

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

To: Senate Federal and State Affairs Committee
From: R.E. "Tuck" Duncan, General Counsel
RE: SB 276

The Kansas Wine & Spirits Wholesalers Association **opposes** the provisions contained in SB276 that would remove the requirement for prosecution that a licensee "knowingly" hired a disqualified employee. The Alcoholic Beverage Control wants to eliminate what is known as the element of "scienter" and sanction licensees even if they had no knowledge that a person was unqualified to be an employee. "Scienter" is a legal term that refers to intent or knowledge of wrongdoing. This means that an offending party has knowledge of the "wrongness" of an act. To be fined or suspended a licensee should have "knowingly" done wrong. Therefore, please do not adopt the amendments on lines 12 and 17 of page 1 of the bill.

The agency will propose an amendment that creates a defense to this new approach. Rather than creating a defense, which envisions a charge and hearing, the law should establish the guidelines which create the "safe harbor" before any prosecution would take place. This should be in statute and not enacted by regulation. Such provisions might include that the employer: (a) makes inquiry of the prospective employee, (b) has the employee provide a criminal record screening to the extent allowable by law, and (c) updates those records once every three (3) years. Therefore, if the employer complies with these procedures and can demonstrate to the agency they have done so, no administrative action would then be initiated.

The bill also requires licensees to conduct background investigations on prospective employees prior to hiring. The investigations would be required to comply with rules and regulations established by the Secretary of Revenue. The fiscal note says there is no impact to the agency, but there will be a considerable impact to the industry. KBI name-based record checks are \$20.00 per individual. Fingerprint-based record checks are \$35.00 per individual.
http://www.kansas.gov/kbi/criminalhistory/request_public.shtml?B1=Do+a+Public+Record+Check

Thank you for your attention to and consideration of this matter.