

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 4-5, 2010  
Room 152-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-chairperson  
Senator Karin Brownlee  
Senator Janis Lee  
Senator Ralph Ostmeyer  
Senator Chris Steineger (May 5)  
Representative John Faber (May 4)  
Representative Steve Huebert (May 5)  
Representative Shirley Palmer  
Representative Joe Patton (May 4)  
Representative Jan Pauls  
Representative Ed Trimmer

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Ken Wilke, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### Others Present

Andrew Schulte, Kansas Corporation Commission  
Sean Miller, Capitol Strategies  
Chris Tymeson, Kansas Department of Wildlife and Parks  
Berend Koops, Hein Law Firm  
Tom Day, Kansas Corporation Commission  
Michael Wegner, Kansas Corporation Commission  
Michael Schmidt, Kansas Corporation Commission  
Matt Spurgin, Kansas Corporation Commission  
Tom DeBaun, Kansas Corporation Commission  
Gary Dawdy, Kansas Corporation Commission  
Jaime Stamatson, Kansas Corporation Commission

Robert Glass, Kansas Corporation Commission  
Andrew Fry, Kansas Corporation Commission  
Elena Larson, Kansas Corporation Commission  
Pat Renner, Kansas Corporation Commission  
Theresa Schwartz, Kansas Board of Regents  
Crystal Piderbaugh, Kansas Board of Regents  
Carman Allen, Board of Emergency Medical Services  
Julie Ehler, Kansas Department of Agriculture  
Dan Tuggle, Kansas Department of Agriculture  
Katie Howard, Kansas Department of Agriculture  
Gary Meyer, Kansas Department of Agriculture  
Randy Stookey, Kansas Department of Agriculture  
George Blush, Kansas Department of Agriculture  
Leslie Kaufman, Kansas Cooperative Council  
Mary Jane Stankiewicz, Kansas Agriculture Retailers Association  
Kevin Barone  
Tuck Duncan, Kansas Wine & Spirits Wholesalers  
Chris Wilson, Kansas Agriculture Aviation Association  
Erik Wisner, Kansas Department of Agriculture  
Sarah Byrne, Alcohol and Beverage Control, Department of Revenue  
Rebecca Rice  
Thomas Britt Nichols

**Tuesday, May 4**

Chairperson Vicki Schmidt called the meeting to order on May 4, 2010 at 8:00 a.m.

The Chairperson welcomed Chris Tymeson, Chief Counsel, to speak to the proposed rules and regulations noticed for hearing by the Wildlife and Parks Commission. KAR 115-2-1, amount of fees; KAR 115-8-1, department lands and waters: hunting, furharvesting, and discharge of firearms; KAR 115-25-9a, deer; open season, bag limit, and permits; additional considerations; and KAR 115-25-9b, deer; nonresident limited-quota antlered permit application period.

Mr. Tymeson stated that KAR 115-2-1 was being changed to reflect suggestions made by a Committee member when this rule and regulation last came before the Committee. The Chairperson thanked the agency for being responsive to concerns raised by the Committee.

Andrew Schulte was recognized by the Chairperson to address the proposed rule and regulation noticed for hearing by the Kansas Corporation Commission. KAR 82-1-219, general requirements relating to pleadings and other papers.

Mr. Schulte stated this rule and regulation will promote increased electronic filing with the Kansas Corporation Commission. The proposed amendment will produce environmental and economic benefits for the Commission and those with business before the Commission by reducing the costs and environmental burden of creating and maintaining paper records. There were no comments from the Committee.

Chairperson Schmidt asked for Committee action on the Committee's minutes from April 5, 2010. *Senator Ostmeyer moved that the minutes be approved as presented to the Committee; Senator Lee seconded the motion. The motion passed.*

The Chairperson welcomed Matt Spurgin to address proposed rules and regulations noticed for hearing by the Kansas Corporation Commission. KAR 82-17-1, definitions; KAR 82-17-2, utility requirements pursuant to the act; KAR 82-17-3, tariff requirements; KAR 82-17-4, reporting requirements; KAR 82-17-5, renewable energy credit program; KAR 82-16-1, definitions; KAR 82-16-2, renewable energy standards and report; KAR 82-16-3, administrative penalties; KAR 82-16-4, retail revenue requirement; KAR 82-16-5, certification of renewable energy resources; and KAR 82-16-6, renewable energy credit program.

Staff noted that in KAR 82-17-1, (d), (e) and (l) need to have the word "is" inserted so the sentence reads "...is hereby adopted by reference." In KAR 82-17-2, staff noted in paragraph (b) there should be a clarification of the terminology on what the utilities have on file with the Commission. The Committee had concerns regarding KAR 82-17-3, (g) and the fact there was no remedy assessed if any damage occurs. Mr. Spurgin stated this is contained in the tariffs. The Committee was concerned that the Commission is moving away from rules and regulations by using guidelines which are not enforceable. The Committee had questions concerning KAR 82-16-2, (b): why the KCC was not using calendar year dates and whether this would punish those just beginning construction for the first of the year, since there would be data for only six months. Mr. Spurgin stated that this was at the request of industry. In (b)(6), staff noted that there was no definition for "constructed" although "installed" has been used in the statute. The agency staff member stated that the agency would look at this.

Theresa Schwartz was welcomed by Chairperson Schmidt to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Regents. KAR 88-24-1, eligibility to take GED test.

Ms. Schwartz stated this rule and regulation is being changed to delete the requirement that only a Kansas resident may take the test in Kansas. This change will allow persons who live in a state bordering Kansas to take the test in Kansas. Staff noted the history section needed to be changed to KSA 2009 Supp. A question was raised by a Committee member about those individuals who are homeschooled. Crystal Piderbaugh stated this was covered in another rule and regulation.

The Chairperson recognized Carman Allen to address the proposed rules and regulations noticed for hearing by the Kansas Board of Emergency Medical Services. KAR 109-5-1, continuing education; KAR 109-5-3, continuing education approval for long-term providers; and KAR 109-11-1, first responder course approval.

Ms. Allen stated that these rules and regulations had come before the Committee previously, but at the public hearing some changes had been suggested. There were no questions from the Committee.

The Chairperson recessed the Committee until 8:00 a.m. on Wednesday, April 5, 2010.

### **Wednesday May 5**

Chairperson Vicki Schmidt reconvened the meeting on May 5, 2010, at 8:00 a.m.

The Chairperson welcomed Julie Ehler, Chief Counsel, to speak to proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-7-213, adoption by reference; and KAR 4-7-716, adoption by reference.

In KAR 4-7-716, staff questioned why the agency was still using the 17<sup>th</sup> edition of the "official methods of analysis of AOAC international," when the 18<sup>th</sup> edition was listed on the Association of Official Analytical Chemists web site. The agency will check to make sure that it does not need to use the latest addition.

Randy Stookey was recognized by the Chairperson to address proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-13-25, bulk pesticide storage and handling of pesticides; definitions; KAR 4-13-25b, quantities of bulk pesticide; KAR 4-13-25c, location, design, and construction requirements of a bulk pesticide storage facility; KAR 4-13-25d, secondary containment for bulk pesticide storage; KAR 4-13-25e, requirements for mixing and loading pads for bulk pesticides; KAR 4-13-25f, requirements for bulk pesticide containers and appurtenances; KAR 4-13-25g, discharge, recovery, and reporting requirements; KAR 4-13-25h, submission of diagrams, plans, and specifications; KAR 4-13-25j, bulk pesticide storage facility inspection and maintenance requirements; KAR 4-13-25k, site closure and discontinuation of operation; KAR 4-13-25l, penalty for noncompliance with pesticide containment; KAR 4-13-25m, change in owner or operator of bulk pesticide storage facility; reporting requirements; and KAR 4-13-25i, revoked.

Mr. Stookey stated these rules and regulations were being proposed to bring Kansas into compliance with Environmental Protection Agency (EPA) requirements. Several Committee members had concerns these new rules and regulations would cause a financial hardship on small individual business owners by causing them to spend substantial funds to bring their businesses into compliance. Mr. Stookey stated these rules and regulations were already in place but were being amended to clarify the EPA requirements. In response to a question from a Committee member concerning KAR 4-13-25d,(b)(1), Mr. Stookey stated that he did not believe there were any facilities that would not be in compliance at this time. Staff suggested that KAR 4-13-25d,(b)(1) be clarified and the phrase "applies only to liquid bulk pesticide" be inserted after "steel, reinforced concrete, or any other rigid material capable of withstanding the static pressure." In response to a question from a Committee member, there was concern raised about subsection (g) and that earthen materials and asphalt cannot be used as secondary containment, and that this could result in economic consequences to owners to replace them. Mr. Stookey stated that these rules and regulations were not mandated by federal law. In KAR 4-13-25j, staff questioned whether the term "potential violation" should be included in (b) since it was named in item (a)(11). A Committee member requested that the agency provide the Committee with a list of specific examples of violations in Kansas that would fall under these rules and regulations. A request was made by the Committee for a list of the members that were part of the working group that reviewed and approved these rules and regulations.

