

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 21, 2012, in Room 144-S of the Capitol.

All members were present except:

Senator Steve Morris - excused

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 Allen Schmidt
JoAnn Kuhlmann, Eagle Creek Grapes
Jeff Sollo, Grace Hill Winery
Bob DesRuisseaux, Kansas Grape Growers and Winemakers Association
Richard Shank, representing Rosewood Winery of Great Bend
Michelle Meyer, Kansas Viticulture & Farm Winery Association
Richard Hird, Wild Hare Vineyard & Winery
Justin Johnson, Golden Road Estate Vineyard
Greg Shipe, Davenport Orchard & Vineyard
Lori Henderson, Crooked Post Vineyard
Jost Bryant, Davenport Orchard & Vineyard & Winery
Tuck Duncan, KS Wine & Spirits Wholesalers Association
Phil Bradley, KS Viticulture & Farm Winery Association
Doug Jorgensen, Alcoholic Beverage Control

Others attending:

See attached list.

Introduction of Bills

Representative Louis Ruiz requested a Senate Concurrent Resolution introduction outlining the State of Kansas principles regarding immigration reform policies.

Senator Owens moved that this request should be introduced as a committee resolution. Senator Reitz seconded the motion. The motion carried.

Senator Tim Owens requested a conceptual bill introduction to provide a medical exemption from restrictions on tinted windows.

Senator Owens moved that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

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The minutes of the Federal and State Committee at 10:30 a.m. on February 21, 2012, in Room 144-S of the Capitol.

SB 379—Farm winery licenses; delete requirement products be grown in Kansas; other changes

Chairman Brungardt opened the hearing on **SB 379**.

Staff provided an overview of the bill; and a proposed balloon requested by Representative Bethell was presented. ([Attachment 1](#))

The Chairman called attention to testimony provided by Representative Bob Bethell. ([Attachment 2](#)) The amendment would propose a 10/90 proportion and require the Kansas Department of Agriculture to estimate one year in advance the availability of a crop to meet this 10% requirement. In case the availability of product was not sufficient it would also allow a winery to verify that attempts were made and the base was not available to them, before a product could be made and labeled with less than 10% Kansas base.

Senator Allen Schmidt, spoke in favor of the bill. ([Attachment 3](#)) 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

Jo Ann Kuhlmann, Eagle Creek Grapes, Olpe, Kansas, testified in favor of the bill. ([Attachment 4](#)) Ms. Kuhlmann supports reducing/eliminating the fruit requirements found in KSA 41-308a.

Jeff Sollo, Grace Hill Winery, Whitewater, Kansas, testified as proponent on the bill. ([Attachment 5](#)) Mr. Sollo asked to rescind 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 6](#)) KGGWA supports 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.

Richard Shank, representing Rosewood Winery of Great Bend, spoke in favor of the bill. ([Attachment 7](#)) Mr. Shank stated that the State cannot tie an industry to an environment without a resource; a drought, a freeze, or a storm, could devastate the winery without a way to sustain them. The 60/40 rule limits the winery business in a way other industries are not.

Laura Tyler, Wheat State Wine Co., LLC, Winfield, Kansas, submitted written testimony in support of the bill. ([Attachment 8](#))

Brooke Balderson and Noah Wright, Oz Winery, Wamego, Kansas, provided written testimony in support

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of the bill. (Attachment 9)

Written testimony was provided by Leland (Mike) Gerhardt, Pome On The Range Orchards and Winery, Williamsburg, Kansas, in support of the bill. (Attachment 10)

Dr. John Brewer, President, Wyldewood Cellars Winery, Mulvane, Kansas, provided written testimony in support of the bill. (Attachment 11)

Written testimony was provided by Dennis Reynolds, Somerset Ridge Vineyard & Winery, Paola, Kansas, in support of the bill. (Attachment 12)

Brett Schmidt, Independence, Kansas, provided written testimony in support of the bill. (Attachment 13)

Michelle Meyer, President, Kansas Viticulture & Farm Winery Association, appeared as an opponent on the bill. (Attachment 14) Removing lines 15 -21 from the Farm Winery bill removes any requirement for wineries to use Kansas grown grapes in Kansas wine. The Farm Winery bill was first and foremost an agriculture bill designed for farmers/grape growers to make a value added product (wine) from their vineyards; the bill was not designed to “make more wine.”

Richard Hird, Wild Hare Vineyard & Winery, LLC, Baldwin, Kansas, testified in opposition to the bill. (Attachment 15) The removal of the 60% rule would create a disincentive to plant additional vineyard acreage in Kansas, and would weaken the connection between Kansas Farm Wineries and Kansas agriculture. That connection is vital to creating products which are unique to Kansas.

