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Testimony in Support of HB 2206: Modernizing Kansas Retail Liquor Laws
Submitted by Ron Gaches on behalf of Hy-Vee
House Commerce Committee
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Thank you Chairman Kleeb for this opportunity to offer testimony in support of HB 2206, the UnCork proposal to expand the sale of adult alcoholic beverages to grocery stores and convenience stores. I am Ron Gaches and I am appearing on behalf of Hy-Vee grocery stores.

Hy-Vee is an Iowa based employee-owned grocery store company operating 233 stores in eight Midwest states. We are one of the top 25 grocery store chains and top 50 private companies in the United States. Our first store in Kansas opened in Overland Park in 1988. In Kansas, we operate 13 grocery stores and seven convenience stores with fuel. We have nearly 3,400 Kansas employees and paid wages last year in excess of $59 million. We also collected and remitted more than $31 million in sales and payroll taxes to the State, and paid more than $2,500,000 in local property taxes and nearly $2,000,000 in other Kansas state taxes.

In a normal hearing on an ordinary issue I would speak to the relative merits of our proposal, discuss the legitimate objections and concerns of our opponents, and summarize with our strongest possible arguments in support of our proposal. But nothing about the debate on this issue has been normal.

Our goal is a simple one: to offer consumers greater options in where to purchase adult beverages and to provide grocery store and convenience stores the opportunity to expand their product offering and grow their business. Based on the attacks and misrepresentations from our opponents you might believe we were undermining the very foundation of a free society and threatening the livelihood of every man, woman and child in Kansas.

Perhaps you received the email from Tom Jacob of Jacob Liquor Exchange in Wichita. Mr. Jacob suggests rather strongly that our proposal is going to put his family and others out of business. He writes that HB 2206 will not create new jobs and claims "At most, only twenty percent of these outlets would add even one new employee." How can he make that statement? Mr. Jacob estimates that we are going to put 75% of liquor stores out of business within two years. How are we going to do that if only 20% of the new outlets add one employee? He also writes that expanding sales to grocery store and convenience stores will not provide more selection to the consumer because the new locations will only stock a few popular items. If that's true, how are we going to put 75% of the liquor stores out of business? Mr. Jacob notes that a 2-liter bottle of Pepsi has a ten cent profit for retailers while he makes a $5 profit on a bottle of Jack Daniels, and then begs for protection from competition. Mr. Jacob explains that he has more than 30 years serving his customers, his employees are trained on his products, his customers are accustomed to "stopping by" his store (of course, where else can they buy alcohol beverages???) and that he has a broader inventory than we will ever stock. We aren't going to hire employees knowledgeable about the products, we won't carry much variety, and customers aren't accustomed to stopping by our stores for alcohol. What on earth is he crying about? Can he withstand at least a little competition?

Perhaps you've seen the propaganda from Keep Kansans in Business, the organization run by Spencer Duncan. Mr. Duncan spends an entire page making the argument "The Current System is A Free Market." He evens quotes Milton Friedman out of context and references Adam Smith, without telling you directly what Smith believed about free markets and competition.

Milton Friedman wrote, "The great danger to the consumer is the monopoly -- whether private or governmental. His most effective protection is free competition at home and free trade throughout the world. The consumer is protected from being exploited by one seller by the existence of another seller from whom he can buy and who is eager to sell to him. Alternative sources of supply protect the consumer far more effectively than all the Ralph Naders of the world."

Friedman also said, "Most economic fallacies derive from the tendency to assume that there is a fixed pie that one party can gain only at the expense of another."

I directly challenge whether Mr. Duncan's Friedman quote suggests that the economist would be opposed to our proposal. Mr. Freidman was concerned about protecting free enterprise, not monopolies. What's free market about the current system? Distribution of the products are in the hands of a few multi-billion firms, an individual can own and operate only a single retail store, minimum prices are control by the state, and competition ... true competition ... is prohibited.