Chairperson Schmidt recognized Sarah Byrne, Assistant Attorney General, to speak to the proposed rules and regulations noticed for hearing by the Alcoholic Beverage Control (ABC) Division, Department of Revenue. KAR 14-6-4, containers of cereal malt beverage; statement of alcohol content required; KAR 14-11-1, definitions; KAR 14-11-4, registration of employees, salesperson permits; KAR 14-11-5, licensed warehouses; KAR 14-11-6, opened containers of domestic table wine or domestic fortified wine on the licensed premises; KAR 14-11-7, retail sales and deliveries; KAR 14-11-9, farm winery or farm winery outlet licensee prohibited from warehousing domestic table wine or domestic fortified wine for consumers; KAR 14-11-11, domestic table wine and domestic fortified wine rationing; KAR 14-11-14, prohibited statements and restrictions in the advertising of domestic table wine and domestic fortified wine; KAR 14-11-15, public display of domestic table wine or domestic fortified wine; KAR 14-11-16, farm wineries and farm winery outlets selling at retail, marking prices, price or inventory control tags; shelf markings; KAR 14-11-22, special order shipping, license requirements; KAR 14-11-23, special order shipping; KAR 14-11-24, bona fide farmers' market sales permit; KAR 14-11-25, licensee of farm winery also licensed as manufacturer; KAR 14-11-26, label approval required; KAR 14-11-27, domestic table wine and domestic fortified wine,

Kansas product requirement; KAR 14-11-28, sales to minors prohibited; KAR 14-11-29, record retention, reporting requirements; KAR 14-16-25, imposition of penalties for violations; KAR 14-19-27, storage of liquor; removal from club premises; KAR 14-19-38, denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; KAR 14-19-39, extension of premises; KAR 14-20-29, storage of liquor, removal from club premises; KAR 14-20-40, denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; KAR 14-20-41, extension of premises; KAR 14-21-12, storage of liquor, removal from drinking establishment premises; KAR 14-21-21, extension of premises; KAR 14-21-22, denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; KAR 14-23-2, applications, documents required; KAR 14-23-5, events, filings, notice, prohibitions; KAR 14-23-8, purchase of alcoholic liquor; requirements and restrictions; KAR 14-23-10, removal of liquor from event premises prohibited, boundary requirement. The following are revoked: KAR 14-6-2a; KAR 14-6-3; KAR 14-11-10a; KAR 14-11-10b; KAR 14-11-10d; KAR 14-24-1; KAR 14-24-2; KAR 14-24-3; KAR 14-24-4; KAR 14-24-5; and KAR 14-24-6.

Ms. Byrne stated the KAR 14-11 rules and regulations are the result of the passage of 2009 SB 212. Other rules and regulations are being amended since they have not been reviewed since 1988. In KAR 14-11-1 (e), a Committee member suggested that the definition of "farmers market" be reviewed. It was suggested that it be further defined as "as gathering of two or more vendors." Staff noted that in KAR 14-11-1, the history section should include KSA 2009 Supp. 41-210. A Committee member noted that the economic impact statement for KAR 14-11-4 was misleading in that it stated that there would be a minimal increase in revenue in question three and that there was no economic impact noted in question four. Staff suggested that the history section be amended to include KSA 41-1127. A Committee member expressed concern that the fees and license requirements were too high in KAR 14-11-22. Ms. Byrne stated that these fees were set by the Legislature and were included in the statute. In KAR 14-23-8, staff noted there is an error in the history section and KSA 2009 Supp 41a03 needs to be changed.

The Chairperson recognized Rebecca Rice to speak in opposition to the proposed rules and regulations noticed for hearing by the ABC. (Attachment 1). Ms. Rice stated that she was not included in working group and has not had time to review these rules and regulations in depth. She requested the agency withdraw the regulations and meet with the industry to work together to develop a compromise.

Thomas Britt Nichols was recognized by the Chairperson to speak in opposition to these proposed rules and regulations (Attachment 2). Mr. Nichols stated only two of the 18 Kansas wineries were consulted about these proposed rules and regulations. No notification of the meeting or of the public hearing was given. These rules and regulations will have a substantial effect on the Kansas wine industry.

The Committee had many concerns about the rules and regulations. It was suggested that the Legislature might need to become involved to amend the statute. The Chairperson recommended that the agency appear before the Committee again on June 29, 2010. She recommended the agency schedule a meeting with the Kansas winery members and interested parties to address the concerns brought to the attention of the Committee before coming back in June.

The Chairperson stated that the next meeting of the Committee would be June 29, 2010. The meeting was adjourned at 10:00 a.m.

## Committee Comments on Proposed Rules and Regulations

**Kansas Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning amount of fees; and department lands and waters: hunting, furharvesting, and discharge of firearms. After discussion, the Committee had no comment, but wants to thank the agency for being responsive to the concerns of members of the Committee.

**Kansas Board of Regents.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility to take GED test. After discussion, the Committee had no comment.

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions (Net Metering); utility requirements pursuant to the act; tariff requirements; reporting requirements; and renewable energy credit program. After discussion, the Committee had the following comments.

KAR 82-17-1. In subsections (d), (e), and (i), the word "is" should be included after "and."

KAR 82-17-2. In subsection (b), the Committee is concerned about what is meant by the phrase "general terms and conditions" and suggests that it be clarified.

KAR 82-17-3. The Committee is concerned that the agency will be relying on the tariff which is more of a guideline rather than rules and regulations which would have the force and effect of law.

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general requirements relating to pleadings and other papers. After discussion, the Committee had no comment.

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions (Electric Utility Renewable Energy Standards), renewable energy standards and report, administrative penalties, retail revenue requirement, certification of renewable energy resources, and renewable energy credit program. After discussion, the Committee had the following comment.

KAR 82-16-2. In paragraph (b)(6), the Committee suggests clarification to the word "constructed" perhaps by amending it by adding the word "completely" before it.

**Kansas Board of Emergency Medical Services.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education; continuing education approval for long-term providers; and first responder course approval. After discussion, the Committee had no comment.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning adoption by reference (milk for manufacturing purposes); and adoption by reference (Grade A pasteurized milk). After discussion, the Committee had the following comment.

KAR 4-7-716. In subsection (a)(5), the Committee asks the agency to consider the adoption of the 18<sup>th</sup> edition of the "Official Methods of Analysis of AOAC International."

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning bulk pesticide storage and handling of pesticides, definitions; quantities of bulk pesticide; location, design, and construction requirements of a bulk pesticide storage facility; secondary containment for bulk pesticide storage; requirements for mixing and loading pads for bulk pesticides; requirements for bulk pesticide containers and appurtenances; discharge, recovery, and reporting requirements; submission of diagrams, plans, and specifications; bulk pesticide storage facility inspection and maintenance requirements; site closure and discontinuation of operation; penalty for noncompliance with pesticide containment; change in owner or operator of bulk pesticide storage facility, reporting requirements; and revocation. After discussion, the Committee had the following comments.

KAR 4-13-25d. In subsection (b)(1), the Committee wonders whether the requirements of this subsection apply to dry pesticides. If it does apply to both liquid and dry pesticides, the Committee suggests it be clarified to show which requirements apply to each type of pesticide. In addition, the Committee is unclear as to what constitutes "any other rigid material" and believes an explanation in the rule and regulation would be useful. Further, the Committee asks for a comparison of subsections (b) and (g) since it appears they may be in conflict.

KAR 4-13-25j. In subsection (b), the Committee suggests the agency consider the addition of "potential violation" to be consistent with the other portions of this regulation.

Economic Impact Statement. The Committee questions the statement included in the Economic Impact Statement that the changes are not mandated by federal law.

**Kansas Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning containers of cereal malt beverage, statement of alcohol content required; definitions; registration of employees, salesperson permits; licensed warehouses; opened containers of domestic table wine or domestic fortified wine on the licensed premises; retail sales and deliveries; farm winery or farm winery outlet licensee prohibited from warehousing domestic table wine or domestic fortified wine for consumers; domestic table wine and domestic fortified wine rationing; prohibited statements and restrictions in the advertising of domestic table wine and domestic fortified wine; public display of domestic table wine or domestic fortified wine; farm wineries and farm winery outlets selling at retail, marking prices, price or inventory control tags, shelf markings; special order shipping, license requirements; special order shipping; bona fide farmers' market sales permit; licensee of farm winery also licensed as manufacturer; label approval required; domestic table wine and domestic fortified wine, Kansas product requirement; sales to minors prohibited; record retention, reporting requirements; imposition of penalties for violations; storage of liquor, removal from club premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; extension of premises; storage of liquor, removal from club premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; extension of premises; storage of liquor, removal from drinking establishment premises; extension of premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; applications, documents required; events, filings, notice, prohibitions; purchase of alcoholic liquor, requirements and restrictions; removal of

liquor from event premises prohibited, boundary requirement; and revocations. After discussion, the Committee had the following comment.

