

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

To: Kansas Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan, General Counsel
RE: SB 269

In-store tastings: an idea whose time has come for Kansas*

Tastings are allowed in many states. For example:

"RICHMOND, Va. (AP) — With about 5,000 brands of liquor available on store shelves nationwide, suppliers of some top-selling spirits hope modernization of state alcohol laws will get customers to try new products, ... Virginia is one of the latest states to change what critics say are outdated alcohol laws. Beginning in July, the state will let customers sample products before buying them at about 330 Alcohol and Beverage Control, or ABC, stores.

"New Jersey, Vermont and Maine also eased their tasting laws in the last year, and a total of 43 states have changed liquor laws to allow spirit sampling at stores, according to the Distilled Spirits Council of the United States, a trade association representing nearly 70 percent of all liquor brands.

"... Tastings laws are part of a larger movement to modernize state alcohol laws to cater to consumer demand ..."

Kansas is one of a small minority of states that do not have a sampling law. For a brief period some in-store sampling was allowed administratively by the Kansas A.B.C., then, on April 27, 2010 the ABC issued industry memorandum 2011-1. Here's what they said:

"Issues frequently surface concerning retailer hosted samplings of liquor products. This policy clarifies that no samplings or "tastings" may occur in, on, or about the retailer's licensed premises.

a. Statutory and regulatory requirements:

K.S.A. 41-308(a) provides: "A retailer's license shall allow the licensee to sell and offer for sale at retail and deliver in the original package, alcoholic liquor for use or consumption off of and away from the premises specified in such license."

"K.S.A. 41-308(b) states "A retailer shall not sell, offer for sale, give away or permit to be sold, offered for sale or given away in or from the premises specified in such license any service or thing of value whatsoever except alcoholic liquor in the original package..."

“K.A.R. 14-13-13(j) provides: “A retailer shall not permit the drinking of alcoholic liquors or cereal malt beverage in, on, or about the licensed premises.”

b. No retailer, or anyone acting as an agent or employee of a retailer, may allow the serving or sampling, whether free of charge or not, of alcoholic liquor in, on, or about the retailer’s licensed premises.”

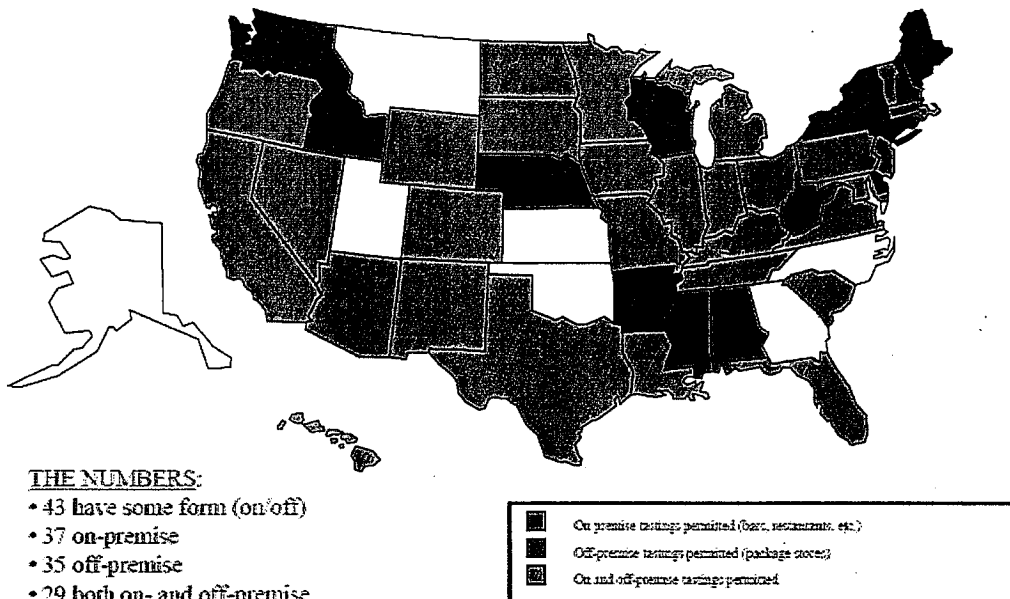
“For purposes of this policy memorandum, “in, on, or about the licensed premises” means the licensed premise and any property adjacent to and immediately surrounding the retailer’s licensed premise which a reasonable person would believe to be under the control of the licensee.”

