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House Health and Human Services Committee

Testimony Re: HB 2137

Presented by Ronald R. Hein

on behalf of

Kansas Beverage Association

February 2, 2005

Mister Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Beverage Association (KBA), which is the a state trade association for beverage bottling companies operating in Kansas. Prior to last November, we were named the Kansas Soft Drink Association, but after several generations, we have changed our name to more truly reflect our members and the products we make, which include carbonated diet and regular soft drinks, bottled waters, isotonic drinks, juice, juice drinks, sports drinks, dairy-based beverages, teas, and other beverages.

The Kansas Beverage Association opposes HB 2137 for a variety of reasons. The bill: 1) takes away local control of the school districts; 2) places a decision with the state that should be a decision of the parents regards eating habits of their own children; 3) attempts to label foods as good foods and bad foods; healthy foods and unhealthy foods, contrary to good nutrition science; 4) will have an adverse financial affect upon schools in general and specifically programs which are designed to fight the obesity problem, such as physical education programs; 5) attempts to throw a very simple, yet incorrect, solution at a very complex problem currently plaguing our society.

We have met with the sponsor of this legislation several times, and we applaud the goal he is trying to achieve which is to reduce obesity in our society and specifically in our school children. However, we respectfully submit that not only is this not a solution to the goal he is attempting to achieve, but that there will be unintended consequences from this legislation that will exacerbate the obesity situation. When a focus is put on simple solutions, such as this, for a complex problem, sufficient attention is not paid to the real solutions to the childhood obesity problem.

You will be hearing from others on the issue of local control. You will be hearing from another conferee who will explain from the nutritional standpoint why this legislation is not the appropriate way to solve the problem. However, I do want to provide information of which you may not be aware regarding the current federal law governing vending machines and specifically soft drinks in schools.

The sale of carbonated soft drinks in schools is regulated by the U.S. Department of Agriculture as part of the School Lunch Program and the School Breakfast Program. Under the regulations (7 CFR Sec.210.11 and Appendix B to Sec.210), carbonated soft drinks are defined as foods of minimal nutritional value (FMNV) and may not be sold in any school in the food service areas (cafeteria) during the lunch and breakfast period. As a matter of bottler policy, there are generally no soft drink vending machines in elementary schools in Kansas

HB 2137 would ban carbonated soft drinks in elementary and middle schools in Kansas, even if those soft drinks are diet soft drinks. Since we do not place vending machines in elementary schools, I will address only the issues as they relate to middle schools and high schools. This bill also provides that in high schools, 50% of the product in vending machines must NOT be carbonated soft drinks, including diet carbonated soft drinks. Therefore, although the goal of this legislation is to fight obesity, it would be a violation of HB 2137 to have vending machines which are totally full of diet soft drinks, even though the products contain no calories.

The problem of childhood obesity is a complicated one. This legislation is not the solution. However, our industry has been among the front runners in those who are attempting to address the issue. We have had a tremendous growth of bottled waters, diet products, and other products which are currently addressing the problems that exist. Consumption of sugared, carbonated soft drinks is down and bottled waters, diet beverages and juices and sports drinks are up.

Studies indicate the average high school age student consumes approximately 1.2 twelve ounce non-diet soft drinks per day, but only one such product is sold in school per week. School sales represent only 9% of school kids' purchases, so this legislation will not have a significant impact.

Although I do not want to get into the details, the logistics of the administration and the various vending providers complying with the 50% rule in high schools presents many logistical problems. When is the 50% rule looked at? Who is responsible for monitoring and accounting for the volume of individual products in machines? Is the 50% rule applicable per machine or for all the products accessible to the students? If the percentage shifts because of usage of one type of product versus another, who is responsible for emptying or adding products to the machines so that they meet the statutory threshold?

If the legislature is truly desirous of solving the obesity problem while still trying to preserve personal responsibility, which we believe that they are, then we would suggest that the legislature create an interim study committee, or some other study committee, to look at the overall problem of obesity. Such a study should include encouragement of

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physical activity of children and of society in general as a part of that solution. The study should probably at least consider restoring physical education in our school system.

As you will hear in other testimony, the solution to the obesity problem is not a matter of simply restricting choices nor the government becoming the food police. It is a matter of educating children in our society to have a healthy overall diet and a regular regimen of physical activity.

There is room for all foods in moderation in a healthy diet. Restricting any single food or type of food simply drives up the desire for such a restricted food. Restricting ANY foods is not the solution to the obesity problem facing our country.

I have provided you with a copy of the American Beverage Association's "Soft Drinks and Nutrition Facts" booklet. I have also attached to my testimony a document by Dr. Guy Johnson entitled "Beverages in Schools Programs—A Nutritional Threat or a Teaching Opportunity" and a publication by Liz Marr "Soft Drinks, Childhood Overweight, and the Role of Nutrition Educators: Let's Base Our Solutions on Reality and Sound Science". I encourage you to read these documents when you have time and I think you will find that they clear up many of the myths that some people believe about nutrition and possible solutions to the obesity problem. They also clearly demonstrate that some of the quick, easy, and simple solutions to obesity, and childhood obesity, in our society, are not justified by the facts and the evidence, and that comprehensive solution is the way for policy makers to go.

I respectfully request that you not pass HB 2137, and that if any action is to be taken, that the legislature develop a full study of the obesity problem.

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