

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 12, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Melissa Doeblin, Revisor of Statutes Office  
Theresa Kiernan, Revisor of Statutes Office  
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Senator Wysong  
Tom Groneman, Alcoholic Beverage Control  
Tuck Duncan, KS Wine & Spirits Wholesalers Assoc.  
Neal Whitaker, KS Beer Wholesalers  
John Peterson, Anheuser Busch Companies

Others attending:

See attached list.

Senator Julia Lynn requested to introduce two bills. (Attachment 1)

The first request is an act concerning certain Homeowner's Associations.

Senator Vratil moved that this request should be introduced as a committee bill. Senator Brownlee seconded the motion. The motion carried.

The second request is an amendment of Transportation Development District Act. An affidavit form was provided. (Attachment 2)

Senator Vratil moved that this request should be introduced as a committee bill. Senator Barnett seconded the motion. The motion carried.

**SB 500- Alcoholic beverages; termination or modification of distributor's franchise**

Chairman Brungardt opened the hearing on **SB 500**

Senator David Wysong, appeared in support of the bill. (Attachment 3) Senator Wysong believes that there is a conflict between 41-41(e) in the current law and 41-410(f) of the proposed law, and is seeking to make the administrative remedy by striking (e) and replace (f) to become (e).

Tom Groneman, Director, Alcoholic Beverage Control, appeared in opposition to the bill. (Attachment 4) The bill amends KSA 41-410 as it relates to the termination, modification or alteration of franchise agreements for distribution of alcoholic liquor and CMB in the State of Kansas, and opposes the bill for two reasons:

- A franchise agreement is basically a contract between the supplier and the distributor, and the proper place to decide contract disputes is in the courts as currently provided by subsection (e)
- If the intent of the bill is to shorten the time to terminate a franchise agreement, the bill may do just the opposite. If a party chooses to appeal under subsection (f) there will be two additional steps before the matter would go to district court

Tuck Duncan, General Counsel, Kansas Wine & spirits Wholesalers Association, spoke in opposition to the bill. (Attachment 5) The original legislation in 1979 included the director in the process of reviewing termination, after numerous hearings the legislature in its final conference committee report removed the Agency and established the process of a direct Court appeal. The process has worked and the Association does not advocate any changes in the system.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on February 12, 2008 in Room 526-S of the Capitol.

Neal Whitaker, Kansas Beer Wholesalers Association, appeared in opposition to the bill. (Attachment 6) The court system in Kansas is adequately equipped to handle the few disputes that have occurred since the law was passed in 1979, and by including the ABC Director and the Administrative Law system on these business disagreements, will only add additional expense and lengthen the time to reach conclusion.

John Peterson, Anheuser Busch Companies, appeared in opposition to the bill. (Attachment 7) Franchise agreements are contracts between two business, and to expand the role of government, by interjecting a State governmental official into those contracts, as the person who actually determines whether there has been a violation or otherwise should be allowed to be changed is not appropriate.

Chairman Brungardt closed the hearing on **SB 500**.

The meeting was adjourned at 11:10 am. The next scheduled meeting is February 13, 2008.





SENATOR JULIA LYNN

COMMITTEE ASSIGNMENTS  
JUDICIARY  
FEDERAL AND STATE AFFAIRS  
ELECTIONS AND LOCAL GOVERNMENT  
VICE-CHAIR, CHILDREN'S ISSUES (JOINT)  
SENATE PRESIDENT'S TASK FORCE  
ON HEALTHCARE

INTERIM INFORMATION:  
18837 W. 115TH TERR.  
OLATHE, KANSAS 66061

**SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS**  
**Request for Introduction of Committee Bills**

Julia Lynn, Senator, Senate District #9  
February 12, 2008

Mr. Chairman and Members of the Committee:

I request the introduction of two committee bills.