Mr. Duncan never actually quotes Adam Smith; he just tells what he wishes Smith had said. Mr. Smith actually had this to say about organizations similar to Keep Kansans in Business, "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices."
— Adam Smith, *The Wealth of Nations: An Inquiry into the Nature & Causes of the Wealth of Nations*

Mr. Duncan continues to make contradictory arguments on page four on his missive where he argues, "Many big-box stores use wine and beer as a "loss leader." They do this because alcohol accounts for a minimal amount of overall sales and they sell thousands of high-margin products to offset low-margin alcohol." Are sales minimal and not a threat, or are we going to put 75% of the liquor dealers out of business as Mr. Jacob suggests? Also, Mr. Jacob, a real liquor dealer, said that the margin on a bottle of Jack Daniels is $5 while the Pepsi bottle generates 10 cents. Now I understand why Mr. Jacob doesn't want competition. He makes $5 on a single bottle of whiskey. But which is it? Loss leader or high profit product? As a practical matter it is probably both and neither. Lower prices on some products are used by ALL retailers to generate traffic. My local liquor store runs a special on Budweiser products several times each summer. It is the last stop on the way to Clinton Park west of Lawrence. While you are in the store you are treated to a tantalizing display of small sized bottles of liquor products at the checkout stand just begging for a spur-of-the-moment purchase. Grocery stores might do the same. But all liquor products are subject to minimum price controls in Kansas, set by the state. Our bill does not allow grocery stores or convenience stores to sell any product at a price lower that what liquor stores are allowed to offer.

On page five, Mr. Duncan makes one of the most ridiculous arguments I've heard in 34 years of working with the Kansas legislature. He argues, "The State Created the Current System. It's Responsible to Honor that System." Good golly, where is the support for the free market in that? I bet I've heard 75 percent of current legislators say to me as I've worked various issues this year, "It's time for the state to quite picking winners and losers. All businesses should compete on a level playing field."

If the explanation for why we should continue an inefficient, anti-consumer system for the sale of alcohol products is because we've been doing that way since the 40's we are doomed to economic stagnation. Let's build cars and planes like we did in the 40's. Let's grow and sell wheat and beef like we did in the 40's. Let's make phone calls and deliver news like we did in the 40's. Our liquor laws shouldn't be designed to protect the current set of retailers, regardless of how long they've been in place. How can anyone evoke the voices of Milton Friedman and Adam Smith and then make the argument the government owes me a living and should protect me from competition.

Our laws should be designed to facilitate commerce, put in place minimum standards for responsible behavior, and serve consumers. Government should get out of the way and let businesses compete.

If you want to respect history, let's roll the rules back to 1919 and the passage of the 18th amendment to the U.S. Constitution, that's prohibition for those not old enough to remember. In truth, our liquor laws have been under almost constant evolution the past forty years. Many of you are old enough to remember when you couldn't buy liquor by the drink in a Kansas restaurant, or when we had single strength beer. Liquor dealers were beneficiaries of major liberalization of the retail sales rules last year and are pushing further changes this session. They want to give away food while they are providing free samples of liquor products, with mixers, to their customers. Maybe they should read Mr. Duncan's diatribe about liquor stores don't have enough space to compete or financial resources to expand first before they set up shop with buffet tables and sampling bars.

The responsibility for the death of rural communities is Mr. Duncan's next pitch. By page six he has become an expert at weaving out-of-context data together to make an argument that never passes the reasonableness test. Who here really believes that rural Kansas is depopulating because chain grocery stores and big box stores are locating in Kansas. Kansas has become more and more urban since statehood. The trend accelerated following World War II. The mechanization and improved productivity of agriculture, the limited diversity of jobs, and limited access to educational and cultural amenities have all led to the depopulation of a majority of Kansas counties. If you attended last year's meetings of the Vision 2020 Committee you'd have believed that the scarcity of good broadband access was the cause of rural Kansas' problems. This much is certain, rural counties are losing population. Did the state intervene to protect the local pharmacy when Walgreens came to town? Did the state intervene when Orscheln's came to town and pushed the local farm supply store out of business? Orscheln's is in more states with more stores than Hy-Vee. Did the state intervene on behalf of Kansas independent oil producers when SandRidge Energy came to our state and drilled a hundred wells? Did the state intervene when chain grocery stores reached out to medium size towns? The answer is NO! Consumers appreciate the broader variety of products that are available in those stores. In communities with declining but more mobile populations, it is difficult for a small grocery store to survive. But we still have hundreds of small grocery stores. Many are competing hard and hanging on.

Then Mr. Duncan turns right around and says that under current Kansas law, independently owned grocery stores can own a liquor store adjacent to their store if they want to. Well, anyone can own one liquor store Mr. Duncan. There's no need to restate the obvious. But what if you own two or more small grocery stores? And besides, which would your small Kansas town rather have? A liquor store or a grocery store that also sold alcohol?