Justin Johnson, Golden Road Estate Vineyard, Linwood, Kansas, spoke in opposition of the bill. (Attachment 16) If the 60% rule is removed from law, Mr. Johnson is not sure if his business can continue to exist as a vineyard and open a winery, as some capital is to come from the first few years of harvest and selling to current wineries.

Greg Shipe, Davenport Orchards, Vineyard and Winery, Eudora, Kansas, appeared as an opponent on the bill. (Attachment 17) 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, than 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.

Josh Bryant, Cellar Master, Davenport Orchard & Vineyard & Winery, Linwood, Kansas, testified as an opponent to the bill. (Attachment 18) A winery’s focus is not only about making wine, the purpose of a winery is to show through every glass of wine, the connection to the very farm in which the grapes were

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grown. By lowering the restriction on the grapes that have to be grown in Kansas, weakens that connection to the land.

Lori Henderson, Crooked Post Vineyard, Valley Falls, Kansas, testified in opposition of the bill. (Attachment 19) If current and future Kansas wineries wish to create wine from products obtained out of state, then they should hold a Manufacturing License. Manufacturing brings income and growth into the state and that is very important; for those Kansas wineries that wish to remain at least 60% or higher in content, they should be able to use the Farm Winery License with the benefits of sampling, selling, self-distributing and being of farmers market.

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, appeared in opposition of the bill. (Attachment 20) The Kansas Wine & Spirits Wholesalers Association opposed the proposed definition on page 2, line 22 of the bill; the definition is very broad that allows the manufacture of all beverage alcohol, and not limited to a farm winery as we know it. This would completely break down the three-tier system and effectively eliminate the tied-house provisions of Kansas law. In order to avoid conflicts with the case *Grahom v. Hearld*, 544 U.S. 460 (2005), 342 F.3d 517, affirmed; 358 F.3d 223, reversed and remanded, there needs to be some minimum percentage of Kansas product involved in farm winery operations in order to justify the privilege that comes with the farm winery license; otherwise, if there is no distinction between the in-state and out-of-state producer, then all the privileges afforded to the in-state winery must be extended to the out-of-state supplier.

Philip Bradley, Kansas Viticulture & Farm Winery Association, spoke in opposition of the bill. (Attachment 21) Kansas Viticulture & Farm Winery Association opposes the bill for two reasons: 1)because it eliminates the 60% minimum requirement for Kansas product and therefore eliminates the connection that serves as incentive to the plant and grow acres of fruit; and 2) the new definition of production.

Written testimony was provided by Les Meyer, Holy-Field Vineyard & Winery, Basehor, Kansas, in opposition of the bill. (Attachment 22)

George Hoff, Stone Pillar Vineyard & Winery, Olathe, Kansas, provided written testimony in opposition of the bill. (Attachment 23)

Written testimony was provided by Greg and Rebecca Hunn, On the Edge Vineyard, Erie, Kansas, in opposition of the bill. (Attachment 24)

Tony and Kay Kugler, Kugler's Vineyard, Lawrence, Kansas, provided written testimony as opponents of the bill. (Attachment 25)

Written testimony was provided by Phillip Vaughn, Honey Creek Vineyard, Tonganoxie, Kansas, in opposition of the bill. (Attachment 26)

Dr. Tom Miesse, Lawrence, Kansas, provided written testimony as an opponent of the bill. (Attachment 27)

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Written testimony was provided by Pep Selvan, BlueJacket Crossing Vineyard & Winery, Eudora, Kansas, in opposition of the bill. ([Attachment 28](#))

Doug Frost, MS MW, Prairie Village, Kansas, provided written testimony in opposition of the bill. ([Attachment 29](#))

Written testimony was provided by Kieth Hand, Free State Vineyards, Lawrence, Kansas, as an opponent of the bill. ([Attachment 30](#))

Terry Robbins, Oskaloosa, Kansas, provided written testimony in opposition of the bill. ([Attachment 31](#))

Written testimony was provided by Daniel Ward, Slough Creek Vineyard, Oskaloosa, Kansas, in opposition of the bill. ([Attachment 32](#))

Doug Jorgensen, Director, Alcoholic Beverage Control, testified as neutral on the bill. ([Attachment 33](#)) The Director appeared to present neutral testimony on the bill with concerns on; the definition of production, and the inclusion of the labeling requirement in new subsection (d). ABC proposes the bill be amended to strike new subsections c and d on page 2 of the bill, lines 22-29. ABC supports any amendment to address problems with the Kansas product requirement for farm wineries.

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.

The Committee was provided the Wine Labeling Regulations in the Code of Federal Regulations (CFR) from the Department of the Treasury. ([Attachment 34](#))

Chairman Brungardt closed the hearing on **SB 379**.

The next meeting is scheduled for February 22, 2012. The meeting was adjourned at 11:59 a.m.