



TESTIMONY

January 27, 2016

REGARDING THE SALES OF BEER VIA GROWLERS AND THE LEASING OF COOLERS TO LIQUOR RETAILERS AND WHOLESALEERS

By Joseph Miller

Testimony Before the Senate Jobs, Economic Development
and Local Government Committee

TO THE HONORABLE MEMBERS OF THIS COMMITTEE:

My name is Joseph Miller, and I am a policy analyst for the Show-Me Institute, a nonprofit, nonpartisan, Missouri-based think tank that supports free-market solutions for state and local policy. The ideas presented here are my own. This testimony is intended to summarize research that analysts for the Show-Me Institute have conducted and reviewed regarding proposals to liberalize the sale and distribution of beer, as well as the necessity of consumer goods regulation in general.

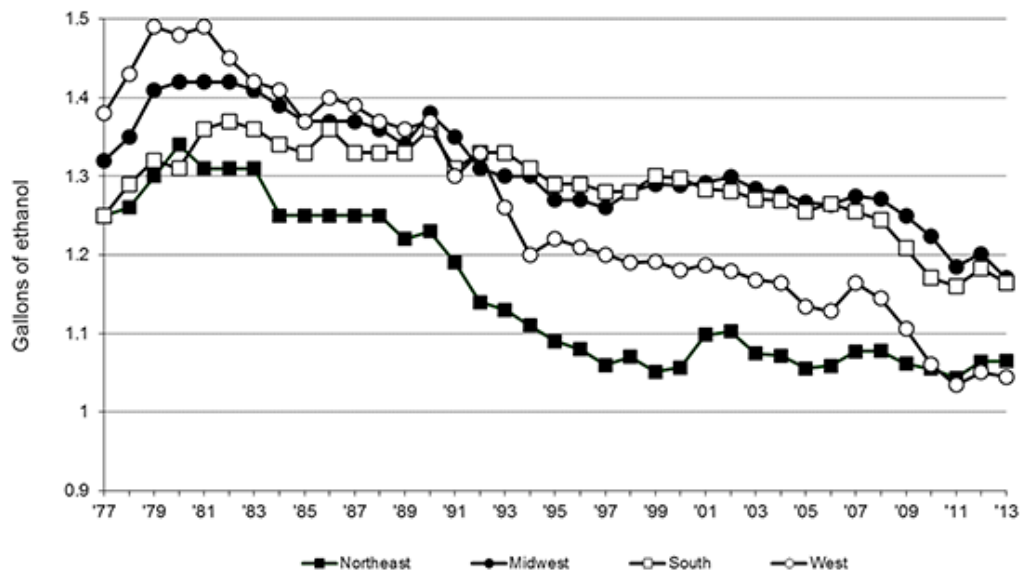
Upon the legislature's approval, SB 919 would allow any person who is

licensed to sell liquor in the original package at retail to sell 32 to 128 ounces of draft beer for consumption off premises. These containers are also referred to as "growlers." The bill would also allow beer suppliers to lease portable refrigeration units to retail licensees at fair market value.

Before addressing the specific issues involved in SB 919, it is relevant to ask why regulations should exist on any service or product. The main justifications are either the protection of the consumer or the protection of public safety. That is to say, regulations are generally only justified when the actions of a free market for certain goods and services will either lead to "market failure" where

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Per Capita Ethanol Consumption from Beer by Region, United States, 1977-2013



producers will ultimately extract rents from the consumer, or if the sale of unregulated products may lead to actual public danger.¹

With these justifications in mind, let us consider the regulations that SB 919 proposes to change. The first element deals with the sale of growlers.² These reusable containers hold between 32 and 128 ounces of beer, but cannot currently be sold at retail. That is not to say they cannot be sold. On the contrary, breweries and “brew pubs” can and do sell growlers to the general public. It is only retailers, who are already licensed to sell a variety of alcohol in a wide range of containers (including high-volume beer kegs), who cannot.³ How could the ability to sell beer in growlers lead to a market failure in the beer, or more widely the alcohol, market? Growlers are most popular for craft beer, meaning that

the ability of retailers to sell growlers may actually lead to more, and not less, competition among beer brands. Many states already allow the sale of growlers at retail, and there is no evidence of either market failure or a detriment to consumers.⁴

