



REFORMING CRAFT BREWING LAWS IN NEBRASKA

CHRISTOPHER KOOPMAN

Senior Research Fellow, Mercatus Center at George Mason University

Nebraska General Affairs Committee

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Dear Committee Members,

Thank you for the opportunity to provide comments regarding craft brewing regulation in Nebraska. The Project for the Study of American Capitalism at the Mercatus Center at George Mason University is dedicated to advancing knowledge about the effects of government-granted privilege on society. As part of its mission, the program conducts careful and independent analyses that employ economic and legal scholarship to assess legislation, regulation, and taxation from the perspective of the public interest. Therefore, this commentary does not represent the views of any particular affected party but is designed to assist your committee as it explores these issues.

I wish to directly address a single provision that is included in LB632: the requirement that wholesalers must unload and reload beverages at their warehouse before delivering them to retailers (revising 53-123.01(1)). This “unloading requirement” will only serve to increase the cost of distribution for Nebraska’s craft brewers. Further, this will limit the choices available to consumers throughout the state seeking high-quality, local craft beer.

Nebraska, like many other states, uses a three-tier system—requiring a wholesaler to stand between the brewer and the retailers—to control the distribution of alcoholic beverages within the state. With certain limited exceptions, this system requires that brewers, wholesalers, and retailers (stores, restaurants, etc.) remain separate entities according to their ownership and management. While perhaps well intentioned, these requirements increase the cost of developing, producing, and distributing new products in the brewing industry. In a recent survey of the empirical literature on laws that limit or constrain the relationship between buyers and sellers in a supply chain, economists Francine Lafontaine and Margaret Slade found that “when restraints are mandated by the government, they systematically reduce consumer welfare or at least do not improve it.”¹

1. Francine Lafontaine and Margaret E. Slade, “Exclusive Contracts and Vertical Restraints: Empirical Evidence and Public Policy,” in *Handbook of Antitrust Economics*, ed. Paolo Buccirossi (Cambridge, MA: MIT Press, 2008), 391–414.

For more information or to meet with the scholar, contact
Bryce Chinault, 703-993-4930, bchinault@mercatus.gmu.edu
Mercatus Center at George Mason University, 3434 Washington Blvd., 4th Floor, Arlington, Virginia 22201

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While this approach is costly enough, adding additional restrictions like the unloading requirement in LB632 will exacerbate the problem. This regulatory requirement, which perhaps could be viewed as *de minimis* on its own, should be viewed within the context of the entire regulatory landscape that craft brewers face. When considering together the federal, state, and local regulations that a typical brewer faces, it becomes quite clear that the unloading requirement will increase the regulatory burden on an already overburdened industry. For example, my colleague Matthew D. Mitchell and I reviewed all the regulatory barriers that a craft brewer in Virginia faces.² Once all federal, state, and local regulations are taken into account, the burden is substantial. Starting a brewery in the Commonwealth of Virginia requires as many procedures as starting a small business in China or Venezuela, countries notorious for their excessive barriers to entry.³ Nebraska's regulations are not very different from those found in Virginia, and adding yet another regulation to a heavily regulated industry is difficult to justify.

Policymakers should avoid increasing the unnecessarily burdensome regulatory restrictions faced by craft brewers, as the changing composition of the industry continues to chip away at the rationale of the current regulatory landscape. This is particularly true with mandates, such as the unloading requirement, that seem to serve no public purpose. Instead, policymakers should look to reduce these burdens where possible, reform the three-tier system (if not abandon it altogether), and create a climate where consumer choice is supported.

The success of craft brewing in Nebraska should be based on brewers' ability to provide the greatest value at the lowest cost to consumers, rather than brewers' ability to bear the costs of new regulatory restrictions. The unloading requirement is a step away from, not closer to, that ideal.

Thank you for the opportunity to provide comments regarding craft brewing regulations in Nebraska.

2. Mathew D. Mitchell and Christopher Koopman, "Bottling Up Innovation in Craft Brewing: A Review of the Current Barriers and Challenges" (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, June 2014).

3. *Ibid.*, 3.