

Approved: 3-30-12
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 22, 2012, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Dennis Hodgins, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the Committee:

Senator Steineger
John MacDonald – Boulevard Brewing
Senator Allen Schmidt
Jackie McClaskey, Assistant Secretary of Agriculture
Jeff Sollo, Grace Hill Winery
Bob DesRuisseaux, Kansas Grape Growers and Winemakers Association
Patrick Guilfoyle, City of DeSoto
Greg Shipe, Davenport Orchard & Vineyard
Tuck Duncan, KS Wine & Spirits Wholesalers Association
Phil Bradley, KS Viticulture & Farm Winery Association
Doug Jorgensen, Alcoholic Beverage Control

Others attending:

See attached list.

SB 381-Alcoholic beverages; authorizing sales of cereal malt beverage by a retailer licensed under the Kansas liquor control act

Chairman Brungardt opened the hearing on **SB 381**.

Staff provided an overview of the bill.

Senator Chris Steineger spoke in favor of the bill. (Attachment 1) The bill would allow liquor stores to sell light beer.

John R. McDonald, Founder and President, Boulevard Brewing Company, Kansas City, Missouri, appeared in support of the bill. (Attachment 2) Although Boulevard Beer is distributed in 21 states, the state of Kansas currently accounts for 24% of total sales. It is planned to create a full-flavored, lower alcohol product, below 3.2% in strength – which would be classified in Kansas as a cereal malt beverage.

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Under current state law, this new product could not be sold in any on-or-off-premise account in the state of Kansas licensed to sell full-strength product, known as “beer”, (i.e. no restaurant, no liquor store, no stadium, racetrack, concert venue, etc.) that possesses a “beer” license would presently be able to legally sell such a lower alcohol product, despite the seemingly clear benefits of moderation that such a product would represent.

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, testified as an opponent to the bill. (Attachment 3) This product category has its own history and represents, based on gallonage receipts, 19% of the malt beverage market, and we believe that those selling CMB should assimilate retail store category products; neither do we believe retail stores should invade the CMB licensee’s market.

Doug Jorgensen, Director, Alcoholic Beverage Control, presented neutral testimony and concerns on the bill. (Attachment 4) ABC recommended amended language if the bill moves forward. A new section would be required to amend KSA 41-103 to exempt sales of cereal malt beverage by a retailer from this provision. This would allow a retailer to sell cereal malt beverage, which was the original intent of the bill, without compromising the integrity of the cereal malt beverage act, and without creating potential unintended consequences.

Chairman Brungardt closed the hearing on **SB 381**

SB 390– Allowing farm wineries to sell wine by the bottle at special events and sell wine produced by farm wineries for consumption on licensed premises

Chairman Brungardt opened the hearing on **SB 390**

Staff provided an overview of the bill.

Jackie McClaskey, Assistant Secretary, Kansas Department of Agriculture, appeared in support of the bill. (Attachment 5) The bill would allow those farm wineries, on their premises only, to sell glasses of their own wine. Farm wineries are currently able to apply for a drinking establishment license that would essentially allow them to operate a bar on premise. This is an attempt to streamline the licensing procedure while allowing customers to purchase a single glass of wine at a time in order to sample the farm winery’s products. Department of Ag remains neutral on the provisions contained in Section 1 that would drop to 10 percent the amount of Kansas product contained in a farm winery’s manufacturing operations.

Senator Allen Schmidt, spoke in favor of the bill. (Attachment 6) The introduction of this legislation is to interject some ideas and initiatives to help expand the grape growing industry in Kansas. Senator Schmidt proposes:

- Review and expand regulations or procedures that will provide protection for vineyards from direct and indirect chemical sprays that destroy grapes and vines
- Allow start-up wineries (for Kansas residents) to obtain a waiver from the 60% Kansas grape rule for at least the first 3 years or until the vineyard is established or drop that requirement completely
- Promote and incentivize the initiation and expansion of grape growing in Kansas

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Jeff Sollo, Grace Hill Winery, Whitewater, Kansas, testified as a proponent on the bill. ([Attachment 7](#)) Mr. Sollo asked to rescind the 60/40 rule, to enable the wine industry to create jobs and grow the local economy.

Bob DesRuisseaux, Kansas Grape Growers and Winemakers Association, (KGGWA) appeared in favor of the bill. ([Attachment 8](#)) KGGWA support the bill to reduce or eliminate the Kansas Fruit requirement in KSA 41-308a(c) also known as 60/40 rule. Current federal labeling law requires that a wine labeled a Kansas wine must be made from 75% Kansas grapes. Wine not complying with the 75% must be labeled American wine. KGGWA also supports the provisions contained in the bill allowing for the sale of wine for consumption on premises and at special events under the oversight of the ABC in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments.

Patrick J. Guilfoyle, City Administrator, DeSoto, Kansas, testified in favor of the bill. ([Attachment 9](#)) The City of DeSoto is asking the committee to change the law in order to allow Kansas wineries to sell their unopened, sealed bottles at wine tasting events licensed by the State.

