



TESTIMONY

House Federal and State Affairs Committee

HB 2611

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

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

February 16, 2022

Good morning, Chairman Barker 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 HB 2611 setting Kansas on a path for retail delivery of alcoholic liquor and cereal malt beverage products.

By way of information, KARLL is an association of twenty-five liquor retailers who are generally the larger stores in their relevant market areas but have common interests with the Kansas Association of Beverage Retailers. A listing of our members is included with my testimony.

In October of 2021, I testified before the Special Committee on Liquor Modernization and expressed our concerns with delivery. For those of you on that committee, some of this may sound familiar.

The Covid-19 pandemic initiated and accelerated significant changes in state's liquor laws, some of which were implemented during a time of emergency before the law was allowed to catch up.

Legislators may recall retail liquor stores were deemed a vital business and were not required to close during a time when many non-alcohol-related businesses were forced to close by Federal, State and Local health orders. Many retailers adopted touchless sales and curbside carryout to accommodate consumers and public health concerns.

When restaurants were allowed to conduct business on a limited basis, mostly carry-out or delivery, a request was made by the restaurant industry to allow for the sale of liquor products "to-go." By way of information for the Committee, my client, KARLL, did not object to this accommodation granted by the Governor and later codified in statute.

During the 2021 legislative session, there was discussion among the liquor industry players on expanding carry-out to include home delivery by restaurants, grocery stores, retail liquor stores and other licensees. Now we have a bill to consider.

KARLL has taken a wait and see approach to delivery for a number of reasons, including the following:

- **Liability.** Kansas currently does not have dram shop liability, but a retail liquor store selling products to customers for delivery to a residence does raise certain liability and enforcement issues. Whether third party delivery or a retailer employee were utilized, there would be liability issues to be concerned with and address. What will happen if delivery is made to a residence where someone 21 years of age accepts delivery, but clearly minors are present and consuming? Scenarios like this are endless.
- **Cost.** Delivery is not free. A retailer would be required to accommodate delivery with additional employees or contract through a vendor (e.g., Door Dash, Uber Eats, Lyft, taxis, etc.). Clearly margins would be impacted for a retailer and prices increased for consumers.
- **Who Owns the Information?** Perhaps the biggest concern for retailer delivery is who owns the data related to delivery? An entity known as Drizly has operated for several years in a handful of states for alcohol product delivery. In February of 2021, it was announced Drizly was being acquired by Uber Technologies, Inc. In a *Forbes* magazine article on the transaction, Uber was not described as a “transportation company,” but rather as a “San Francisco-based tech giant.”

Companies like Facebook, Uber/Uber Eats, Lyft, Amazon, Door Dash, Google, Wal-Mart, Kroger and are among the largest companies in the world. More than anything, what they do is collect and monetize data and personal information. Until such a time that retailers have a better understanding of the pro’s and con’s for engaging in home delivery, including the risk of loss or weaponization of their own financial and customer data, one can expect retailers to be cautious in entering into this area of retail sales of alcohol products.

Imagine these scenarios:

- Retailer A contracts with Uber/Drizly (or any other aforementioned delivery service) for delivery of product to customers. Uber/Drizly collects data on Retailer A sales (and customers of all other retailers they serve). Customer solicits Retailer A for product but is intercepted by Uber/Drizly who suggests looking at the products and prices available from Retailer B, who will pay for delivery for the first order and discount products being requested. Retailer A loses a customer and has no idea why or that it even happened.
- Uber/Drizly sells data on customers in relevant market area to any and all retailers who would like to purchase it. Company has data on all customers who utilize Uber/Drizly delivery and coordinates marketing with other retailers who are willing to pay for the information.

As we have seen in the national media is these companies are practically beyond regulation or consumer control. Every day we learn more about that these companies are doing with the data they collect and ways they monetize that information for their own benefit to the tune of billions of dollars and to the detriment of small businesses they leave in their wake. It is no wonder retailers do not trust these companies to keep the retailer’s interest proprietary to their own. We doubt there is anything that could be placed in statute to control or regulate such activity, but we can take a wait and see attitude and evaluate best practices in this area around the country.

Kansas has made a number of accommodations for the sale of alcoholic liquor and CMB products over the past decade with the industry – all members – working together on 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; Shipping Records.
- Farm Winery Law Changes.
- Self-Serve Options.
- Removal of Unfinished Products.
- ABC-requested Changes/Enforcement.

The Special Committee on Liquor Modernization touched upon the area of enforcement and social costs of the most recent changes in liquor laws. The information was inconclusive, but not something we should ignore.

Finally, I suspect the proponents of this legislation will suggest if the retailers don't want in, take them out and let them have delivery. We do not see this as an appropriate path forward, as these market giants will materially alter the landscape for the sale of these products and their impact on small business and yes, retailers, is unknown but will likely be significant.

Consumers can now get liquor and CMB products in carryout, curbside delivery and even from a fast-food restaurant, if so inclined. KARLL believes we should not rush into home delivery of alcohol and CMB products. We have done enough for a while.

On behalf of the Kansas Association for Responsible Liquor Laws, Inc., I thank you for your time and consideration of our comments today. I am pleased to stand for questions.

WBD

**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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