

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:47 a.m. on Thursday, March 17, 2005, in Room 231-N of the Capitol.

All members were present except:
Senator Roger Reitz (E)

Committee staff present:
Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Phil Bradley, Kansas Licensed Beverage Association (written)
Norm Jennings, Smoky Hill Vineyards & Winery (written)
Tuck Duncan, Kansas Wine & Spirits Wholesalers Association
Janna Dunbar, Kansas Department of Commerce (written)
Neal Whitaker, Kansas Beer Wholesalers Association

Others attending:
See attached list.

Chairman Brungardt announced that the Chairman of the Committee had requested a bill introduction. Senator Brownlee called upon Steve Weatherford and Steve Kelly from the Kansas Department of Commerce to make the formal bill request. Mr. Weatherford explained they were requesting a bill that would modify the enabling legislation for the Kansas Development Finance Authority to allow them to issue bonds for a facility such as a hall of fame, museum, or tourist destination of national significance. He said that this request directly relates to an opportunity that Kansas has to potentially become the home of the NASCAR Hall of Fame.

Senator Brownlee made a motion to introduce the proposed bill, seconded by Senator Gilstrap, and the motion carried.

Chairman Brungardt announced next week's agenda, and noted additional written testimony had been submitted to the committee for review by Representative Janice Pauls in opposition to **SB 285** which had a hearing on March 15. Copies of the fiscal note on **SB 297** had also been distributed to committee members. (Attachment 1)

The Chair stated that there had been an objection by one member of the committee that perhaps procedure was not followed properly, and she had questioned whether there was a quorum to take a vote on the Cesar Chavez resolution, **SCR 1608**, at the March 15 meeting. The Chairman stated he viewed it as a ceremonial idea that the committee should send out. He stated he would entertain a motion to do or redo the committee action on that resolution.

Senator Vratil made a motion to recommend favorably **SCR 1608** which acknowledges Cesar Chavez, seconded by Senator Gilstrap. The Chairman called for a voice vote, and announced the ayes carried the motion. Division was called by a show of hands, and the motion failed on a three to three count.

SB 297 - Sales of Kansas beer and wine by the drink on the state fairgrounds during the Kansas State Fair

Chairman Brungardt opened the hearing on **SB 297**, and asked the Revisor to review the bill. The Revisor explained this bill contained the two sections that the committee struck from **SB 274** sponsored by the Kansas Licensed Beverage Association. The bill would authorize consumption on the State Fairgrounds of wine manufactured by farm wineries and beer brewed by microbreweries during the State Fair, and that beer or wine would be sold under a temporary permit for a period of no longer than three days, which is current law.

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Phil Bradley, Kansas Licensed Beverage Association, submitted written testimony in support of **SB 297**. (Attachment 2)

Norm Jennings, on behalf of Smoky Hill Vineyards & Winery and Kansas Grape Growers & Wine Makers Association, submitted written testimony in favor of **SB 297**. (Attachment 3)

Tuck Duncan, Kansas' Wine & Spirits Wholesalers Association, spoke in support of **SB 297**. He explained there had been a meeting of 98% of the interest groups in the office of the Director of Alcoholic Beverage Control, relating to some earlier testimony about this provision whereas some concerns were expressed that if it was limited to just these two products, that it might create some type of discriminatory allegation. The recommendation of the groups meeting, including the Departments of Commerce and Agriculture, was to suggest the committee make this a temporary permit as allowed for under current law which then would be non-discriminatory in that manner. This would allow for the sale of any beverage alcohol products. He clarified that by limiting it to just Kansas products would create a discriminatory problem because of the increase of litigation that has taken place in other states. Mr. Duncan said he thought what the State Fair would do would probably enter into an agreement with a vendor limiting the products that the vendor would allow to be sold. (Attachment 4)

The Revisor stated she had talked to the Chairman about amending this proposed bill, and the way the amendment was drafted it would talk only about wine and beer. She asked if there was a problem with the way the amendment was drafted. Mr. Duncan responded he did not have a problem with that because it did not say Kansas wine and beer, and Kansas already had those sub-categories and it is not an equal protection violation. Kansas has separate beer licenses, distributor licenses, spirits licenses, wine licenses, etc. He said as long as the same classification classes are treated equally, he thought that was agreeable. Chairman Brungardt asked the Revisor to distribute copies of the drafted balloon amendment for the committee to review and consider later. He explained this left it to the discretion of the State Fair Board for further limiting it to the products the Board chooses for exposition to Kansans. (Attachment 5)

Senator Brownlee commented that she thought it was to showcase Kansas products, and maybe the designation of Kansas products should be left in the bill. Chairman Brungardt responded that the problem with that is it runs a fowl of the commerce clause in treating domestic products and other state products unfairly. There are court cases pending on that topic.

Janna Dunbar submitted written testimony in support of **SB 297**. (Attachment 6)

Neal Whitaker, Kansas Beer Wholesalers Association, testified in support of **SB 297**. He stated that the Association was asking that **SB 297** be amended to allow the sale of all alcoholic beverages legal for sale in Kansas at the Kansas State Fair. He said the State Fair Board can contract with whomever they choose and can certainly limit the type of alcohol that the contractor is allowed to sell. (Attachment 7)

Chairman Brungardt closed the hearing on **SB 297**.

