



OPPONENT TESTIMONY

Senate Committee on Federal and State Affairs

SB 253

An Act concerning alcoholic beverages; authorizing the delivery of alcoholic liquor and cereal malt beverage by licensed retailers, licensed clubs, drinking establishments and restaurants and third-party delivery services to patrons.

**Whitney Damron
On behalf of the
Kansas Association for Responsible Liquor Laws, Inc.**

March 10, 2023

Good morning, Chairman Thompson, and Members of the Committee:

I am Whitney Damron and I appear before you today on behalf of the Kansas Association for Responsible Liquor Laws, Inc., to share our concerns with SB 253 that would allow for the delivery of alcoholic liquor and cereal malt beverage products by licensees and third-party delivery services.

By way of information, KARLL is an association of twenty-five retail liquor stores who are generally some of the larger retailers in their market areas but share common interests with all retailers.

A listing of KARLL members is included with my testimony.

While KARLL is opposed to this bill this year, we have worked in the past with various parties to bring about substantial changes to how and where alcoholic liquor and cereal malt beverage products are sold:

- SB 13 passed in 2017 and implemented in 2019 allowed CMB retailers to sell strong beer up to 6% alcohol.
- Executive orders and subsequent legislation in 2021 allowed for curbside delivery and carryout of alcoholic liquor and cereal malt beverage products.

But with change comes challenges. Challenges for mom-and-pop retailers to compete against big box retailers and multi-location chains. Challenges to enforce youth access prevention by state and local law enforcement agencies. And now, challenges to compete with or against the world's largest technology companies on moving alcoholic liquor and CMB from licensees to customers.

The retailers I represent have taken a close look at delivery options and legislative proposals and are not yet ready to embrace the requests being made by the proponents of SB 253.

Just some of our concerns include:

- **Liability and Youth Access.**

Under SB 253 the proponents of this bill propose to shield themselves from responsibility for preventing youth access and other violations of the state liquor laws by insulating themselves from liability and enforcement through third-party delivery companies. Yes, a delivery person can check ID's at the point of delivery, but what happens if the person at the door is 21 years of age but there are clearly minors present at the residence? If problems persist, permit holder can simply drop one delivery person in favor of another without addressing the underlying problem that delivery outside of a licensee has inherent risks for expanding youth access to these adult-only products.

- **Consumer Cost.**

Delivery is not free. A retailer will be required to accommodate delivery with additional employees or contract through vendors. Margins will be impacted, costs for consumers will increase, and liability costs will rise for placing an employee behind the wheel. Big box retailers can use market share and financial resources to create an unlevel playing field for market participants. Ultimately the deep pockets of big box retailers filled with Wall Street cash will consolidate sales and force smaller players out of business.

- **Who Owns the Information?**

One of the biggest concern for retailers is "who owns the data generated by delivery and what happens to this information once an order is made?" The bill includes vague language as to the collection of "personal data" to only that which is "adequate, relevant and reasonably necessary". The bill suggests such data collectors shall "maintain reasonable security" for the protection of such information. Can anyone imagine what the disclosure verbiage the proponents of this legislation will insert into their agreements that most readily agree to when signing up for Facebook, iTunes, Twitter, Instagram, Uber, Lyft, and other platforms? Furthermore, nothing in the bill appears to prevent any participating party from collecting data and dissecting it for its own purposes, including customer marketing.

Will these companies use data to move customers from one licensee to another? Will they require a licensee to enter into an agreement with a permit holder that allows the permit holder to retain and utilize information obtained to market to another licensee either while the first licensee is under contract or after an agreement lapses?

The scenarios are only limited by the creativity of the engineers paid to write the programs and the aggressiveness of the marketing divisions of these companies.

A company known as Drizly has operated for several years as a liquor product delivery service. In February 2021, Drizly was acquired by Uber Technologies, Inc. Most of us think of Uber as a transportation company, but when the transaction was announced, *Forbes* magazine appropriately described Uber Technologies as a "San Francisco-based tech giant."

