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Assembly Member Hector De La Torre
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0050

Re: AB 1060

Dear Assembly Member De La Torre:

Since you have pending legislation (AB 1060) that would prohibit the sale of alcohol through self-checkout machines at grocery stores, we wanted to make you aware of the preliminary results of a study on the self-checkout system that law students in my Community Economic Development Clinic at UCLA have been working on this past semester.

The study grew out of the Clinic's work with the Los Angeles Alliance for a New Economy (LAANE), which has focused on researching trends in the grocery industry and their impact on economic development in low-income communities. In light of concerns about whether the increased prevalence of self-checkout machines would enhance the risk of illegal alcohol purchases, we agreed to help conduct a study in association with LAANE to evaluate the reliability of self-checkout machines in monitoring alcohol sales.

The final results of the study are not yet available. However, we wanted to share with you the preliminary results since they bear on your pending legislation.

The study was conducted over two weeks in April with participants ranging in age from 21 to 41. The participants included UCLA law school students from my Clinic, as well as LAANE interns, staff, and volunteers. Participants visited five different grocery store chains with self-checkout machines: Albertsons, Ralphs, Fresh & Easy, Superior, and the Market by Vons. Participants were scheduled to visit stores on numerous occasions to purchase alcohol along with other items. At the conclusion of each visit, participants completed a survey (attached). In total, participants conducted 97 visits to 34 grocery stores with self-checkout machines in Los Angeles and Orange counties. Of the stores visited, 65% used self-checkout registers

exclusively, while the remainder used a combination of self-checkout and staffed registers.

Alcohol Sales Through the Self-Checkout System

The self-checkout process is supposed to work as follows. Employees are notified that a self-checkout machine has locked up through a computer or a light that indicates employee assistance is required. The self-checkout machine itself does not indicate the reason for the lock up, but rather displays a screen showing that the customer needs assistance to complete the transaction. A self-checkout machine can lock up for many reasons: scanning a coupon incorrectly, putting a purse or bag on the scale, scanning the wrong price, and scanning alcohol. In order to determine the nature of the problem, an employee comes to the locked register, ascertains why the lock up was triggered, provides the required assistance, and then clears the system. If the customer is attempting to purchase alcohol, it is impossible for the customer to complete the transaction until a staff member comes over, checks identification, assesses whether the customer is intoxicated, keys in an approval code, and allows the transaction to be completed.

In practice, however, the study showed that there are problems with this system. In particular, participants noted that sometimes the machines fail to lock up when alcohol is scanned, the system continues the transaction without employee approval when a credit card or other items are scanned, and employees remotely approve a transaction without ever having any interaction with the customer.

The study revealed other potential problems. For instance, because the systems do not indicate that alcohol is the cause of the lock up, employees may have no reason to ask for identification or to assess the customer's level of intoxication unless the alcohol purchase is brought to their attention. In addition, the code that employees use to override the machine may be input in several different ways. Many supermarkets use a hand held computer so that the code may be entered either next to the customer's machine or from a distance. Overriding the computer lock from a distance opens the possibility for deception by the customer. Entering the approval code on the customer's self-checkout machine makes it possible for the customer to see and potentially memorize the override code for future purchases.

Similarly, minors may be able to discover holes in the self-checkout system to circumvent age verification. For instance, one blog provides a nine-step guide on how to purchase alcohol through self-checkout without ever having to show identification:¹

1. Go to Jewel, preferably during a busy time. Saturday afternoon works well.
2. Walk to the liquor section. Select your favorite variety of beer, wine, or spirits.

¹ Tom Sherman, How to Buy Liquor at Jewel When You're Underage: A 9 Step Guide, at <http://underscorebleach.net/jotsheet/2007/09/how-to-buy-liquor-when-youre-underage>, September 22, 2007.

