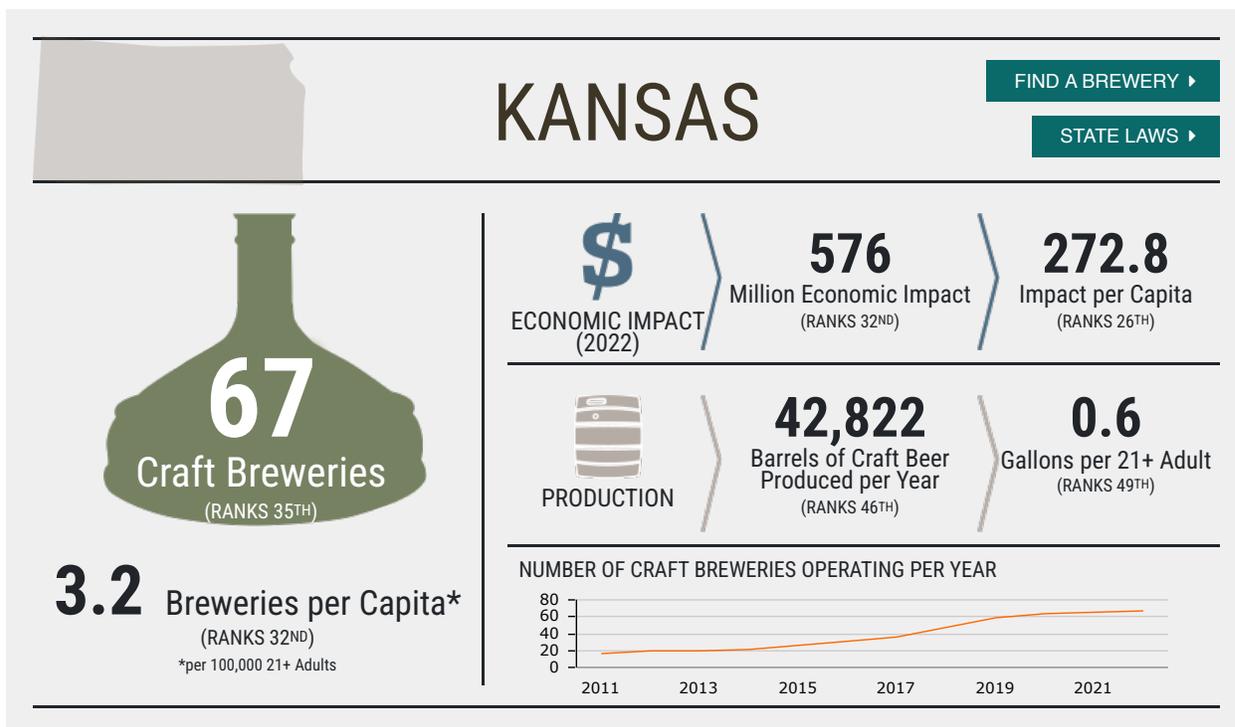




Mr. Chair and members of the committee, thank you for the opportunity to present written testimony on this important topic. Kansas has a long history with alcohol regulation. This bill will help Kansas small businesses who serve as our neighborhood “front porches” where people can come and gather, share their victories, and a few defeats, and generally form community. If you don’t live near a microbrewery, it is increasingly difficult to have a Kansas beer on our actual front porch as Kansas law requires it first to go through a middleman and then to be resold through a packaged store. SB 511 allows a microbrewer to have the freedoms every other businesses have; the right of more self determination and the opportunity to avoid additional restraints of trade through less regulation. SB 511 create an addition right to sell directly to retail establishments while not removing or altering the distributor requirements.

Background

Kansas is currently 49th in the nation for beer produced per person through 67 microbreweries. At the same time, 41 other states allow small in-state breweries to have some form of direct sales. It is reasonable, and taught in every economics class, that a restricted marketplace will produce less goods. Here is a backgrounder from the Brewers Association¹:



¹ <https://www.brewersassociation.org/statistics-and-data/state-craft-beer-stats/?state=KS>



Kansas Regulatory Model: Three Tier System

Kansas has never ratified the 21st amendment. Our taste for alcohol has been heavy on the regulation and light on the freedom. Regardless, the Kansas ABC has dutifully followed our laws and reported on the Kansas tiered system for many years². Here is their description found in many legislative reports:

“The three-tier system is comprised of:

1. Supplier (out-of-state distiller, winery, brewery, or an in-state or out-of-state broker)
2. Distributor (in-state)
3. Retail (retail liquor store or on-premise establishments)

The main purposes of the three-tier system are to:

- provide a reliable method of gallonage tax collection
- provide for an orderly market
- avoid tied houses and the abuses of prohibition
- provide for checks and balances within the industry”

SB 511 wants to emulate what has been in the laws for decades. Kansas farm wineries have been recognized in Kansas law since 1983. The laws allowing their rights have seemed to work well. Allowing them to grow, make, move and sell their products at retail, both theirs and others, while not perfect, allows for the same rights of self determination we are seeking. As near as I can tell, no one has reported to the Kansas legislature, other than a few complaining about their property tax assessments, that the regulatory scheme allowing farm wineries direct sales and allowing them to collect their taxes and report them are not working appropriately.

Distributor Consolidation and Competitive Interests

Of concern, is what was once a shield against the large out of state manufacturers is acting as a sword against Kansas small businesses. Post prohibition, state governments followed John D. Rockefeller’s, Toward Liquor Control to justify implementing a sophisticated regulatory scheme, including restricting direct sales. This privation of a common sales right acted as a shield against the large out of state manufacturers’ power. However, the marketplace has changed. There are nearly 63,000 labels/or registered brands in Kansas. Of those, 16,384 are beer labels/brands. Kansas only has 38 beer distributors and many counties have only three. Is it reasonable to expect from a distributor they have 431 favorite beers? Do Kansas distributors have space on their truck for everyone? Our wine laws allow for direct to consumer sales for this very reason. While we are not asking to sell directly to consumers, we are asking to sell to other retailers and drinking establishments.

Make no mistake, distributors do remain reliant on the big manufacturers. You’re either an ABI or Molson Coors affiliated distributor, regardless of what Tuck says. “The two largest brewers selling beer in the United States, Anheuser-Busch InBev SA/NV (“ABI”) and Molson Coors Beverage Company (“Molson Coors”), together account for an estimated 65 percent of the beer market nationwide, as

² https://kslegislature.org/li_2022/b2021_22/committees/ctte_spc_2021_liquor_law_modern_1/documents/testimony/20210831_03.pdf

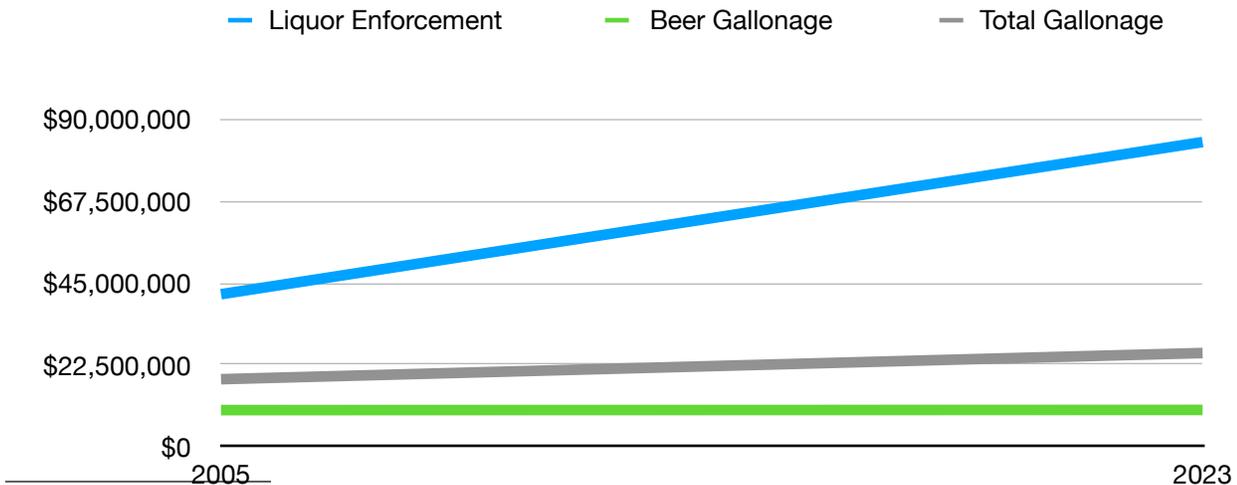


measured by revenue, making the U.S. beer market highly concentrated under the standards that the federal antitrust agencies use to assess market concentration.”³

