



KANSAS ASSOCIATION OF BEVERAGE RETAILERS

P.O. Box 3842, Topeka, KS 66604 785-969-1617

Testimony to the Senate Federal and State Affairs Committee
Opposition Testimony SB 253
March 10, 2023

Amy A. Campbell, Executive Director

Chairman Thompson and Members of the Committee,

Thank you for the opportunity to speak to you today on behalf of the Kansas Association of Beverage Retailers. The Kansas Association of Beverage Retailers was created at the repeal of prohibition in Kansas and is made up of licensed off premise retailers – liquor store owners – across the state of Kansas. Our members are all Kansans, a fact that has been a source of efficient regulation for the Kansas Liquor Control Act since its creation in 1949.

Every change to our statutes impacts current liquor store owners and their business viability. Please remember that our Kansas liquor store owners are still dealing with the aftermath of the Beer Law. That law shifted a significant portion of beer sales to grocery and convenience stores. According to the Division of Alcoholic Beverage Control website this week, Kansas has 38 fewer licensed liquor stores than in 2017 (759 - 721).

The decreasing numbers were temporarily slowed by the pandemic. More people staying home provided a temporary boost to retail liquor stores. Wine and spirits buying was temporarily shifted, but we are seeing those purchases to shift back to restaurants, bars and entertainment venues.

For the most part, Kansas has a healthy industry today, for large and small businesses. Please keep in mind the myriad of effects that come when any part of that system is altered. As you authorize more entities (especially unlicensed entities) to enter the Kansas liquor marketplace, you are diverting from the licensed businesses in the market today.

While many states have rushed into alcohol deregulation, Kansas has always been more careful in its approach. Even so, Kansas has rapidly expanded the number of entities selling and serving alcohol in a variety of settings. The Director has spoken to the Legislature about this expansion and the challenge to enforce state laws amid the many legislative changes in recent years. In addition, we are seeing accelerating shipping of wine into the state – sometimes from unlicensed entities.

Please remember the ABC Annual Report in which Director Beavers shared information about the growing challenge of illegal online sales and sales of counterfeit products. We hope you will be attentive to these problems and provide the resources the agency needs to enforce our laws, as well as avoiding new laws that worsen those challenges.

Direct to Consumer Delivery

KABR has been researching models of direct-to-consumer delivery for several years. Obviously, we are interested in how those models help or harm local businesses. At this point, we have serious concerns about the digital online platforms and out of state businesses that are moving into the delivery picture and dominating. While beer and liquor delivery may sound simple, a simple online word search can show how complex this field has become. My own social media accounts are regularly targeted by illegal delivery entities claiming they can legally deliver alcohol to Kansans.

Our conversations with retailers in states that do allow delivery tell us two things:

1. The online platforms that are supposed to be set up as an agent of the retailer can turn into dominant entities that expect a range of significant fees without holding a comparable risk or regulatory burden. Their growth is crowding out smaller competitors and turning the retailer into an agent of the platform.
2. Independent retailers have a significant disadvantage attempting to compete in this environment.

KABR continues to research the changes occurring across the nation and confer with peers in other states regarding delivery. It is possible KABR could support options from states where regulation is taken seriously.

Third Party Delivery Issues

In December 2020, the National Restaurant Association declared public policy principles for third-party delivery. These principles were intended to correct some of the conflicts occurring between restaurants and third-party delivery companies. These conflicts have been well publicized including articles in the Wall Street Journal and Forbes. There is merit in these principles and if Kansas wants to dive ahead into liquor delivery, we should assure these minimum principles are included in our statutes.

Unfortunately, those principles do not acknowledge any public safety principles for unlicensed entities selling and delivering alcohol. Our members believe strongly that our licenses have long been dependent on compliance with the laws that assure the safe and legal sales of adult beverages and no legislation should assume that this safety will automatically happen.

The question of who owns the customer data and how that can be shared or monetized is a key issue that is not addressed in this legislation. Everyone has had the experience of pricing a product online and then being deluged by ads for that product from other sellers. That may not be a concern for shoes, but when the product is alcohol – the State has a legitimate concern that these sellers should be licensed and regulated.

Unequal Penalties and Lack of Accountability

We are confused about the language specifying the regulated obligations of permit holders. For most of the third party platforms, delivery drivers are NOT employees. Our retailers know from experience that accountability and keeping their license is tied to the actions of their employees. Limiting fines to \$1000 is unequal and unfair to current licensees, and appear to allow repeat violations to go on for years.

It is current law that no person or entity that is not licensed can own an interest in retail liquor sales. This applies to leases and contracts. This legislation appears to allow delivery entities to insert themselves into retail beer and liquor sales earning percentages of sales.

Overall Consumption of Alcohol has Increased in the Pandemic

Multiple studies cite the stresses of the pandemic and the increased availability of alcohol, as well as boredom and isolation as reasons for these increases. In addition, there are increases in the accompanying physical health harms and mental health harms associated with excessive consumption.

One-third of participants (34.1%) reported binge drinking and 7.0% reported extreme binge drinking. Participants who experienced COVID-19-related stress (versus not) reported consuming more drinks ($\beta = 4.7$; CI (0.2, 9.1); $p = 0.040$) and a greater number of days drinking ($\beta = 2.4$; CI (0.6, 4.1); $p = 0.007$). Additionally, 60% reported increased drinking but 13% reported decreased drinking, compared to pre-COVID-19. Reasons for increased drinking included increased stress (45.7%), increased alcohol availability (34.4%), and boredom (30.1%). Participants who reported being stressed by the pandemic consumed more drinks over a greater number of days, which raises concerns from both an individual and public health perspective.

Elyse R. Grossman et.al (December 2020) Alcohol Consumption during the COVID-19 Pandemic: A Cross-Sectional Survey of US Adults, *National Center for Biotechnology Information*

Alcohol consumption has increased considerably in the context of COVID-19. There was a 54% surge in national alcohol sales during first week of pandemic, and subsequent reports indicated persistent increases in rates of alcohol intake. A survey-based study published in September 2020 in JAMA Network Open found that the frequency of alcohol consumption increased by 14% overall among US adults during the period of May 28 to June 16, 2020, when compared with a baseline period during the previous year.

Especially high increases were observed among women in terms of frequency (17% vs 11% among men), days of heavy drinking (41% vs 7% among men), and alcohol-related consequences. Women also demonstrated a 39% increase (compared to 27% among men) in scores on the 15-Item Short Inventory of Problems scale, which is "indicative of increased alcohol-related problems independent of consumption level for nearly 1 in 10 women,"
Tori Rodriguez, MA, LPC, AHC (July 2021) COVID-19's Continuing Toll: Increasing Alcohol Use and Liver Disease Disproportionately Affect Women, *Psychiatry Advisor*

KABR retailers are eager to sell to Kansas adult customers – but we want to keep them as customers for a lifetime of responsible enjoyment of our products.

Thank You for Supporting our Small Businesses

Kansas liquor stores are always looking for ways to improve service to their customers, but we ask that you recognize the upheaval that has occurred in the industry.

Please do not recommend new laws that will bring additional out of state and unlicensed entities into the retail liquor marketplace. If there are restructuring changes that are important to Kansas, we continue to be willing to work on solutions. The current three tier system in Kansas provides consistent and even-handed regulation to the industry while providing reliable revenue to the State.

We would be happy to answer questions and look forward to working with you as we work to further improve Kansas liquor laws in the future.