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March 7, 2018

To: Senate Federal & State Affairs Committee

From: R.E. "Tuck" Duncan
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RE: SB433

At the hearing on March 6, 2018 certain information was presented that appeared to suggest that were you to adopt SB433 there would not be adequate safeguards to protect the public health and safety and in particular inadequate provisions regarding sales to minors. As an attorney who represents drinking establishments I would advise you there are numerous safeguards already in the law.

To anticipate those concerns the proponents of the bill have suggested the following amendment¹:

(4) Notwithstanding any other provision of law, all laws and rules and regulation applicable to the sale of alcoholic liquor to persons under the legal age of consumption shall be applicable to the sales transactions of the prepaid access card.

Such laws include those I mentioned at the hearing:

KSA 41-2615: Possession or consumption by minor prohibited. (a) No licensee or permit holder, or any owner, officer or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverage by a minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than 18 years of age may serve alcoholic liquor or cereal malt beverage under the on-premises supervision of the licensee or permit holder, or an employee who is 21 years of age or older.

¹ See attachment to testimony of Spencer Duncan, representing Brew Bank, proposed amendments attachment page 2.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than \$100 and not more than \$250 or imprisonment not exceeding 30 days, or both.

(c) It shall be a defense to a prosecution under this section if: (1) The defendant permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (2) to possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

And the licensee is responsible for the actions of its employees:

14-21-11. Licensee's responsibility for conduct of business and employees. Each licensee shall be responsible for the conduct of its business. Each licensee shall be responsible for all violations of the club and drinking establishment act by the following people while on the licensed premises:

- (a) An employee of the drinking establishment;
- (b) an employee of any person contracting with the drinking establishment to provide services or food; and
- (c) any individual mixing, serving, selling or dispensing alcoholic liquor.

And as set forth in KSA 21-5607: (the criminal code) (c) (1) "Furnishing alcoholic liquor or cereal malt beverage to a minor is a class B person misdemeanor, for which the minimum fine is \$200."

Thus, the server liability in an establishment that has a self-serve wine or beer machine is the same for an establishment that does not have such machines.

There is a face-to-face transaction, monitored, in the self-serve establishment. In fact there is more scrutiny in the self-serve establishment since there is a requirement to monitor and maintain the video there while there is no such requirement for other drinking establishments.

Therefore, each server whether in a self-serve establishment or not, plus the licensee, are held to the same high standards.

I trust the foregoing resolves the concerns expressed. Since there were no opponents to this legislation, your favorable consideration would be appropriate in light of the foregoing.

Thank you for your kind attention to and consideration of these matters.