

LB 33
General Affairs Committee
Testimony of Chris Wagner
Project Extra Mile
February 3, 2025

Good afternoon, Chairman Holdcroft and members of the General Affairs Committee. My name is Chris Wagner, and I am here representing Project Extra Mile, a network of community partnerships working in Nebraska to prevent and reduce alcohol-related harms. We want to express our opposition to LB 33.

The state of Nebraska continues to experience tragedies involving young people who lose their lives due to alcohol. As a consequence, the state needs this committee to prioritize defeating legislation that will contribute to these tragedies. LB 33 would introduce our youngest and most impressionable to the taste of alcohol through non-alcoholic products like near beer. These products look, smell, and taste like beer, therefore they may be a gateway to wanting to try the “real thing” before the legal consumption age of 21, thus increasing the harms our state is already experiencing.

In the materials I just provided, you can read the transcript of this committee’s hearing back in 1989 on a bill to undo what the legislature did the prior year when it deregulated near beer. Highlights of the testimony include police having to spend time and resources responding to calls involving this product because youth were drinking it at large events and driving down the street showing off to other motorists who called 911 as well as an 8-year-old testifying that a fourth-grade boy was drinking ‘near beer’ at her school during lunch.

I would also like to point out that the Alcohol and Tobacco Tax and Trade Bureau (TTB) frequently finds noncompliance with alcohol label content, the most common being that alcohol content did not match the label and was outside of regulatory tolerances, which also placed the product in a different tax class. I’ve included the last TTB Alcohol Beverage Sampling Program results that I was able to find on the agency’s website. That report indicates that 19 of the 53 (36%) malt beverage products sampled had alcohol content in excess of the 0.3% ABV tolerance from what was stated on the label. In its report, the TTB states that on average overproof malt beverage products were 0.94% ABV above the labeled amount. This is obviously a concern if we are going to let minors drink these products and then expect them to follow the laws about minor in possession and driving under the influence, especially given what we know about youth and young adults and their proclivity to engage in extreme binge drinking.

Instead of deregulating ‘near beer,’ we’d ask the committee give the Liquor Control Commission the authority to regulate all non-alcoholic products that they requested in 2023 and resulted in the introduction of a similar bill that year.

For those reasons stated, we urge the committee to oppose LB 33.

Thank you for your consideration.

COMMITTEE ON GENERAL AFFAIRS
LBs 153, 154, 440, 441
January 30, 1989

The Committee on General Affairs met at 1:30 p.m. on Monday, January 30, 1989, in Room 1520 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on the following legislative bills: LB 153, LB 154, LB 440, and LB 441. Senators present were: Jacklyn Smith, Chairperson; D. Paul Hartnett, Vice-Chairperson; Sharon Beck, W. Owen Elmer, Tim Hall, Rod Johnson, Doug Kristensen, and Bernice Labeledz. Absent: None.

SENATOR SMITH: Good afternoon, ladies and gentlemen. This is the regularly...

(Note: testimony interrupted because of recorder malfunctioning.)

LB 153

SENATOR BAACK: (Exhibit A) (inaudible). We do take care of that with this amendment? The tourist attraction must be located outside of the corporate limits of a city, the activities must take place out of doors, and persons from at least 100 miles from home must visit this site. That's sort of in the definition of tourist attraction. I think what this bill does is it recognizes that there are certain tourist attractions in this state that are very unique and are also very beneficial to economic development for this state. This bill came about when Gordon Howard from Bayard brought this to my attention. He was having some difficulties in working out some things with the Liquor Control people and he is of great economic benefit to my area and brings a lot of people into that area, brings a lot of money into that area, which is good for the economic development of that area. I think that, with that, I will just allow, Gordon Howard will follow me and he can talk about his unique situation, and the amounts of visitors and things that he has there and can explain this bill more fully at that point I think. But I would try to answer any questions if there are any. I do have to get back and do some negotiating here, but I'm open for questions if there are some.

SENATOR SMITH: We have a question here, Senator Hartnett.

SENATOR HARTNETT: Senator Baack, is there a special use, maybe I should ask the people from the Liquor Commission, that you can get liquor permit at one time, or if you're talking...is this going to be used a lot, do you think, or

order to be able to sell near beer.

SENATOR SMITH: Are there questions?

SENATOR HANNIBAL: Under this bill, yes, under LB 441, and I believe under Senator Pirsch's bill.

SENATOR SMITH: Thank you, Senator Hannibal.

SENATOR HANNIBAL: I would like to, if I may, Senator Smith, reserve a closing if necessary. It probably won't be, for my legislative aide, Linda Srb, and if she decides to waive, then.

SENATOR SMITH: Then you'll come back for your other bill?

SENATOR HANNIBAL: Yes, sir, Madame Chair, I'll go back to Appropriations Committee, because we might have some discussion on this, and I have another bill to present to you and I'll come back as soon as you're ready for me.

SENATOR SMITH: Okay. Thank you. Could we have the next testifier, and indicate which bill, or both that you are testifying for.