It is also worth noting the **duality** of the concern reported in the U.S. Treasury Report: “If the craft brewers’ access to large distributors that sell ABI or Molson Coors beer were reduced or eliminated, these competing craft brewers could be forced to use smaller, less efficient distributors that typically receive inferior treatment at retail establishments. In addition, if a larger number of craft beer brands were pushed into a smaller distributor, that may increase the complexity and cost of distribution, which could also increase the distributor’s incentive to raise the price of all of its craft beer brands. *Similarly, as the number of brands carried by a distributor increases, the distributor may become less focused on promoting the smaller brands that it carries. And, as discussed above, because state franchise laws often may make it very difficult for a brewer to switch distributors, brewers have little recourse should the distributor hamper the brewer’s growth.*”⁴ This same duality expressed in the U.S. Treasury report is another reason why allowing for direct sales will help regulate a competitive marketplace. It puts Kansas microbreweries in a no win situation; dance with someone who wants to shelve your brand in favor of another larger competitor or try to dance with someone not capable. Either way, Kansas law requires microbreweries to dance with someone.

Comparative Tax Collections

Looking closer at the liquor enforcement tax, the amount paid (8% of sales) by distributors and package stores, it has doubled since 2005. This tier is where the tax revenues have grown the most. The production taxes (gallage⁵) have remained statistically flat. The distribution tier appears to be in a solid position.



³ <https://home.treasury.gov/system/files/136/Competition-Report.pdf>, pg 20.

⁴ <https://home.treasury.gov/system/files/136/Competition-Report.pdf> pg 32. (Emphasis added)

⁵ K.S.A 41-501: \$.18 per gallon on beer and cereal malt beverage; \$.20 per gallon on all wort or liquid malt; \$.10 per pound on all malt syrup or malt extract; \$.30 per gallon on wine containing 14% or less alcohol by volume; \$.75 per gallon on wine containing more than 14% alcohol by volume; and \$2.50 per gallon on alcohol and spirits.



Conclusion

State	Gallons/21+ adult	Rank	Max Direct Sales Volume (bbl)	Direct Sales Allowed
Maine	10.7	2	30000	Yes
Pennsylvania	9.9	4	No limit	Yes
Alaska	9.5	5	300,000	Yes
Oregon	8.3	6		Yes
Wisconsin	7.6	7	No limit	Yes
Montana	7.2	8	60000	Yes
Colorado	5.9	9	9677	Yes
Hawaii	5.3	10	No limit	Yes
Wyoming	4.9	11	No limit	Yes
Ohio	4.6	12	1,000,000	Yes
Minnesota	4.4	13	No limit	yes
California	3.8	14	No limit	Yes
Connecticut	3.5	15	No limit	Yes
North Carolina	3.5	15	4839	Yes
New Hampshire	3.3	17	No limit	Yes
New Mexico	3.2	18		Yes
Washington	3.1	20	60000	Yes
Massachusetts	2.9	21	No limit	Yes
New York	2.9	21	No limit	Yes
Missouri	2.4	23		Yes
District of Columbia	2.3	24	500	Yes
Idaho	2.2	26	30000	Yes
Virginia	2.2	26	500	Yes
Utah	2.1	29	60000	Yes
Maryland	2	30	3000	Yes
Iowa	1.9	31	30000	Yes
Texas	1.9	31	1,000/brewery, or 2,500 max combined	Yes
Indiana	1.6	34	3000	Yes
Illinois	1.4	35	3000	Yes
Arizona	1.3	36	3000	Yes
Michigan	1.3	36	2000	Yes
North Dakota	1.3	36	10000	Yes
South Dakota	1.3	36	1500	Yes
Tennessee	1.3	36	1800	Yes
Nebraska	1.1	41	250	Yes
New Jersey	1	44	300000	Yes
Oklahoma	0.9	46	65000	Yes
Alabama	0.8	47	No limit	Yes
Arkansas	0.7	48	45000	Yes
West Virginia	0.5	50	10000	Yes

Written Proponent Testimony
SB 511
Kansas Craft Brewers Guild
Scott J. Schneider J.D.
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Kansas often has trailing laws that favor out of state production. Whether its the past tax debates about machinery and equipment, the current single factor tax, or a myriad of other laws, Kansas is reticent to favor our own. Our alcohol laws are no different. SB 511 will allow for Kansas to get in the game. Thank you for your consideration on passing SB 511.