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Senate Commerce
Testimony re: SB 71, Preemption of Local Minimum Wage
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
February 12, 2007

Madam Chairman, Members of the Committee:

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

The KRHA supports SB 71. Minimum wage legislation, on the surface, sounds good in concept. It would appear to help insure a certain, arbitrarily picked wage to all workers.

But, in practice, minimum wage legislation oftentimes works adversely to the very people that minimum wage legislation is intended to help. Most workers whose worth is higher than the minimum wage, including professionals, technically skilled workers, skilled laborers, and others, are not even impacted by minimum wage legislation. So, generally, the intent is to utilize the wages as an aide for those people who are untrained, unskilled, probably but not always young, inexperienced workers either just entering the workforce, or in many instances, those who are attempting to get work experience while going to school or otherwise.

The result of such minimum wage legislation is oftentimes to force the employer to reconsider his or her willingness to employ the least educated, least trained, least experienced worker for employment. If he has to pay more than what they are worth at that point in time, the worker might decide to employ an individual who is more skilled, more experienced, or more trained. In short, the government can increase the minimum wage, but cannot force employers to pay a higher wage to those least employable and highest at risk workers.

With that said, it is already the law at the federal level that there is a minimum wage. Looking at the minimum wage set out in Kansas, it certainly appears, to be extremely low.

The impact of the minimum wage, both federal and state, is slightly different for the

restaurant, lodging, and hospitality industry due to the fact that many employees of our industry also receive tips. Under federal law, the current minimum wage is \$5.15 per hour. But only \$2.13 of that minimum wage is required to be paid by the employer if the employee receives tips in a sufficient amount to exceed the \$5.15 minimum wage. If the tips do not bring the total wage to the minimum wage level, then the employer must make up the difference in cash payment to meet that minimum wage.

Under state law, the minimum wage is \$2.65 per hour, but a maximum of 40% of such amount can be in tips.

KRHA supports SB 71. Virtually all food service establishment employees in Kansas, constituting approximately 13.5% of the Kansas workforce, already are paid wages in excess of the federal minimum wage. For the restaurant, lodging and hospitality business, the federal law governs our employees rather than the state law.

The federal Fair Labor Standards Act of 1938, as amended, provides that the act “applies to enterprises that have employees who are engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or working on goods or materials that have been moved in or produced for interstate commerce.”

There is a so-called “enterprise” test, which requires \$500,000 annual volume to be engaged in interstate commerce. But even if the income is below that, any businesses are covered, or specific employees are covered, to the extent that the business is otherwise meeting the criteria set out in the act. The act has also been interpreted to cover those businesses which accept credit card sales because of the interstate nature of credit cards.

Kansas, and other states, have seen cities attempting to pass local minimum or living wage ordinances. These local ordinances constitute a significant problem for our industry for a variety of reasons. Such local ordinances especially are problematic in communities such as in Johnson County, where one can drive from city to city without leaving the urban area. There are already enough differing governmental levels of laws and regulations on our industry as well as others, without having a third level of legislation in the area of minimum wage or other working conditions.

In light of this, the KRHA would also suggest that SB 71 be amended to prohibit local minimum or living wage ordinances.

The KRHA strongly urges the committee to adopt an amendment to SB 71 which would prohibit local minimum or living wage ordinances and resolutions, and further urges the committee to report SB 71 with the recommendation that it be passed .

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