



**OPPOSITION TESTIMONY**

**Senate Committee on Federal and State Affairs**

**SB 253**

**An Act concerning alcoholic beverages; authorizing the delivery of alcoholic liquor and cereal malt beverage by licensed retailers, licensed clubs, drinking establishments and restaurants and third-party delivery services to patrons.**

**Whitney Damron  
On behalf of the  
Kansas Association for Responsible Liquor Laws, Inc.**

**January 31, 2024**

Good morning, Chairman Thompson, and Members of the Committee:

I am Whitney Damron and I appear before you today on behalf of the Kansas Association for Responsible Liquor Laws, Inc., (KARLL) to share our concerns with SB 253 that would allow for the delivery of alcoholic liquor and cereal malt beverage products by licensees and third-party delivery services.

By way of information, KARLL is an association of twenty-five retail liquor stores who are generally some of the larger retailers in their market areas but share common interests with all retailers.

A listing of KARLL members is included with my testimony.

As Yogi Berra said so eloquently, "It's like déjà vu all over again."

On Monday of this week, we received proposed changes to SB 253 from the proponents and have worked to understand what the changes do, if anything, to lessen our concerns to the bill.

**- Who Owns the Information?**

Historically, one of the biggest concerns with a delivery bill is, "who owns the information and customer data obtained through these delivery channels?"

The bill now indicates "data shall not be sold or used for any purpose beyond compliance with this section" on page two of the bill, (1)(f).

Does this only apply to personal information or does it apply to order information (e.g., volume, product, price, location, etc.). What happens to the data? Is it stored or otherwise maintained in any database of the delivery service permit holder? Does all customer and order information simply go away after each transaction? If not, what happens to it? How is this to be enforced?

While we have not been provided with copies of any agreements the proponents utilize, we can find some information through a Google search.

Example from a 77-page Uber Eats contract:

***Last modified: 1/12/2024 Uber Eats U.S. Merchant Terms and Conditions***

## **Promotions.**

### **12.b. Control of Uber Platforms.**

The parties acknowledge and agree that:

12.b.i. the Merchant controls the list of Items and the Retail Price of Items available through the Uber Platforms;

12.b.ii. Portier controls the factors that impact the order, frequency and ranking in which all merchants appear to Customers in the Uber Platforms, including in search results and presentation of merchants by category;

12.b.iii. the Uber Platforms are a competitive marketplace where the Merchant, the Merchant's Brand, the Merchant's Sponsored Listings, and the Merchant's Promotions may each be displayed together with, alongside, or compared with the Merchant's competitors and other third parties that may promote or sell products through the Uber Platforms;

12.b.iv. nothing in this Agreement prevents Portier from presenting the Merchant, the Merchant's Brand, the Merchant's Sponsored Listings, and the Merchant's Promotions together with, alongside, or in comparison with the Merchant's competitors and other third parties that may promote or sell products through the Uber Platforms;

Does this mean Uber Eats and other delivery service permit holders can collect, dissect, and accumulate data from a retailer and use it to push customers to more favored customers of the platform? Once these companies have customer data, they are only limited by their imagination as to what can be done with it. What impact will it have if a company uses one of these services and then decides to end their relationship? Again, it is not clear to us if the bill addresses personal data or all data that can be obtained from a transaction.

The bill also suggests such data collectors shall "maintain reasonable security" for the protection of such information. This is not much consolation to the 2.5 million consumers of Drizly that had their personal data exposed. Uber recently closed Drizly, but the personal data breach is still relevant and raises the question, "what were they doing with all this data that others promise to not retain?"

*FTC Takes Action Against Drizly and its CEO James Cory Rellas for Security Failures that Exposed Data of 2.5 Million Consumers*

*Order requires company to destroy unnecessary data, restricts future data collection and retention, and binds CEO to specific data security requirements.*

*October 22, 2022*

*Drizly and Rellas were alerted to security problems two years prior to the breach yet failed to take steps to protect consumers' data from hackers. The FTC's proposed order requires the company to destroy unnecessary data, restricts the data that the company can collect and retain, and binds Rellas to specific data security requirements for his role in presiding over unlawful business practices.*

As we have seen year in, year out, day in, day out, these giant tech companies, like Meta/Facebook, Amazon, Door Dash, Uber/Uber Eats/Drizly and retailers like Wal-Mart and Kroger are some of the largest companies in the world and practically unregulatable in terms of anyone's ability to constrain their collection and use of consumer data or market dominance.

- **Liability and Youth Access.**

Under SB 253 the proponents of this bill shield themselves from responsibility for preventing youth access and other violations of the state liquor laws by insulating themselves from liability and enforcement through third-party delivery companies.

