



February 2, 2023

Mr. Chairman and Members of the Committee,

On behalf the Kansas Beer Wholesalers Association, thank you for the opportunity to provide testimony in support of H.B. 2170, AN ACT concerning alcoholic beverages; relating to spirits distributors, wine distributors and cereal malt beverage distributors; regulating samples; amending K.S.A. 41-306, 41-306a and 41-307 and repealing the existing sections.

H.B. 2170 amends Kansas statute pertaining to samples provided by a licensed Kansas distributor to licensed liquor retailers, clubs and drinking establishments. This legislation would match Kansas statute to the current federal regulations. Of note, this legislation does not apply to samples provided to consumers by retailers or clubs and drinking establishments.

H.B 2170 is intended address a conflict between Kansas statute, a Kansas Administrative Regulation and the Federal TTB regulation – all three of which speak, albeit differently, to samples provided by distributors to licensed retailers, clubs and drinking establishments. These variations in language are creating confusion in the marketplace and on at least one occasion has resulted in a Kansas distributor receiving a citation from the Kansas ABC.

Currently, a distributor of beer, wine and/or spirits is allowed to provide samples to the owner/operator and employees of liquor stores and clubs and drinking establishments. This allowance is found in KSA 41-306 for spirits, 41-306a for wine and 41-307 for beer. The statute is silent as to the size and/or amount of the sample(s). The statute also makes no reference to the product being new to either the distributor or the licensee.

However, KAR 14-14-6a(b) (attached to my testimony) says “(b) Any distributor may withdraw alcoholic liquor and cereal malt beverage inventory in the course of business to provide licensees with information on new product lines. Any distributor may provide each licensee with one individual bottle or one individual can from a new product line. The distributor shall provide these samples either on the distributor’s licensed premises or on the premises of the recipient licensee.”

There are several issues with the regulation which was adopted in 2003. First, we believe that it is far more restrictive than the legislature’s intent as evidenced in the statute it adopted. In addition, the regulation is not at all practical in its application. For example, what does “new” mean and how and who defines “new”? Is it a product that is one month old, six months old, etc.? The limitation of one can or one bottle is arbitrary and impractical in terms of application, reason and enforcement. Providing a sample of two eight-ounce cans of 5% ABV beer is a violation, but providing a sample of 1.75 liters of 80 proof liquor is OK simply because it is contained in one bottle.

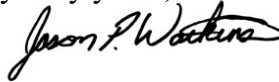
After consulting with members of the industry, as well as officials with the Kansas Alcoholic Beverage Control, we believe the most equitable and easiest remedy is to simply have Kansas statute match the current federal TTB regulation contained in 27 CFR § 6.91, which is also attached to my testimony. In short, this would allow a distributor to provide samples of products to a licensee provided that licensee had not purchased that product within the preceding 12 months. Samples would be limited in quantity to not more than 3 gallons of any brand of malt beverage, not more than 3 liters of any brand of wine, and not more than 3 liters of distilled spirits.

Due to the current confusion within the marketplace and ongoing potential for administrative actions for violations of the act, we do request that the bill be amended to be effective upon publication in the Kansas State Register. We have also sought the opinion of the Kansas ABC related to this requested amendment and the Director has indicated that this would not create a problem for the agency.

Therefore, we urge the Committee to report H.B. 2170 favorable for passage with the aforementioned amendment included.

Thank you and I am happy to stand for questions at the appropriate time.

Very truly yours,



Jason P. Watkins

Kansas Beer Wholesalers Association

§ 6.91 Samples.

The act by an industry member of furnishing or giving a sample of distilled spirits, wine, or malt beverages to a retailer who has not purchased the brand from that industry member within the last 12 months does not constitute a means to induce within the meaning of section 105(b)(3) of the Act. For each retail establishment the industry member may give not more than 3 gallons of any brand of malt beverage, not more than 3 liters of any brand of wine, and not more than 3 liters of distilled spirits. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next larger size.

Comparison TTB & Kansas Regulations Distributor to Licensee Sampling

Current Federal TTB REG

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Current Kansas Administrative Regulation

14-14-6a. Withdrawal of inventory from the warehouse for sampling. (a) Any distributor may withdraw alcoholic liquor and cereal malt beverage inventory from the distributor's warehouse to provide educational opportunities to any of the following types of licensees in the course of business or at industry seminars:

- (1) Retail liquor stores;
- (2) clubs;
- (3) drinking establishments;
- (4) caterers; or
- (5) hotel drinking establishments.

(b) **Any distributor may withdraw alcoholic liquor and cereal malt beverage inventory in the course of business to provide licensees with information on new product lines. Any distributor may provide each licensee with one individual bottle or one individual can from a new product line. The distributor shall provide these samples either on the distributor's licensed premises or on the premises of the recipient licensee.**

(c) No licensee that receives an individual bottle or can from a distributor in the course of business shall sell the item received. Licensees and distributors shall comply with all other laws pertaining to the possession and consumption of alcoholic liquor and cereal malt beverages.

(d) Alcoholic liquor and cereal malt beverage inventory withdrawn for use at industry seminars shall be for licensees and their employees to sample the distributor's product lines. Each alcoholic liquor sample and cereal malt beverage sample offered by the distributor shall be consumed only on the seminar premises and in accordance with Kansas law. Each distributor shall notify the director, using a form available from the director, at least seven days before conducting an industry seminar.

(e) Each distributor shall pay the liquor enforcement tax on the alcoholic liquor and cereal malt beverage inventory when the inventory is withdrawn from the distributor's warehouse, based on the current posted bottle price or case price.

(Authorized by K.S.A. 41-210; implementing K.S.A. 41-709; effective Jan. 3, 2003.)