General Comment. The Committee recognizes some of the issues raised by concerned parties at its hearing on these rules and regulations. The Committee requests that personnel from the agency meet with these concerned parties in an attempt to alleviate controversial issues with the rules and regulations. The Committee requests that the interested parties return to the Committee with a report on June 29, 2010.

Prepared by Judy Glasgow  
Edited by Corey Carnahan

Approved by Committee on:

June 29, 2010

(Date)



JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
COMMITTEE GUEST LIST

DATE: May 4, 2010

NAME	REPRESENTING
Andrew Schulte	Corporation Commission
Sean Munn	CAPITOL STRATEGIST
Chris Tymeson	KDWP
Berend Koops	Hein Law Firm
TOM DAY	KCC
Theresa Mal Schenck	KBOR
Crystal Puduberg	KBOR
Michael Wegner	KCC
Michael Schmitt	KCC
Matt Spurgin	KCC
Tom DeBaur	KCC
Gay Pausky	KCC
Jane Hamer	KCC
ROBERT GLASS	KCC
Andrew Fry	KCC
Elene Larson	KCC
Pat Reimer	KCC
Chris Helmer	BETMS





## Raney Gilliland

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**From:** Rebecca Rice [rebecca@rebeccarice.com]  
**Sent:** Wednesday, May 05, 2010 7:41 AM  
**To:** Raney Gilliland  
**Subject:** Rules and Regs Committee  
**Attachments:** Rules\_one doc.pdf

Hi Raney:

I ran out of time before I could finish my comments on the extremely flawed ABC proposed regs. I am now running late for committee and don't actually know protocol for it anyway. If you want to forward these comments or print them for the committee, that would be great. If not, if you would tell them that I forwarded detailed but incomplete comments to you that are all negative in nature I would appreciate it.

ABC did not consult the industry – to my knowledge or at least I wasn't included in the notification – of the final proposed rules and regs and did not seek our input. For the first time that I can remember, the Attorney General did not seek comment from the industry as to the legality of these proposed regs. This is the first opportunity we have been given to review the regs. We were not notified by ABC that this hearing or the public hearing had been scheduled. Consequently, I assume everyone is scrambling – as I am – to put together some critique for this first opportunity to be heard.

Thank you for your help. If I need to do something else in addition to providing these to you, please let me know.

Rebecca

Joint Committee on Administrative  
Rules and Regulations  
May 4-5, 2010  
Attachment 1

**14-6-4. Labels on Containers of beer and cereal malt beverage;**

**statement of alcohol content required.** ~~(a) Each original package of beer and cereal malt beverage offered for sale in this state shall bear a label setting forth in plain and legible print in the English language, and in the manner permitted by federal laws and regulations with respect to the labeling of beer:~~

~~(1) The word "beer" or "ale" or the name listed in subsection (c) of K.S.A. 1989 Supp. 41-102;~~

~~(2) The number of fluid ounces contained therein;~~

~~(3) The name of the beer or cereal malt beverage manufacturer or importer. If the name of the importer on the label and on the federal, approved label is not the same as the supplier wanting to post the brand or item, a letter of authority or other documentation from the importer shall be submitted;~~

~~(4) a statement that the contents contain no more than 3.2% alcohol by weight, except that any kind or brand of cereal malt beverage that contains less than 1/2 of 1% of alcohol by volume, may show a statement that the contents contain less than 0.5% alcohol by volume; and~~

~~(5) any additional information required by other laws and regulations.~~

~~(b) Prior to the shipment of any beer into the state, each label shall be~~

~~submitted in duplicate to the director, accompanied by a federal label approval form when applicable.~~ (Authorized by K.S.A. 41-211; implementing K.S.A. 41-211; and K.S.A. 41-706; effective Jan. 1, 1966; amended May 1, 1985; amended Oct. 1, 1988; amended Aug. 6, 1990; amended P-\_\_\_\_\_.)

**14-11-1. Definitions.** As used in this article and the liquor control act, unless the context clearly requires otherwise, the following terms shall have the meanings specified in this regulation:

(a) "Bonded wine premises" means a facility registered under the internal revenue code, 26 U.S.C. chapter 51, for the production, blending, cellar treatment, storage, bottling, or packing of wine.

(b) "Calendar year" means the period of time from January 1 through the following December 31.

(c) "Domestic fortified wine" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(d) "Domestic table wine" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(e) "Farmers' market" means a regularly scheduled gathering of vendors, the primary purpose of which is to sell produce and other agricultural products directly to consumers.

(f) "Farm winery" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(g) "Farm winery outlet" means a facility owned by the owner of a farm winery that is licensed by the director to manufacture, store, and sell the same brands of domestic table wine and domestic fortified wine as those of the farm winery.

(h) "Federal basic wine manufacturing permit" means a permit issued under the federal alcohol administration act, 27 U.S.C. chapter 8, to a bonded wine premises to produce wine.

(i) "Manufacturer" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(j) "Standard case" means a package of original containers consisting of a total of 9,000 milliliters of wine of one brand or a combination of brands.

(k) "Wine" has the meaning provided by K.S.A. 41-102, and amendments thereto.

(l) "Winery" has the meaning provided by K.S.A. 41-350, and amendments thereto. (Authorized by K.S.A. 2009 Supp. 41-350; implementing K.S.A. 2009 Supp. 41-308a; effective P-\_\_\_\_\_.)

This appears to be an inaccurate definition. I am aware of only one federal permit that is required to manufacture wine. The sentence is also inaccurate even if two federal permits are required.

The two statutes cited as giving permission for this regulation are KSA 41-333 and 41-308a. KSA 41-333 is the general salespersons permit statute. K.S.A. 41-308a is the Farm Winery statute.

**14-11-4. Registration of employees; salesperson permits.** (a) The licensee of each farm winery and farm winery outlet shall notify the director within five days after each employee begins work and upon each renewal of the license. The notification shall be submitted upon forms provided by the director.

This administration's current employee registration form allows an outlet manager to submit names. No regulation is necessary for this policy and it is a policy that the Department has used and isn't using currently. So, a new policy and new forms for no particular reason?

(b) Each person engaged in the sale of domestic table wine or domestic fortified wine on the premises of a farm winery or farm winery outlet, or the taking or soliciting of orders for the sale of domestic table wine or domestic fortified wine on behalf of a farm winery or farm winery outlet, shall obtain a salesperson's permit as required by K.S.A. 41-333 and amendments thereto. Each salesperson shall provide that person's permit for inspection upon request by the director or any agent or employee of the director or secretary. (Authorized by K.S.A. 41-210; implementing K.S.A. 2009 Supp. 41-308a and K.S.A. 41-333; effective P-\_\_\_\_\_.)

To what degree does the agency intend to take this regulation? When I was a partner in a farm winery, my partners and I had family, friends, chambers, "solicit" business for us. By codifying this type of rigidity, this administration is ensuring that the next administration does not have the flexibility that this administration enjoyed for 7.5 years. And it appears to require a nonsensical result. Licensees can not control the actions of people who do not work for them. This contemplates that they can. At the very least the regulation should require that the person must be an agent working at the request and direction of the licensee.

No other licensee is required to obtain a salesman's permit for every person "engaged" in the sale of alcoholic liquor. After 20 years of a different and consistent interpretation across various administrations, ABC has now decided that farm wineries are subject to the salesman permit statute AND that the requirement should be more strictly enforced against farm wineries than any other licensee.

Previous administrations have followed the general rule that only employees directly involved in sales not on the licensed premises AND substantially involved in that activity (selling off site) are required to obtain a salesman's permit.

This regulation will have a significant affect on who can be employed by a farm winery. For example, unless a wife or child is also an owner, they can not work or be employed in any floor sales (or off site) capacity if they have an interest, "direct or indirect", in the farm winery. (K.S.A. 41-341; 41-334)

The definition of a salesperson [KSA 41-102(x)] is broader than the regulation. Assuming future administrations don't ignore the definition and believe to be bound to enforce the regulation using the statutory definition, any person with a "beneficial interest" in the winery who is not an owner can not work in basically any capacity other than manual laborer.

KSA 41-333 (salesman permit general statute) has not been amended since 1990. Now, suddenly, this administration "needs" a rule and regulation that is directly opposite previous administration's interpretation. Why request these regulations now after 7 years, other than to codify the agency's current policy and to bind future administrations to this overly strict and inaccurate interpretation?

