



March 5, 2024

Mr. Chairman and Members of the Committee,

On behalf of the Kansas Beer Wholesalers Association (KBWA), thank you for the opportunity to provide testimony in opposition to S.B. 511, AN ACT concerning alcoholic liquor; relating to microbreweries; permitting the sale of beer and hard cider manufactured by the licensee to retailers, public venues, clubs, drinking establishments, holders of temporary permits and caterers; allowing the sale of such beer and hard cider in unopened containers to consumers at special events monitored and regulated by the division of alcoholic beverage control.

The KBWA stands in strong opposition to this legislation. The enactment of S.B. 511 would result in several problematic outcomes and unintended consequences for the state of Kansas and participants in the alcoholic beverage market, including the very proponents of this bill. The issues are many, and I will attempt to cover them herein.

Kansas alcohol production, distribution, sales, and consumption laws – also called the three-tier system – have long been acknowledged as fair, balanced, and principled public policy. Our safeguards balance business needs and market growth with public health and safety concerns. The main principle of Kansas' alcohol laws is separating producers, distributors, and retailers into three distinct "tiers." This system has provided for tremendous consumer choice, created a market environment whereby the smallest producers can flourish and thrive, and promoted safe, responsible consumption, in addition to the collection of considerable taxes for Kansas. S.B. 511 is a major departure from that system and would seriously erode the very foundation that has ensured success for the proponents of this proposal.

We are frankly unsure of what problem this bill attempts to fix. In 2011, Kansas had 13 microbreweries. At the close of 2023, there were 81. This is tremendous growth. In fact, I think you would be hard-pressed to find many other industries in Kansas that have experienced that type of growth. We would submit to you that the very system the authors of this bill attempt to undermine is the reason for this growth. **Large international brewers would control the market without the three-tier system, and the critical, independent distribution tier and small craft brewers would be completely locked out.** One has to look no further than the soda aisle, where choices are predominantly Coke and Pepsi, then look at the beer aisle, where you'll find several hundred brand choices - the contrast results from the three-tier system: it fosters choice and access.

The bill, as written, allows any entity holding a Kansas micro-brewery license to distribute beer and hard cider to other licensees, such as liquor stores and drinking establishments. This means any entity producing up to 60,000 barrels annually could “self-distribute” in Kansas. It should be noted that less than 4% of beer producers nationwide exceed 60K barrels. It should also be noted that based on the decision in the US Supreme Court case *Granholm v. Heald*, which, in short, bars states from treating out-of-state producers differently than in-state producers, you cannot limit this right to only in-state producers. Therefore, this bill invites and allows 96% of the country’s beer makers to self-distribute in Kansas. While a handful of Kansas craft brands would survive this onslaught, most would be unable to compete and would likely close—an unintended consequence for sure, but also one that would be devastating and why the KBWA opposes this bill.

Some of the proponents of this legislation have suggested its genesis is related to an access to market problem. However, that makes little sense. There are a minimum of 30 different licensed beer distributors in Kansas. Every licensed craft brewer in this state has access to at least four full-service, professional, independent distributors. Distributors compete hard with one another to land craft brew distribution contracts because they are profitable and highly desired. The states’ AB distributors have even set up a separate entity to do nothing but pursue craft brewers for their portfolio of distributed products. As demonstrated by several of the state’s successful craft brewers, there’s tremendous access to market for brands and products that consumers want to purchase and consume. Successful makers of beer are having no problem accessing the market and are, in fact, growing and thriving.

