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WINE & SPIRITS
WHOLESALE ASSOCIATION

February 21, 2012

To: Senate Committee on Federal and State Affairs

From: R.E. "Tuck" Duncan

RE: SB 379

The Kansas Wine and spirits Wholesalers Association opposes the new production definition set forth in SB 379. The proposed definition is at page 2, line 22 of the bill and states as follows:

(c) "Production" means to use non-alcoholic juice or other physical product to distill, rectify, ferment, brew, make, mix, concoct or process any substance capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes blending, bottling and the preparation for sale within a licensed physical structured winery operation within the state of Kansas boundaries.

This is a very broad definition 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.

We also believe that in order to avoid conflicts with the case *Granholm v. Heald*, 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 privileges that come 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.

Granholm states: [S]tate laws violate the Commerce Clause if they mandate "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." "While States could ban domestic liquor production, *Mugler v. Kansas*, 123 U.S. 623,... States were required to regulate domestic and imported liquor on equal terms."

No domestic content makes these licenses nothing more than manufacturers (for which we already have a licensee). These two items need to be corrected before the bill is considered further.

Thank you for your attention to these matters.

Sn Fed & State
Attachment 20
2-21-12