



CASEY'S GENERAL STORES, INC.

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MEMORANDUM

TO: Senate Committee on Judiciary
FROM: Bob Alderson
On Behalf of Casey's General Stores, Inc.
RE: 2016 Senate Bill No. 455
DATE: February 17, 2016

Chairman King and Members of the Committee:

My name is Bob Alderson, and I serve as Kansas Legal Counsel for Casey's General Stores, Inc. Casey's has 153 company-owned convenience stores in the State of Kansas. All of them are licensed under the Kansas Cigarette and Tobacco Products Act ("Act") to sell at retail cigarettes and tobacco products. Casey's also is licensed as a Wholesale Dealer under that Act. I am appearing on behalf of Casey's today in opposition to 2016 Senate Bill No. 455 ("SB 455").

Initially, I want to express my disappointment that SB 455 was prepared by the Kansas Department of Revenue without any apparent input from the stakeholders. The introduction of SB 455 came as a surprise to Casey's, and from my conversations with others subject to the Act, they also were surprised.

Casey's is subject to regulation by various Kansas state agencies, notably the Kansas Department of Health and Environment and the Kansas Department of Agriculture. Whenever those two agencies have contemplated the introduction of comprehensive legislative changes to the statutes they administer, they have routinely provided stakeholder groups the opportunity to provide input on the proposed legislation. That was not the case with SB 455. And while it would not be productive to speculate on whether stakeholder input would have altered the substance of SB 455, I am confident that consultation with the Department would have enhanced our understanding of the Department's purposes underlying the bill's provisions and probably lessened the opposition.

As to the provisions of SB 455 which Casey's finds objectionable, we are most concerned about the increase in penalty proposed by Section 19, which amends K.S.A. 2015 Supp. 79-3391. Currently, the maximum civil fine to be imposed under the Act is \$1,000. The bill would increase this to \$2,500. Such a dramatic increase would suggest that such increase is necessary to achieve compliance with the requirements of the Act. However, that is not the case, particularly as the fine relates to sales to minors.

I am confident that members of the Committee are familiar with the federally-mandated "Synar compliance," which is a measure of the state's enactment and enforcement of laws prohibiting the sale and distribution of tobacco products to minors. Synar requires an 80% compliance rate.

Any state not in compliance is in danger of losing a percentage of the Federal Block Grant funds for substance abuse and prevention.

From the state's FY 2010 to date, the Synar Compliance Rate for the State of Kansas has been in excess of 90%. A 90% Synar compliance rate is an excellent indication that the current fine and penalty structure is effective in preventing the sale of cigarettes to minors. It certainly does not support the need to increase the maximum penalty by two and one-half times. Accordingly, such increase must be viewed simply as a revenue-raising measure. This is not consistent with case law which regards penalty provisions in statutes as a means of compelling compliance.

Casey's also is concerned with the provisions of Section 6, which states that the director shall not issue or renew a license to any person who has had a license revoked in this state or any other state. Casey's has over 2,000 stores located in middle United States. While we don't anticipate that the license of any Casey's store in any state, including Kansas, would be revoked, if that should happen, the director would be precluded from renewing the license of any of the 153 stores in Kansas. Current law makes revocation or refusal to renew a license permissive, and we respectfully suggest that such discretion of the director be retained.

In Section 7, on page 9, line 10, we respectfully submit that limiting a request for hearing to ten days after the notice of intent to revoke is mailed is too short. This provision is existing law, but considering difficulties with the U.S. postal system, we respectfully submit that it should be expanded to 30 days, in order to avoid a person being denied a hearing because the request for the hearing was not made within the ten-day period.

We also suggest that the notice be sent to the licensee, instead of to the licensed premises. This should be more efficient, by ensuring that the notice is given to a decision-maker rather than to someone who isn't necessarily as concerned as the licensee regarding the alleged unlawful conduct.

On page 12, lines 11 and 12 require a Wholesaler to file monthly reports electronically. Casey's respectfully requests that the implementation of this requirement be delayed a sufficient amount of time, to allow licensees having multiple stores, such as Casey's, adequate time to prepare. For Casey's to electronically file its monthly reports will require the electronic consolidation of information from its 153 stores. This will necessitate some extensive programing.

Finally, we have concern regarding the seizure and forfeiture of assets used in the sale, transportation, distribution, importation, wholesaling or manufacture of unstamped packages of cigarettes. As noted above, Casey's is licensed as a Wholesale Dealer, and in that capacity delivers cases of cigarettes to its various stores, not only in Kansas, but also in other states. Casey's makes every effort to comply with the statutory and regulatory requirements of each state for affixing tax stamps. Notwithstanding, mistakes are occasionally made and we request that the Director be clothed with appropriate discretion in applying the penalty and forfeiture provisions to a conscientious business who has made a mistake, as opposed to a person dealing in contraband with an intent to subvert the law.

Thank you for your attention to this testimony. I will be happy to respond to your questions at the appropriate time.