Additionally, this bill has been purported to be needed to help a struggling industry. Again, we point to the massive growth (growth that even the Brewer’s Guild says is unsustainable) within the industry over the last decade. We would also point to the numerous carveouts and exceptions made in law for Kansas microbrewery licensees by drawing your attention to Attachment 1 of my testimony. Kansas policymakers have done a lot to help Kansas craft brewers, and the KBWA has supported the lion’s share of these handouts. But the government can only do so much. Not every business that opens stays open. In fact, as much as I hate to say it, beer in general is struggling, and craft beer is not immune. Look no further than an October Forbes article, **“People are Drinking Less Craft Beer: Here’s Why Says Brewers Association.”**

*“In one way, the reasons for craft beer’s diminishing sales are complex and range from still-lingering pandemic disruptions to an intense growth rate in recent years that was never sustainable, and from general inflation to lifestyle trends around healthier living. But in another sense, the reason for the rough patch craft beer has encountered is simple”.*

*“The number one reason why people say they’re drinking less craft [beer] isn’t because they’re watching their waistline or watching their wallet, it’s because they are drinking more of some other type of beverage alcohol,” said Bart Watson, chief economist for the Brewers Association, during a webinar discussing the results of the Brewers Association’s mid-year survey.”*

<https://www.forbes.com/sites/erikofgang/2023/10/11/people-are-drinking-less-craft-beer-heres-why-says-brewers-association/?sh=33210ab11121>

To be clear, the KBWA supports Kansas craft beer. We want them to be wildly successful. But the bottom line is that if an industry reaches a point of saturation and consumer demand diminishes, those with the best and most sought-after products will thrive, while the least desirable products will fail no matter what their legislators or distributors may do.

Finally, the Kansas Department of Revenue highly regulates Kansas beer distributors through the Division of Alcoholic Beverage Control. There are numerous statutes and rules and regulations pertaining to what a distributor can and cannot do and how they must do it. It's a long list that includes, in part, trade practices, how we market, when we can pick up expired products, that we must sell to all licensees and at the same price, all the way down to who can get a tee-shirt or a coupon, or to who and when and where we can provide a sample of a new product, etc. I share this not to complain. Most are well-reasoned and responsible rules. After all, we are talking about a product that if not controlled and well-regulated can wreak havoc on our society. However, S.B. 511 allows licensed microbreweries to act as distributors while placing none of the same requirements related to distribution laws on them. This creates an unfair playing field, but the more pertinent point is that this absence is intentional. Craft brewers don't want to be subject to the same laws, restrictions, and rules and regs as Kansas alcohol distributors. That alone should give each member of this Committee cause for serious pause and demonstrate that S.B. 511 is bad public policy and should be rejected.

In closing, let me say we regret having to oppose an industry partner's legislation. The KBWA prides itself on being an excellent partner to all who work in the alcohol industry. We strive to support everyone we work with and that includes on matters that come before the legislature. However, the policy contained in S.B. 511 is terribly dangerous, with consequences that extend far beyond even what I've been able to cover in my testimony before you today. With that in mind, we urge the Committee not to pass S.B. 511.

Thank you, Mr. Chairman, and I am happy to stand for questions at the appropriate time.

Very truly yours,



Jason P. Watkins  
Executive Director, Kansas Beer Wholesalers Association



### Exceptions for Kansas Craft Brewers

1. Kansas craft brewers were originally required to use certain amounts of Kansas grown agricultural products. That requirement was completely eliminated from statute.
2. Kansas craft brewers are permitted to receive on-premise liquor licenses, allowing them to operate bars and restaurants where they sell their products and any other alcohol products directly to consumers. This is a major departure from the three-tier system where producers aren't allowed to sell directly to the public.
3. Kansas craft brewers are allowed to sell packaged beer directly to the public from their licensed facilities. This is a major departure from the three-tier system where producers aren't allowed to sell directly to the public.
4. Kansas craft brewers are allowed to operate "tap rooms" where they sell on-premise drinks containing their products directly to patrons. This is a major departure from the three-tier system where producers aren't allowed to sell directly to the public.
5. Kansas craft brewers are allowed to obtain a caterer's license. Again, another exception in the law.
6. Kansas craft brewers are allowed to sell kegs directly to the public without going through a liquor store.
7. The licensing fee for Kansas craft brewers is deeply discounted at \$500 for two years versus \$2000 for a regular manufacturer of beer.
8. Kansas craft brewers are allowed to manufacture hard cider, a wine product, without obtaining a winery license.

As evidenced by the preceding list, Kansas policy makers have created a number of exceptions and/or carve outs for Kansas craft brewers that other industry members and licensees do not enjoy.