



Senate Federal & State Affairs Committee
SB 36

Testimony of
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Good morning Mr. Chairman and members of the committee. Thank you for the opportunity to present testimony in opposition of SB 36.

Farm wineries and microbreweries can serve free samples both on and off the licensed premises. Last year, bills passed this committee allowing retailers, micro-distilleries and manufacturers to serve free samples as well. ABC did not oppose those bills because the agency saw little risk for abuse. That is not the case with Senate Bill 36.

The purpose for free sampling by microbreweries, farm wineries and micro-distilleries is economic development in nature – to promote Kansas-made products. If the customer enjoys the product they can buy some for later consumption off of the licensed premise. The agency saw little danger these industry segments would abuse the privilege and over-serve customers because they are attempting to introduce their unique products to customers. For this reason, ABC did not propose a limit on the number or size of free samples.

For retailers, the risk for abuse was perceived last year as minimal because, unlike on-premise licensees, the sale of liquor is the retailer's sole source of revenue. Because the samples come from the retailer's inventory, they are cutting into the retailer's bottom line.

The dynamics are different for on-premise licensees. The differences include:

- ✓ The licensee is generally not promoting Kansas-produced products where the customer is introduced to new products in the hopes that they may want to purchase some for consumption away from the licensed premises.
- ✓ The licensee, unlike retail liquor stores, has other sources of revenue apart from the sale of liquor.

ABC's mission is to promote, serve and protect the public health, safety and welfare of Kansans through the regulation of the liquor industry. The agency opposed the concept of free samples at on-premise establishments during last legislative session and continues in such opposition out of a concern for the potential for abuse.

- ✓ K.S.A. 41-2640 prohibits licensees from giving away free drinks. This bill represents a way around that statute, particularly given the fact that there is no limit to the size and number of samples.
- ✓ On-premise licensees could conceivably use free samples as a loss leader to get customers in the door. The cost of the samples could be covered by cover charges, food and non-food items – sources of revenue not available to retail liquor store licensees.

Our biggest concern with regard to the potential for abuse involves bars in college towns and other bars where the licensee is struggling competitively to stay in business. The struggling licensee tends to be much more prone to selling to minors, over-serving customers and becoming delinquent in the payment of the liquor drink tax. Licensees who are in jeopardy of going out business, at times, will become desperate to get customers in the door. The result can jeopardize public safety. Under current law, restaurants that wish to allow samples of wine can charge a minimal amount for the sample so long as they do not go below acquisition cost.

If you choose to allow free samples at on-premise establishments and at special events, we would recommend prescribing limits on the size and number of samples and allowing the Director of Taxation to promulgate rules and regulations pertaining to tax matters related thereto. We would further recommend that violation of those regulations be citable under the Club and Drinking Establishment Act. In order to be consistent with other license types you might also consider imposing the same size and number of samples restrictions on retail liquor stores, farm wineries, microbreweries, manufacturers and micro-distilleries.

ABC is categorically opposed to allowing free samples to be served at special events. Special events are defined in the Farm Winery Handbook as “a public or private gathering of two or more persons, arranged for a specific commercial, charitable, or social purpose, having limited duration and not conducted in the ordinary course of business”. Because of the temporary nature and public accessibility to these events, ABC expects to have a high difficulty of monitoring these events and these events provide a high potential for over-service and abuse.

Senate Bill 36 has the potential of reducing the rate of compliance with liquor drink tax laws. Licensees who under-report liquor drink tax revenue may explain tax discrepancies by claiming liquor was given away via samples when, in fact, the tax was under-reported.

Summary

From a public health and safety perspective, the benefits of allowing a consumer to sample, free of charge, an alcoholic beverage at a restaurant before deciding to purchase is outweighed by the danger of abuse, excessive consumption and alcohol-related incidents at high risk bars, particularly given the fact that restaurants can provide such samples under current law so long as they charge for it.

Thank you for carefully considering all the unintended consequences of this bill.