

HEIN LAW FIRM, CHARTERED

5845 SW 29th Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

Fax: (785) 273-9243

Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

www.heinlaw.com

Testimony Re: SB 36, Sampling at Drinking Establishments

Senate Federal and State Affairs Committee

Presented by Ronald R. Hein

on behalf of

Kansas Restaurant and Hospitality Association

January 24, 2013

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association (KRHA). The Kansas Restaurant and Hospitality Association, founded in 1929, is the leading business association for restaurants, hotels, motels, country clubs, private clubs and allied business in Kansas. Along with the Kansas Restaurant and Hospitality Association Education Foundation, the association works to represent, educate and promote the rapidly growing industry of hospitality in Kansas.

KRHA requested introduction of and supports SB 36, which permits sampling at drinking establishments. This bill would put drinking establishments on the same level playing field that is recognized by current law for retail liquor dealers, micro-breweries, and micro-distilleries regarding permission to conduct sampling of product. You will recall that I raised this issue when SB 7 was heard by this committee on Tuesday.

KRHA drinking establishment members have numerous customers who would like to be able to taste an alcoholic beverage (wine or otherwise) prior to making their purchase decision. But, pursuant to current law, our providers are unable to do so.

This legislation would avoid an unfair, illogical hodge-podge of sampling authority, and instead would provide a legislative structure which treats competing businesses fairly and equitably.

As I pointed out in my SB 7 testimony, our businesses are adversely impacted by the current prohibition of them providing samplings. I have set out an example of how the current law works below.

When a customer orders wine at a restaurant, and the waiter brings the wine and permits the customer to taste the wine, if the customer does not like the wine, under current law, we must still charge the customer the cost of the wine that was poured, since a restaurant cannot give away alcohol, and because alcohol cannot be sold for an amount less than the

cost to the restaurant. So the restaurant must determine the percentage of the bottle of wine that was poured, calculate the cost to the restaurant for that bottle, and then MUST charge the customer for that amount. Obviously, the customer who didn't even like the product is going to respond in an annoyed manner that they have to pay for something they didn't like. Sometimes the restaurant can offer a free appetizer or some other free food as a means of assuaging the customer's concerns, but ultimately the customer MUST pay the charge for the alcohol.

Another example is that of a restaurant or sports bar that has a line up of multiple beers on draft. With such variety of product, many individuals might want to sample a draft beer or ale before ordering that particular product. This gives the customer the opportunity to consider a new choice without committing to purchasing a full glass. If a customer enters a micro-brewery, such as Granite City Food & Brewery, they may "taste" a variety of beers in-house before making a decision. That same establishment can even offer "samples" or "tastes" to customers while they wait to be seated. A restaurant which is not a micro-brewery, even across the street, would not be able to provide such tasting opportunities to the customer. This comparison demonstrates the adverse effect of such direct competition between a restaurant or sports bar and a micro-brewery that can sample their products on site. There is no rational basis for the law creating this competitive difference that picks winners and losers in the market place.

Of the 50 states, 38 states allow on-premises tastings. Kansas allows off-premises tastings but not on-premises tastings, although SB 7 will permit retail liquor stores to permit on-premises tastings of mixed drinks, even though their products are normally for sale only for off-premises consumption. That distinction makes no sense. Please see the map attached to the back of my testimony.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.