41-701 through 41-705 and 41-709, and amendments thereto, in the same manner and subject to the same penalties as a manufacturer.

(e) A farm winery or winery outlet may sell domestic wine

and domestic fortified wine in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (f) and serve and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (f) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

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

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

(h) No farm winery or winery outlet shall:

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

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

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

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

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

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

Sec. 16. K.S.A. 2005 Supp. 41-308a is hereby repealed.