**I. HOMEOWNER'S ASSOCIATION:** This is an act concerning certain Homeowner's Associations.

1. This act sets mediation standards for resolution of disputes between Homeowners Associations and Residents.

2. This act requires Attorney General to provide guidance to Homeowners Assns and Residents in regard to "Best Practices".

3. This act outlines guidelines for amending by-laws and procedures, for interpreting declarations, for election processes, and for financial reporting.

**II. Amendment of TRANSPORTATION DEVELOPMENT DISTRICT ACT:** To allow cities to adjust special assessments amounts throughout the term of the assessment when used in conjunction with other revenue specified in K.S.A. 12-17,147.

1. This act would allow assessments on real property to be modified, while protecting the bondholders with underlying special assessments on the property until a consistent stream of sales tax revenue is generated.

2. This legislation would permit the special assessment amount levied in any one year to equal the difference between the TDD sales tax collected in that year and the total debt service due on the bonds in that year.

**Thank you for your consideration.**

Sen Fed & State

Attachment 1

2-12-08







TOPEKA

SENATE CHAMBER

DAVID WYSONG  
 SENATOR, 7TH DISTRICT  
 6630 INDIAN LANE  
 MISSION HILLS, KS 66208-1745  
 (913) 530-1608

STATE CAPITOL, ROOM 141-E  
 TOPEKA, KANSAS 66612  
 (785) 296-7369

WYSONG@SENATE.STATE.KS.US

## COMMITTEE ASSIGNMENTS

VICE-CHAIR: FINANCIAL INSTITUTIONS  
 AND INSURANCE

MEMBER: WAYS AND MEANS  
 NATURAL RESOURCES

JOINT COMMITTEE ON CORRECTIONS  
 AND JUVENILE JUSTICE

KANSAS CHILDREN'S CABINET  
 AND TRUST FUND

**Testimony in Support of Senate Bill 500**  
**Presented to the Senate Federal and State Affairs Committee**  
**February 12, 2008**

First, I believe that there is a conflict between 41-41(e) in the current law and 41-410(f) of the proposed law. In (e) an aggrieved party is given a legal remedy and in (f), as I have proposed, provides for an administrative remedy first and then a legal remedy to the aggrieved party. What I am wanting to be sure of is that after all is said and done in the redo of the statute that there is not a conflict between two provisions. We are seeking to make the administrative remedy the remedy in the state of Kansas for an aggrieved party involved in the distribution of alcoholic liquor or cereal malt beverage. Therefore, I would like to strike (e) and replace (f) to become (e). Anyone can sue.

In court case, "House of Schwan v. Norwood", the Court of Appeals of the State of Kansas in 1998 commented as follows:

"Although it might be preferable for the Director to determine whether there was reasonable cause for the termination of franchise agreements, the Director and the district court did not err in determining that this is not what the legislature intended."

This legislative interpretation creates a situation that doesn't work in the real world. In this particular situation, Joullian is a small winery in California and hired Premier/Glazers to distribute its wine in the state of Kansas. In the year of 2007, Glazers sales of Joullian wines dropped a significant amount from 2006; and after several years of no growth in sales, Joullian was seeking to change distributors for the state of Kansas to find a more successful business endeavor in the state. Glazers is a large distributor with organizations in a number of states and a deep pocket. Glazers, in an effort to prevent Joullian from making this change, filed in district court for an injunction; and without receiving any counter balancing evidence, put the injunction in place and effectively kept Joullian out of the Kansas market since September 2007. By putting this proposed provision into law, the legislature would be allowing the marketplace to work more effectively. The ABC Director, by his training and experience, would be able to determine "just cause" in most situations, thereby reducing court time and costs and free the courts to only address these issues after a fact finder (the Director) has already reviewed the facts of the case and made a finding as to the reasonable cause.