JERRY PRAZAN: Senator Smith and members of the committee, my name is Jerry Prazan, registered lobbyist for the City of Omaha. I'm here this afternoon to testify in support of both the bills before you, since they both cover the same concepts. We asked Senator Pirsch to introduce these two items as small items, as opposed to the weighty items that you are going to be dealing with later on on the liquor control act. The first item I should say is the near beer issue. Last year you passed a bill that essentially put the new language that the draft for LB 154 strikes out. To deregulate alcoholic beverages less than a certain alcoholic content. Right away the City law enforcement people made a complaint, about the same time, about a month after the bill became a law in August. And they were having problems with people who quickly, the word quickly got around, and mostly youth sort of groups that were having these in cars, and sort of very conspicuously showing them to other passengers on the road and complaints came in and the police stopped them and they said, ha ha, you can't do nothing. So it's more of really a personal complaint on the police officers. And then it, word got around kind of quickly, so there's a number of instances like that during the nice weather and people were out drinking in front of houses and things like that, and the police were unable to do that and do anything

about it, and it's more of a neighborhood nuisance as opposed to any serious sort of alcohol federal offense. Although there were some suspicions on the part of some of the members of the law enforcement people who think that the containers are being refilled with regular beer, and there's really no way they could tell other than take it to a lab and test it. If that was this near beer that was originally in the bottle or if it was a refill of some kind, and so we thought, since the intent of the act last year it was passed was primarily just to let things other than licensed retailers sell this sort of product, we thought that we would bring it back for a reconsideration to the committee and the Legislature, and I think maybe that was not a wise idea. Maybe things that look and smell and taste like beer should be kept in with beer. And all this would do, it would require that licensed beer distributors and licensed retailers would have to, they would be the tier of establishments that could sell these things, and you would have to be 21 again to purchase them. So it could not be purchased by a 16 year old, or something, as you can now. The second part of the bill, which probably there are more questions about, is the wine license. 1983, and the previous year before the (inaudible) law, the city of Omaha suggested some other changes in retail licenses to allow a sort of lower grade of license available to certain types of establishments. This Class J license which was a beer and wine on sale and a Class I license which I was involved in, which allowed just on-sale consumption without off-sale that a Class C has. The theory behind this is the same. We have a lot of establishments that want to sell alcoholic liquors and there is a reluctance on the part of neighborhoods and city councils to have too many liquor licenses out there. But people come in with legitimate and rightful sort of business enterprises where they would like to sell wine coolers and beer, and the interpretations we've been getting from the Supreme Court is that we can't be arbitrary and we can't be discriminatory in granting various people licenses if they are applying like everyone else. And so we are trying to legitimately let people who are trying to establish businesses have the license tools that they need to conduct their business in a lawful manner, but we want to be prudent and not have it so you have to give them the license for more than what they need. Right now, if the establishment wants to sell beer and wine coolers, which a lot of them purport to do, the only license we can give them, or I should say the smallest license we can give them is a Class D license which is a liquor store license, which is the same as an N street liquor or a South street liquor, or you know full time liquor establishment where liquor is

RACHEL JANSSEN: Okay. My name is Rachel Janssen. I'm a student at Lakeview School. I'm in favor of LB 441. One day when I was at lunch in the lunch room, I saw a boy drinking near beer. Near beer contains alcohol, so it should be treated like an alcoholic beverage. Alcohol is a drug and it can hurt you. It effects your brain and you can get hooked on it. Mr. Navritil, my principal, has told me that it is not allowed on Lakeview School property.

SENATOR SMITH: How old are you, Rachel?

RACHEL JANSSEN: Eight.

SENATOR SMITH: And how old was the boy, what grade was he in, who was drinking?

RACHEL JANSSEN: He's in fourth grade.

SENATOR SMITH: That's about eight or nine. About nine, probably. Thank you, Rachel. Does anyone have a question? Senator Hall.

SENATOR HALL: Rachel. Did the young man who was drinking, did he say where he got the beer?

RACHEL JANSSEN: No, but I heard another kid tell me that she heard the same boy say that he was drinking real beer, but it really wasn't real beer, it was the near beer.

SENATOR HALL: And so you don't know if he bought it at a store, he brought it from home, or where he got it.

RACHEL JANSSEN: I don't know where he got it.

SENATOR HALL: Thank you very much.

SENATOR SMITH: Thank you, Rachel.

ROBERT SCHRAEDER: My name is Robert Schraeder, I'm the Executive Director of the Alcoholism and Drug Abuse Council of Nebraska. We're an affiliate of the National Council on Alcoholism, the largest provider of prevention services to youth in the state. I, for the sake of time, I'm not going to repeat what other people say, other than the fact that we are very supportive of getting near beer off of the pop shelves in grocery stores, and back into the liquor stores. I think Rachel's point was well taken, and that's our basic concern is that it ends up in the hands of third, fourth and fifth graders. I also represent the Nebraska Coalition for

TTB Alcohol Beverage Sampling Program 2016 Results

TTB's Alcohol Beverage Sampling Program (ABSP) is a random survey of products in the marketplace where we:

- Verify that the labels on alcohol beverages contain adequate descriptive information,
- Confirm that the labels are not likely to mislead consumers, and
- Determine where compliance issues exist.