1-6



**14-11-5. Licensed ~~farm winery's~~ warehouses ~~to be separate~~. Every**  
~~licensed~~ Each licensee of a farm winery or farm winery outlet shall provide, at the  
licensee's own expense, a warehouse area ~~to be~~ situated on and ~~to constitute~~  
constituting a part of the farm winery's or farm winery outlet's premises. The  
warehouse area shall be used solely ~~and exclusively~~ for the ~~purpose of~~ storage of  
domestic table wine and domestic fortified wine manufactured by that farm  
winery or farm winery outlet. Domestic table wine and domestic fortified wine  
shall not be stored in any other place, ~~except as provided in K.A.R. 14-5-4.~~  
(Authorized by K.S.A. 41-210; implementing K.S.A. 41-401; and K.S.A. 1983  
2009 Supp. 41-308a; effective May 1, 1984; amended P-\_\_\_\_\_.)

**14-11-11. Domestic table wine and domestic fortified wine rationing requirements.** (a) ~~The licensee of~~ each licensed farm winery that sells its wine to distributors in ~~the state of~~ Kansas shall ~~immediately~~ notify the director, upon discovery, if that winery does not have a sufficient supply of domestic table wine or domestic fortified wine, of any of the brands or kinds ~~which it~~ that the winery manufactures and distributes, to fill and ship all orders of each licensed distributor who possesses a franchise for that farm winery's brands in this state, in the sequence ~~and order~~ in which those purchase orders are received and within 45 calendar days from the date on ~~the~~ each purchase order ~~of the licensed distributor.~~

(b) ~~Such a~~ The licensee of the farm winery shall submit, for the approval or rejection of the director, an equitable plan of distribution of all domestic table wine or domestic fortified wine that is in short supply. The failure of ~~such a farm winery~~ the licensee to notify the director or to submit a plan of distribution shall be grounds for the suspension or revocation of the license of that farm winery or for the imposition of a ~~monetary~~ fine. (Authorized by K.S.A. 41-1118; implementing K.S.A. ~~1983-Supp.~~ 41-1101; effective May 1, 1984; amended P-  
\_\_\_\_\_.)

**14-11-14. Prohibited statements and restrictions in the advertising of domestic table wine and domestic fortified wine.** (a) Advertisements of domestic table wine and domestic fortified wine shall not contain any of the following:

(1) Any statement, design, device, or representation of, or relating to, any guaranty which that is false or likely to mislead the consumer;

(2) any statement, design, device, or representation which that the director concludes is obscene, indecent, undignified or in bad taste in composition or form;  
or

(3) any statement concerning the brand of alcoholic liquor that is inconsistent with any statement of the labeling;

(4) any statement of, or relating to, the price of domestic table wine, except a reference to the authorized discount on case sales, if the advertisement is directed to the public;

(5) any statement, design, or device representing that the use of any domestic table wine or domestic fortified wine has curative or therapeutic effects, if the statement is untrue specifically or tends to create a misleading impression;

(6) any statement, design, device, or representation relating to analysis, standards, or tests, irrespective of falsity, which is likely to mislead the consumer;

(7) any statement that the product is produced, blended, made, bottled, packed, or sold under or in accordance with any authorization, law, or regulation

This is a dramatic change in policy. The determination of "likely to mislead" is totally subjective vs. any false guaranty.  
ABC does not need additional work load as per their own representations but are increasing their responsibilities by requiring duplication of the federal process.  
TTB has an extensive process for label approval and there is no evidence that state laws can require substantially different labelling than is allowed by federal law. At a minimum, it can be assumed that approval by TTB will be considered prima facie

~~of any municipality, county, state, federal, or foreign government unless this statement is required or specifically authorized by the laws or regulations of that government. If a municipal, county, state or federal permit number is stated, this permit number shall not be accompanied by any additional statement relating to it;~~

~~(8) any statement that domestic table wine was manufactured in, or imported from, a place or country other than that of its actual origin, or that it was produced or processed by one who was not in fact the actual producer or processor;~~

~~(9) any statement, design, device or pictorial representation of or relating to, or capable of being construed as relating to, the armed forces of the United States, the American flag, any state flag or of any emblem, seal, insignia, or decoration associated with any flag or the armed forces of the United States. Advertisements shall not contain any statement, device, design, or pictorial representation of, or concerning, any flag, seal, coat of arms, crest, or other insignia that is likely to falsely lead the consumer to believe that the product has been endorsed, made, used by, produced for or under the supervision of, or in accordance with the specifications of, a government, organization, family, or individual with whom the flag, seal, coat of arms, crest, or insignia is associated;~~

~~(10) any statement, design, or device that, directly or by implication, concerns age or maturity of any brand or lot of domestic table wine unless a statement of age appears on the label of the advertised product. If a statement, design, or device concerning age or maturity is contained in any advertisement, it shall include, in direct conjunction with and with substantially equal conspicuousness, all parts of the statement concerning age and percentages, if any, which appear on the label.~~

(b) ~~Licensed~~ Any licensee of a farm wineries winery may advertise the farm winery's products by brand name. (Authorized by and implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-714; implementing K.S.A. 1984 Supp. 41-714; effective May 1, 1984; amended May 1, 1985; amended P-\_\_\_\_\_.)

Again, this proposed regulation is probably unnecessary. Case law requires that legislation adopted last takes precedent. A regulation that has not been updated to reflect current law will not be enforceable where it conflicts with the new law. However, if these regulations are adopted, the regulation should be drafted to eliminate the probability that the regulation will need to be changed each time the law changes. One version would be to remove "the" between "than" and "licensed" and strike everything until section b. All of the "locations" listed are "licensed" premises for the purpose of selling or sampling. For greater accuracy, the phrase "or permitted" could be inserted after "licensed".

Section b can be amended to also allow for future changes by striking everything after "agricultural shows". The statute already prohibits sales and sampling at those locations.

**14-11-15. Public display of domestic table wine ~~regulated~~ or domestic**

**fortified wine.** (a) Domestic table wine or domestic fortified wine intended for retail sale for purposes of consumption shall not be placed on public display in any place or at any other location than ~~the licensed premises of any of the~~ <sup>or permitted</sup> following:

~~(1) A farm winery;~~

~~(2) a farm winery outlet;~~

~~(3) a retail liquor store;~~

~~(4) a farmers' market for which a bona fide farmers' market sales permit~~

~~has been issued; or~~

~~(5) a special event approved and monitored by the director.~~

(b) ~~Licensed~~ Any farm wineries winery licensee may, if approved by the director upon receipt of a written request, display domestic table ~~wines~~ wine or domestic fortified wine at state or county fairs or other agricultural shows if all of the following conditions are met:

(1) No free samples are dispensed; and

(2) No retail sales are made at the fair or show; and

(3) No orders are taken for subsequent sales. (Authorized by K.S.A. 41-

211; implementing K.S.A. ~~1983~~ 2009 Supp. 41-714; effective May 1, 1984;

amended P-\_\_\_\_\_.)

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**14-11-16. Farm wineries ~~that sell~~ and farm winery outlets selling at retail; marking ~~price on original packages~~ prices; use of price or inventory control tags, ~~or both~~; shelf markings; and ~~price marking on point of sale materials~~. Any licensee of a Kansas farm wineries winery or farm winery outlet that sell sells domestic table wine and domestic fortified wine at retail may mark the retail selling price on the glass portion of the original container by ~~means of~~ using a crayon, grease pencil, or other similar method means. ~~Price marking on the container's label. Kansas ID stamps, or federal strip shall be prohibited.~~ Licensees may affix, to an original container, a price or inventory control paper or tag, or both. Luminous; or fluorescent paper, or any similar paper, may be used for price or inventory control tags.**

Farm winery and farm winery outlet licensees ~~having authorized~~ possessing any coolers or refrigerators may place on the ~~refrigerator~~ refrigerators or ~~cooler~~ coolers or on a nearby wall the list of cold items available and the price per item or case. In addition, licensees may place price information on point-of-sale materials ~~as authorized and defined by K.A.R. 14-10-1.~~ (Authorized by K.S.A. 41-210 and K.S.A. 41-211; implementing K.S.A. 41-210, K.S.A. 41-211, and K.S.A. 1983 2009 Supp. 41-714; effective May 1, 1984; amended P-  
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**14-11-22. Special order shipping; license requirements.** (a) Each owner or operator of a winery located either within this state or in another state wishing to ship wine directly to consumers in Kansas shall first obtain a special order shipping license from the secretary.

(b) Each application for a special order shipping license shall be submitted upon a form prescribed by the director, contain all information that the director deems necessary, and include the following:

- (1) A copy of the winery's federal basic wine manufacturing permit;
- (2) the appropriate license and registration fees; and
- (3) a bond, pursuant to K.S.A. 41-317(b) and amendments thereto.

