

March 5th, 2024
SB 511
Proponent
Brett Straight
Brand Master
Defiance Brewing

Chairman Thompson and Members of the Committee,

Senate Bill 511 was introduced on February 13th and referred to the Committee of Federal and State Affairs yesterday. Here is the link:http://kslegislature.org/li/b2023_24/measures/sb511/

We have had successful communication with both our House Representative Barbara Wasinger and Senate Representative Rick Billinger. We have attempted to contact Representative Ken Rahjes unsuccessfully. From our understanding, he leads or is the Chair of the Rural Caucus Committee and we are requesting their support on this initiative. The impact of this legislation is imperative for the growth and sustainability of small microbreweries in rural communities. Below is a list of industry facts related to our "Direct Sales," initiative you are welcome to share with any legislator. This information was provided by Sean Willcott of Willcott Brewing Company, Leavenworth, KS.

Direct Sales Initiative SB 511 Industry Facts

- 1) The effort is not "self-distribution". The proposed change does not affect or limit distributors actions or abilities. The effort is changing microbrewery licensing and provides the ability for in-state microbreweries to have the option to sell direct to retail, or use distributors where it makes business sense.
- 2) This effort is being modeled after the existing wine industry laws in Kansas, which allows Kansas wineries the option to sell direct to retail or utilize wholesalers. Winery license statute is K.S.A. 41-308(a) (http://ksrevisor.org/statutes/chapters/ch41/041_003_0008a.html). Microbrewery license statute is K.S.A. 41-308(b). (https://www.ksrevisor.org/statutes/chapters/ch41/041_003_0008b.html). The sections specifically being used as an example is K.S.A. 41-308(a)(2)
- 3) 41 states (including Washington DC) currently have some form of direct sales ability for the microbreweries in their state (see attached spreadsheet that I compiled based on correspondence with ABC departments of each state as well as state websites)
- 4) Kansas ranks 32 in the nation for number of breweries per capita in the state (<https://www.brewersassociation.org/statistics-and-data/state-craft-beer-stats/?state=KS>)

- 5) Kansas ranks 49 in the nation for gallons of beer produced per 21+ resident (<https://www.brewersassociation.org/statistics-and-data/state-craft-beer-stats/?state=KS>)
- 6) Less than 2% of the beer consumed in Kansas in 2023 was produced in Kansas (data was provided by Kansas director of ABC)
- 7) There are currently 81 microbrewery licenses issued in the state of Kansas (<https://www.kdor.ks.gov/apps/liquorlicensee/LiquorLicenseeSearch.aspx>)
- 8) 30 of the 105 counties in the state have a microbrewery (I sorted the data provided from KS liquor license database and counted the number of counties <https://www.kdor.ks.gov/apps/liquorlicensee/LiquorLicenseeSearch.aspx>)
- 9) Below is a link to a federal Treasury report that basically concludes exactly what Kansas microbreweries are experiencing regarding the unfair access and market manipulation: <https://home.treasury.gov/system/files/136/Competition-Report.pdf>

Brief Backgrounder of our Distributors of Defiance Brewing Company

Defiance partnered with the Kansas Craft Alliance in 2013. The Kansas Craft Alliance was a supplier/distributor partnership with the 14 Anheuser-Busch Warehouses throughout the state. Jerrod Nelson was the President of the KCA with Crawford Sales based out of Olathe, KS. Each warehouse then appointed a Craft Beer Representative. The warehouses highlighted below in red never ordered any beer from us, yet retained the right to sell our brand. Therefore, we could not seek another distributor to sell our beer in their respective territory unless we *bought* out their franchise agreement.

