

Testimony before the Senate Federal & State Affairs Committee
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SB 253 – CMB/Liquor/Drinking establishment delivery bill
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Testimony in SUPPORT of SB 253

Chairman Thompson, and members of the Committee

Thank you for the opportunity to appear today on behalf of my client Walmart in support of modernizing our regulated beverages laws to allow for delivery of alcohol and cereal malt beverage, or CMB, products to Kansas customers. Our customers already enjoy the benefits of home delivery of the wide range of other products our stores stock. This subject is timely, particularly considering recent changes in regulated beverage laws in Kansas and how the state responded to consumer demand during the pandemic by allowing for convenience for Kansas consumers.

Walmart is the largest retailer in America. Counting supercenters, discount stores, neighborhood markets and Sam’s Clubs, Walmart has over 80 retail units in Kansas, employing over 20,000 associates. In FY 2023, Walmart collected on behalf of the state over \$477M in taxes. For that same fiscal year, Walmart paid \$91.4M in state and local taxes. A key component of its retail business involves in-store grocery sales as well as home delivery and grocery pickup.

Even before the pandemic there was strong customer demand for retail home delivery (35 states + D.C) but the experience of the shut-down ramped up that demand, and business, with the Legislature’s assistance, responded. We appreciate this Legislature’s willingness to remove barriers to a business’ ability to serve its customers and find ways to address the challenges they and their customers face in this economy.

As a result of the hearing last session and discussions with stakeholders facilitated by Chairman Thompson over the interim, along with valuable input from and final review by ABC, we have a balloon amendment to offer that improves the proposal in several ways. We are here today to ask for your favorable consideration of SB 253, as amended, as a logical and compatible modernization of existing law, now that we know that recent expansion of regulated beverage laws has had a very favorable response without evidence of any significant problems. The accommodations provided during the pandemic have been vastly successful and vastly appreciated. Consumers continue to depend on home delivery, and therefore demand for delivery services has not waned.

Walmart has a proud history of being a responsible retailer, especially when it comes to CMB sales. Adding Kansas to the list of states allowing for delivery would be supportive of our local, physically present businesses, local jobs within stores and delivery-related work. It enhances overall customer convenience. We are experiencing significant customer acceptance and demand for the convenience of home delivery.

The language in the bill, and the proposed amendments, enable a simple and straightforward home delivery option. You will see that Secs. 2, 3 & 4 repeat some of the same provisions. This is because it amends the 3 separate Kansas acts governing liquor sales, CMB sales and club and drinking establishment sales. The bulk of the language deals with the mechanics of the safe and legal completion of the delivery task, whether it be by the original retailer or by a third-party delivery service. There are processes in place to help to ensure compliance with all applicable laws and regulations every step of the way. Key to that is ensuring that ABC has the necessary authority and oversight and that retailers have strong protections.

Walmart and other grocers and C-stores are, of course, limited to beer sales. That doesn't change. Licensees would be allowed to deliver only those alcohol products they are currently licensed to sell on-premises. The bill enables all retail licensees the option to add home delivery as a customer convenience. We have heard a claim that many package stores don't currently see the need or value in offering home delivery. That is fine. The bill would not require that a licensee offer the option of home delivery – it is just an option for businesses to consider. Reluctant liquor stores could add the service later if they wanted, without the need for additional legislation.

We know that many will appreciate having the right to offer that option, either now or in the future. For example, I personally visited four of our local package stores in Lawrence. Three were positive about the prospect of being able to deliver and one was interested but wanted to be sure restrictions were not too onerous for them. We believe the requirements and protections in the bill are reasonable and appropriate.

The home delivery option in the bill includes club and drinking establishments as well. The availability of carry-out mixed drinks proved successful during the challenges of the pandemic and continues to be a popular consumer option. Before the pandemic, no state had passed legislation authorizing to-go or delivery alcohol from restaurants. Less than 3 years later, 38 states have passed laws to make to-go/delivery cocktails permanent (24) or extended them beyond the end of the pandemic (14). 29 of those states permit home delivery in addition to curbside.

We wish to thank Director Beavers and her team at ABC for their thorough consideration of the legislation, their attention to detail in making sure the bill and our proposed amendments are consistent with their regulatory expectations, and the time spent answering questions and providing suggestions and directions from their position as regulator. We have appreciated their input and are grateful for their guidance. This bill is a product of those discussions and their review. ABC has reviewed the balloon and has indicated they have no concerns. The proposal is fully three-tier compliant.