(c) The application of any winery may be rejected by the director for any of the following reasons:

- (1) The application does not include all information that the director deems necessary.
- (2) The application does not include a copy of the winery's federal basic wine manufacturing permit.
- (3) The application does not include the appropriate license and registration fees.
- (4) The application does not include the required bond.



(5) The applicant or its owners, officers, agents, or managers have violated a provision of the liquor control act or these regulations relating to special order shipping.

(6) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(7) The applicant or its owners, officers, agents, or managers previously held a license issued under the liquor control act or the club and drinking establishment act, and when that license expired or was surrendered, the licensee was delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(d) The special order shipping license shall be valid for one year from the date of issuance. The owner or operator of a winery wishing to renew its special order shipping license shall submit its renewal application to the department at least 30 days before the expiration of its current license. (Authorized by and implementing K.S.A. 2009 Supp. 41-350; effective P-\_\_\_\_\_.)

**14-11-23. Special order shipping.** (a) No holder of a special order shipping license, and no owner, employee, or agent of the licensee, shall sell, give, or deliver wine to a person under 21 years of age.

(b) No licensee shall ship wine that was not manufactured by the licensee to a consumer in Kansas.

This limitation is not required by Kansas statute.

(c) For each shipment of wine to be sent directly to a consumer in Kansas, the licensee shall complete an invoice or sales slip containing all of the following information:

- (1) The name, address, and license number of the winery;
- (2) the name and address of the purchaser;
- (3) the date of the purchase;
- (4) the quantity and size of each brand of wine purchased;
- (5) the subtotal of the cost of the wine and the total price of the shipment, including enforcement tax and shipping charge;
- (6) a statement that the purchaser's age was verified and that the purchaser is at least 21 years of age; and
- (7) the type of photo identification examined and the internet-based age and identification service utilized.

(d) For each sale of wine to be shipped directly to a consumer in Kansas, the licensee shall collect gallonage tax as required by K.S.A. 41-501 and amendments thereto.

(e) Each licensee, other than a licensed Kansas farm winery or manufacturer, shall file gallonage tax returns and remit these taxes annually. These returns and remittances shall be submitted on or before the 15<sup>th</sup> day of January for the preceding calendar year. The gallonage tax returns shall be accompanied by an annual sales report, which shall be submitted on a form prescribed by the director and shall reflect all sales made under the license during that calendar year.

(f) Each licensee shall file enforcement tax returns and shall submit returns showing zero sales if no wine was sold under the license during that tax period.

(g) Each licensee of a Kansas farm winery or farm winery outlet that also holds a special order shipping license shall maintain separate records and file separate returns for its special order shipping license. The licensee of each farm winery or farm winery outlet shall remit these taxes separately from the taxes collected and reported under any other license or permit held by the farm winery or farm winery outlet.

(h) Each licensee shall maintain, on the licensed premises, a copy of the invoice or sales slip for each shipment of wine sent directly to a consumer in

Kansas for at least three years from the date of sale. The copies shall be made available for inspection by the director or any agent or employee of the director or secretary upon request. (Authorized by K.S.A. 41-210 and K.S.A. 2009 Supp. 41-350; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-350; effective P-  
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**14-11-24. Bona fide farmers' market sales permit.** A farm winery licensee may sell domestic table wine and domestic fortified wine manufactured by the licensee at a farmers' market only after obtaining a bona fide farmers' market sales permit from the director.

The licensee is not required to manufacture the wine at the farmers' market.

(a) Each farm winery licensee intending to sell wine at a farmers' market shall submit an application to the director for a bona fide farmers' market sales permit. Each application shall be submitted on a form prescribed by the director and shall include all information the director deems necessary. The application shall indicate the location of the farmers' market and the day of the week on which the applicant intends to sell wine.

(b) No bona fide farmers' market sales permit shall be issued if the local governing body has not approved the sale of alcoholic liquor at retail for the proposed location of the farmers' market.

(c) No bona fide farmers' market sales permit shall be issued for any farmers' market located on state property or within 200 feet of any school, college, or church.

(d) The director may reject an application for a bona fide farmers' market sales permit for either of the following reasons:

(1) The application does not include all information the director deems necessary.

s well as all other regulations that contain the same language should be limited to fees or fines levied in conjunction with the license. The legislature has routinely and regularly refused to adopt legislation - promoted by the department of revenue - to withhold state issued licenses. The legislature has recognized there are many reasons why money might be "owed" to the state and has refused to deny an individual the ability to earn a living simply because fees unrelated to that license are possibly in arrears.

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(2) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(e) Each bona fide farmers' market sales permit shall be valid for one year from the date of issuance. Each farm winery licensee wishing to renew its bona fide farmers' market sales permit shall submit its renewal application to the department at least 30 days before the expiration of its current permit.

(f) No holder of a bona fide farmers' market sales permit shall sell domestic table wine or domestic fortified wine at a farmers' market on any day of the week other than the day specified in the application or at any farmers' market other than the one specified in the application.

(g) Domestic table wine and domestic fortified wine shall be sold at a farmers' market only in the original, unopened container. The serving of samples of domestic table wine or domestic fortified wine at a farmers' market shall be prohibited.

(h) Any of the following may sell domestic table wine and domestic fortified wine at a farmers' market:

(1) The holder of a bona fide farmers' market sales permit;

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As stated previously, the salesperson requirement imposed by this regulation are not contemplated in the statutes. The law specifically allows a family member to sell at a farmers' market. If the legislature intended that only individuals holding salesperson's permits would be allowed to sell at the farmers' market, then the allowance language serves no purpose. Obviously, any person - family or not - who is a licensed salesperson can sell the wine at the farmers' market or at any other legal location.

The "allowance" by the legislature was obviously a loosening of the requirement to "register" an employee not to increase regulation of the winery. Additionally, the law is specific about "registering" employees. There is no contemplation by the legislature to require that virtually every individual involved in some capacity with the farm winery obtain a salesperson's permit.

This new "interpretation" also directly conflicts with K.S.A. 41-308a (g)(1), (2) and (3). These statutes allow wineries to employ individuals between the age of 18 and 21. This allowance is not uncommon for other liquor licensees. Yet no one under the age of 21 can obtain a salesman's permit. So, ABC is attempting to change the statute with these regulations.

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(2) a member of the permit holder's family who is at least 21 years of age;

or

(3) an employee of the permit holder who is at least 21 years of age and is reported to the director as an employee, on a form prescribed by the director.

(i) Each person selling domestic table wine and domestic fortified wine under a bona fide farmers' market sales permit shall possess a salesperson's permit as required by K.S.A. 41-333 and amendments thereto. The person shall produce the permit upon request by the director or any agent or employee of the director or secretary upon request.

(j) Each farm winery selling wine at a farmers' market shall display its bona fide farmers' market sales permit in a conspicuous place in its farmers' market sales area.

(k) For each sale of domestic table wine or domestic fortified wine at a farmers' market, the holder of a bona fide farmers' market sales permit shall collect liquor enforcement tax as required by K.S.A. 79-4101 and amendments thereto. The permittee shall file enforcement tax returns and remit payment according to the provisions of the liquor enforcement tax act, K.S.A. 79 4101 et seq. and amendments thereto.

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(l) Each licensee of a Kansas farm winery that also holds a bona fide farmers' market sales permit shall maintain separate records and file separate returns for its bona fide farmers' market sales permit. The farm winery licensee shall remit enforcement taxes collected from sales at the farmers' market separately from the taxes collected and reported under its farm winery license. (Authorized by K.S.A. 41-210, K.S.A. 2009 Supp. 41-351, and K.S.A. 79-4106; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-351; effective P-\_\_\_\_\_.)

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**14-11-25. Licensee of farm winery also licensed as manufacturer. (a)**

A farm winery licensee may request a license as a manufacturer by submitting an application to the director.

(b) Each application for a manufacturer's license shall be submitted upon forms prescribed by the director, shall contain all information the director deems necessary, and shall include the following:

(1) The appropriate license fee pursuant to K.S.A. 41-310(c), and amendments thereto;

(2) a bond pursuant to K.S.A. 41-317(b), and amendments thereto; and

(3) the registration fee pursuant to K.S.A. 41-317(a), and amendments thereto.

(c) The director may reject an application for a manufacturer's license for any of the following reasons:

(1) The application does not include all information the director deems necessary.

(2) The application does not contain the appropriate license fee, bond, or registration fee.

(3) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(d) Each farm winery licensee shall maintain separate storage facilities, production records, and sales records from those of the manufacturer.