- 1) Western Beverage - Dodge City,(now Wil-Fischer)
- 2) Western Beverage - Hays,(now Wil-Fischer)
- 3) Vidricksen - Colby, (now Pestinger)
- 4) Vidricksen - Salina, (now Pestinger)
- 5) Flint Hills - Manhattan,
- 6) **Flint Hills - Osage,**
- 7) House of Schwan's - Wichita,
- 8) City Beverage - Hutchinson, (**only ordered a couple of pallets, then stopped**)
- 9) **Eagle Beverage - Frontenac,**
- 10) Crawford Sales - Olathe,
- 11) O'Malley's - Lawrence,
- 12) Strathman - Topeka,
- 13) **Seneca Wholesale Co - Seneca**
- 14) **Wil-Fischer - Kansas City**

Although we had a contract with all of the AB warehouses in the state, our products were not available in every territory because some warehouses wouldn't order beer from us. In August of 2022, we received a termination of contract notification from Crawford Sales, Olathe. Jerrod Nelson helped us navigate out of the franchise agreements with all of the KCA warehouses with the exception of the three Wil-Fishcer, the two Pestinger and Flint Hills (Manhattan) warehouses. We partnered with Worldwide Beverage Group to cover the open territories in November of 2022. Jerrod Nelson resigned from the KCA in December of 2022 and a new President for the Kansas Craft Alliance was never appointed.

Strathman Sales parted ways with Wes Thulin, their Craft Beer Representative in June of 2022. O'Malley's parted ways with Jon Cook, their Craft Beer Representative sometime in 2023. Flint Hills, Manhattan, parted ways with Jamie Wilson, their Craft Beer Representative in October of 2023 and never hired a replacement. With all the resignations/terminations of the Craft Beer Representatives and the President of the KCA, our partnership as a supplier became increasingly more difficult and frustrating.

Anecdotal Testimony of Defiance Brewing Company's interaction with Kansas Distributor's

I became the Sales Representative for Defiance Brewing Company in October of 2021. My first market visit with our distributor (House of Schwan's) in Wichita was in November. It is common practice in the industry to schedule a "ride-along," with a sales representative employed by your distributor. Our Craft Beer Representative (Steve Haines) made the arrangements for a ride-along with their sales representative (Spencer). He took me around to both on-premise and off-premise accounts and introduced me and our brand to accounts. It was during this "ride-along," the representative informed me he doesn't make any money selling our brand. He receives incentive pay for selling Anheuser-Busch products like Budweiser, Bud Light, Michelob Ultra and Busch Light, but not Defiance. So he doesn't really push our brand because he makes more money selling AB products. He told me his paychecks come from AB, not Defiance.

In March of 2023 I attended the Kansas Craft Beer Exposition in Lawrence, Kansas. I had several ticket holders approach me who were employed with on-premise accounts in Lawrence. These individuals asked me who we were now distributed by? I told them we were still with (O'malley's), and learned our distributor had informed these accounts they could no longer get Defiance beer. The truth was they simply hadn't ordered any beer from us and didn't have any in their warehouse to sell.

On May 4th, I had a scheduled market visit with our distributor in Topeka. The Craft Beer Representative (Wes Thulin) for this warehouse (Strathman) made the arrangements for me to "ride-along," with him. At the end of the day we had scheduled another market visit for July 12th. He emailed me an Outlook Event Invite for that date. I accepted. On May 25th, I received an Outlook notification for "event cancellation," of the next market visit. There was no explanation. After several unanswered emails and no other contact information for this warehouse, I simply called their office line. I spoke with the receptionist and explained we were a supplier partner

and had been unable to get a response from their Craft Beer Representative. I learned he was no longer with the company. I left my contact information and requested a call back to determine who our new contact person would be. I followed-up every week. Three weeks went by and no one contacted me. We had no orders placed that month by Strathman. I finally contacted Jarrod Nelson, the President of the Kansas Craft Alliance in Kansas City and explained the situation. Within 15 minutes I was contacted by the owner of Strathman.

Our distributor (Crawford) in Olathe/Overland Park informed us in May of 2022 they would no longer order beer from us unless it was pre-sold in the market. I made a total of 18 trips to their territory in 2022 and was never afforded a "ride-along," with any of their representatives. I would make contact with accounts, secure the order and send a spreadsheet to the warehouse manager (Russell Barnett), where he would order the beer I pre-sold from Defiance. The next month when following up with accounts, I was informed they never received their order from last month. After some investigating, I learned the warehouse neglected to tell their sales staff our beer was pre-sold and not available to other accounts. Therefore, our pre-ordered beer was sold out from underneath the accounts who had requested it.

