



KANSAS JUSTICE INSTITUTE

Testimony to the House Committee on Commerce, Labor and Economic Development

HB2158: Permitting beekeepers who meet certain requirements to sell packaged honey and honeycombs without holding a food establishment or food processing plant license under the Kansas food, drug and cosmetic act.

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Proponent - In Person

Chairman Tarwater and Members of the Committee:

Kansas Justice Institute¹ strongly supports the elimination of unreasonable occupational barriers. In our view, because honey and honeycomb *are already safe* food products, requiring a license to sell them is unreasonable, irrational, arbitrary, oppressive, protectionist, and not appropriately tailored to serve a legitimate public interest. Stated differently, because there is nothing inherently unsafe about honey or honeycomb, there is no reason to strictly regulate them like other types of food products that could present health risks.

To that end, KJI believes HB2158 is an excellent start, strongly supports the intent of the bill, but respectfully asks this Committee to consider removing the \$50,000 cap. Honey doesn't become unsafe after a certain number of sales.

For some historical background, Kansans have been keeping domesticated bees for more than 170 years. *See The Kansas State Bee-Keepers Association*, *The Kansas Lever* (Apr. 13, 1893). Local Kansas beekeepers' associations have existed since at least 1872. *Bee Books*, *The Kansas Spirit* (Feb. 17, 1872) (describing Douglas County, Kansas, Beekeepers Association).

Kansans have been selling their own local honey for more than 150 years. *E.g., Fine Honey*, *The Daily Kansas Tribune* (Sep. 26, 1869) (describing D.G. Watt of Wakarusa keeping bees, selling honey, and exhibiting hives at Kansas State fair); *Improved Bee-Keeping*, *Western Home Journal* (Dec. 9, 1869) (column explaining how one increases profitability from beekeeping); *Bees for the Horticulturist*, in *Bulletin of the Kansas State Horticultural Society*, (Kansas State Printing Plant, Topeka, 1922) at 16 ("There is another reason why I produce comb honey if I can, and that is it is easy to sell and has always sold for a good price").

For more than 150 years, Kansans have been keeping beehives at their homes. *E.g., The Baldwin Institute*, *The Daily Kansas Tribune* (Sep. 3, 1871) (article describing a Doctor's beehives on his residential property); *What I Know About Bee-Keeping*, *The Kansas Spirit* (Mar. 9, 1872)

¹ Kansas Justice Institute (KJI) is a non-profit, public-interest litigation firm committed to defending against government overreach and abuse. It is part of Kansas Policy Institute.

(describing five beehives kept at home in Atchison); *Bees for the Horticulturist*, *supra* at 18 (describing keeping hives “at home”).

What’s more, beekeeping benefits both the community and the individual beekeeper. Honeybees help pollinate local gardens, fruits, vegetables, berries, and native plants. Tending bees and being outdoors provides health benefits to the beekeeper. Eating local, fresh honey provides health benefits “given its antimicrobial, antiviral, antiparasitary, anti-inflammatory, antioxidant, antimutagenic and antitumor effects.” Rachele Messner, et al., *Backyard Beekeeping*, Utah State University, Extension Sustainability (2014); see also, Delaney Nothaft, *Is honey good for you? Learn about the buzz here.*, USA Today (May 20, 2023).

In short, because honey and honeycomb are already safe products, there are serious and credible arguments that regulating them like they aren’t safe violates Kansas Constitution Bill of Rights Sections 1, 2, 18, and 20 under *any* legal standard of review. The Kansas Constitution forbids unreasonable, unequal, and arbitrary occupational barriers, after all.

In Kansas, courts sometimes apply what’s called the “real and substantial relation” test.

The “real and substantial relation” test relies on “human judgment, natural justice, and common sense. Whether or not a restriction is reasonable may depend on many factors, no single factor being ordinarily decisive” and examines the “total situation.” *Ernest v. Faler*, 237 Kan. 125, 130-131 (1985). This means “the legislature cannot use a cannon to kill a cockroach.” *Id.* at 130. In other words, a “legislative body cannot” “enact unequal, unreasonable, and oppressive legislation[.]” *City of Baxter Springs v. Bryant*, 226 Kan. 383, 391(1979); see also, *Capital Gas & Electric Co. v. Boynton*, 137 Kan. 717, 728, 730 (1933) (law did not promote the public welfare, and was “unreasonable, arbitrary, unjust, and oppressive.”) (cleaned up).

What’s more, in *Thompson v. KFB Ins. Co.*, 252 Kan. 1010, 1022–23 (1993), the Kansas Supreme Court explained that although deference is sometimes given to legislative classifications, where “the only basis for the classification is to deny a benefit to one group for no purpose other than to discriminate against that group, the statutory classification is not only mathematically imprecise, it is without a rational basis and is arbitrary,” and is therefore unconstitutional.

Thank you for your time and consideration.

Sincerely,

Samuel G. MacRoberts