Final Action on:

SB 267 - Farm wineries, number of outlets and gallons of wine; liquor retailers, sampling

Chairman Brungardt called for discussion and final action on **SB 267**. He explained the bill related to farm wineries increasing the number of outlets, the number of gallons of wine permissible for production, and allowing sampling in retail stores.

Committee discussion followed relating to the sampling in liquor stores, and that the wording was confusing whether the committee was dealing with farm wineries or liquor stores, plus the idea that sampling should be limited in some way as it was a major policy change.

Chairman Brungardt commented that he had a concern also regarding the sampling in liquor stores, and he had requested the Revisor to draft a balloon amendment that speaks to domestic wine instead of alcoholic liquor. He explained that would limit the intent, but it also raises the other question of why reserve that

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privilege for only domestic products. The Supreme Court is going to decide this matter in the Spring so it may not be something to spend a lot of time debating. The Chair commented if the committee's intent is to try and make available to people the opportunity to taste an ounce of Kansas wine, thereby possibly inducing them to buy the product. He stated it would be a nice promotional effort for Kansas products, and could see no great harm in doing that type of marketing promotion. The committee needs to make that decision, but it definitely needs to be limited in some way.

Committee discussion continued regarding Kansas wines being sold in Kansas retail liquor stores, and possibly limiting to only the Kansas domestic wine products for sampling. The committee discussion indicated there was not much support for any sampling in retail stores.

Chairman Brungardt directed the committee's attention to the provision of the bill relating to the number of outlets that Kansas farm wineries have on their own which are licensed and available to the public. He explained the bill calls for an increase from two to five winery outlet licenses on page 2, line 34. Discussion followed concerning the various types of outlets that are used to broaden the exposure of the Kansas products and make those products more available to people. Concerns were expressed that this bill would be giving farm wineries five outlets where liquor stores can only have one, and the health related issues when expanding alcohol consumption. Question was asked in regard to expanding the outlets from two to five how those would be subject to compliance checks and how would they be compared to liquor store requirements. Mr. Groneman responded that the outlets would be monitored in the same ways that liquor stores are currently monitored as well as the way existing outlets are presently monitored.

Senator Brownlee made a motion to amend SB 267 on page 2, line 34, from two outlets to three outlets. The motion was seconded by Senator Barnett. The Chairman called for discussion. Senator Gilstrap asked how long the number of outlets had been at two, and the response was from the inception which was in the 1980's. The Chair called for the vote on the motion. The motion carried.

Chairman Brungardt called the committee's attention to the issue of capacity, and that testimony had been received from the wineries that there will be issues of capacity for several companies of bumping up against and exceeding the current ceiling on production capacity.

Senator Barnett made a motion to amend page 3, line 7, by changing the capacity from 50,000 to 100,000 gallons per year. The motion was seconded by Senator Brownlee, and the motion carried.

The Revisor noted there was one other provision the committee had discussed possibly amending which was on page 2, lines 23 and 24, and allows the farm winery licensee to serve at special events, monitored and regulated by the Division of Alcoholic Beverage Control. She said there was some question on the part of the Division as to clarifying what that provision meant. Mr. Groneman explained the question was in regard to how it was written concerning how it was to be monitored and whether the agent had to be at an actual event for the entire duration of the event. He stated that ABC would monitor the events the same as is currently done as long as the Division knew what the intent was, and the Division can draft the rules and regulations to cover. Chairman Brungardt stated the Division would administer as they usually do in accordance to the law, so there would be no language change required.

Senator Vratil made a motion to amend SB 267 by deleting Sections 1, 3 and 4 from the bill because those sections are no longer necessary with the exclusion of the retail liquor stores from this bill.; also to amend on page 2, Section 2, line 23, insert the phrase "free of charge" after the word serving; on page 2, line 34, to strike the word five and insert the word "three"; and on page 3, line 7, to strike the numeral 250,000 and insert the numeral "100,000," and to authorize the Revisor to make any other conforming changes such as those in Section 5. The motion was seconded by Senator Barnett, and the motion carried.

Senator Vratil made a motion to recommend SB 267 favorably as amended, seconded by Senator Barnett, and the motion carried.

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Senator Vratil made a motion to recommend SCR 1608 favorably for passage. Chairman Brungardt stated that the Majority Leader's office had advised that it would be necessary for the resolution to be amended in order for reconsideration.

Senator Vratil made a motion to reconsider the committee's previous action, and to amend SCR 1608 in line 35 following the word send, by inserting the phrase "as many as necessary". The motion was seconded by Senator Hensley, and the motion carried.

Senator Vratil moved to recommend SCR 1608 favorably for passage as amended, seconded by Senator Hensley, and the motion carried.

Meeting was adjourned at 11:25 a.m. The next meeting scheduled is Tuesday, March 22, 2005.