

K • A • N • S • A • S
WINE & SPIRITS
WHOLESALE ASSOCIATION

February 22, 2012

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan
RE: SB 381

The Kansas Wine and spirits Wholesalers Association opposes SB 381 authorizing sales of cereal malt beverage by a retailer licensed under the Kansas liquor control act. In 1937 the Legislature enacted the law that categorizes beer with an alcoholic content of 3.2% or less alcohol by weight as cereal malt beverage (CMB). The law authorized the sale of CMB for both on- and off-premise consumption throughout the state and set the drinking age of CMB at eighteen. The original legal age set at 18 in 1937 was increased to 21 in 1985. In an effort to reduce the incidence of drunk driving, federal legislation was passed that would end the flow of dollars to the states for highway construction unless the states raised their drinking age for alcohol to 21. Kansas, like every other state did, in fact, raise the drinking age for 3.2 beer to 21, phasing it in one year at a time and by July 1, 1987, the change was complete.

In 1990 the Kansas Legislature enacted the nonalcoholic malt beverage act 41-342 *et. seq* which provides that "Nonalcoholic malt beverages [a beverage containing less than .5% alcohol by volume obtained by alcohol fermentation of an infusion or coction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages] may be sold by retailers licensed pursuant to the liquor control act, by clubs and drinking establishments licensed pursuant to the club and drinking establishment act by retailers licensed pursuant to article 27 of chapter 41 of the Kansas Statutes Annotated, as an additional privilege of the license issued in accordance therewith." History: L. 1990, ch. 178, § 4; May 17.

In 2006 the Legislature enacted the Flavored Malt Beverage Act. " 'Flavored malt beverage' means a malt beverage which meets the formula definitions as set forth in department of the treasury, alcohol and tobacco tax and trade bureau regulations published January 3, 2005, at 27 CFR Parts 7 and 25. [And,] ... any malt product which meets the formula definitions ..., regarding flavored malt beverages shall have imposed upon it the tax rate for malt beverages as set forth in K.S.A. 41-501, and amendments thereto, for beer and cereal malt beverage. [And,] ..., any malt product which meets the definitions ... regarding flavored malt beverages shall be deemed in compliance with the labeling requirements of this state when its labeling meets the requirements of 27 CFR Parts 7 and 25 published January 3, 2005." These products are less than 3.2% by wt. and labeled less than 4% by volume, an equivalent.

This product category has its own history and represents, based on gallonage receipts, 19% of the malt beverage market. **Just as we do not believe that those selling CMB should assimilate retail store category products, neither do we believe retail stores should invade the CMB licensee's market.** Thank you for your attention to these matters.

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Attachment 3
2-22-12