There was a case in California (Frank-Lin Distillers v. Michael-David) in which a jury found for the winery against a distributor. After the case was decided, the attorney for the winery commented that, "This case was a backdoor attempt to create a wine 'franchise' law in the California legal system in place in 14 states that makes it nearly impossible for wineries in those states ever to change distributors, and often forces wineries to buy back their own brands from

Sen Fed &amp; State

Attachment 3  
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**Testimony in Support of Senate Bill 500**  
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underperforming distributors". This pretty much states the situation as we find it in Kansas. It should be easier for small wineries without deep pockets to rid themselves of underperforming, yet large and wealthy distributors.

By allowing the ABC Director to make these decisions, it would help in a situation that, for lack of a better term, restrains trade in Kansas.

This winery has effectively been out of the market in Kansas for 5 months due to this disagreement and the inability to make a change of distributor with the courts involvement.

Before Mr. Duncan testifies to protect the Wholesalers fiefdom, I thought I would bring up a couple of points.

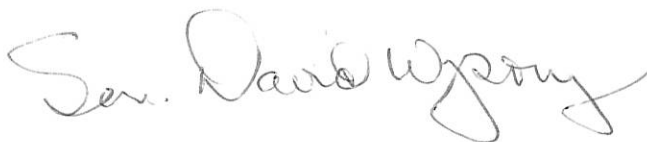
As a partner in the largest winery in Oregon, I know a little about wine. Today, the winery I am addressing is Joullian. According to Snooth, a wine review internet site, it rates Joullian's Zinfandel and Chardonnay with 4 stars and its Sauvignon Blan and Cabernet with 3-1/2 stars...our of 5.

The quality of Joullian is such that on Feb. 10, the American Restaurant in Kansas City, Mo. (the city's highest rated restaurant) featured Joullian wines for a dinner sponsored by the James Beard Foundation, the country's highest-rated culinary organization.

I also should say that the price point on their wine is reasonable, so quality and value should not be an issue of not selling Joullian wine.

The bottom line issue here is fairness. If you were to manufacture widgets, and hired me to sell your product, and I didn't increase your sales over time and actually lost sales, don't you think you should have the right to fire me?

Everyone has a right to take someone to court, but for a law to restrain a business from sales while in a lawsuit? That is not fairness. And that is what SB500 is all about...Fairness.



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Testimony on Senate Bill 500  
to  
The Senate Committee on Federal and State Affairs

by Tom Groneman  
Director  
Alcoholic Beverage Control

February 12, 2008

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Mr. Chairman, members of the committee, I appear today in opposition to Senate Bill 500. This bill amends K.S.A. 41-410 as it relates to the termination, modification or alteration of franchise agreements for distribution of alcoholic liquor and CMB in the State of Kansas. I am opposed to this bill for two reasons.

One, a franchise agreement is basically a contract between the supplier and the distributor. The proper place to decide contract disputes is in the courts as currently provided by subsection (e).

Secondly, if the intent of the bill is to shorten the time to terminate a franchise agreement, the bill may do just the opposite. Subsection (f) provides any party could request a hearing in front of the director. In that case the director's ruling would be appealable to the Secretary of Revenue and then on to district court in accordance with the act for judicial review and civil enforcement of agency actions. Thus, if a party chooses to appeal under subsection (f) there will be two additional steps before the matter would go to district court.

I would be glad to answer any questions.



K • A • N • S • A • S  
**WINE & SPIRITS**  
WHOLESALERS ASSOCIATION

**Statement in Opposition to Senate Bill 500**  
**Senate Federal and State Affairs Committee**  
**February 12, 2008**  
**R.E. "Tuck" Duncan, General Counsel**

The Kansas Wine & Spirits Wholesalers Association is opposed to SB500. The system enacted by the Kansas Legislature in 1979 has functioned well and candidly there have been a minimal number of law suits arising from the provisions of K.S.A. 41-410, most of which have been resolved without Court determinations.

