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House Committee on Federal and State Affairs
Re: SB 276
March 6, 2012

Mr. Chairman and Members of the Committee:

I am legal counsel for the organization, Kansas Clubs and Associates (KCA). They have asked that I represent them in expressing KCA's support for SB 276 **as amended**. The bill as originally introduced created a strict liability standard for licensees by removing the term "unknowingly". KCA opposes instituting a strict liability standard. While KCA could support making no changes in current law, the bill as amended by the Senate is an improvement over current law.

The bill as amended allows employers to make the best business decision regarding whom to employ as servers and bartenders. Current law creates a bi-furcated system: some individuals with certain past convictions are prohibited from being servers or bartenders but are not prohibited in any other capacity at establishments that are licensed pursuant to the Club and Drinking Establishment Act. The bill as amended gives employers the authority – and the liability as imposed by the marketplace - to decide whether an individual is suitable for a particular position in the licensed establishment.

In the event the committee receives testimony requesting that the underlying bill be advanced by removing the Senate amendments, KCA opposes that action because the bill as introduced prior to amendment:

1. Establishes a new background investigation requirement but provides no parameters for the background investigation thereby apparently establishing parameters by regulation.
2. Does not eliminate the imposition of strict liability even if the yet-to-be defined background investigation is appropriately conducted.
3. Seems to require - in the last paragraph - that a background investigation be conducted on all prospective employees. While the underlying bill - prior to amendment - does not impose strict liability regarding all employees, it does appear to require a background investigation of all prospective employees. If the eventual regulations establish parameters requiring that fingerprints be submitted prior to employment in any capacity, that would be an extreme result for no discernible benefit and at a price established by the agency. The only possible benefit we can discern would be the building of an extensive fingerprint database of individuals who have committed no offense other than wishing to be employed.
4. The fiscal note attached to the bill indicates the "cost" would be negligible and absorbed within existing resources. That is misleading. There would be a cost for licensees and/or their employees. We don't know whether the cost would be annual; semi-annual; bi-annual. The bill places no limit on the cost the agency can assign so the fiscal note should instead state that the cost could be substantial but that insufficient information is known or provided. The fiscal note should also indicate that the cost could change as often as the regulation changed or as often as the circumstances described by a regulation dictated with no limit on the cost to the licensee and/or the licensee employees.

Thank you for considering our support of SB 276 **as amend**

House Federal & State Affairs

Date: 3-06-12

Attachment # 3