SB 253 allows companies such as Lyft, Uber Eats, Door Dash and others to obtain what must be described as a "master permit" that all employees and/or independent contractors work under. If an employee or independent contractor performs an illegal act and is subject to an enforcement action, the company can terminate the relationship and utilize other providers with little or no enforcement action taken against the company as the permit holder.

- **Consumer Cost.**

Delivery is not free. A retailer will be required to accommodate delivery with additional employees or contract through vendors. Margins will be impacted, costs for consumers will increase, and liability costs will rise for placing an employee behind the wheel. Big box retailers can use market share and financial resources to create an unlevel playing field for market participants. Ultimately the deep pockets of big box retailers filled with Wall Street cash will consolidate sales and force smaller players out of business.

- **Problem Drinking.**

**Home delivery of alcohol linked to increased alcohol consumption and binge drinking**

During the COVID-19 pandemic, many states expanded online alcohol sales and alcohol home delivery laws. One of the first U.S. studies of the impact on adults of home delivery of alcohol during the early months of the pandemic found significantly more alcohol consumption and binge drinking among those who obtained their alcohol through home delivery than those who did not.

[www.news-medical.net](http://www.news-medical.net)

July 4, 2023

Furthermore, do we have any idea how these delivery companies intend to market to consumers after a sale? For those with alcohol challenges in their life, receiving solicitations through social media for easy delivery of alcohol doesn't seem like a good idea.

Finally, we are aware of concerns expressed by the Kansas Wine & Spirits Wholesalers Association in regard to legal cases pending in other states. We share those concerns and believe the Kansas Legislature should be cognizant of both short-term impacts of this legislation and potential long-term consequences not foreseen, yet entirely possible. These companies have the ability through size, scope, reach and a never-ending supply of Wall Street money to fundamentally alter the small business landscape for retail liquor store owners just as they have for most any other businesses in which they compete against and before Kansas lets that happen, we ought to see what impact they have on small business in other states.

Search for most any of these companies with the word "antitrust" and you will find scores of hits online:

- *Third-party delivery companies sued by diners for antitrust violations. A New York Federal judge ruled that the case against Uber Eats, Grubhub driving up menu prices can move forward.*  
[nrm.com](http://nrm.com) (03/31/22) (Nation's Restaurant News)
- *US Government and 17 states sue Amazon in landmark monopoly case. ...allegations that the e-commerce giant abused its economic dominance and harmed fair competition.*  
[cnn.com](http://cnn.com) (09/26/23)
- *FTC alleges Facebook resorted to illegal buy-or-bury scheme to crush competition after strong of failed attempts to innovate.*  
[ftc.gov](http://ftc.gov) (08/19/21)

I won't belabor the point further, but suffice to say, these companies bring market forces to bear that have a significant impact on all who are forced to compete or do business with them.

The members of the Kansas Association for Responsible Liquor Laws, Inc., respectfully suggest the proponents of delivery for alcoholic liquor and cereal malt beverage products have failed to make the case for enactment given the questions and concerns we and others raise in regard to this legislation, and we ask the Committee to not advance SB 253 to the floor.

On behalf of the Kansas Association for Responsible Liquor Laws, Inc., I appreciate your consideration of our concerns and will stand for questions at the appropriate time.

WBD

Attachment

**Kansas Association for  
Responsible Liquor Laws, Inc.  
Membership List  
Established in 2012**

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**GARDNER**

Moonlight Liquor

**HAYS**

Kaiser Liquor

**HUTCHINSON**

DJ Liquor  
Egbert Liquor

**KANSAS CITY**

Village West Liquors

**LAWRENCE**

On The Rocks

**LEAWOOD**

Harry's Liquor  
Ranchmart Wine & Spirits

**LENEXA**

Justin's of Lenexa  
Valley Wine & Spirits

**MANHATTAN**

The Fridge Wholesale Liquor

**MISSION**

Tipsy's Wine & Spirits

**OLATHE**

Brown Bag Liquor  
Fareway Wine & Spirits  
Metcalf Discount Liquor

**OVERLAND PARK**

Kansas Fine Wine & Spirits, LLC  
MDL Wine & Spirits

**SHAWNEE**

Missie's Discount Liquors

**SALINA**

Brooks Retail Liquor

**TOPEKA**

Devlin's Wine & Spirits  
Vern's Retail Liquor

**WICHITA**

ABC Liquor  
Burgardt Retail Liquor  
Jacob Liquor  
Jack's Discount Liquor  
Jack's Wine & Spirit  
R & J Discount Liquor  
Wichita Fine Wine & Spirits, LLC

*For more information, please contact:*

Whitney Damron  
Whitney B. Damron, P.A.  
919 South Kansas Avenue  
Topeka, Kansas 66612-1210  
(785) 224-6666 (M)  
[wbdamron@gmail.com](mailto:wbdamron@gmail.com)

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