As we have seen year in, year out, day in, day out, these giant tech companies, like Meta/Facebook, Amazon, Door Dash, Uber/Uber Eats/Drizly and retailers like Wal-Mart and Kroger are some of the largest companies in the world and practically unregulatable in terms of anyone's ability to constrain their collection and use of consumer data or market dominance.

Questions.

- From the bill, it appears certain companies are not required to obtain a permit from the State “if they only provide technology services to a retailer or licensee to obtain a third-party delivery” as noted in New Section 1. (g). Who are these companies and why should they be exempt from having a permit, license or otherwise being regulated if they are making themselves an integral part of the sale of alcoholic liquor or CMB products in our State?
- The bill would allow companies such as Lyft, Uber Eats, Door Dash and others to obtain what must be described as a “master permit” that all employees and/or independent contractors work under. What kind of enforcement scheme is this? If an employee or independent contractor performs an illegal act and is subject to an enforcement action the company will merely terminate the relationship and utilize other providers with little or no enforcement action taken against the permit holder. With 3 million or more drivers for Uber/Lyft/Door Dash and other transportation technology companies in the United States, drivers would be thrown under the proverbial bus in case of violations with little to no enforcement action at the permit holder level.

Kansas has made a number of accommodations for the sale of alcoholic liquor and cereal malt beverage products over the past decade with stakeholders working together to craft reasonable and responsible legislation.

Changes in recent years reflective of this spirit of cooperation include:

- Strong Beer Compromise passed in 2017; implemented in 2019.
- Days and hours of sale for liquor and CMB retailers.
- Growler/Crowler Sales.
- Carryout Sales.
- Temporary Permits.
- Common Consumption Areas.
- Canning & Bottling Changes.
- Residency Requirements.
- Fulfillment Houses.
- Wine Delivery; Direct Shipping; Shipping Records.
- Farm Winery Law Changes.
- Self-Serve Options.
- Removal of Unsold Products.
- ABC-requested Changes/Enforcement.
- Sampling of Product.
- Food Sales Requirements.

The members of the Kansas Association for Responsible Liquor Laws, Inc., respectfully suggest the proponents of delivery for alcoholic liquor and cereal malt beverage products have failed to make the case for enactment given the questions and concerns we and others raise in regard to this legislation, and we ask the Committee to not advance SB 253 to the floor.

On behalf of the Kansas Association for Responsible Liquor Laws, Inc., I am pleased to stand for questions at the appropriate time.

WBD

- *Oregon Uproar over Underage Liquor Drops*
Wine Searcher, February 7, 2023
www.wine-searcher.com

- *Your To-Go Cocktails Make it Harder Drinking Laws*
Pew Stateline, May 5, 2022
www.pewtrusts.org

- *At-home Alcohol Delivery: A New Avenue for Underage Drinking*
Addiction Prevention Coalition, November 22, 2021
www.apcbham.org

Attachment: List of KARLL Members

**Kansas Association for
Responsible Liquor Laws, Inc.
Membership List
Established in 2012**

GARDNER

Moonlight Liquor

HAYS

Kaiser Liquor

HUTCHINSON

DJ Liquor
Egbert Liquor

KANSAS CITY

Rogers Liquor
Village West Liquors

LAWRENCE

On The Rocks

LEAWOOD

Harry's Liquor Store
Ranchmart Wine & Spirits

LENEXA

Justin's of Lenexa
Valley Wine & Spirits

MANHATTAN

The Fridge Wholesale Liquor

MISSION

Tipsy's Wine & Spirits

OLATHE

Brown Bag Liquor
Metcalf Discount Liquor

OVERLAND PARK

Lukas Wine & Spirits Superstore
MDL Wine & Spirits

SHAWNEE

Missie's Discount Liquors

SALINA

Brooks Liquor

TOPEKA

Devlin's Wine & Spirits
Vern's Retail Liquor

WICHITA

ABC Liquor
Burgardt Retail Liquor
Jacob Liquor
R & J Discount Liquor

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