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Testimony Re: HB 2690, Exempt Bars from Smoking Bans

House Federal and State Affairs Committee

Presented by Ronald R. Hein

on behalf of

Kansas Restaurant and Hospitality Association

March 12, 2012

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.

The KRHA requests that either the current smoking ban be amended to provide an exemption for restaurants and hospitality businesses, or that HB 2690 be reported unfavorably, so that all entertainment competitors are treated equitably and fairly in this state.

For a number of years, the Kansas Restaurant and Hospitality Association has been one of the leading defenders of the right of business owners to make their own business decision about the use of legal products in private businesses operated by our members. In short, the KRHA believes that our business owners know best what food to serve, what business decisions to make, and what customers they seek for the best success for their personal businesses. The KRHA has always believed that the business owner, not the government, is in the best position to determine their customer base. As such, the KRHA has generally opposed governmental imposed smoking bans on businesses.

The KRHA recognizes that, prior to the state smoking ban, most of the restaurants were already non-smoking or were converting to non-smoking facilities. More and more businesses, in our Association and otherwise, were choosing to be non-smoking on their own without government intervention for economic and business purposes. We also recognize the adverse economic impact which smoking bans have had on numerous food and beverage businesses.

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In the past, the KRHA has agreed to a major concession, which is that the KRHA would be neutral on a ban which would prohibit smoking in restaurants and hospitality businesses if smoking was permitted in a separate and distinct room, separated by floor-to-ceiling walls and separately ventilated. This would have eliminated exposure for non-smokers. We have also testified for and taken a position that we would not oppose a smoking ban that prohibited smoking at all restaurant, hospitality, and entertainment venues, so as to make all such business competitors subject to a level playing field.

When the Legislature passed the smoking ban, they intellectually agreed with the KRHA that it is rational that certain exemptions to the smoking ban were appropriate to protect a business's economic interests. However, the Legislature decided that a smoking ban would threaten the State's business (state owned and operated gaming casinos and slots at tracks), but not threaten privately owned and operated businesses. There was and is NO justification for such a discriminatory policy.

It is decidedly unfair and hypocritical for the state to exempt their own businesses from the ban, and then force private businesses to be subject to the ban, to the businesses' economic detriment. Especially when you consider many restaurants and restaurants with bars are competing for those same entertainment dollars

It is also important to the KRHA that any smoking ban provides a level playing field between entertainment venues. To allow the state-owned businesses to be exempt from the smoking ban, or, pursuant to this bill, to allow age-restricted facilities to be exempt from the ban, and to deny that exemption to other non-age restricted businesses that compete with them is objectionable to the KRHA. State policy should treat all competing businesses in a fair and equitable manner, and should NOT pick winners and losers. Such a policy is colloquially known as "crony capitalism".

Therefore, KRHA opposes HB 2690 UNLESS the committee amends the bill to provide an exemption for restaurants and other hospitality businesses which compete with the facilities included within the provisions of this bill, with a separate and distinct room requirement or not.

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

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