Each year we purchase products from the marketplace and bring them to our offices for label assessments, where we first evaluate them for compliance with our labeling regulations. Following the label assessments, we send the products to our laboratories for a series of chemical analyses to assess whether the products themselves comply with the information displayed on the product labels.

Overview for 2016 Results

In 2016, we selected 175 distilled spirits, 157 malt beverages, and 118 wines for the 2016 ABSP, for a sample total of 450 products. After analyzing these products, we found 152 products that were non-compliant:

- Distilled spirits: 68 products
- Malt beverage: 53 products
- Wine: 31 products

Common Compliance Issues

Alcohol Content Tolerances

The most common compliance issues we identified involved alcohol content that did not match the label and was outside regulatory tolerances, or that placed the product in a different tax class than indicated by the label. Tolerances vary by commodity:

- Distilled spirits generally allow for a loss of 0.15% alcohol by volume; however, no tolerance is allowed for an increase in alcohol by volume (27 CFR 5.37(b)).
 - On average, for distilled spirits, underproof products were 0.66% alcohol by volume below what was shown on the label, and over proof products were 0.28% alcohol by volume above what was shown on the label.
 - To assist distillers with proofing issues, TTB offers our "TTB Proofing Video Series" available on the [Distilled Spirits - Frequently Used Proofing Processes](#) page. These instructional videos guide industry members, step-by-step, through several frequently

used proofing procedures. The videos include close-ups of techniques and processes, and explain why it is important to correctly follow all of the steps involved in proofing spirits. In addition, we encourage industry members to review the gauging manual found in [27 CFR part 30](#) and the [official methods](#) used by our [Scientific Services Division](#).

- Malt beverages generally allow for a tolerance of 0.3% alcohol by volume, either above or below the alcohol content stated on the label (27 CFR 7.71(c)).
 - For malt beverages, underproof products on average were 0.71% alcohol by volume below what was shown on the label, and over proof products were 0.94% alcohol by volume above what was shown on the label.
- Wines are allowed a tolerance of 1% alcohol by volume either above or below the stated label alcohol content for wine containing more than 14% alcohol by volume.
- Wines falling between 7% alcohol by volume and 14% alcohol by volume are allowed a tolerance of 1.5% alcohol by volume (27 CFR 4.36(b)).
 - For wine, two products were found to be outside of tolerance, with both being 1.7% underproof.
- If at any point a wine crosses into a different tax class, the tolerances no longer apply. For example, if a wine is labeled as 13.5%, but is found to actually be 14.2%, we would consider this a violation.
 - We found 8 wines with a tax class violation.

Non-Allowable Revisions

Another common compliance issue we identified involved labels that did not match their approved Certificate of Label Approval (COLA) due to changes that were not allowable revisions. 53 of the 155 non-compliant products, or approximately 34%, had labels that contained changes in information, either mandatory or non-mandatory, which differed from the COLA.

For a complete list of findings by commodity, see the charts below.

2016 Findings

You can find the [Definitions for Non-Compliance Categories](#) at TTB.gov.

Distilled Spirits

We identified 87 noncompliance issues in 68 different distilled spirits products.

Reasons for Noncompliance	Number of Products
Alcohol content: over	36
Non-mandatory information differs from the COLA (not an allowable revision)	18
Alcohol content: under	14
Mandatory information differs from the Certificate of Label Approval (COLA)	5
Mandatory information is missing	4
No COLA	2
Health Warning Statement has errors	2
Class, type, or statement of composition is incorrect	2
Prohibited practices	2
Other: Label not firmly affixed	1
Type-size/legibility	1
Grand Total	87

Malt Beverages

We identified 72 noncompliance issues in 53 different malt beverage products.

Reasons for Noncompliance	Number of Products
Non-mandatory information differs from the COLA (not an allowable revision)	21
Alcohol content: over	19
Alcohol content: under	10
Mandatory information is missing	6
Health Warning Statement has errors	5
Mandatory information differs from the Certificate of Label Approval (COLA)	4
Prohibited practices	4
Class, type, or statement of composition is incorrect	1
Statement of average analysis or serving facts statement is missing or is incorrect	1
Type-size/legibility	1
Grand Total	72

Wine

We identified 41 noncompliance issues in 31 different wine products.

Reasons for Noncompliance	Number of Products
Non-mandatory information differs from the COLA (not an allowable revision)	13
Tax class	8
Mandatory information differs from the Certificate of Label Approval (COLA)	6
Health Warning Statement has errors	5
Mandatory information is missing	3
Alcohol content: under	2
Prohibited practices	2
No COLA	1
Type-size/legibility	1
Grand Total	41