Written testimony was provided by Dr. John Brewer, President, Wyldewood Cellars Winery, Mulvane, Kansas, in support of the bill. ([Attachment 10](#))

Brett Schmidt, Independence, Kansas, provided written testimony in support of the bill. ([Attachment 11](#))

Greg Shipe, Davenport Orchards, Vineyard and Winery, Eudora, Kansas, appeared as an opponent on the bill. ([Attachment 12](#)) The Kansas Farm Winery statute is an incubator bill for farmers and other interested entrepreneurs, and provides benefits for Kansas agriculture and the small business of winemaking.

The argument of matching the Federal Labeling requirement with the 60% Kansas grown product is misleading. The 60% Kansas agriculturally grown product is the minimum requirement to hold a Kansas Farm Winery License; the Federal labeling regulation has to do with what is in the bottle with several options that can be used. The 75% has to do with Appellation of Origin; if a winery wants to identify on the label that it is a Kansas wine, then at least 75% of the dominant grapes grown have to be from Kansas, which is more than the minimum requirement to be a Kansas Farm Winery. If the wine had the minimum of 60% in the bottle, then it could not be labeled Kansas Table Wine, but could be labeled American Table Wine and still meet the minimum requirement to be a Kansas Farm Winery product.

Philip Bradley, Kansas Viticulture & Farm Winery Association, spoke in opposition of the bill. ([Attachment 13](#)) Kansas Viticulture & Farm Winery Association has requested the proposed change to the bill by striking "60%" and changing to "10%" on page 2, line 24.

Michelle Meyer, President, Kansas Viticulture & Farm Winery Association, provided written testimony in opposition of the bill. ([Attachment 14](#))

Written testimony was provided by Richard Hird, Wild Hare Vineyard & Winery, LLC, Baldwin, Kansas, in opposition of the bill. ([Attachment 15](#))

Justin Johnson, Golden Road Estate Vineyard, Linwood, Kansas, provided written testimony in opposition

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of the bill. ([Attachment 16](#))

Written testimony was provided by Lori Henderson, Crooked Post Vineyard, Valley Falls, Kansas, in opposition of the bill. ([Attachment 17](#))

Josh Bryant, Cellar Master, Davenport Orchard, Vineyard and Winery, Eudora, Kansas, provided written testimony in opposition of the bill. ([Attachment 18](#))

Written testimony was provided by Les Meyer, Holy-Field Vineyard & Winery, Basehor, Kansas, in opposition of the bill. ([Attachment 19](#))

George Hoff, Stone Pillar Vineyard & Winery, Olathe, Kansas, provided written testimony in opposition of the bill. ([Attachment 20](#))

Written testimony was provided by Greg and Rebecca Hunn, On the Edge Vineyard, Erie, Kansas, in opposition of the bill. ([Attachment 21](#))

Tony and Kay Kugler, Kugler's Vineyard, Lawrence, Kansas, provided written testimony as opponents of the bill. ([Attachment 22](#))

Written testimony was provided by Phillip Vaughn, Honey Creek Vineyard, Tonganoxie, Kansas, in opposition of the bill. ([Attachment 23](#))

Dr. Tom Miesse, Lawrence, Kansas, provided written testimony as an opponent of the bill. ([Attachment 24](#))

Written testimony was provided by Pep Selvan, BlueJacket Crossing Vineyard & Winery, Eudora, Kansas, in opposition of the bill. ([Attachment 25](#))

Doug Frost, MS MW, Prairie Village, Kansas, provided written testimony in opposition of the bill. ([Attachment 26](#))

Written testimony was provided by Kieth Hand, Free State Vineyards, Lawrence, Kansas, as an opponent of the bill. ([Attachment 27](#))

Terry Robbins, Oskaloosa, Kansas, provided written testimony in opposition of the bill. ([Attachment 28](#))

Written testimony was provided by Dan and Amy Watowa, Cobblestone Vineyard, Atchison, Kansas, in opposition of the bill. ([Attachment 29](#))

Richard Mason, President & CEO, RSMason Enterprises, Inc., Edwardsville, Kansas, provided written testimony in opposition of the bill. ([Attachment 30](#))

Written testimony was provided by Ross Jory, Shawnee County, in opposition of the bill. ([Attachment 31](#))

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Doug Jorgensen, Director, Alcoholic Beverage Control, appeared neutral on the bill. (Attachment 32) The bill reduces the percentage of Kansas produce required to be utilized in the manufacture of domestic wine from 60% to 10%. That was not part of the discussions between the ABC and the Department of Agriculture. ABC does have the Attorney General's opinion #2011-21; and found that KSA 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." Therefore, the labeling requirement of KSA 41-308a(c) is unenforceable and should be removed. If the bill passes with the 10% Kansas product requirement, the committee must amend the bill to strike the labeling requirement, located on page 2, lines 27-30.

Chairman Brungardt closed the hearings on **SB 390**.

The next meeting is scheduled for March 1, 2012. The meeting was adjourned at 11:35 a.m.