(e) No alcoholic liquor or cereal malt beverage manufactured by the manufacturer shall be sold at or under any of the following:

- (1) The licensed premises of any farm winery;
- (2) the licensed premises of any farm winery outlet;
- (3) a bona fide farmers' market; or
- (4) any special order shipping license.

(f) No alcoholic liquor or cereal malt beverage manufactured by the manufacturer shall be displayed or sampled in any sales area or tasting area of the farm winery premises.

(g) Each farm winery licensee that also holds a manufacturer's license shall file separate gallonage tax returns for its manufacturer's license. The farm winery licensee shall remit gallonage taxes separately from the taxes reported under its manufacturer's license.

(h) Each farm winery licensee that also holds a manufacturer's license shall submit a monthly sales report with each manufacturer license's gallonage

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tax return. The report shall be submitted on a form prescribed by the director and shall reflect all sales made under the manufacturer's license during that month.

(i) Each farm winery licensee that also possesses a manufacturer's license shall be subject to the record retention and reporting requirements of both license types. (Authorized by K.S.A. 41-210 and K.S.A. 79-4106; implementing K.S.A. 41-211, K.S.A. 2009 Supp. 41-305, K.S.A. 2009 Supp. 41-317; effective P-  
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There is no statutory requirement (or allowance) for creating this duplication of effort. TTB has an extensive label approval process which is acknowledged in this proposed regulation so it is unclear why ABC wants to duplicate that process. Perhaps there is a reason for filing the labels with the TTB approval but even that seems an excessive use of clerk time to handle paper that isn't necessary. There is no reason to require the Director to review and approve the labels.

**14-11-26. Label approval required.** Before offering for sale in this state any domestic table wine or domestic fortified wine, a farm winery or farm winery outlet shall notify the director of each label of the domestic table wine or domestic fortified wine. The notification shall be provided in a form prescribed by the director and accompanied by a certificate of label approval from the federal tax and trade bureau for each label proposed for sale in this state. No domestic table wine or domestic fortified wine shall be sold in this state without approval of the label by the director. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211; effective P-\_\_\_\_\_.)

This is an extremely divisive issue within the farm winery industry. ABC has adopted a new policy, and is codifying that new policy with this regulation even as a new administration will take office a few short months after these regulations become final.

I do not believe there has been any change in the relevant portion of the statute since 1983 justifying this regulation.

#### 14-11-27. Domestic table wine and domestic fortified wine; Kansas

**product requirement.** (a) At least 60% of the products utilized in the manufacture of each bottle of domestic table wine and domestic fortified wine shall be grown in Kansas unless the director has authorized a different proportion pursuant to K.S.A. 41-308a(c), and amendments thereto.

(b) In order for the director to find that less than 60%, but more than 50%, of the products used in the manufacture of each bottle of domestic table wine and domestic fortified wine shall be grown in Kansas, the following factors shall be considered:

- (1) Acts of nature affecting the harvest of products used in the manufacture of domestic table wine and domestic fortified wine;
- (2) disease, blight, or fungus affecting the harvest of products used in the manufacture of domestic table wine and domestic fortified wine; and
- (3) pesticide drift or overspray from surrounding areas affecting the harvest of products used in the manufacture of domestic table wine and domestic fortified wine. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211, K.S.A. 2009 Supp. 41-308a; effective P-\_\_\_\_\_.)

Part (b) is designed to prevent future directors from utilizing their own judgment. The statute specifically leaves that judgment to the Director so the regulation may simply be unenforceable as it conflicts with the law.

The regulation is designed to limit not only future Director's judgment as to what qualifies for an exemption but also as to what percentage to allow.

This proposed regulation is a significant change in public policy and is not implementation of current statute but is a change in current statute by regulation. The result will be (hopefully unintended) that either: 1) substantially less wine will be sold by farm wineries; or 2) virtually no wine will be sold as Kansas (grape) wine (except perhaps for a few producers who claim to use only Kansas grapes). This regulation in essence establishes a ceiling, not a floor. For a Kansas winery to sell the maximum amount of product using the same amount of Kansas grapes in production, no more than 60% per bottle will be used.

Federal law requires that 75% of the product must be from Kansas product in order to be labelled as Kansas wine. So, if 50 - 60% of "each bottle" must be made from Kansas grown product and a winery wants to maximize production, then the majority of wine can not be sold as Kansas wine. There are not enough grapes grown in Kansas to accommodate the need. That presumes of course that ABC can enforce the requirement, which is highly questionable. And an unenforceable, limiting regulation leads to distrust, rumor, and general problems within any industry.

No other administration has interpreted this statute in this manner.

**14-11-28. Sales to minors prohibited.** No farm winery licensee, farm winery outlet licensee, holder of a special order shipping license, holder of a bona fide farmers' market sales permit, or any owner, employee, or agent of any these individuals shall sell, give, or deliver domestic table wine or domestic fortified wine to any person under 21 years of age. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211; effective P-\_\_\_\_\_.)

**14-11-29. Record retention; reporting requirements.** (a) Each farm winery licensee, farm winery outlet licensee, holder of a bona fide farmers' market sales permit, or holder of a special order shipping license shall maintain on the premises of the farm winery or farm winery outlet records of all sales made under the license or permit. These records shall be available for inspection by the director, any agent or employee of the director, or the secretary upon request.

(b) Each farm winery licensee shall submit a monthly sales report with each gallonage tax return. The report shall be submitted on a form prescribed by the director and shall reflect all sales made under any license or permit issued under the liquor control act and held by the farm winery licensee during that month. (Authorized by K.S.A. 41-210, K.S.A. 2009 Supp. 41-350, and K.S.A. 2009 Supp. 41-351; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-350; effective P-\_\_\_\_\_.)

**14-11-6. Opened containers of domestic table wine or domestic fortified wine on the licensed premises.** The licensee of a licensed farm winery or farm winery outlet that sells domestic table wine or domestic fortified wine at retail shall not permit the original package or container of any domestic table wine or domestic fortified wine to be opened in or on that portion of the licensed premises that is used for retail sales, except as needed for serving free samples. ~~The presence of any unsealed container or original package containing domestic table wine on the retail sales area of the licensed premises shall be considered as prima facie evidence of a violation of the act.~~ (Authorized by K.S.A. 41-210; implementing ~~1983~~ 2009 Supp. 41-308a; effective May 1, 1984; amended P-\_\_\_\_\_.)



**14-11-7. Retail sales and deliveries shall be made within licensed premises.** (a) Retail sales of domestic table wine and domestic fortified wine by a farm winery or farm winery outlet shall be made only on ~~and within~~ the licensed premises. Deliveries of domestic table wine and domestic fortified wine sold at retail by a farm winery or farm winery outlet shall be made only ~~within~~ on the licensed premises for ~~off-premise~~ consumption off the premises.

(b) Any farm winery may deliver domestic table wine and domestic fortified wine to either of the following:

(1) The licensed premises of any of the following:

(A) A club;

(B) a drinking establishment;

(C) a wine distributor; or

(D) a retailer; or

(2) the principal place of business of a caterer. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-210 and K.S.A. 1983 2009 Supp. 41-308a; effective May 1, 1984; amended P-\_\_\_\_\_.)

**14-11-9. Farm winery or farm winery outlet licensee prohibited from ~~acting as bailee of warehousing~~ domestic table wines wine or domestic fortified wine for ~~retail purchasers for delivery when sales are illegal~~ consumers. No licensed farm winery or farm winery outlet that sells domestic table wine or domestic fortified wine at retail shall take orders, or otherwise arrange sales of ~~domestic table~~ the wine, for ~~retail customers~~ consumers for the purpose of delivering the ~~domestic table~~ wine before the legal opening hour, ~~or~~ after the legal closing hour, or on any day when sales at retail are prohibited. (Authorized by K.S.A. 41-210; implementing K.S.A. ~~1983 Supp. 41-717~~ 2009 Supp. 41-712; effective May 1, 1984; amended P-\_\_\_\_\_.)**

**14-16-25. Imposition of penalties for violations.** (a) The director may revoke or suspend the license of any licensee for any violation of the liquor control act, the club and drinking establishment act, or any implementing regulation.

(b) In addition to or in lieu of any other civil or criminal penalty for any violation of the liquor control act, the club and drinking establishment act, or any implementing regulation, the director may order a civil fine not exceeding \$1,000 per violation.

(c) The director may order a penalty based upon the schedule specified in subsection (d). Penalties may vary from the schedule based on the presence of aggravating or mitigating circumstances.

(d) The department's "liquor fine and penalty schedule," dated July 1, 2009, is hereby adopted by reference. (Authorized by K.S.A. 41-210 and K.S.A. 41-2634; implementing K.S.A. 41-211, K.S.A. 2008 Supp. 41-328, K.S.A. 2008 Supp. 41-2611, and K.S.A. 41-2633a; effective P-\_\_\_\_\_.)

