

Testimony before the Senate Federal & State Affairs Committee  
March 10, 2023  
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 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 in light of recent changes in regulated beverage laws in Kansas and how the state responded to consumer demand during Covid-19, by allowing for convenience for Kansas consumers.

You will have testimony from several entities in our delivery coalition. 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 2021, Walmart collected on behalf of the state over \$423.6M in taxes. For that same fiscal year, Walmart paid more than \$71.6M 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 Covid-19 there was strong customer demand for retail home delivery (35 states + D.C) but the experience of Covid 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 discussions with stakeholders and with valuable input from and final review by ABC, we helped support introduction of SB 253. We are here today to ask for your favorable consideration of SB 253 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 Covid-related accommodations have been vastly successful and vastly appreciated. Our new normal, even post-Covid, will involve consumer demand for the convenience of home delivery.

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. Needless to say, it enhances overall customer convenience. We are experiencing significant customer acceptance and demand for the convenience of home delivery.

As you can see from the bill, the enabling of the home delivery option is simple and straightforward. 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. We have put 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 is, of course, limited to beer sales. That doesn't change. Licensees would be allowed to deliver only those alcohol products they are 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 in particular 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.

We know that many will appreciate having the right to offer that option, either now or in the future. For example, over the recent break, I visited four of our local package stores in Lawrence. Three were enthusiastic about the prospect of being able to deliver and one was definitely interested but wanted to be sure restrictions were not too onerous for them. We believe the requirements and protections in the bill are 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 Covid and continues to be a popular consumer option. Before Covid, 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 Bevers and her team at ABC for their thoughtful consideration of the legislation, their attention to detail in making sure the draft was 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.

We know there will be questions of a technical nature. I have attached to my testimony a Q & A document that answers many of the questions we have heard expressed informally. For example, the bill does allow for retail licensees to contract for delivery services with services like the ones you are already familiar with through meal delivery. However, all sales must be through a licensed 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 3<sup>rd</sup> party delivery service, all as explained in the attached Q & A memo.

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 opportunity?**

**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 3<sup>rd</sup> 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 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., completed certified training and 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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.**

**Q: Would 3<sup>rd</sup> party delivery services be permitted to make direct sales or bypass the retailer?**

**A: No. 3<sup>rd</sup> 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 3<sup>rd</sup> party delivery service restrictions?**

**A: Yes. A 3<sup>rd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 training required, the 3<sup>rd</sup> 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.**

**Q: Would it be technically challenging to implement delivery?**

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

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

**A: Deb Beavers and her team at ABC graciously gave us 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.**

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

**A: Pre-Covid, 35 states and the District of Columbia had laws in place allowing for delivery from retail stores. Today that number has grown to 43. Interestingly, just before the Covid-19 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.**