“Such property shall include: An adjacent party shop, smoke shop, or property with common ownership; The parking area, sidewalks, and alleys immediately surrounding the licensed premises. In the case of a strip mall or other shared property, this shall be the area directly in front of, behind, above, below, and to the side of the licensed premises unless such property is occupied by another, licensed business not directly or indirectly associated with the retailer.”

Therefore point of purchase samplings is not now permitted in Kansas.

SB 269 will permit in-store tastings where products to be sampled would come from the inventory of the retailer or could be purchased by the by the supplier. These provisions are modeled after a similar law in Texas that has not seen any difficulties in administration.

States Allowing Consumer Tastings



DISCUS -2011

This bill allows liquor stores to offer limited liquor tastings throughout the year. Tasting participants would be given small quantities of either wine, beer or spirits. With so many variations of liquor many people are looking to sample them before spending money on an entire bottle. Many retailers acknowledge that during these tough economic times many people do not feel comfortable spending a lot of money on liquor only to find out it's not what they wanted. They also recognize that samplings would give people the opportunity to try something they might not normally drink and as such they'll know what they're buying before they spend the money.

In Maryland where the proposal was recently debated even the Mothers Against Drunk Driving's Maryland chapter (*Carroll County Times*, 1.12.11) announced the organization was not against wine, beer or liquor tastings.

This is not really a liquor issue. In-store marketing creates a lively atmosphere and enriches the shopping experience. It has been said that the store is more than a distribution point. It is a marketing medium that allows for various touch points of communication or messaging. The store is really assembling a discordance of messages that draw attention from the brands on the shelf. Brands are advertised on signs fastened to shelves, attached to displays, and stuck on the floor with decals. There are audio systems and TV monitors broadcasting a blend of brand messages and programming about shopping. In-store live samplings of new branded products add to the mix.

I recently read that "In-store marketing tools have been used ... for years to advertise and promote brands of consumer packaged goods made by such world-class firms as Coca-Cola, Kraft, and Unilever, as well as from smaller companies. What began with signs on shopping carts two decades ago has grown to such imposing and sophisticated tools as oversized TV screens suspended from the ceiling... These efforts at building brands in the store are hardly confined to the US..."

What remains important is that consumers live through the experience. It helps them decide what product to pick from the ever-growing variety of choices. What it all gets down to is one thing: differentiation. In-store tastings complements today's hectic consumer lifestyle. Consumers simply don't have time to 'study' ad messages. They want relevant brand information when and where it is convenient for them.

So please give this proposal favorable consideration. Last year Virginia became the 43rd state to allow in-store tastings, it is clear that the time has come for Kansas to join the majority.

*This testimony is an edited version of the speaker's article on this topic published in the *Kansas Beverage News*, September, 2011

SB269 technical amendments

New Sec. 2. (a) Notwithstanding any other provisions of the Kansas liquor control act to the contrary, any person or entity who is licensed to sell alcoholic liquor in the original package at retail may conduct wine, ~~malt beverage~~ beer and distilled spirit tastings on the licensed premises as follows:

(1) Wine, beer and spirits for the tastings shall come from the inventory of the licensee. Except as provided by paragraph (2), a person other than the licensee or the licensee's agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this section.

(2) The holder of a supplier's permit or such permit holder's agent or employee may participate in and conduct product tastings of alcoholic beverages at a retail licensee's premises and may open, touch, or pour alcoholic beverages, make a presentation, or answer questions at the tasting. Any alcoholic beverage tasted under this subsection must be purchased from the ~~package store~~ retailer on whose premises the tasting is held. The retailer may not require the purchase of more alcoholic beverages than are necessary for the tasting. This section does not authorize ~~the holder of a nonresident seller's or manufacturer's~~ the supplier or its agent ~~'s~~ permit to withdraw or purchase an alcoholic beverage from the holder of a ~~wholesaler's~~ distributor's permit or provide an alcoholic beverage for tasting on a retailer's premises that is not purchased from the retailer.

Submitted by R.E. "Tuck" Duncan after consultation with ABC.