On the point of consumer safety, many restrictions on the sale of alcohol exist from prohibition. There is a case to be made that, in general, the consumption of alcohol can lead to the public detriment and should be regulated. However, while a case for the general regulation of alcohol exists, it does not hold for restrictions on growler sales. Beer is legal. Beer in containers larger than growlers is available for sale at retailers. Growlers are legal, and are sold at breweries and brew pubs. SB 919 would only allow a product that is legal to be sold in a quantity that is legal in a place

that already sells the same product in much larger quantities. There is no evidence from other states that growlers have decreased public safety or have even caused an increase in total alcohol consumption. The “craft beer” revolution and the nationwide liberalization of alcohol sales have actually coincided with a *decrease* in per capita consumption of beer in United State and the Midwest:⁵

Increasing consumer choice for the purchase of beer, and especially craft beers, could be a boon for consumers and local breweries. As there is little discernable basis for the prohibition of growler sales at the retail level, there seems little reason to continue such prohibition.

The second part of SB 919 proposes to allow beer suppliers to lease refrigerators to retailers. There is no evidence that allowing such a

lease would have any effect on public health, and would simply allow a beer supplier to have better placement and advertisement of their products at participating stores.

There is some concern that allowing beer suppliers to lease refrigerators would create an unfair advantage for large beer suppliers and their brands. This would presumably affect the consumer if one beer company were able to monopolize enough stores to shut out competition and gain market power. However, beer, as a consumer good, is a highly competitive industry. There are at least eight major international alcohol suppliers that sell beer in Missouri and in neighboring states. In addition, the entry costs of beer brewing are not prohibitive, with craft breweries rapidly expanding in the state and across the country.⁶ From 2011 to 2014, Missouri added 12 independent craft breweries, a 28% increase in just four years.⁷ The expansion nationally has been still more rapid. Since 2011, the United States has added nearly 1,500 independent craft breweries. While the large suppliers still dominate total consumption

