March 5, 2024

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan, General Counsel
Kansas Wine & Spirits Wholesalers Association - OPPOSED
RE: SB511 - Permitting beer and hard cider sales by microbreweries to retailers, public venues, clubs, drinking establishments, holders of temporary permits and caterers and allowing such sales at special events to consumers

Chairman Thompson and Members of the Committee,

The Kansas Wine & Spirits Wholesalers Association opposes SB511.

My microbrewer friends have some misconceptions about the glamour of self-distribution. Compared to traditional distributing, self-distributing requires a higher upfront cost. One might need to hire a sales rep for in almost all cases of consistent distribution, having a rep on staff to solely focus on distribution allows for better relationships and successful sales.

Second, you have to choose the proper vehicle for transporting your beer. For shorter trips, like one-mile distribution, it's reasonable to use a personal vehicle. But for longer trips, a refrigerated box truck is a necessary expense. Then there are expenses associated with travel. Knowing your routes, with no backtracking or unnecessary travel time, provides a huge advantage. Setting these up ahead of time and budgeting not only the time an employee will spend on a delivery route, but the gas mileage that quickly adds up helps as you budget to ensure the lowest possible bottom line. There are the logistics - the warehouse space and the equipment to store inventory – to consider.

Our current system saves on up-front costs, frees up brewery resources, will increase sales volume, are responsible for cartage of the product safely, incur all the expenses associated with trucks, fuels, drivers, liability and work comp insurance. Leveraging outside distribution is a model that is successful – and we have a number of craft brewers in Kansas who have benefited from same. And there is the keg tracking and the line-cleaning expenses to also consider. These producers are better served when they rely on the distributors' expert knowledge of the market; should focus on the core of their business, and thus grow their business.

The allure of self-distribution is that in a self-distribution scenario, the craft brewery keeps the distributor's gross profit. However, our analysis on whether the distributor gross profit will be sufficient to cover the costs of the craft beer distribution is operation concludes that is doubtful.

A three-tier distribution system has many practical advantages. Craft brewers and importers, in particular, would have a hard time affording all the warehouses and trucks needed to distribute beer over wide territories on their own. In a world without independent distributors, small brewers would mostly be limited to distributing in a very limited geographic area. By aggregating the distribution of many brands, independent distributors make warehousing and trucking more efficient. And by offering the products of many suppliers, a retailer may need only one or two deliveries per day, as it can meet most of its beer needs by doing business with just a few distributors. For example, there is no self-distribution in our neighbor Missouri.

In Idaho the limited self-distribution requires that: " Such brewer shall, however, comply with and be subject to all other regulations or provisions of law that apply to a wholesaler's license,"

For example in Nebraska the law allows craft brewery licensees to self-distribute up to 250 barrels per year to retail licenses in Nebraska if the licensee: (1) only self-distributes its beer in a territory in which the craft brewery licensee has not entered into a distribution agreement with a licensed Nebraska wholesaler; (2) self-distributes its beer utilizing only persons employed by the licensee in vehicles owned and leased by the licensee; and (3) complies with all relevant statutes, rules, and regulations that apply to Nebraska beer wholesalers regarding distribution.

A model that preserves the three-tier system exists in Virginia which has created a non-profit cooperative to facilitate brewery distribution.[1]

Importantly, KWSWA is concerned about the unintended consequences of SB511. There are numerous federal lawsuits currently pending that challenge laws banning self-distribution from out-of-state producers to in-state retailers where there is in-state self-distribution.

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[11] 3. *Establish and operate a nonprofit, nonstock corporation under Chapter 10 (з 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for Virginia breweries and limited breweries. Such corporation shall provide wholesale beer distribution services for Virginia breweries and limited breweries licensed in accordance with з 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, (i) two of whom shall be an owner or manager of a Virginia beer wholesale licensee, (ii) one of whom shall be an owner or manager of a brewery or limited brewery licensee, and (iii) one of whom shall be an owner or manager of a brewery or limited brewery licensee that is not served by a wholesaler at the time such owner or manager is appointed to the board of directors. In making appointments to the board of directors, the Board shall consider nominations submitted by the Virginia Beer Wholesalers Association regarding members listed in clause (i) and nominations submitted by the Virginia Craft Brewers Guild regarding members listed in clauses (ii) and (iii). At least annually, such corporation shall be required to report to the Commissioner on its activities, including reporting the quantity of beer distributed for each brewery or limited brewery licensee during the preceding year. The Commissioner shall report such information to the General Assembly. The provisions of the Virginia Public Procurement Act (з 2.2-4300 et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section; ... CHAPTER 597 An Act to amend and reenact зз 3.2-102, 4.1-206.2, 4.1-223, 4.1-225.1, 4.1-231.1, and 4.1-310.1 of the Code of Virginia, relating to alcoholic beverage control; beer distribution. [H 2258] Approved March 26, 2023*

For example in *ALBA, et.al v. New York State Liquor Authority, et. al*, Docket No. 1:23-cv-08108, a civil action in the United States District Court, Southern District of New York, Plaintiffs are asking the court to by-pass the three-tier system and allow out-of-state producers to the extent the state permits in-state producers, to sell directly to in-state retailers.

If that becomes the law, what a disaster it will be for tax collections and maintaining an orderly market for the regulation of the alcoholic beverage system in Kansas.

Characteristics of an orderly market regulated by the Director of alcoholic Beverage Control in the sale of alcoholic beverages include:

- Compliance with licensing and permit regulations: All establishments selling alcohol must hold the necessary permits and licenses, ensuring that they operate legally and within the parameters set by regulatory authorities.

- Pricing regulations: Prices of alcoholic beverages are regulated to prevent excessive price fluctuations or unfair pricing practices that could harm consumers or create market distortions.

- Safety measures: Measures to ensure the safety of both consumers and the public, and limited underage purchases.

- Consumer protection: Measures to protect consumers' rights, such as ensuring accurate labeling of products, preventing deceptive marketing practices, and providing that the product is of best quality for consumption.

Overall, an orderly market in the sale of alcoholic beverages aims to balance the commercial interests of businesses with the public interest in promoting responsible consumption, and public health, and safety.

After careful consideration, if the committee should decide to implement some form of self-distribution numerous amendments are needed for this bill if it is to move forward. Self-distribution should be (1) limited to the county and adjoining counties in which the microbrewery is located; (2) it should be same day delivery; and, (3) there should be a cap on the number of barrels the microbrewery can self-distribute. Once that cap is reached they should roll-over into the current three-tier system. Further, they should comply with all relevant statutes, rules, and regulations that apply to Kansas wholesalers regarding distribution.

Thank you for your kind attention to and consideration of these matters.

Tuck Duncan