The passage of HB 2206 is not going to threaten rural Kansas. As a practical matter, Kansas government has been able to do relatively little to alter the shape of demographic change that is impacting all of rural America. If rural Kansans are concerned about the impact of Orscheln's, Walgreens, SandRidge, Hy-Vee, Dillon's or Wal-Mart they can refuse to do business with them.

Now, let's address this fabulously false assertion by Mr. Duncan that Kansas should reject HB 2206 because out-of-state companies will benefit and somehow that is not good for the state. As a state, where are we on the whole issue of "out-of-state companies"?

When an out of state dairy wanted to set up business in Kansas we did cartwheels to attract them. When GM went looking for a place to invest $600 million in a new car line, Kansas wanted to be at the front of the line. When Hills (owned by Colgate) needed a home for a new production facility we rolled out the red carpet. We're bending over backwards to attract every manufacturing, processing, technology, medical and service job from Missouri into Kansas we can. Why? Because we want the capital investment and jobs.

Hy-Vee has invested more than $1 billion in capital expenditures in the past five years, and will invest an additional $272 million in FY 2013. Hy-Vee stores and stores like them anchor retail shopping areas. Those shopping areas become destinations and service centers; and they produce hundreds and thousands of jobs and millions of dollars in state and local taxes. Liquor stores that are organized as sole proprietors, which they all must be by law, pay no state income taxes and relatively little property taxes.

Kansas cannot progress as a state comprised exclusively of small independent businesses, selling each other coffee, sandwiches and liquor. We absolutely need the out-of-state capital that out-of-state businesses bring to the state. The construction jobs, maintenance jobs, service jobs, utilities, local services, transportation, on and on. Who are we kidding to suggest we don't want and need out of state investment in our state.

Please review the materials from Mr. Duncan closely. He is an excellent writer. A clever writer. Check his references. Check the facts. On the last page of his paper Mr. Duncan suggests that grocery and convenience stores sales reduce consumer choice. I'm not sure what facts to believe. Are we putting liquor stores out of business because we sell so much product or are we offering consumers only a limited selection? I know at Hy-Vee, we make a point to offer locally produced wines and micro-brewed beers because we want to support our local producers.

Mr. Jacob suggests that his selection, employee knowledge and customer reputation is superior to that of the proposed competition. And he reminds us that consumers taste for wine has changed dramatically in the past 30 years. Consumers are seeking out new and different options. I happen to agree with him. I'm one of those customers. I'm probably going to continue shopping at my favorite liquor store because of their selection. And that store will continue to be successful, particularly if the grocery stores and convenience stores sell only a limited selection. The folks who will benefit from convenience and selection will be consumers, your constituents.

Finally, let's address the hypocrisy of some of our opposition. There were two notable contributions to the Kansas Wine and Spirits Wholesalers PAC last summer. The first was a single contribution of $38,000 from Glazers of Kansas, a wholly owned subsidiary of a Texas based distributor of alcoholic beverages. Why an out-of-state firm would participate so deeply in an effort to maintain the status quo liquor laws and prevent passage of HB 2206 is beyond me. I've been provided explanations but you should ask for yourselves.

Even more interesting is the $5,000 contribution from Standard Beverage, owned by the family of Leslie Rudd. You can't talk about the history of Kansas liquor law or business without a chapter devoted to the Rudd family. In addition to owning Standard Beverage, Mr. Rudd also has an ownership interest in Dean & Deluca, a chain of high end food stores, grocery stores if you will. These stores are interesting for several reasons, one of which is they sell wine where permitted by state law. But Dean & Deluca isn't Mr. Rudd's only retail wine business. In addition to his California winery, Mr. Rudd owns Oakville Grocery, a two store grocery store chain in Oakville and Healdsburg, California. In addition to groceries, Oakville Grocery sells wine. And the Farm Stand, located just outside the door of the grocery store, offers beer on tap and sangria along with the fruits and vegetables found inside the grocery store. Clearly, Mr. Rudd recognizes a good investment opportunity when he sees it. Selling wine in grocery stores in California and Dean & Deluca stores is a good investment for Mr. Rudd. Kansas grocery stores and convenience store owners would like to have the same opportunity.

The real winners with passage of this legislation will be the citizens of Kansas, your constituents, who will have the opportunity to shop for their groceries and save some of their valuable time by grabbing a bottle of wine with their next meal. As you may know, 70% of our Hy-Vee customers are women. We believe they want the safety, comfort and convenience of a store like Hy-Vee. We urge your favorable consideration of HB 2206.