We received a 60 day notice of contract termination from our distributor, (Crawford Sales Company) in Olathe, Kansas, on August 31st of 2022. This was after the debacle created by having to pre-sell beer in their market for them to order any beer from us. We were unable to sell any beer in their market during that time. In addition, this termination of contract created a void in the normal operations with the Kansas Craft Alliance. Crawford was the hub for four other AB warehouses who purchased beer from us. Pestinger of Salina, Flints Hills of Manhattan, Strathman of Topeka and O'Malley's of Lawrence would submit their orders to (Russell Barnett) at Crawford, and he would submit all the orders to our production facility. We would then ship the order directly to Crawford. They would then route the orders back to the warehouses respectively in Lawrence, Topeka, Manhattan and Salina. The cost to ship a pallet of beer stacked 1 case high (minimum) or 10 cases high (maximum) was \$200 at the time. We would normally ship two pallets to Crawford at \$400 for shipping. Upon termination, we would now be responsible for shipping to each warehouse individually. Meaning we would need to spend \$800 to ship each order individually on top of the revenue we lost during those 60 days.

Email communication with Flint Hill Beverage (Manhattan) Craft Beer Representative Jamie Wilson (Karlin) with a response from Terry Dow, owner of Flint Hills Beverage, September 6, 2022

From: Brett Straight
Sent: Friday, September 2, 2022 10:51 AM
To: Jamie Wilson
Subject: Defiance Inventory

Jamie,

There were business decisions made by owners and investors of Defiance which were out of my control. The future of Defiance Brewing Company is ambiguous at best right now. There are a multitude of unknown variables which will determine how this all unfolds for us. The decision was made due to an insufficient revenue being produced by our brewhouse through sales with the KCA. While there were four KCA territories up in sales from 2021, the other four territories we do business with performed worse last quarter. I had hoped my presence in the market place would have produced better results, but I failed. We're simply not generating enough revenue to cover the costs of operations.

I have enjoyed working with you, you have been a good mentor for the line of work we do in this industry. I am unsure of what my role will be or if I will have one? However, I intend to help sell as much beer as I can to alleviate the current financial burdens Defiance is in. Would you please send me the current inventory Flint Hills has of Defiance Beers? I will continue my role with Defiance until I am notified differently. Thank you.

Brett E. Straight
Brand Master
Defiance Brewing Company
817-718-3019
2050 US 40
Hays, KS 67601

Brett,

I am your only contact for this, so please send any requests to me. I was informed by Ken from a letter that he was trying to terminate our distribution rights. We will not just sign-off our distribution rights without payment. We will only sell our distribution rights to Defiance or to another wholesaler that will purchase our rights for an agreed pre-determined amount. Termination without payment will not be an option. If Defiance has decided to pull out of certain markets temporarily then we sell the product in inventory back to Defiance when you want us to. We will still have our distribution rights for our territory if Defiance decides to sell within our territory in the future.

Thank you,

Terry Dow

Owner/Manager



5900 Corporate drive

Manhattan, ks 66503

785-776-2337

From: Jamie Karlin

Sent: Tuesday, September 6, 2022 2:25 PM

To: Terry Dow

Subject: Fwd: Defiance Inventory

Sent from my iPhone

Begin forwarded message:

From: Brett Straight

Date: September 6, 2022 at 2:19:27 PM CDT

To: Jamie Karlin

Subject: Re: Defiance Inventory

JK

Jamie Karlin

To: Brett Straight

Tue 9/6/2022 2:26 PM

Sorry! I forwarded to my boss and he said he took care of it. Apparently he did not. We are currently out but I'm pretty sure we have an order waiting on pick up in KC. I forwarded along again so hopefully he responds. Sorry. Sad to see you go I enjoyed working together.

Jamie

Sent from my iPhone

On Sep 6, 2022, at 2:19 PM, Brett Straight wrote:

Jamie,

Just a quick follow-up on the inventory. Is there someone else I should contact?

Thank you,

Brett E. Straight

Brand Master

Defiance Brewing Company

817-718-3019

2050 US 40

Hays, KS 67601

As a supplier, we send out an email at the beginning of the month including the Purchase Order, New Item Form and a brew sheet for our monthly seasonal. We asked distributors to have the Purchase Order placed by the 10th of each month so our production team has sufficient time to package the order. There have been multiple times we have received orders from distributors after the 20th of the month. This makes it extremely difficult to fulfill the order as a small business microbrewery.