



CASEY'S GENERAL STORES, INC.

P.O. Box 3001 • One Convenience Blvd., Ankeny, Iowa 50021-8045 • 515-965-6100

TESTIMONY OF BOB ALDERSON
ON BEHALF OF CASEY'S GENERAL STORES, INC.
BEFORE THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

FEBRUARY 13, 2020

Chairman Barker and Members of the Committee:

My name is Bob Alderson, and I am submitting this testimony on behalf of Casey's General Stores, Inc. ("Casey's") in opposition to House Bill No. 2563.

Casey's operates more than 2,000 stores in 16 states, including 164 stores in Kansas. Currently, Casey's employs 2,800 Kansans who are paid wages in the amount of \$48,628,075.00. During this fiscal year, Casey's has sold 153,593,940 gallons of gasoline in Kansas for total gasoline sales of \$380,909,475.00. Total sales for goods and services in Kansas are \$739,175,677.00, and Casey's paid property, sales and payroll taxes in the amount of \$30,359,590. Suffice it to say that Casey's is a good corporate citizen.

Casey's opposes HB 2563 because the bill increases the retailers license fee from \$25 to \$100. The increase of \$75.00 may seem relatively small, but as noted above, Casey's has 164 company-owned stores in Kansas and the increase will mean an annual increase of \$12,300.

What is the justification for the increase? The sponsor of the bill indicated that the fee had not been increased in many years, so that an increase is needed. Casey's respectfully disagrees. Raising the fee just to be raising the fee makes no sense. Are retailers failing in their responsibility to prevent the sale of cigarettes and tobacco products to underage persons, thereby necessitating additional regulatory/investigative personnel? To the contrary, retailers have been very diligent in training their sales clerks to identify underage persons and to refrain from sales of cigarettes and tobacco products to those persons. Their efforts have resulted in a compliance rate of more than 90%. No credible evidence has been offered to indicate that retailers will be any less diligent in their efforts to prevent sales of cigarettes and tobacco products to underage persons after passage of HB 2563.

What benefits do retailers receive from the increased license fee? None is perceived. Accordingly, Casey's requests that HB 2563 be amended to eliminate the increased license fee.

Casey's also suggests a further amendment of the bill to include a provision preempting cities and counties from exercising their home rule authority with respect to the Cigarette and Tobacco Products Act. As the committee will recall, several years ago a number of cities exercised their police powers to prohibit persons under the age of 21 from purchasing cigarettes and tobacco products. The City of Topeka adopted such an

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ordinance, which was challenged in the Shawnee County District Court. There the District Court issued an injunction against Topeka's enforcement of its ordinance.

However, on appeal, the Kansas Supreme Court reversed, holding that, even though the Act was uniformly applicable to all cities, Topeka's ordinance was not in conflict with the Act. *DWAGFYS MANUFACTURING, INC., d/b/a The Vapebar Topeka and Puffs 'N' Stuff, LLC*, 309 Kan. 1336, 443 P.3d 1052 (2019). It "merely enlarges a provision of the statute by requiring more than the statute, and adding that, "[w]here a municipal ordinance merely enlarges . . . the provisions of a statute, there is no conflict between the two unless the legislature has limited the requirements for all cases to its own prescription;" citing *Leavenworth Club Owners Assn v. Atchison*, 208 Kan. 318, 320-22, 492 P. 2d 183 (1971). DWAGFYS at 1345.

In other words, the Court in DWAGFYS held that there is no implied preemption. If the legislature wants to prevent cities from acting by ordinary ordinance to make more stringent a uniformly applicable law, it must declare the preemption in the statute. Thus, in the future if a city governing body determines the city would be better served by raising the age to 25, for purchasing cigarettes and tobacco products, it can do so, unless the Act specifically preempts such action.

Accordingly, Casey's respectfully requests that HB 2563 be amended to include such preemption.

Thank you for your attention to my remarks. I will be happy to respond to questions.