3. Go to the self-checkout line.
4. Wait for the Jewel employee in charge of the self-checkout area to become distracted. This happens regularly.
5. Scan the alcohol. The system will say that approval is need.
6. Approval is not needed. Swipe your credit card.
7. The system will exit out of the “needs approval” screen and into the “choose your payment type” screen.
8. Finish paying.
9. Walk out.

Preliminary Results of the Study

Our study of grocery stores with self-checkout registers illustrated that it is indeed possible for this, and other, scenarios to occur. The preliminary results of the study are organized into three areas: the lack of staff at self-checkout machines and opportunities for theft; the failure to ask for identification or assess for intoxication; and computer failures of the self-checkout machines.

Lack of Staff at Self-Checkout Machines

In two-thirds of the visits, participants saw only one employee working at the self-checkout area. In five instances, participants saw no employees at the self-checkout area. About a quarter of the time participants had to wait two minutes or longer for an employee to come over after they scanned alcohol. At stores that were entirely self-checkout, participants had to wait two or more minutes for staff in one-third of the visits. At stores with some staffed registers, in contrast, participants had to wait two minutes or longer in only one-fifth of the visits.

Another concern revealed by the study was that employees sometimes had obstructed views of customers purchasing alcohol. In about one-third of the visits, participants believed that the employee monitoring the self-checkout lanes did not have a clear view of all of the machines. Participants reported that employees at nearly half of the stores with only self-checkout did not have a clear view of the self-checkout machines (in 14% of the cases, the employee’s view of the machines could not be determined).

In combination, low numbers of employees supervising self-checkout machines, obstructed views, and long wait times enhances the risk of error in checking alcohol purchases and may make it easier for customers to purchase alcohol illegally either through deception or theft.

Failure to Ask for Identification or Assess for Intoxication

One would expect that low staffing ratios in the self-checkout area would reduce the likelihood that customer identification would be checked or intoxication level assessed when

using the self-checkout machines. In the study, one-third of participants between ages 21 and 30 reported that they were not asked to provide identification (it is the industry standard for grocery stores to check identification for anyone who appears under the age of 30). The participants also reported that employees made eye contact with them less than half the time (39%), suggesting the absence of careful scrutiny that would allow employees to judge either age or level of inebriation. Similarly, employees asked participants questions that elicited a verbal response in only 23% of the visits, again raising questions about whether the employees could adequately assess whether or not the customer was intoxicated.

Computer Failures

Most of the time, the self-checkout register's system appeared to work correctly, by locking and not permitting customers to purchase alcohol without some sort of approval from an employee. However, the system did not lock in eight instances, allowing participants to purchase alcohol without approval by a supermarket employee.

Furthermore, in some cases, even when the system initially locked, participants were able to override the system without employee intervention. In nine cases, participants were able to override the system by scanning another item or swiping a credit card in the machine. In total, participants were able to override the system or purchase alcohol without an employee's assistance 17 times out of 97 attempts (17.5% of attempts).

Preliminary Conclusions and Recommendations

The preliminary results of this study suggest that the use of self-checkout machines may increase the ease with which minors and those who are intoxicated are able to obtain alcohol, which have well-documented negative public health impacts. Lawmakers should consider imposing safeguards to minimize these negative health impacts. There is good precedent for such action to promote public health. In 1998, California and other states filed a lawsuit against major tobacco companies that resulted in a ban on self-dispensing cigarette machines. Supermarkets across the country also took action to remove advertisements from stores and lock up tobacco products. As a result, customers today are not able to purchase tobacco products without a store employee getting the products for them.

We believe that the public health concerns created by alcohol may merit similar safeguards. The evidence of inadequate staffing, inconsistent monitoring, technological failures documented in this study suggest that self-checkout machines may increase the risk of illegal purchases of alcohol, thereby harming the public health. We recommend that state and local leaders take action to address this situation and ensure that minors and people under the influence cannot obtain alcohol at grocery stores that operate self-checkout registers. The full report of our study will be available shortly. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "SCOTT L. CUMMINGS".

Scott L. Cummings
Professor of Law