**14-19-27. Storage of liquor; removal from club premises prohibited.**

(a) Each ~~club~~ licensee shall store its liquor only ~~upon~~ on the licensed premises of the club unless ~~it~~ the licensee has received prior approval in writing from the director to do otherwise.

(b) Any licensee may store wine purchased by a customer only in the unopened original container on the licensed premises, pursuant to K.S.A. 41-2637 and amendments thereto. The licensee shall be responsible for the contents of each customer's wine storage area.

(c) The wine storage area shall be subject to immediate entry and inspection by any law enforcement officer or any officer or agent of the director. Each licensee shall maintain, on the licensed premises, a key or other means to access the contents of the wine storage area.

(d)(1) The licensee may allow a customer to have access to the customer's wine storage area. An agent or employee of the licensee shall accompany each customer to the customer's wine storage area.

(2) A receipt showing the quantity of each brand of wine purchased shall be maintained in each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee or its owner, employee, or agent shall mark the receipt showing the date of removal and the quantity of each brand removed.

~~(b) A club~~ (c) No licensee, and no owner, employee, or agent of the licensee, shall not make any sales of alcoholic liquor for consumption off the licensed premises. All No alcoholic liquor purchased on the club premises shall not be removed from the club premises, except in accordance with this regulation.

(f)(1) A licensee may permit its customers to remove partially consumed bottles of wine from the licensed premises, in accordance with K.S.A. 41-2653 and amendments thereto.

(2) If any customer wishes to remove from the licensed premises a partially consumed bottle of wine that had been stored in its original unopened container pursuant to K.S.A. 41-2637 and amendments thereto and this regulation the licensee or its employee shall provide the customer with a copy of the original receipt with a notation that the bottle was removed from the customer's wine storage area on that date. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2613, K.S.A. 2009 Supp. 41-2637, and K.S.A. 2009 Supp. 41-2653; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended P-\_\_\_\_\_.)

**14-19-38. Denial, revocation, or suspension of license upon request for hearing by governing body of city or county; request; evidence.** (a) The governing body of a city or county may request a hearing before the director to determine whether an application for licensure or renewal shall be denied or whether a license issued under the club and drinking establishment act shall be revoked or suspended.

(b) The request shall be submitted in writing by the governing body, on city or county letterhead, to the director and shall be accompanied by evidence that indicates reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license.

(c) The director shall review the evidence presented and determine whether reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license. The director shall notify the governing body of the date and time of the hearing, or denial of the request, in writing as soon as reasonably possible.

(d) The hearing and notices shall be in accordance with the Kansas administrative procedures act (KAPA). The director shall consider the evidence presented by the governing body and the licensee at the hearing and determine whether the license shall be denied, revoked, or suspended.

(e) Evidence to be considered in determining whether a license shall be denied, revoked, or suspended shall include the following:

(1) A crime of violence has occurred in, on, or about the premises, arising from conduct occurring within the licensed premises.

(2) The licensed premises and surrounding areas under relative control of the licensee constitute an abnormal and unreasonable drain on public resources to secure the safety of patrons, local residents, and businesses.

(3) The licensed premises, including surrounding areas under relative control of the licensee, constitute a threat to public health, safety, and welfare.

(4) The governing body has filed one or more nuisance actions against the licensee or the licensed premises.

(5) The governing body or licensee has taken all reasonable remedial steps regarding the situation.

(f) For purposes of this regulation, "crime of violence" shall include arson, murder, manslaughter, rape or sexual assault, armed robbery, assault, and battery, and an attempt to commit any of these crimes. (Authorized by and implementing K.S.A. 2009 Supp. 41-2651; effective P-\_\_\_\_\_.)

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**14-19-39. Extension of premises.** (a) A licensee may permanently or temporarily extend its licensed premises upon written approval by the director.

(b) A licensee shall request the director's approval to extend its licensed premises in writing at least 10 days before the proposed extension.

(c) Each request shall be accompanied by a diagram of the extended premises, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place.

(d) For a temporary extension, the request shall include the dates on which and times during which the premises would be extended. If the licensee does not own or lease the area to be included in the temporarily extended premises, the request shall also include written permission from the governing body, owner, or property manager to extend the licensed premises into that area.

(e) No premises shall be extended permanently into an area for which the licensee does not possess a valid lease or deed.

(f) The boundary of any premises extended beyond the interior of a building shall be marked by a physical barrier.

(g) The licensee shall maintain, on the licensed premises, a copy of the diagram showing the extended premises. The copy shall be available for



inspection upon request by any law enforcement officer or any officer or agent of the director.

(h) The licensee shall maintain, on the licensed premises, a copy of the director's written approval to extend the licensed premises, which shall be deemed to be an essential part of the premises license. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(i) No licensee, and no owner, employee, or agent of the licensee, shall allow the serving or consumption of alcoholic liquor on extended premises that have not been approved by the director. (Authorized by and implementing K.S.A. 41-2621; effective P-\_\_\_\_\_.)

**14-20-29. Storage of liquor; removal from club premises prohibited.**

(a) Each ~~club~~ licensee shall store its liquor only ~~upon~~ on the licensed premises of the club unless ~~it~~ the licensee has received prior approval in writing from the director to do otherwise.

(b) Any licensee may store wine purchased by a customer only in the unopened original container on the licensed premises, pursuant to K.S.A. 41-2641 and amendments thereto. The licensee shall be responsible for the contents of each customer's wine storage area.

(c) The wine storage area shall be subject to immediate entry and inspection by any law enforcement officer or any officer or agent of the director. Each licensee shall maintain, on the licensed premises, a key or other means to access the contents of the wine storage area.

(d)(1) The licensee may allow a customer to have access to the customer's wine storage area. An agent or employee of the licensee shall accompany each customer to the customer's wine storage area.

(2) A receipt showing the quantity of each brand of wine purchased shall be maintained in each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee or its owner, employee, or agent shall mark the receipt showing the date of removal and the quantity of each brand removed.

~~(b) A club~~ (e) No licensee, and no owner, employee, or agent of the licensee, shall not make any sales of alcoholic liquor for consumption off the licensed premises. All No alcoholic liquor purchased on the club premises shall not be removed from the club premises, except in accordance with this regulation.

(f)(1) A licensee may permit its customers to remove partially consumed bottles of wine from the licensed premises, in accordance with K.S.A. 41-2653 and amendments thereto.

(2) If any customer wishes to remove from the licensed premises a partially consumed bottle of wine that had been stored in its original unopened container pursuant to K.S.A. 41-2641 and amendments thereto and this regulation, the licensee or its employee shall provide the customer with a copy of the original receipt with a notation that the bottle was removed from the customer's wine storage area on that date. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2613, K.S.A. 2009 Supp. 41-2641, and K.S.A. 2009 Supp. 41-2653; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended P-\_\_\_\_\_.)

**14-23-10. Removal of liquor from event premises prohibited;**

**boundary requirement.** A (a) No permit holder shall not sell alcoholic liquor for removal from or consumption off of the licensed premises, except that liquor may be removed to a drinking establishment that has extended its premises into the special event area in accordance with K.S.A. 41-2645 and amendments thereto.

(b) The boundary of any premises covered by a temporary permit shall be marked by a physical barrier. (Authorized by K.S.A. 41-2634 ~~as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2604, L. 1987, Ch. 182, Sec. 91 and K.S.A. 2008 Supp. 41-2645, as amended by L. 2009, ch. 114, sec. 10;~~ effective, T-88-22, July 1, 1987; effective May 1, 1988; amended P-  
\_\_\_\_\_.)

**14-23-2. Applications; documents required.** (a) Each application for a temporary permit shall be ~~made~~ submitted upon forms ~~prepared~~ furnished by the director and shall contain all information the director deems necessary. Any application ~~which~~ that does not contain all required information may be returned to the applicant ~~without the application being considered on its merits.~~

(b) Each application shall be accompanied by the permit fee in the form of a certified check or cashier's check drawn on a Kansas bank, United States post office money order, or cash. Personal or business checks shall not be accepted.

(c) Each application shall be accompanied by a diagram of the premises covered by the temporary permit. The diagram shall clearly show the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing L. 1987, Ch. 182, Sec. 91 K.S.A. 2008 Supp. 41-2645, as amended by L. 2009, ch. 114, sec. 10; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended P-\_\_\_\_\_.)

**14-23-5. Events; filings; notice; prohibitions.** (a) Each temporary permit holder shall be allowed to offer for sale, sell, and serve alcoholic liquor for consumption at an event in accordance with the club and drinking establishment act and these regulations. Each temporary permit holder shall be allowed to sell wine in the unopened, original container at the state fair.