We know there will be questions of a technical nature. I have attached to my testimony "Q & A" and "Claim & Fact" documents that answer many of the questions that have been posed. For example, the bill does allow for retail licensees to contract for delivery services like the ones you are already familiar with through meal and grocery delivery. However, all sales must be through a licensed Kansas retailer. Third-party delivery services will be required to be registered in Kansas and apply for permits to deliver with the ABC, but they will not be licensed to sell or arrange for sales of alcohol products. The bill clearly lays out the requirements for delivery, either by the retailer or 3rd party delivery service, all as explained in the attached Q & A memo. Drivers must be certified as having successfully completed training programs approved by ABC. Age-verification scanning software approved by ABC must be used.

I will be happy to stand for questions but may refer some questions of a more technical nature to conferees who have a higher level of expertise than me, and we're fortunate to have that expertise represented here today.

SB 253 Delivery Bill Q & A

Q: What does the bill do?

A: It allows licensed retailers to offer home delivery of the alcohol products they are licensed to sell.

Q: Who is included in this delivery option?

A: All licensed retailers under the Kansas Liquor Control Act, all licensed retailers under the Kansas Cereal Malt Beverage Act and all licensed retailers under the Kansas Club and Drinking Establishment Act.

Q: Would licensees be required to offer delivery under this bill?

A: No. This is enabling legislation only. Licensees would have the choice to offer delivery or not. Most will be influenced by customer expectations and customer service considerations.

Q: If a licensee decides to offer delivery, must a licensee deliver, even if the request is for a single item?

A: No, licensees offering delivery may establish a policy of minimum delivery orders if they so choose.

Q: Does this bill in any way expand who can sell alcohol products or what products they can sell?

A: No. This bill allows for the delivery by licensees of only those alcohol products current law allows them to sell. This just adds delivery as an option for the benefit of customers who desire this option and for retailers who choose to make delivery an option for their customers.

Q: Who would be allowed to deliver?

A: Retailers would be allowed to make their own deliveries or contract in writing with 3rd party delivery services registered in Kansas and possessing delivery permits issued by the ABC.

Q: What would be the delivery process?

A: 1. The customer would place a delivery order directly with their local store via an app or website. At checkout a hold is placed on their debit or credit card.

2. The order would be assembled at the store and sent out for delivery to the customer.

3. Upon delivery, the driver, (who must be at least 21, holds a valid Kansas D.L., certified as having completed delivery driver training and be covered by required liability insurance coverage), must:

a. deliver only to the address on the order and to someone at least 21 years of age,

- b. verify the age of the customer using technology or methods approved by the ABC,
 - c. make sure the customer is not visibly intoxicated or impaired.
4. If any of these conditions are not met, the customer will not receive the delivery and the sale will be cancelled.
 5. If the conditions are met, the customer will review the order, sign a written or electronic acknowledgment of receipt and the transaction is finalized.

Q: What requirements would a 3rd party delivery service have?

A: They would have to apply for and receive a delivery permit from the ABC. The permit fee would be \$1500, renewable annually. They would have to be registered to do business in Kansas and ensure that all drivers were at least 21 years of age, carry liability insurance as required by Kansas law, comply with the delivery rules and limitations in the bill and be responsible for the any violations of the liquor laws of the state. They would be required to use ID scanning technology or other ID confirmation modality approved by the ABC and implement and maintain security measures to protect customer data. They would also be required at the time of application to submit to ABC the training program drivers must successfully complete to ensure compliance.

Q: What are the specific data collection safeguards in the bill?

A: Personal data collection is limited to what is minimally adequate and necessary in relation to the purpose for which it is being collected (consumer sale) as disclosed to the customer. A retailer licensee or 3rd party delivery service must maintain reasonable security procedures and practices, including administrative, physical and technical safeguards appropriate to the nature of the data and the purpose for which it is being used to protect data from unauthorized use, disclosure, access, destruction or modification. Sale of customer data would be prohibited and ABC would have the right to request and receive any delivering entity's data policy.

Q: Would 3rd party delivery services be permitted to make direct sales or bypass the retailer?

A: No. 3rd party deliveries would be allowed only under a written agreement with a retailer. Prior to the product leaving the retailer's premises the sale would be finalized with the customer by the retailer or the retailer would obtain a debit or credit card authorization for the total amount. All product must be assembled and fulfilled at the retailer's premises out of the retailer's existing inventory. The retailer retains the sole discretion to decide whether to accept an order. The sale can only be between customer and licensed retailer and the retail licensee must always appear as the merchant of record. The retailer receives full payment from the customer and money is automatically credited to the retailer.

Q: Are there any other 3rd party delivery service restrictions?

