

Alcoholic Beverage Control
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Senator Ralph Ostmeyer
Chairman, Federal & State Affairs committee
State Capitol, Room 136-E
Topeka, Kansas 66612

Re: Proposed amendment to SB 203

Dear Senator Ostmeyer:

I regret that I was unable to attend the hearing on SB 203. The amendment to K.S.A. 41-2615 proposed by the Kansas Licensed Beverage Association, through Tuck Duncan, is of great concern for ABC. Should the committee adopt such amendment, ABC will change its position from proponent to opponent despite the fact that we requested introduction of the bill. There are few issues that ABC is unwilling to compromise on, but the application of K.S.A. 41-2615 to administrative prosecutions is one of those issues. The negative impact on public safety that the amendment would pose is too great for ABC to take a neutral stand.

ABC's interpretation has always been that the "knowingly or unknowingly permit" language of the statute creates absolute liability on a licensee when a minor is found in possession of alcohol on its licensed premises. The case Mr. Duncan spoke of, *State v. JC Sports Bar, Inc.*, addresses only **criminal** prosecution under K.S.A. 41-2615. Criminal statutes must be strictly construed in favor of the accused, as a person's life, liberty or property is at stake. However, in an administrative proceeding, no one's life, liberty or property is at risk. The action is taken against the **license**, which is not property. It is imminently reasonable and in accordance with public policy to apply a different standard to those actions.

A study of the history of K.S.A. 41-2615 indicates that the legislature intended to impose an absolute liability standard on *licensees*. In 1983, K.S.A. 41-2615 read, in pertinent part:

- (a) No club shall knowingly or unknowingly permit the consumption of alcoholic liquor or cereal malt beverage on its premises by a minor...The owner of any club, or any officer or employee thereof, who shall permit the consumption of alcoholic liquor or cereal malt beverage on the premises of the club by a minor shall be deemed guilty of a misdemeanor...

In *State v. Sleeth* (1983), the Kansas Court of Appeals found that the conspicuous absence of the "knowingly or unknowingly" phrase from the sentence applying to criminal prosecution of

owners indicated a legislative intent to infuse that provision with a scienter requirement. In other words, the first sentence, applying to the regulatory enforcement of clubs, created an absolute liability standard, while the criminal provision, applying to the individual, did not. The court further found that knowledge of the incident was not a prerequisite to holding the club liable for a violation.

In *Sanctuary, Inc. v. Smith* (1987), the Kansas Court of Appeals reaffirmed that interpretation, finding that K.S.A. 41-2615, through the use of the “knowingly or unknowingly permit” phrase, imposes a strict liability standard on clubs: “Our legislature has adopted a strict regulatory policy by imposing upon private clubs an **absolute duty** not to permit minors to consume alcoholic beverages on their premises.” The statute has since been amended to its current form, but the language creating the absolute liability remains. As the amendment was made in conference committee, no legislative history exists to explain the legislature’s 1987 amendment.

Requiring the ABC to prove that a licensee took some overt act or served alcohol to a person or allowed a person to possess or consume that alcohol knowing that person was underage would result in a cosmic shift in the regulatory universe. Licensees could simply look the other way and plead ignorance to avoid liability. They would have no incentive to diligently police their own establishments. In fact, in order to avoid citations, the licensee would be better off not checking IDs of youthful-looking patrons who possess alcohol.

The strict liability standard is the most effective enforcement tool available to ABC in its mission to strictly enforce the provisions of the club and drinking establishment act in accordance with state policy. It is Kansas’ state policy that minors shall not possess or consume alcoholic liquor. Because of the strict liability standard most licensees in the state take proactive measures to prevent youth access to alcoholic liquor. Without that tool, Kansas youths would have much greater access to alcoholic liquor, with no liability falling on the licensees who run the establishments frequented by those youths.

Further, allowing a licensee to recover fines imposed on them by ABC would negate the effectiveness of those remedial actions and the Director’s ability to deter illegal activity. While the minors involved should and do face criminal penalties for engaging in illegal activity, the licensees should and currently do bear responsibility for what goes on in their licensed establishments. That is the choice made by the business owner when he/she voluntarily entered into a highly regulated industry.

A liquor license is a privilege, not a right. When a licensee voluntarily accepts that privilege, it accepts all the responsibilities that go along with it. One of those responsibilities is the absolute duty to prevent minors from possessing or consuming liquor on the licensed premises. It would be poor public policy to require a showing of intent or knowledge to find a licensee liable in such an instance as this. Such an interpretation would only discourage licensees from taking proactive steps to prevent underage access to liquor.

It would also be poor public policy to require the licensee to take some overt action to “permit” underage access of liquor before finding them liable for a violation. They could merely serve the people with the minor and again look the other way while the minor consumed alcohol. Worst of all, it is poor public policy to allow a licensee to pass along the consequences of a violation to someone else with the result being the licensee suffers no economic damages from its failure to

prevent a minor from possessing or consuming alcoholic liquor on its premises. No good would be served by such a position, while great harm could ensue.

I respectfully request that you and the committee members seriously consider all the unintended consequences of this amendment before working the bill. The proposed amendment to K.S.A. 41-2615 would be a game-changer. ABC supports the original bill and has no objection to the other amendments presented, but ABC will oppose the bill in its entirety if this amendment is included.

Please feel free to contact me with any questions or concerns you may have on this issue, or any issue involving alcoholic liquor.

Sincerely,



Dean Reynoldson
Director of ABC