The current process for termination or modification of a wine, beer or spirits franchise is as follows: A supplier or wholesaler gives notice to the effected wholesaler or supplier no less than 30 days in advance by sending that notice to the Director of the Alcoholic Beverage Control along with a statement that the reason for the termination is not due to any refusal to violate the law. The Director in turn sends a certified copy of the notice to the effected party. A supplier or wholesaler then has that 30 day period to decide to either do nothing, negotiate or file an appropriate action in Court. Typically a request is made by the effected part for a stay of the impending termination or modification of the parties' contract to maintain the *status quo* and not disrupt the distribution and sale of the product in question. If the effected party takes no action, then after 30 days a new appointment contract may be filed with the Alcoholic Beverage Control. There are 74 distributor's licenses in Kansas.

Kansas has multiple franchise termination provisions for various industries, several requiring more notice than the beverage alcohol statute. K.S.A. 8-2414, the **automobiles and other vehicles**, licensure of vehicle sales and manufacture provisions provides:

"Cancellation, termination or nonrenewal of franchise agreements between dealers and manufacturers or distributors; cause; hearing; burden of proof; compensation upon termination; effect of noncompliance by manufacturer or distributor. (a) No franchise agreement entered into between a vehicle dealer and a first or second stage manufacturer or distributor may be cancelled, terminated or not renewed by the first or second stage manufacturer or distributor unless 90 days notice has been given to the vehicle dealer and the director, which notice must state in full the reasons and causes for the cancellation, termination or nonrenewal of such franchise agreement, except that in the event of a showing of fraud, insolvency or failure to perform in the ordinary course of business, a notice of not less than 15 days may be approved by the director, with notice thereof to such vehicle dealer and upon written application by such first or second stage manufacturer or distributor. A notice required under this subsection shall be given by certified mail and the period of

time given in the notice prior to cancellation, termination or nonrenewal shall be computed from the date of mailing thereof.

(b) A vehicle dealer, within a period of time equal to that provided for in the notice filed pursuant to subsection (a), may file a complaint with the director against a first or second stage manufacturer or distributor challenging the reasons and causes given for the proposed cancellation, termination or nonrenewal of the franchise agreement. Upon a complaint being filed, the director shall promptly set the matter for public hearing, in accordance with K.S.A. 8-2411, and amendments thereto, for the purpose of determining whether there has been a violation of K.S.A. 8-2410, and amendments thereto, or whether good cause exists for cancellation, termination or nonrenewal of the franchise agreement. Notwithstanding the provisions of K.S.A. 8-2411, and amendments thereto, the hearing may be set for a time which is not less than the number of days provided in the notice given pursuant to subsection (a), from the date the director gives notice thereof.

(c) The franchise agreement shall remain in full force and effect pending the determination by the director of the issues involved as provided by this act. If the director determines that the first or second stage manufacturer or distributor is acting in violation of this act or that good cause does not exist for the proposed action, the director shall order for the franchise agreement to be kept in full force and effect.

(d) The burden of proof shall be on the first or second stage manufacturer or distributor to show that it did not act arbitrarily or unreasonably and that good cause did exist for the proposed cancellation, termination or nonrenewal of the franchise agreement. The director shall order that the franchise agreement may be cancelled, terminated or not renewed if the director finds, after a hearing that the licensed vehicle dealer is acting in violation of this act or that the judgment of the first or second stage manufacturer or distributor is with good cause and the vehicle dealer's default is material.

(e) (1) In the event of cancellation, termination or nonrenewal of a franchise agreement, good cause as used in this section shall mean the failure of the new vehicle dealer to effectively carry out the performance provisions of the franchise agreement if all of the following have occurred:

(A) The new vehicle dealer was given notice by the first or second stage manufacturer or distributor of the failure prior to the notice of cancellation, termination or nonrenewal as required by subsection (a);

(B) the notification stated that the notice of failure of performance was provided pursuant to this article;

(C) the new vehicle dealer was afforded a reasonable opportunity to carry out the franchise agreement; and

(D) the failure continued for more than one year after the date notification was given. . . .