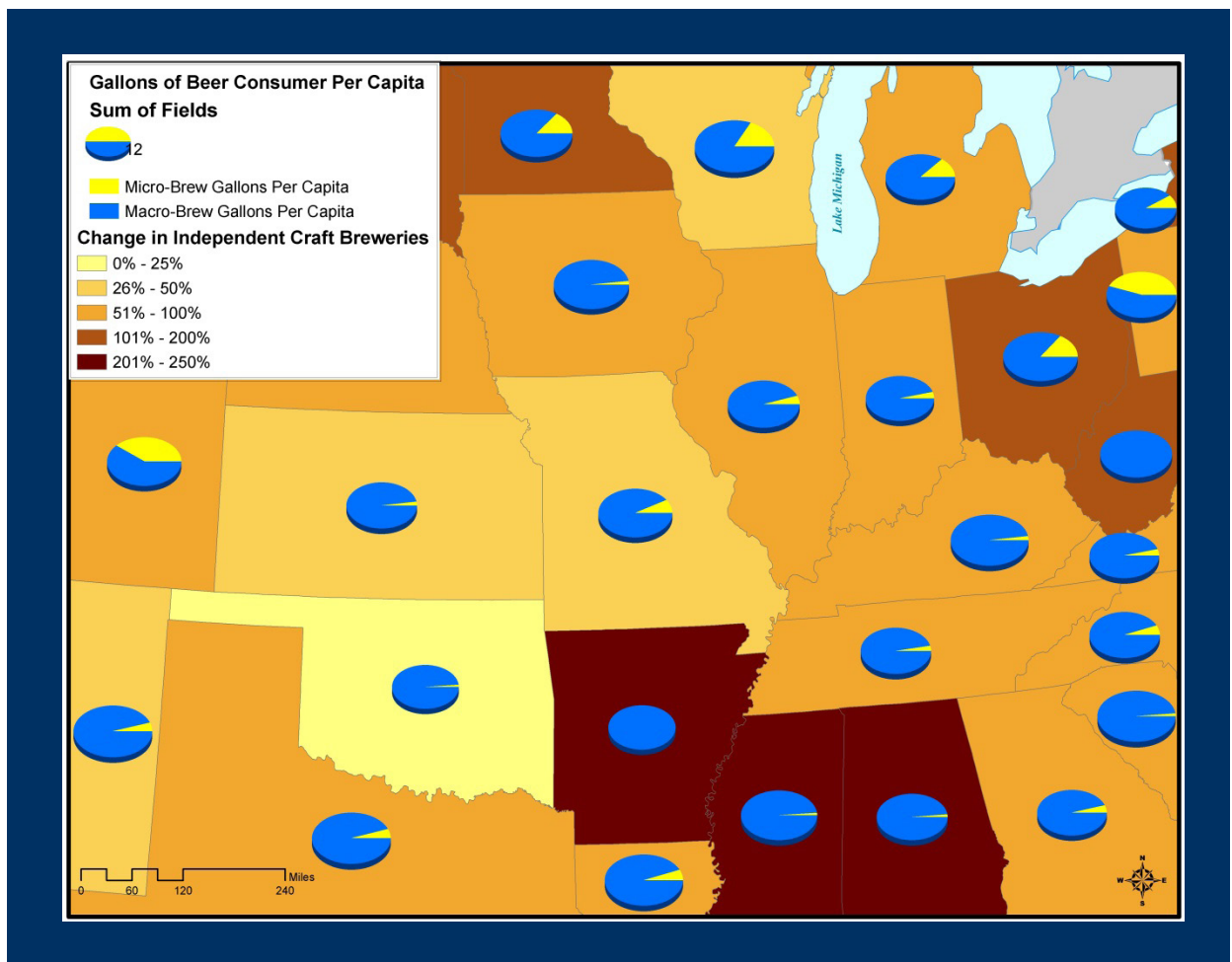
(93% of beer consumed in Missouri), this situation is changing rapidly. In five states, more than a third of all beer consumed is now independent micro-brews.⁸

With intense competition and low barriers to entry, consumers in Missouri have little to fear from brewers leasing refrigeration equipment to retailers. Allowing consumer product suppliers to enter product placement agreements with retailers is already common. There is no evidence of any market failure that justifies special protections in the beer industry.⁹

Additional regulations regarding the sale of alcohol in some form

may be justified for public safety and consumer protection reasons. However, like regulations in any other industry, new rules must face scrutiny regarding both their intended goals and actual results. The regulations that SB 919 seeks to alter appear to have little purpose, either in protecting the public or consumers. Furthermore, there is no evidence that these rules have had any salutary effect on either public health or market competition. It may therefore be justifiable for policymakers to consider repealing them, as SB 919 would.

Joseph Miller is a policy analyst at the Show-Me Institute.



NOTES

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3. Missouri Department of Public Safety: Alcohol and Tobacco Control. "Keg Registrations." <http://atc.dps.mo.gov/licensing/keg/keg.php>
4. Brewers Association. "Growler Laws." <https://www.brewersassociation.org/government-affairs/laws/growler-laws/>
5. National Institute for Alcohol Abuse and Alcoholism. "Apparent per Capita Alcohol Consumption: National, State, and Regional Trends, 1977–2013." <http://pubs.niaaa.nih.gov/publications/surveillance102/CONS13.htm>
6. Nicastro, Steve. "Starting a Craft Brewery Requires Passion, Patience and Deep Pockets." <http://www.nerdwallet.com/blog/small-business/how-much-does-it-cost-to-start-a-craft-brewery/>
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8. Ibid.
9. Benjamin Klein, Joshua D. Wright. "The Economics of Slotting Contracts." <http://www.justice.gov/atr/economics-slotting-contracts>



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