

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on March 19, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Lisa Benlon- excused
Representative Rob Olson- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Jason Long, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Nikki Feuerborn, Committee Assistant

Conferees appearing before the Committee:

Others attending:

See attached list.

Representative Fund moved for the introduction of a bill addressing requests for proposals from state agencies. Motion was seconded by Representative Swenson. Motion carried.

Representative Knox moved for the introduction of proposed legislation which he referred to as "the pistol packin' parsons" bill. Motion was seconded by Representative Jack. Motion carried.

Discussion and Action on SB 212 - Wine shipments, certain persons; licensure; limitation

Revisor Heim explained the attached balloon which now includes along with the original bill certain language from **SB 218 - Farm wineries; allowing farmers' market sales permits, allowing issuance of manufacturer's license, allowing manufacture by wine outlet licensees.** The amendment also includes two severability clauses (Attachment 1).

Representative Swenson moved for the adoption of the balloon amendment. Motion was seconded by Representative Peterson. Motion carried.

Representative Brown moved for **SB 212** to be reported favorably as amended. Motion was seconded by Representative Grant. Motion carried.

The meeting was adjourned at 1:50 p.m.

The next meeting is on call of the Chair.

House Federal and State Affairs
Guest list

Date 3-19-09

Name

Organization

Bob Badly
Spencer Duncan
Rayne Am... ..
...
...

KLBA
Capital Connection LLC
Wine Inst.
~~...~~ KABR
Hein Co

SENATE BILL No. 212

By Committee Federal and State Affairs

2-4

Proposed Amendments
Prepared by: Mike Heim
Revisor of Statutes Office
March 18, 2009

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10 AN ACT concerning alcoholic beverages; concerning shipment of
11 wines[;repealing K.S.A. 2008 Supp. 41-348 and 41-349].
12

amending K.S.A. 41-305 and K.S.A. 2008 Supp. 41-308a and 4
repealing the existing sections; also

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

14 Section 1. (a) For the purposes of this act, the term "winery" means
15 any maker or producer of wine whether in this state or in any other state,
16 who holds a valid federal basic wine manufacturing permit. The terms
17 "director" and "secretary" have the meaning ascribed to these terms in
18 K.S.A. 2008 Supp. 41-102, and amendments thereto.

19 (b) Any winery may be authorized to make direct shipments of wine
20 to consumers in this state upon obtaining a special order shipping license
21 from the secretary pursuant to this act.

22 (1) A special order shipping license shall only be issued to a winery
23 upon compliance with all applicable provisions of this act and the regu-
24 lations promulgated pursuant to this act, and upon payment of a license
25 fee in the amount of \$50.

26 (2) A special order shipping license shall entitle the winery to ship
27 wine upon order directly to consumers for personal or household use in
28 this state. The purchaser shall pay the purchase price and all shipping
29 costs directly to the permit holder. Enforcement taxes collected herein
30 shall be paid solely on the purchase price and not on the shipping costs.

31 (c) No holder of a special order shipping license shall be permitted
32 to ship in excess of 12 standard cases of wine of one brand or a combi-
33 nation of brands into this state to any one consumer or address per cal-
34 endar year.

35 (d) (1) Before accepting an order from a consumer in this state, the
36 holder of a special order shipping license shall require that the person
37 placing the order to state affirmatively that he or she is 21 years of age
38 or older and shall verify the age of such person placing the order either
39 by the physical examination of an approved government issued form of
40 identification or by utilizing an internet based age and identification serv-
41 ice [approved by the director of alcoholic beverage control, or the
42 director's designee].

43 (2) Every shipment of wine by the holder of a special order shipping

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Attachment 1

1 license shall be clearly marked 'Alcoholic Beverages, Adult Signature Re-
2 quired' and the carrier delivering such shipment shall be responsible for
3 obtaining the signature of an adult who is at least 21 years of age as a
4 condition of delivery.

5 (e) A special order shipping license shall not authorize the shipment
6 of any wine to any premises licensed to sell alcoholic beverages pursuant
7 to this act or the club and drinking establishment act.

