Kansas Restaurant and Hospitality Association
Testimony Opposing HB 2088
House Federal and State Institutions
Tuesday February 3, 2015

Mr. Chairman and members of the committee, the Kansas Restaurant and Hospitality Association and opposes HB 2088 because it serves little public purpose beyond tax collecting.

The Kansas Restaurant and Hospitality Association represents members who employ over 137,000 Kansans. We are one of the primary tax collectors for the state, collecting more than $424 million as an industry. Creating a legislative construct which allows an additional layer of financial extraction on those members who hold an alcohol license, without a firm foundation in a meaningful policy purpose is something we cannot support.

The KRHA is not opposed at all to ABC being allowed to issue fines and engage in administrative action against a licensee. We are against such a soft enforcement mechanism which allows an undefined notice to a "licensee, a licensee's agent, or an employee." This is exactly the fact scenario, which was argued to the Kansas Court of Appeals this last summer.

The Court overturned the fine for several substantive reasons. First, ABC wasn't following the law. Second, their interpretation of the law didn't fit well within a meaningful pubic policy purpose. The Court stated the following:

> "The issuance of a citation at the time of the violation gives immediate notice to the violator and/or the licensee that there has been in fact a violation of the law. It then affords the licensee an opportunity to immediately take corrective steps to fix the violation and thus more likely limit the continuation of any violations. The failure to issue a citation at the time of the violation could very possibly allow the violations to continue for as long as 30 days or until a violator receives a citation in the mail perhaps several weeks after it occurred."[1]

HB 2088 would place into law a practice which would not aid in stopping the violation when it is occurring. The KRHA believes a more preventative and cooperative approach will better assist in reducing violations than a simple reactive fining system. For these reasons, we stand opposed to HB 2088.

Regards,

Jason P. Watkins

---

[1] Kite's Bar & Grill, Inc. v. Kansas Dep't of Revenue, Alcoholic Beverage Control Div., 50 Kan. App. 2d 493, 329 P.3d 536, 540 (2014)