

Approved: 2-7-06
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 11, 2006 in Room 231-N of the Capitol.

All members were present except:
Senator John Vratil- excused

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

Conferees appearing before the committee:
Tuck Duncan, KS Wine & Spirits Wholesalers Assoc.

Others attending:
See attached list.

Mary Torrance, Revisor of Statutes Office, provided an explanation and implications of the 2005 U.S. Supreme Court case dealing with shipment of interstate and intrastate wine. (Attachment 1) *Graham v. Heald*, #03-1116, May 16, 2005, the laws were challenged as violating the Commerce Clause of the United States Constitution. The states argued the Twenty-first Amendment to the Constitution, which grants states broad power to regulate liquor, and allowed them to treat in-state and out of state producers differently, also argued that the laws were justified by legitimate states' interest in prevention of underage drinking and collection of tax revenue. The Court held that the states' bans against shipment by out of state wineries violated the Commerce Clause, were not authorized by the Twenty-first Amendment to the U.S. Constitution and were not necessary to further the interests asserted by the states.

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, spoke on the future legislative impact of the 2005 U.S. Supreme Court case on shipment of wine in state and out of state in Kansas. (Attachment 2) The states argued that any decision invalidating their direct-shipment laws would call into questions the constitutionality of the three-tier system. The three-tiers are producers, wholesalers and retailers; this system was formed by states to prevent the recurrence of marketing abuses that characterized supplier-retailer relationships before Prohibition and thus establishing the wine and spirits wholesaler as the middle tier separating producer from retailers. The three-tier was created by federal and state legislatures as a regulatory control over the distribution and availability of beverage alcohol that deters underage access.

"The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system shipment of out of state wine" *Midcal, supra*, at 110. The Amendment did not give States the authority to pass nonuniform laws in order to discriminate against out of state goods, state policies are protected under the Twenty-first Amendment when the states treat liquor produced out of state the same as its domestic equivalent. The choices are:

- Ban all alcohol shipments outside the regulated system; or
- Permit alcohol sales outside the regulated, accountable, state created system...or
- Equalize treatment by imposing "evenhanded" restriction on all

Information was provided on several cases and other states pending legislation and the status of those cases.

Athena Andaya, Legislative Research Department, reviewed for the committee the 2005 Legislative session and 2005 Special session dealing with state-owned and operated gaming. (Attachment 3) A spread sheet was provided that compared the bills to each other and the status of each bill at the end of the Special Session.

The committee was adjourned at 11:40 am. The next scheduled meeting is January 12, 2006.