8 (f) The failure to comply strictly with the requirements of this act and
9 rules and regulations promulgated pursuant to this act shall be grounds
10 for the revocation of a special order shipping license or other disciplinary
11 action by the director. After notice and an opportunity for hearing in
12 accordance with the provisions of the Kansas administrative procedure
13 act, the director may refuse to issue or renew or may revoke a shipping
14 permit upon a finding that the permit holder has failed to comply with
15 any provision of this section or K.S.A. 2008 Supp. 41-501 et seq., and
16 amendments thereto, or any rules and regulations adopted pursuant to
17 such statutes. Upon revocation of a special order shipping license for
18 shipment of wine to a person not of legal age as required herein such
19 winery shall not be issued any special order shipping license pursuant to
20 this act for a period of one year from the date of revocation.

21 (g) The holder of a special order shipping license shall collect all
22 gallonage taxes imposed by K.S.A. 2008 Supp. 41-501 et seq., and amend-
23 ments thereto, shall remit such taxes annually in a manner prescribed by
24 the secretary and shall accompany such remittance with such reports,
25 documentation and other information as may be required by the secre-
26 tary. In addition, an applicant for and a holder of a special order shipping
27 license, as a condition of receiving and holding a valid license, shall:

28 (1) Collect and pay the applicable Kansas enforcement tax on each
29 sale shipped to a consumer in Kansas imposed by K.S.A. 79-4101 et seq.,
30 and amendments thereto;

31 (2) accompany each remittance with such sales tax reports, docu-
32 mentation and other information as may be required by the director of
33 taxation; and

34 (3) if the holder of the license is an out-of-state shipper, the licensee
35 shall be deemed to have appointed the secretary of state as the resident
36 agent and representative of the licensee to accept service of process from
37 the secretary of revenue, the director and the courts of this state con-
38 cerning enforcement of this section, K.S.A. 2008 Supp. 41-501 et seq.,
39 and amendments thereto, and any related laws and rules and regulations
40 and to accept service of any notice or order provided for in the liquor
41 control act.

42 (h) The secretary of revenue may adopt rules and regulations to im-
43 plement, administer and enforce the provisions of this section.

text212ball

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

4 **[Sec. 2. K.S.A. 2008 Supp. 41-348 and 41-349 are hereby
repealed.]**

5 Sec. ~~2~~ [3.] This act shall take effect and be in force from and after
6 its publication in the statute book.

(j) If any provision of this section is determined by a court to be
invalid or unconstitutional, this section is repealed in accordance
with the intent of the legislature to enhance strict regulatory
control over taxation of alcoholic liquor and over distribution and
sale of wine by licensed persons or entities having a substantial
presence in Kansas.

New Sec. 2 (see attached - text212ball)
Sec. 3. K.S.A. 41-305 (see attached - text212ball)
Sec. 4. K.S.A. 2008 Supp. 41-308a (see attached - text212ball)
Sec. 5. K.S.A. 2008nSupp. 41-317 (see attached - text212ball)

And by renumbering the remaining sections accordingly

41-305 and K.S.A.

41-308a, 41-317,

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text212ball

New Sec. 2. (a) Notwithstanding any other provisions of the Kansas liquor control act, the club and drinking establishment act or the Kansas cereal malt beverage act, any person who is licensed to sell wine pursuant to K.S.A. 41-308a, and amendments thereto, may apply to the director for an annual bona fide farmers' market sales permit. Such permit shall authorize the licensee, a member of the licensee's family or an employee of the licensee to sell wine in the original unopened container produced and bottled by the licensee at a bona fide farmers' market located at a site approved by the director.

(b) Permits issued under this section shall be valid for one year from the date of issuance. A licensee shall not hold more than one bona fide farmers' market sales permit at any one time.

(c) The licensee may only sell wine at a single bona fide farmers' market on one day of the week. The location of the bona fide farmers' market shall be specified in the application submitted to the director. The director shall notify the city, county and applicable law enforcement agency where the bona fide farmers' market is to be held and of the issuance of a permit under this section for the sale of wine at such bona fide farmers' market.

(d) For the purposes of this section, "bona fide farmers' market" means any location held out to be a farmers' market that is subject to inspection by the department of agriculture.

