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WINE & SPIRITS
WHOLESALERS ASSOCIATION

February 6, 2012

To: House Judiciary Committee
From: R.E. "Tuck" Duncan
General Counsel, Kansas Wine & Spirits Wholesalers Association
RE: HB 2521

We support the provisions of HB 2521 providing that notwithstanding the provisions of the Kansas administrative procedure act, any civil penalty imposed for a violation of any of the provisions of the Kansas liquor control act, The Club and Drinking Establishment Act, The Cereal Malt Beverage Act and the Keg Registration Act shall be imposed no later than 90 days after the date such violation occurred.

While current law provides that: "**41-106. Violations of law; copy of citation.** Any citation issued for a violation of the liquor control act or the club and drinking establishment act shall be delivered to the person allegedly committing the violation at the time of the alleged violation. A copy of such citation also shall be delivered by United States mail to the licensee within 30 days of the alleged violation. If such citation and copy are not so delivered, the citation shall be void and unenforceable." -- the citation mailed within 30 days in order to comply with this provision does not really provide much information to a licensee as it states thereon that: "A 'Notice of Hearing on Administrative Action' will be mailed to Licensee if administrative charges result from this citation."

Thus, agent reports and more detailed information that would allow a licensee to identify potential witnesses and gather evidence in a timely manner are not yet available until charges result.

Current law also provides: **41-328. Violations of act; civil penalties.** (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the director, upon a finding that a licensee under the Kansas liquor control act has violated any provision thereof, may impose on such licensee a civil fine not exceeding \$1,000 for each violation.

(b) No fine shall be imposed pursuant to this section except upon the written order of the director to the licensee who committed the violation. Such order shall state the violation, the fine to be imposed and the right of the licensee to appeal the order. Such order shall be subject to appeal and review in the manner provided by K.S.A. 41-321, 41-322 and 41-323, and amendments thereto.

(and KSA 41-2633a is nearly identical.)

This provisions of HB2521 would not interfere with due process rights for hearing, issuance of subpoenas, and other due process compliance issues, since the Director's action of assessing the fine precedes the right of appeal.

In most cases witnesses are transient and the earlier the agency is required to issue its order pursuant to KSA 41-328 and 41-2633a, the more likely the licensee will be able to mount a credible response. *Thank you for your consideration of these matters.*