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SB 511

Proponent

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Chairman Thompson and Members of the Committee,

I'm writing today in support of SB511, a bill that, if passed, would position small Kansas owned breweries for greater success than what the current law allows.

This reform would be life changing for a new business here in Kansas. My wife, our five children and I live in Douglass and I am the head brewer for The Green Frog Brewery and Tasting Room, which will open mid-March. We are newly licensed by both the state and federal governments and the first batches of beer are being prepared as I write this. We believe our brewery and taproom will bring a new vibe and energy to the Douglass community, which sorely needs growth. Your support of SB511 would only help us, and all the others like us, be better faster.

In my previous brewing industry experiences, I have also served as the Director of Sales for Walnut River Brewing Company, the second largest brewery in the State of Kansas. I have seen the business from the side of both the smaller, startup company as well as from the larger, more regional-oriented brewing operation.

I'd like to make it very clear in this testimony that I do not currently work for Walnut River, nor do I speak on their behalf. I note this because I've had firsthand conversations with employees of distributors and wholesalers that have indicated to me that some of the distributors and wholesalers would possibly retaliate against any brewery that might lend its support to passage of a bill like SB511. I would like the record to clearly show that I speak only for myself and for The Green Frog Brewery and Tasting Room.

Current Kansas law is extraordinarily harmful for small businesses like ours. In fact, there are several flaws built into this system that make it nearly impossible for us to compete in the market with large breweries:

- The current system requires microbreweries to enter into contracts and sell our products to a third party distributor or wholesaler, who then sells our brands to restaurants, liquor stores and bars, all with a markup.
- We are allowed only one 3rd party wholesaler per territory to sell our beer, so there is no free-market competition to sell our product – effectively creating a monopoly.
- If a wholesaler is putting their attention on other products and chooses not to put our product as a primary focus, we cannot fire our wholesaler and hire a new one without the derelict wholesaler agreeing to release us.

Perhaps the most striking part of all of this is that the system we seek for the Kansas beer industry already exists in our state. The structure in place for Kansas wineries allows those small businesses the option to use wholesalers or to sell direct to consumers where it makes more sense. Having that flexibility would be hugely beneficial to our company and all the others like us. We want to have that same opportunity with beer.

Successful passage of SB511 could literally change lives in Douglass, Kansas. We are the definition of little guy. Our brewing system is ½ barrel in size. To put that in perspective, Anheuser-Busch will produce in 5 seconds what we produce in a full year. We are no threat to larger breweries.

However, Douglass has experienced a decline in population over the last few years, and with that, the restaurant that served as the social hub of the community closed. For the last 2+ years, there has been no place for people to gather. Our brewery aims to bring back a much needed sense of community that would improve the quality of life for our residents and those in surrounding areas.

Passage of SB511 would allow us to spread the word about our business through placement of product in other communities without having to sell through a distributor who stands to gain very little from selling our product. While a distributor may gain next to nothing in selling a keg or two outside of Douglass, to us it would mean the world. It would give us the ability to market not only our company, but also our community and bring in people to experience all the good that is here.

There has, unsurprisingly, been resistance to this effort by beer wholesalers and distributors in Kansas. Those companies are shielded by current regulations and franchise laws which allow them to keep all breweries, Kansas-owned and non-Kansas owned, large and small, under their thumbs. These companies wield all the control of the supply chain for beer in the state.

For background: The three-tier system was created following the repeal of Prohibition. The aim was to prevent what were known at the time as “tied houses,” or pubs and saloons owned by breweries, which were viewed at the time to be one of many alcohol-inspired societal ills.

This possibility of breweries controlling one portion of the three-tier system is now a reality, however, the target has changed. The large corporate breweries now control the distributors and the flow of product from the brewery to the retailer. While the corporate breweries do not own distribution companies like House of Schwan in Wichita, Strathman in Topeka, or Crawford in Johnson County, they do have deeply rooted control of all of them.

Each of these companies are members of the Kansas Craft Alliance (KCA), a statewide network of more than a dozen beer wholesalers and distributors that sell the product of approximately 85% of the craft breweries in Kansas. All members of the KCA are also exclusive distributors of Anheuser-Busch products and through that arrangement, Anheuser-Busch, a Missouri-headquartered company that is owned by a company outside of the United States, has control of Kansas-owned breweries. The following are just a few of the ways the Anheuser-Busch Brewing Company has near total control of the Kansas craft beer market:

- Distributor ownership must be trained and approved by Anheuser-Busch before the distributor may receive authorization to sell any Anheuser-Busch product, whether it’s a large brand or any of the nearly 400 craft products in the Anheuser-Busch portfolio.
- Distributor sales teams have transitioned to the Anheuser-Busch proprietary Bees app, a platform developed and mandated by Anheuser-Busch through which virtually all sales are run. They also sell all non-Anheuser-Busch product in the distributor’s portfolio using this app, creating a database of sales information of all Anheuser-Busch and non-Anheuser-Busch products.