(e) The secretary may adopt rules and regulations as necessary to implement the provisions of this section.

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

Sec. 3. K.S.A. 41-305 is hereby amended to read as follows: 41-305. A manufacturer's

license shall allow the manufacture and storage of alcoholic liquor and cereal malt beverage and the sale of alcoholic liquor and cereal malt beverage to distributors and nonbeverage users licensed in this state and to such persons outside this state as permitted by law. A person holding a farm winery license issued pursuant to K.S.A. 41-308a, and amendments thereto, may also be issued a manufacturer's license; provided, that no alcoholic liquor or cereal malt beverage manufactured by such farm winery licensee shall be sold by such farm winery licensee at its licensed premises or at any of such licensee's winery outlets.

Sec. 4. K.S.A. 2008 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 in a quantity not exceeding 100,000 gallons per year and the storage thereof;

(2) the sale of wine, manufactured by the licensee, to licensed wine distributors, retailers, clubs, drinking establishments, holders of temporary permits as authorized by K.S.A. 41-2645, and amendments thereto, 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;

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

(7) 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; and

(8) the sale and shipping of wine within this state pursuant to a permit issued pursuant to K.S.A. 2008 Supp. 41-348, and amendments thereto.

(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; and

(3) the manufacture of domestic table wine and domestic fortified wine and the storage thereof; provided, that the aggregate quantity of wine produced by the farm winery licensee, including all winery outlets, shall not exceed 100,000 gallons per year.

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(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 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 (e) 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 (e) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

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

(j) If any provision of this section, or its application to any person or circumstance, is determined by a court to be invalid or unconstitutional, the remaining provisions of this section shall be construed to further limit rather than to expand

commerce in alcoholic liquor and to enhance strict regulatory control over taxation, distribution and sale of wine through the three-tier regulatory system imposed by the Kansas liquor control act upon all alcoholic liquor and cereal malt beverages.

Sec. 5. K.S.A. 2008 Supp. 41-317 is hereby amended to read as follows: 41-317.
(a) Applications for all licenses under this act shall be upon forms prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a state registration fee of \$50 for each initial application and \$10 for each renewal application to defray the cost of preparing and furnishing standard forms incident to the administration of this act and the cost of processing the application. Each application shall also be accompanied by a deposit of a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount of the license fee required to be paid for the kind of license applied for, which license fee shall be returned to the applicant if the application is denied. All registration fees shall be remitted by the director to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. All license fees received by the director, including fees received for licenses to manufacture beer, regardless of its alcoholic content, shall be paid into the state treasury by the director and shall be credited to the state general fund.

(b) Every applicant for a manufacturer's, distributor's, nonbeverage user's, microbrewery, farm winery or retailer's license shall file with the

application a joint and several bond on a form prescribed by the director and executed by good and sufficient corporate sureties licensed to do business within the state of Kansas to the director, in the following amounts:

- (1) For a manufacturer, \$25,000;
- (2) for a spirits distributor, \$15,000 or an amount equal to the highest monthly liability of the distributor for taxes imposed by the Kansas liquor control act for any of the 12 months immediately prior to renewal of the distributor's license, whichever amount is greater;
- (3) for a beer or wine distributor, \$5,000 or an amount equal to the highest monthly liability of the distributor for taxes imposed by the Kansas liquor control act for any of the 12 months immediately prior to renewal of the distributor's license, whichever amount is greater;
- (4) for a retailer, \$2,000;
- (5) for nonbeverage users, \$200 for class 1, \$500 for class 2, \$1,000 for class 3, \$5,000 for class 4 and \$10,000 for class 5; and
- (6) for a microbrewery or a farm winery, \$2,000; and
- (7) for a winery holding a special order shipping license, \$750, unless the winery has already complied with subsection (b)(6).

If a distributor holds or applies for more than one distributor's license, only one bond for all such licenses shall be required, which bond shall be in an amount equal to the highest applicable bond.

(c) All bonds required by this section shall be conditioned on the licensee's compliance with the provisions of this act and payment of all taxes, fines and forfeitures which may be assessed against the licensee.