



February 16, 2022

To: House Committee on Federal and State Affairs
From: R.E. “Tuck” Duncan, General Counsel
Kansas Wine & Spirits Wholesalers Association
RE: HB 2611 authorizing the delivery of alcoholic liquor and cereal malt beverage by licensed retailers and third-party delivery services to patrons;

The bill before you generates for the legislature a public policy decision. HB 2611 proposes to allow the home delivery of packaged wine, beer/CMB and spirits. The KWSWA is neither a proponent nor an opponent of this bill. We do have several suggested amendments if you advance this policy to the full House.

- (1) The milage radius should be 30, not 50. (page 4, line 32; page 9, line 10). That radius will accommodate all cities and most if not all counties.
- (2) There should be a provision that makes it clear that deliveries can be made only within Kansas and not across state lines.
- (3) If the legislature adopts a policy to allow home delivery of alcoholic beverages it should be available to all package licensees or not available to either. Both categories sell the same beer products and the equilibrium that has been achieved in the years since allowing CMB licensees to sell beer not exceeding 6% will be threatened.

According to the Research Report presented to the Special Committee on Liquor Law Modernization dated November 9, 2021:

“Twenty states currently allow for home delivery of mixed drinks from restaurants or other appropriately-licensed establishments. Twenty-one states limit delivery to alcohol sealed by the manufacturer. Twenty-five states allow for home delivery of alcohol through a third-party contractor or service. Seven states do not allow for any type of local home delivery of alcohol to consumers.”¹ Kansas is a state that does not allow any form of delivery.

1

http://www.kslegislature.org/li/b2021_22/committees/ctte_spc_2021_liquor_law_modern_1/documents/testimony/20211110_01.pdf SURVEY OF STATE LEGISLATION REGARDING HOME DELIVERY OF ALCOHOL

(4) Currently the bill provides that: “No employee of a retailer or third-party delivery service and no independent contractor contracting with a retailer or third-party delivery service shall be required to obtain a delivery permit in order to conduct deliveries for such retailer or third-party delivery service.” The individuals working for third party services – almost all of whom are not employees and not under the control of the service - must be subject to a permit otherwise there is no mechanism to induce that delivery person to comply with beverage alcohol regulations.

(5) Speaking of regulations, the Director should be granted the authority to promulgate regulations to implement the provisions of the Act.

During the interim there were concerns expressed regarding costs to the licensee and the privacy of consumer information.

(6) Kansas law currently provides that no one other than the licensee can have a beneficial interest in the sale of alcohol. No percentage of sales can go to unlicensed persons. It is our judgment that as a result of that provision no third party could be paid a percentage of the sale and could only be compensated by a flat fee. Typically, that fee would be paid by the consumer. The committee should codify that no percentage fees are permitted.

(7) With respect to the confidentiality of consumer data collected as defined in KSA 50-7a01 could be deemed by law as confidential and privileged and not subject to disclosure to others.

(8) On pages 4, line 10 and 8, line 20, the bill requires “certification” of the purchaser’s age. We suggest a better term would be “verification.”

(9) On pages 5, line 30 and 9, line 42 the word “agent” is used in conjunction with delivery act violations. Since the word agent is used in several definitions herein and as a term identifying certain employees of the Alcoholic Beverage Control, the sentence might better read:

“Nothing in this section shall be construed to limit the jurisdictional authority of the director in pursuing violations of this section against any ~~agent~~ representative of a retailer or third-party delivery service providing delivery services pursuant to this section.” This will still provide the Director authority to enforce the law against persons not otherwise licensed or possessing a permit.

Our primary concern is that should the policy of delivery be adopted that there is a level playing field with adequate protections for consumer privacy and ensuring that deliveries are not made to persons under the legal drinking age.

Thank you for your consideration of these matters.