A: Yes. A 3rd party delivery service would not be able to use a retailer's likeness to falsely suggest sponsorship or endorsement by a retailer; couldn't inflate the price or alter the retail pricing, but could charge a separately itemized delivery fee, and couldn't charge the retailer any expense not covered by the written agreement. A 3rd party delivery service could not be affiliated with a licensed alcohol manufacturer.

Q: What other requirements would be in place?

A: Deliveries would only be allowed within the borders of Kansas; must be performed within a 25 mile radius of the retailer; could only be delivered in a city or county where sale is allowed; delivery could be made only to an individual of legal age upon proof of age, as with on-premise sales; no delivery would be allowed if the customer is not physically present at the delivery address, the recipient is underage, or noticeably intoxicated; no deliveries to a locker, mailbox, package shipping address or similar storage facility; no deliveries to a place of worship, daycare, elementary or secondary school or public or private postsecondary educational institution, or a place of business licensed under any of the 3 liquor acts; deliveries would have to occur on the same day as the sale and during those hours when it is lawful for a retailer to sell on-premise.

Q: Could a retail licensee or 3rd party delivery service use both employees and independent contractors?

A: Yes, subject to the provisions that all drivers comply with the requirements in the bill, have the required training certification, the 3rd party deliver service permittee remains ultimately responsible for any alcohol-related violations by any of the drivers, and the required amount of liability insurance is in place. Drivers would have to be certified as having successfully completed a training program approved by ABC and carry evidence of that certification of successful completion of driver training when making deliveries.

Q: Would it be technically challenging to implement delivery?

A: No. Retailers of all shapes and sizes currently work with 3rd party delivery services or deliver on their own. Grocery stores, convenience stores, your local liquor store or even a mom & pop restaurant could make use of this option. It's working very successfully in delivery-approved states. Retailers can easily get on a 3rd party delivery service app through provided software and upload their inventory selections. Customers can then access the retailer's selections on the app, place the order and have the product delivered.

Q: Has the ABC had the opportunity to review the bill and proposed amendments and recommend corrections, edits or recommendations?

A: Debbie Beavers and her team at ABC have graciously given their time and attention and have provided valuable advice, requests, edits and suggestions. This bill is a product of the requested edits and ABC's final review. The bill and proposed amendments are fully three-tier compliant.

Q: How many other states allow for alcohol delivery to customers?

A: Pre-pandemic, 35 states and the District of Columbia had laws in place allowing for delivery from retail stores. Today that number has grown to 44. (National Conference of State Liquor Administrators data) Interestingly, just before the pandemic started, no state had passed legislation authorizing to-go or delivery alcohol from restaurants. Less than 3 years later, 38 states have passed laws to make to-go/delivery cocktails permanent (24) or extended them beyond the end of the pandemic (14). 29 of those states permit home delivery in addition to curbside.

SB 253 Delivery Bill

Claim: Liquor stores are all opposed to delivery.

Fact: This is not entirely true. We are aware of several liquor stores that are happy about the prospect of being able to offer this service to their customers. **Retail alcohol delivery is allowed in 44 states!** You are hearing from a select few opponents whose concerns appear to be related mainly, if not solely, to third party delivery services. Liquor stores are currently using third party delivery services in other states, but they are also providing delivery services they have developed in-house. Some of the stores I spoke to would likely plan do their own deliveries at first if authorized in Kansas. They would have that option. Delivery is working everywhere it is allowed.

Claim: Delivery would require employing additional staff.

Fact: Not necessarily. Again, delivery is optional. Retailers can tailor their delivery program to fit existing resources and manpower, including setting hours for delivery. However, delivery does offer the prospect of putting more individuals to work. Customers are asking for this convenience and are willing to pay reasonable delivery fees and tips for the convenience. One of the employees spoken to at a local liquor store was excited about the possibility of delivering for his employer.

Claim: If some liquor stores don't want delivery, then no one should be allowed to deliver.

Fact: Why should the State allow licensees that don't want to offer delivery to its customers dictate if other licensees, including other liquor stores, grocery stores, c-stores, or restaurants get to deliver, especially if that is what their customers want and what the licensee wishes to offer as a customer convenience? How is that fair? That's decidedly anti-free market.

Claim: Is it the intent of the legislature "that every bait shop, tavern and c-store in addition to grocers, big-box and other CMB licensees to be making deliveries?"

Fact: Of course not. Again, this bill merely enables delivery as an option. It is not mandated. Those who do not wish to provide this convenience to their customers don't have to.

Claim: There will not be enough ABC oversight.

Fact: This bill was put together after close collaboration with ABC. We added those provisions ABC asked for and will have a balloon amendment to add additional suggestions ABC asked for at the hearing and during interim meetings with stakeholders, led by Chairman Thompson. ABC will promulgate Rules & Regulations deemed necessary for implementation and oversight.