K.S.A. 16-1207 regarding contracts and promises for **farm equipment dealership** agreements provides for a Court action.

“Action for damages for violation of act; injunctive relief; remedies not exclusive. If any farm equipment manufacturer violates any provision of this act, a farm equipment dealer may bring an action against such manufacturer in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the manufacturer's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law including proceedings under the Kansas consumer protection act. History: L. 1986, ch. 2, § 7; July 1.

With respect to **swine contracts and marketing pools** in K.S.A. 16-1502 regarding Contract termination or cancellation; notification, time periods, the law provides:

“ (a) Except as provided in subsection (b), if a producer fails to comply with the provisions of a contract that requires a capital investment in excess of \$100,000 or more and has a useful life of five years or more, a contractor may not terminate or cancel that contract until:

(1) The contractor has given written notice with all the reasons for the termination or cancellation at least 90 days before termination or cancellation or as provided in subsection (b); and

(2) the producer who receives the notice fails to correct the reasons stated for termination or cancellation in the notice within 60 days of receipt of the notice.

(b) The 90-day notice period and 60-day notice period under subsection (a)(1) and (2) are waived and the contract may be terminated or canceled immediately if the alleged grounds for termination or cancellation are:

(1) Voluntary abandonment of the contract relationship by the producer;

(2) conviction of the producer of an offense directly related to the business contracted under the contract;

(3) material breach of the contract by the producer;

(4) a failure to care for the swine in accordance with good animal husbandry practices;

(5) the bankruptcy or insolvency of the producer; or

(6) an acceleration of any indebtedness secured by the property on which the swine are being raised.

History: L. 1994, ch. 130, § 9; April 14.

In the instant case which gives rise to the introduction of SB500, the supplier sent a notice to the ABC requesting immediate termination. After notice was given to the effected distributor, and within 30 days of the notice having been received by the A.B.C., a restraining order was sought to preserve the distributor's rights. Throughout this period the

product has been available in the market and has been sold until this day. The wines in question retail from approximately \$20.00 to \$30.00 a bottle. My understanding is that the parties have reached an agreement in principle to resolve the pending litigation.

*The law worked.* Notice was given, the product in distribution was available and sold in the marketplace while the parties negotiated a resolution. The dispute was resolved without government intervention in the contract between the parties.

The background of KSA 41-410 is as follows: the original legislation in 1979 included the Director in the process of reviewing termination. After numerous hearings the Legislature in its final conference committee report removed the Agency and established the process of a direct Court appeal. It was believed then, and practice has proven, that these matters will receive more prompt attention than they might through an elongated administrative process. First, the Court must act on a temporary restraining order petition within a reasonable time, after notice to all parties. This process allows for an independent third party review of the contractual rights of the respective parties by someone schooled in the law.

*We do not believe the system to be broken, so please do not fix it.*

However, if the committee desires to consider an administrative approach SB500 needs considerable revision. Many of the procedures found in K.S.A. 8-2414 above should be included, as should definitions for good cause as found in the farm dealer act. Absent these procedures and definitions the Agency will have no guidance by which to make its determination nor would the Courts have any guidance to ascertain if the Agency's actions were arbitrary or capricious (the standard by which to judge agency actions). Further, the administrative process should be accompanied by a stay of any termination or cancellation pending the Agency's review.

Candidly, for the same reasons as existed in 1979 when K.S.A. 41-410 was enacted, I suspect the distillers, wineries and brewers who have entered into contracts with Kansas' 74 licensed distributors would prefer that the Legislature not empower the Agency as proposed in SB500, and keep K.S.A. 41-410 *in tact*. Inasmuch as these agreements are contracts negotiated by the parties, we do not advocate any changes in the system as it exists today for that may simply impair these existing contracts and disrupt the orderly market of beverage alcohol distribution which Kansas currently enjoys.

