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Senate Federal & State Affairs Committee
SB 379

Testimony of
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Director, Alcoholic Beverage Control

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Good morning Mr. Chairman and members of the committee. I thank you for the opportunity to present neutral testimony on SB 379.

ABC does not oppose the concept of this bill. However we do have a concern about the bill, as drafted. The bill includes a definition of "production" that could allow a farm winery to distill spirits and brew beer in addition to the fermenting of wine. ABC has two issues with that definition:

- (1) It is confusing and potentially expands the operations of a farm winery well beyond the original intent; and
- (2) The term "production" is not used in K.S.A. 41-308a, therefore the presence of the definition in this section is unnecessary. If the definition is to be included in the liquor control act at all, it should be included in the definition section, K.S.A. 41-102. However, that term is used in the act in reference to subpoenas and the "production" of documents, so the inclusion of this definition in the act at all is problematic.

ABC also feels the inclusion of the labeling requirement in new subsection (d) is redundant. No alcoholic liquor may be registered for sale in Kansas unless it meets federal labeling laws anyway. ABC therefore proposes the bill be amended to strike new subsections (c) and (d) on page 2 of the bill, lines 22-29.

ABC, however, supports **any** amendment to address problems with the Kansas product requirement for farm wineries. The 60% Kansas product and associated labeling requirements of K.S.A. 41-308a(c) have long been problematic for both licensees and regulators. Federal regulations require that, to place a statement concerning appellation of origin, like "Kansas" on the label, at least 75% of the products used in the manufacture of the wine be grown in that appellation of origin. Many of our wineries have had labels rejected by the federal regulators because the wine contains at least 60% Kansas product, but not 75%.

Attorney General Derek Schmidt, in opinion #2011-21, found that K.S.A. 41-308a(c) is "impliedly preempted by federal regulation as it relates to the percentage of grape variety required to label a wine with Kansas as an appellation of origin." So at least the labeling requirement of K.S.A. 41-308a(c) is unenforceable. Even wineries that can comply with the Kansas product requirement are often prevented from complying with the labeling requirement of K.S.A. 41-308a(c) by federal law.

The original intent of the farm winery statutes was to grow agri-tourism and promote the grape-growing industry. However, the number of farm wineries has increased to the point that Kansas grape growers are challenged to grow enough produce for the farm wineries to meet the 60% requirement. Further, weather, pesticide over-spray, and natural disasters frequently impact the grape crop in Kansas, making it even harder for a farm winery to comply.

K.S.A. 41-308a **must** be amended to cure the conflict between state law and federal regulations. Either: (1) strike the 60% Kansas product requirement and associated labeling requirement, as this bill does; (2) increase the Kansas product requirement to 75%, to match federal regulations; or (3) leave the 60% Kansas product requirement but strike the labeling requirement. Each of these options could have both a positive and negative impact on Kansas.

- (1) With the removal of any Kansas product requirement, wineries could manufacture wine from any source of commercially or privately available fruit or juice, resulting in an increase in yearly production and the number of Kansas farm wineries. However, there would be little incentive to purchase locally grown produce and the grape growers could suffer a loss of revenue.
- (2) With the increase of the Kansas product requirement to 75%, farm wineries could comply with both state law and federal regulations, but production would decrease, as the amount of grapes and other Kansas fruits available is insufficient to maintain current production at a higher percentage of Kansas products. The brands and varieties of wine manufactured in Kansas would be limited by the types of fruit available in Kansas. Grape growers would have a higher demand for their product, however, and an incentive to expand their vineyards.
- (3) With the removal of only the labeling requirement, Kansas wineries could comply with both the 60% Kansas product requirement and federal labeling regulations. However, the issue of availability of Kansas produce is still a factor, limiting growth in the industry.

The farm winery industry is split on the issue of requiring **any** percentage of Kansas products: some feel 60% is appropriate; some feel "Kansas wine" should be made 100% from Kansas product; and others feel the Kansas product requirement restricts the growth of their business and impedes commerce. Previous attempts to amend this statute to address the Kansas product requirement have failed because the industry cannot or will not agree on a solution. The legislature, though, is the only body that can resolve this conflict.

ABC therefore urges the committee to carefully consider the options presented and the proposed amendment offered by ABC before making any final determination on this bill.