Claim: The provision allowing ABC to fine violations up to \$1000 is not enough.

Fact: According to ABC, the existing acts (Liquor Control Act, Club and Drinking Establishment Act and Cereal Malt Beverage Act) already authorize \$1000 fines against licensees, so there just needs to be clear language that the \$1000 fine authority also includes 3rd party delivery services and drivers. Delivery service fines would be no less than those currently in law for retailers.

Claim: The bill is designed to “push more sales online.”

Fact: No, again, the bill is purely permissive. Third-party delivery is neither required nor is there a stated preference for delivery in the bill. It’s simply an option for those licensees who choose to offer delivery to their customers. No one would be required to use a third-party delivery service if they choose to offer delivery to their customers. All sales continue to be between the retailer and the customer. The retailer remains the merchant of record throughout the sale.

Claim: The proposal allows unregulated contractors to receive, sell, and deliver product with little hope for oversight.

Fact: No. Only licensees may sell product. Third party delivery services will need to apply to ABC for annual delivery permits, subjecting them and their drivers to ABC oversight. ABC will have the power to deny permits, fine delivery services and drivers for violations and/or revoke permits when appropriate. Drivers must successfully complete an ABC-approved training program to be certified to make deliveries and a provision will be added to require that the drivers carry evidence of that certification with them while delivering. There will be no unknown, non-certified drivers.

Claim: Online delivery services are intent on gathering consumer data and taking control of retail sales.

Fact. First, there is no evidence this is taking place. Home delivery of alcohol products through on-line services has been a staple across the country, and in Kansas with food and grocery deliveries. SB 253 contains strict provisions to protect personal data. Delivery services may only operate in Kansas for alcohol delivery if they apply for a permit through ABC and sign a written agreement with a retailer, the terms of which are negotiable, including provisions regarding consumer data. We’re adding a provision that consumer data may not be sold and one allowing ABC to request and receive data policies of 3rd party delivery services. A retailer does not have to accept terms proposed by a delivery service to which it disagrees. The retailer (licensee) finalizes all payments. The retailer retains the sole discretion as to whether a sale is made. The retailer receives full payment for the product. Third party delivery services are not authorized to sell product. The retailer remains the seller of record at all times.

Claim: In other states there are claims that some third-party delivery services will direct sales away from a retailer to another preferred retailer.

Fact: Not in Kansas, under the provisions of this bill. The bill specifically provides that the sale is between the retailer and its customer. The retailer remains the seller of record throughout the

transaction. The retailer finalizes all payments from the time of order until final delivery. The retailer controls whether a sale takes place. Customers select and know the retailer they are buying from.

Claim: Training will be inadequate.

Fact: Not true. The bill requires that any third-party delivery service applying for a Kansas delivery permit must submit a training program proposal to ABC and their drivers will need to complete a training and certification program reviewed and approved by the ABC. Third-party delivery service drivers will be required to use identification scanning software technology or an alternative approved by ABC to verify age. Age verification is a key component of the bill.

Claim: Retailers will be liable for actions of drivers they don't employ.

Fact: No. The bill provides that third-party delivery services are liable for the acts of their drivers, whether employees or independent contractors. Drivers also remain personally liable for violations as well. We're adding requested language further clarifying that retailers are protected from liability for the acts of third-party delivery services or their drivers.

Claim: Retailers will have no recourse against delivery services for violations or breaches of their agreements.

Fact: No. Retailers are given specific rights to seek damages and/or injunctive relief against third party delivery services if there is a breach of their agreement, including recovery of profits, potential punitive damages, and attorney fees.

Claim: Delivery services will insert themselves into alcohol sales and earn a percentage of those sales.

Fact: No, not under SB 253. Delivery services are not licensed or permitted to sell product. The bill prohibits a delivery service from inflating or altering a retailer's pricing. The retailer remains the seller of record at all times. The retailer retains sole discretion to determine whether a sale will be made. The retailer receives full payment and finalizes the sale. A delivery service is prohibited from using a retailer's likeness to falsely suggest sponsorship or endorsement of the delivery service. A delivery service may operate only if permitted by Kansas ABC and enters into a written contract with a licensee. If a licensee is not in agreement with the terms of a proposed agreement, the licensee is not required to use the delivery service.

Claim: Passage of this bill may lead to litigation from out-of-state retailers.

Fact: No. This proposal is fully 3-tier system compliant. In-state, limited distance, home delivery, 3-tier compliant laws like our proposal have been universally upheld.