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





**800 SW JACKSON SUITE 1017, TOPEKA, KANSAS 66612**

**FEBRUARY 12, 2008**

Testimony in opposition to Senate Bill 500  
Neal Whitaker  
Kansas Beer Wholesalers Association

KSA 41-410 addresses agreements that range from suppliers and wholesalers selling just a few cases of product in Kansas to suppliers and wholesalers selling millions of dollars of products. So, any changes in the law must be crafted carefully.

If the current statutory process is followed, any aggrieved party has plenty of time to get a restraining order and make their case in the courtroom. In most cases, the distributor has had plenty of warning that termination could occur because – if the distributor doesn't willingly relinquish –the supplier will be required to prove to the court that there is reasonable cause for termination. If the distributor is completely surprised by the notice of termination, it is probable that there was no prior communication of concerns from the supplier and therefore much less likely the supplier can prove there is reasonable cause for termination.

Throwing these business disagreements at the feet of the ABC Director and into the Administrative Law System will only add additional expense and lengthen the time to reach conclusion. The court system in Kansas is adequately equipped to handle the few disputes that have occurred since the law was passed in 1979.

Therefore the members of the Kansas Beer Wholesalers Association oppose SB 500 in its current form.

Sen Fed & State

Attachment 6  
2-12-08



**Senate Federal and State Affairs Committee**  
**Testimony of John Peterson**  
**Anheuser Busch Companies**  
**SB 500**

February 12, 2008

Mr. Chairman, members of the Committee. My name is John Peterson and I am appearing today on behalf of Anheuser Busch Companies.

We oppose SB 500. We appreciate the intent of the sponsors to streamline the process for disputes, but SB 500 would not effectuate that goal. It would do the opposite.

Franchise agreements are contracts between two businesses. To expand the role of government, to expand it by interjecting a State governmental official into those contracts, as the person who actually determines whether they have been violated or otherwise should be allowed to be changed, is not appropriate.

The beer industry has a 3-tier system that has been in place since Prohibition ended more than 70 years ago. This means that brewers sell only to wholesalers, independent businesses that in turn sell and deliver beer to the more than 500,000 retail outlets in the United States. However, there is a contractual relationship between brewers and wholesalers because a distributor promises to service a brewer's products in exchange for the rights to an exclusive territory of retail accounts. In the case of Anheuser-Busch, this contractual arrangement is formalized in our Equity Agreement with wholesalers.

The Equity Agreement that Anheuser-Busch has with each of our more than 600 wholesalers is an extremely detailed and sophisticated document. It is dozens of pages long, and details the responsibilities of both brewer and wholesaler. As an example, just one of the addendums to the agreement, Exhibit 9, by itself 15 pages long, specifies quality control requirements, sales and marketing processes, management standards and numerous other components of the relationship. If any problems develop or deficiencies are identified by brewers, procedures are also specified as to how a wholesaler would remedy these concerns. Finally, as a last resort, a process for termination is detailed. Of course, as per the Equity Agreement, a Kansas wholesaler would be able to challenge a termination in a Kansas court and Kansas law would govern.

Any termination, which is an extremely rare development in the United States among major brewers and their wholesalers, would involve litigation over the meaning of Equity Agreement provisions, extensive fact-finding and a very lengthy trial. This bill, however, would change the law by placing the responsibility for determining the appropriateness of the termination with the Director of the Kansas Division of Alcoholic Beverage Control (ABC). It is simply inappropriate to place this burden with the ABC. Not only would this require the ABC to attempt to function like a court and engage in legal interpretation and determination of questions of fact, but the enormous job of adjudicating any dispute over a termination would detract from the central mission of the Division. That mission is enforcing laws and regulating the alcohol beverage industry in the state of Kansas.

We would respectfully ask you not to approve SB 500.

Sen Fed & State

Attachment 7  
2-12-08