(b) ~~The~~ Each temporary permit holder shall prominently display at each event upon a poster or other device located at the entrance to the permitted premises all of the following:

(1) The temporary permit; ~~and~~

(2) the name of the agent of the organization who is in charge of the event;

(3) a diagram of the premises covered by the temporary permit, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor will take place; and

(4) for a special event, as defined by K.S.A. 41-719 and amendments thereto, the business names of all drinking establishments that have elected to extend their licensed premises into the event area.

(c) A temporary permit holder shall not perform any of the following:

(1) Conduct an event upon licensed premises;

(2) conduct an event ~~with a duration of~~ lasting longer than three days;

(3) deny access to an event to any law enforcement officer;

(4) operate an event between the hours of 2:00 A.M. and 9:00 A.M.;

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(5) sell cereal malt beverages at an event;

(6) make any sales of alcoholic liquor at an event for consumption off the permitted premises, except as provided in this regulation; or

(7) refill any original container with alcoholic liquor or any other substance.

(d)(1) An individual permit holder shall be present at all times during an event or designate another individual who will be responsible for the conduct of the event in the permit holder's absence.

(2) An organization that is a permit holder shall designate one or more agents who shall be present at all times during an event and who ~~will~~ shall be responsible for the conduct of the event. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85, L. 1987, Ch. 182, Sec. 91; implementing K.S.A. 41-718 as amended by L. 1987, Ch. 182, Sec. 53, 41-2613 as amended by L. 1987, Ch. 182, Sec. 68, L. 1987, Ch. 182, Sec. 91 K.S.A. 2009 Supp. 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended P-

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**14-23-8. Purchase of alcoholic liquor; requirements and restrictions.**

(a) Each temporary permit holder shall purchase alcoholic liquor only from a retailer or a farm winery.

(b) Temporary permit holders shall not receive delivery of alcoholic liquor from a retailer or a farm winery.

(c) Temporary permit holders shall not purchase alcoholic liquor from any retail liquor licensee who does not possess a federal wholesaler's basic permit and who does not have on display at the retail establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." Temporary permit holders shall not warehouse any liquor on the premises of any retail liquor store premises or farm winery. All liquor purchased on any one day shall be picked up at the retail liquor store or farm winery on that same day.

(d) Each temporary permit holder, when making alcoholic liquor purchases from a retailer or farm winery, shall obtain and keep, for a period of not less than at least one year from the date of purchase, a sales slip that contains the following information:

- (1) The date of purchase;
- (2) the name and address of the retailer or farm winery;
- (3) the name and address of the permit holder as it appears on the permit;
- (4) the brand, size, and amount of all alcoholic liquor purchased; and



(5) the subtotal of the cost of the alcoholic liquor and the total cost of the order, including enforcement tax. (Authorized by K.S.A. 41-210 as amended by ~~L. 1987, Ch. 182, Sec. 10, K.S.A. 41-211, K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85, 79 41a03 as amended by L. 1987, Ch. 182, Sec. 119, L. 1987, Ch. 182, Sec. 91, and K.S.A. 2009 Supp. 41-2645; implementing K.S.A. 41-301, 41-307 as amended by L. 1987, Ch. 182, Sec. 16, 41-308 amended by L. 1987, Ch. 182, Sec. 18; L. 1987, Ch. 182, Sec. 91 K.S.A. 2009 Supp. 41a03 and K.S.A. 2009 Supp. 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended P-\_\_\_\_\_.)~~

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(785) 458 2930  
law@a5i5.com

Law Offices of  
**THOS. BRITT NICHOLS**

514 Lincoln Avenue  
Wamego, Kansas 66547

Thank you for the opportunity to address the committee on the topic of the substantial number of regulatory and policy changes proposed by Alcoholic Beverage Control (ABC) before you. **If ABC's proposals are not controversial, they should be.** ABC's proposals **virtually assures substantial litigation** against Kansas testing the constitutionality and enforceability of ABC's proposals (***coupled with the potential for the imposition of costs and attorneys fees against the State***) and promises certain **loss of liquor tax revenues**. The proposals also are needlessly likely to increase ABC's costs of administration.

**Kansas' wine industry as managed by ABC underperforms** In the past 10 years, Kansas has fallen from early regional leadership and participant in the national expansion of wine as an industry and as a backbone to tourism development to last place in our region by every useful measure from acreage, # of vineyards, # of wineries, gallonage produced, sales, shipments and tax revenues. Current Kansas wine industry numbers are so insignificant that the Department of Agriculture's official grape and wine industry marketing board does not even bother tracking any statistics. ABC has managed Kansas' wine industry throughout that period of time. Kansas is now a solid last place.

**Why Now?** ABC apparently did not feel any need for the proposed regulations during the past 8 years but now, as the current administration comes to its end, feels like these regulations will be useful for ABC during its final 3 or 4 months. In the most recent 7 legislative sessions, ABC either did not bring these items to your attention in the form of proposed legislation for public consideration and debate or brought forward legislation that was rejected by you but is trying to put policies in place via regulation that the legislature has clearly rejected.

**Some of ABC's proposals are devoid of statutory authority or are clearly precluded by federal legislation and other provisions suffer from serious constitutional defects.**

**Taking Without Just Compensation** The imposition of ABC's proposal would instantly convert previously legal inventory into unsaleable product thereby violating the Constitution's provisions against unjust taking of property without compensation (a form of condemnation recognized by the US Supreme Court as a compensible "regulatory taking"). Even the act creating Prohibition at the national level gave manufacturers one full year to liquidate existing stocks. The proposal contains no similar provision.

**Compelled Speech Violation** The proposal violates the First Amendment's "Compelled Speech Doctrine" by requiring labeling wine as a product of Kansas. The license plate cases establish that states cannot compel political or commercial speech.

**Federal Pre-emption and Ultra-vires problems** Creates, without any statutory authority, a domestic wine label review and approval process out of whole cloth and creates murky criteria for approval or rejection. At the same time, makes no similar requirements on any of the out-of-state wine sellers operating in Kansas. TTB has exclusive labeling authority over alcohol.

**ABC's proposals represent a substantial departure from history and are directly opposed to several prior liquor law interpretations.** Throughout the 25 years or so since

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*Attachment 2*

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the adoption of the farm winery act and through several different directors, no one has felt the need to create new or additional rules and regulations interpreting native fruit content manufacturing requirements (the "60-40 Rule"). In the post-Granholm world, ABC's efforts to reinforce native fruit content requirements singles Kansas out as the only state attempting to enforce native fruit content wine manufacturing rules. All of the other states that had such rules in the first place have either abandoned enforcement or have lost in court on constitutional grounds. As our neighboring states have abandoned native fruit content rules, their wine industries have grown. As ABC has aggressively moves toward enforcement of native fruit content requirements, Kansas' wine industry – as well as tax revenues – will not grow any faster or any better (in terms of quality) than Kansas's production. No other state has imposed such severe or unwise limitations.

**Commerce Clause Violation** You are being invited by ABC to violate the Constitution's Commerce Clause. Enforcement of the native fruit content requirements and related labeling requirements is an illegal effort at market protectionism. As the Supreme Court continually rules: such efforts face "a virtually per se rule of invalidity." In reaction to Granholm, several states have repealed or simply dropped native fruit content requirements. Others have repealed such requirements. In each instance where statutes like Kansas' 60-40 Rule have been tested in court, the states have lost. Millions of dollars in attorneys fees have been assessed for such constitutional violations.

**State-created Demand/Supply Crisis** ABC licenses the production of more than 1.5 million gallons of wine in Kansas but is now mandating that only around 50,000 gallons of grapes will be available for wine production creating an artificial supply crisis in the wine industry.

**Lost Tax Revenues Caused By ABC** As manufactures of Kansas's wine are forced to limit wine production to Kansas produced grapes, any and all revenues that might be created by permitting lawful use of out-of-sate sourced fruits and grapes will be lost. A substantial amount of the current wine production is based on out of state fruit or grapes. As noted, all of Kansas' neighbors have abandoned or repealed native fruit requirements while growing production volumes and, interestingly enough, also growing in-state grape production.

In the interest of brevity, the foregoing is not submitted as a point-by-point review of ABC's proposal but, rather, is an over-arching rejoinder to some of the more glaring problems with ABC's proposal. The proposal needs to be rejected or returned for substantial rework. I would, as I have before, offer to visit with ABC to help resolve some of their difficulties.

**Thank you for your time, patience and consideration.**

  
Britt Nichols

**Britt Nichols** (Wamego, KS) is a practicing attorney (with 30+ years of experience), former Kansas legislator, former Assistant Attorney General for the State of Kansas, several-time law professor, Kansas Farm Winery owner and operator, entrepreneur with substantial practice and experience in rural economic development and a 2005 National Public Sector Financial Management Fellow who is within 3 classes of obtaining a Masters of Public Administration.