



House Federal & State Affairs Committee  
SB 36

Testimony of  
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February 25, 2013

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Good morning Chairman Siegfried and members of the committee. Thank you for the opportunity to present testimony on Senate Bill 36.

We testified in opposition to this bill during the public hearing before the Senate Federal and State Affairs Committee. Our concern was the potential for abuse that the bill, as it was introduced, presented.

Following the hearing, Senate Federal and State Affairs Chairman Ralph Ostmeyer asked us to visit with members of the liquor industry to explore the possibility of middle ground. As a result of our discussions with Phil Bradley, Ron Hein and Adam Mills, the committee agreed to make amendments to address our concerns.

As you know, ABC's mission is to promote, serve and protect the public health, safety and welfare of Kansans through the regulation of the liquor industry. Our opposition to the bill in its introductory form related to:

1. K.S.A. 41-2640 prohibits licensees from giving away free drinks. The bill, as it was introduced, offered a way around that statute, particularly given the fact that there was no limit to the size and number of samples. The Senate Federal and State Affairs Committee applied limits to sizes and the number of samples that may be served to a customer.
2. 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 recouped by cover charges, food and non-food items – sources of revenue not available to retail liquor store licensees. The Senate Federal and State Affairs Committee amended the bill, at our request, to prohibit the giving away of free samples on any business day during which an on-premise licensee charges a door "cover" to enter the bar or remain on the premises.

The reason we thought this amendment was necessary is because of the potential for abuse involving 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.

A third amendment we suggested dealt with the fact that the original language did not address the payment of liquor drink tax on the free samples. The amendment clarifies that the licensee is responsible for collecting the tax on drinks offered as free samples at the price of acquisition for the licensee. In order to minimize the potential of reducing the rate of compliance with liquor drink tax laws, we recommended the bill be amended to provide for regulatory authority of the directors of taxation and ABC, which the committee did. We wanted to make sure that licensees who under-report liquor drink tax revenue do not have a built-in excuse for tax discrepancies by claiming liquor was given away via samples when, in fact, the tax was simply under-reported.

### **Summary**

While there is still some level of potential for abuse, ABC no longer opposes Senate Bill 36. Our concerns were addressed by the Senate Federal and State Affairs Committee and we appreciate their amendments.

Thank you Mr. Chairman.