- Anheuser-Busch corporate receives access to all sales data of all breweries that are not owned by Anheuser-Busch that an Anheuser-Busch approved distributor carries in its portfolio.
- Under the current three-tier system, the distributors are effectively controlled by the big breweries, I am required to contract with a distributor, and Anheuser-Busch is then allowed to see all my sales data. They also have the ability to slow down or completely stop sales of my brands in their territory if my sales were to encroach upon one of their brands (known in the industry as brand collecting).
- Furthermore, franchise laws mean that if a distributor does minimize my brand in the market, I am not able to sever ties with that distributor without them giving me permission to do so, effectively making business decisions for me.
- If I want to take my beer to the market, I am totally at the behest of the distributor.
- In my time at Walnut River, I personally had numerous instances of going to a retailer to introduce them to a product, they tell the distributor they would like to order that product only to have the distributor reply with “sorry, we don’t carry that brand of theirs.”

A distributor is not required to carry a brewery’s entire portfolio and instead chooses which product from the brewery’s entire portfolio it would like to carry, and when a retailer says they want that product they aren’t carrying, rather than order it from the brewery, they simply tell the retailer it is not available, and the brewery loses that business.

On February 23, 2024, KSNT-TV in Topeka aired a story discussing SB511. The story interviewed three Topeka area brewery employees along with State Representative Tom Kessler. I’d like to speak to what Representative Kessler said in that reporting.

From the story:

“State Representative Tom Kessler said, “Our three-tier system in Kansas is pretty solid, and anything that kinda fractures that, I’m completely against. It separates the manufacturer from the retailer. So there’s a lot of aspects there that are necessary.”

Kessler argues that if breweries sell directly to retailers, it could lead to preferential treatment.

“They don’t have to deliver to everyone within an area. You can have three retailers right in a row. They could, like, work with Retailer B, and not sell A or C anything. There’s nothing in the state law that says they would have to, but under our current law, they have to, the distributor has to service all three of those licensees.”

There are two elements to this. First, Representative Kessler owns a liquor store called Tom’s Wine and Spirits, 133 E. 47th Street, Wichita, KS. That was not disclosed in the story. It could be argued that Representative Kessler is protecting his own personal interest. In the reporting, the interest of the breweries is implied, however, the viewer is not informed that Representative Kessler owns a liquor store, a clear conflict of interest.

Secondly, as mentioned above, a distributor is, indeed, required to service all licensees, however, they are not required to call attention to every brand available, so there’s a possibility of selectivism against

certain breweries. An environment exists for preferential treatment by distributors toward Anheuser-Busch owned products and brands, because, again, the distributors are controlled by the larger corporate breweries.

Successful passage of SB511 would dramatically impact a brewery like mine. The brewery we are set open in Douglass is a small brewery, with a half-barrel brewing system, meaning we can make batches of 15.5 gallons at a time. We do not now, nor will we ever, have the capacity to compete with the larger breweries. With that, the chances of a distributor picking up our brand is quite small, and if they did, they would gain very little from doing so.

SB511 would give brewing companies options. The larger breweries will most certainly continue to sell their product through the distributors. These breweries have neither the infrastructure nor the desire to assemble a fleet of trucks and the drivers needed to operate them in order to successfully maintain their current levels of sales and distribution throughout the state. Creating this type of internal operation would be cost-prohibitive for even the largest breweries in Kansas.

However, if a company like mine, The Green Frog, were able to represent ourselves in the market, sell and deliver a couple of kegs to a handful of bars and restaurants in targeted areas, it would mean the world to us and could help us expand and become more successful more quickly. Placement of our product in strategically selected locations could raise awareness of our brand and our company, and it would bring visitors to our brewery and tasting room, allowing them to become friendly and acquainted with the Douglass community, which is desperate to experience growth.

Ladies and Gentlemen, for the sake of our fledgling business and for all the other small, Kansas owned and operated businesses that employ citizens in each of your districts, I implore you to vote in favor of SB511. Please do not choose a large corporation that is not based in our state over dozens of breweries that are.

I thank you for your time and consideration.

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