Kansas’ Government Control of Local Food Policies Law

September 12, 2016

Any legal information provided in this presentation does not constitute legal advice or legal representation.
POLITICAL BACKGROUND ON HB 2595

Kathy Damron, lobbyist for KC Healthy Kids
September 12, 2016
2016 LEGISLATIVE SESSION OVERVIEW

Battle between state and local government
Education policy and funding
Gun control/concealed carry
Tax lid
Elections
Nutrition labeling and HB 2595
HB 2595 DOES WHAT?

“Under House Bill 2595, municipalities would be unable to require retail food establishments to post nutritional information, including caloric content and allergen warnings.”

~ Topeka Capital-Journal
Feb 16, 2016
HB 2595 DOES WHAT?

“HB 2595 would restrict local regulation and decision-making on public health issues relating to nutrition. KAC is concerned with another state encroachment on local control.”

~ Melissa Wangeman
Kansas Association of Counties
(Quoted by the Topeka Capital-Journal)
HB 2595 TIMELINE

Feb 2: Introduced
Feb 12: Hearing in House Commerce Committee
Feb 19: Amended and passed committee
Mar 18: Amended and passed House 89-34
Apr 30: Conference Committee report adopted by House
May 1: Conference Committee report adopted by Senate
July 1: HB 2595 effective date
SUPPORTERS OF HB 2595

Americans for Prosperity  
Kansas Beverage Association  
Kansas Chamber of Commerce  
Kansas Cooperative Council  
Kansas Corn Growers  
Kansas Dept. of Agriculture  
Kansas Farm Bureau  
Kansas Livestock Association  
Kansas Restaurant and Hospitality Association  
Kansas Wheat Growers  
Rep. Gene Sullentrop
OPPONENTS OF HB 2595

American Cancer Society
American Heart Association
Hodgeman County
Johnson County
Kansas Action for Children
Kansas Association of Counties
Kansas Association of School Boards
Health Care Foundations of Greater KC

Kansas Farmers Union
Kansas League of Municipalities
Kansas Public Health Association
Kansas Rural Center
KC Healthy Kids
Oral Health Kansas
Sunflower Foundation
Unified Government of Wyandotte County
YMCAs of Kansas
Overview of
HB 2595/SB 366
September 12, 2016
Julie Ralston Aoki, Staff Attorney
Public Health Law Center

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What do we do?

- Legal Research
- Policy Development
- Publications
- Trainings
- Litigation Support
- Direct Representation
- Lobby
Help kids like Alex and Mio to like and eat healthy things!
What is this about?

**FEDERAL**
The federal government, as long as it is acting within its constitutionally enumerated powers, can trump the states and their subdivisions.

**STATE**
State governments define the powers and authority of local governments.

**LOCAL**
If the federal or state government limits local authority in a particular policy area, it has PREEMPTED local control.
“[A]ll public health is local—it’s got to start and be sustained at the local level.”

Howard Koh
Assistant Secretary for Health and Human Services
July 28, 2009

"We could never win at the local level... So the Tobacco Institute and tobacco companies' first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can't do that, at least on the state level."

--Victor L. Crawford, Former Tobacco Institute Lobbyist

Kansas’ Government Control of Local Food Policies Law

What is HB 2595/SB 366?
This is a Kansas law enacted in 2016 that preempts local authority in favor of state government authority in several areas, including with respect to local regulation and oversight of food service operations, retail food establishments, and other matters concerning local food and agricultural practices. This law (“Government Control” law) also expressly limits local authority to try to reduce food-based health disparities. It is very similar to laws passed in Ohio and Mississippi (see box on page 3 about the invalidation of Ohio’s law). The Ohio, Mississippi, and Kansas laws closely resemble an ALEC (American Legislative Exchange Council) bill.*

What does the Government Control law say about restrictions on the authority of “political subdivisions”?
The law says that the following topics are matters of statewide concern that can only be regulated through state legislation:

- the regulation of “consumer incentive items,” which are toys, crayons, coupons, and any other premium, prize or consumer product associated with a meal served by a food service operation;
- nutrition labeling for food and nonalcoholic beverages in restaurants, retail food establishments or vending machines; and
- how food service operations are “characterized.”

*This fact sheet is funded by the Kansas Health Foundation to increase access to and consumption of healthy food in Kansas.

http://www.publichealthlawcenter.org/topics/special-collections/kansas-resources
HB2595/SB366

Limits local food policy choices by prohibiting political subdivisions from passing certain kinds of laws that would impact food retail and food service.

The restaurant industry

Local control
Who is restricted by the law?

- **Political subdivisions**: Entities that can pass laws or collect taxes--cities, counties, townships, school boards, etc.

- **NOT** private groups, foundations, nonprofits, community coalitions
What **food environments** are covered?

- Restaurants of all types
- Clubs, commissaries
- Snack/concession stands
- Mobile food trucks
- Soup kitchens
- “any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge”
- Grocery stores selling hot food?
Local policy options that are off-limits

- Menu labeling/calorie labeling laws
- Laws to improve the nutritional quality of kids meals
Local policy options that are off-limits

• Restrict sale, distribution or serving of foods/nonalcoholic beverages approved for sale by a federal or state agency

• Restrict the growing or raising of livestock or crops approved for sale by a federal or state agency
Local policy options that are off-limits

- Restrictions, including through licenses, permits, or other regulatory approval process, based on the existence (or nonexistence) of a food-based health disparity
Equality doesn’t mean Equity
Equality doesn’t mean Equity.
What is still doable?

• General planning and zoning
• Community gardens
What is still doable?

• Nutrition education activities
• Double Up Bucks and similar kinds of financial assistance programs
• Food and Farm Councils
What is still doable?

• Administrative policies that set nutrition standards for vending machines, concessions, cafeterias in city/county facilities

• As long as they are not part of a law or ordinance that restricts another entity
Unintended consequences?

- Animal control/beekeeping and similar laws?
- Local food preference laws?
- Recruitment of grocery stores to underserved areas?
THANK YOU!

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http://www.publichealthlawcenter.org/topics/special-collections/kansas-resources
Local Impact: Government Control of Local Foods Law

Missty Lechner
Advocacy Project Director
American Heart Association
Food Councils in KS

A statewide network of communities, organizations and individuals committed to improving the health of Kansans by creating healthy food and beverage environments.
Round of Applause

• Local advocates helped fight the popular perception among lawmakers that Kansans desired this legislation. THANK YOU for your hard work!

My salute to HB 2595, "anti-Bloomberg" bill prohibiting nanny-state nutrition regs such as soft drink size limits

Actual tweet by a lawmaker

A statewide network of communities, organizations and individuals committed improving the health of Kansans by creating healthy food and beverage environments.
How can councils or coalitions move forward?

1. Know what this law preempts
2. Know what this law does not address
3. Prepare yourself for the grey area
   • We can’t know everything impacted until the courts decide
How can councils or coalitions move forward?

4. If you are told “no” on a policy campaign – Tell me

5. Legal counsel for your city or county may need to talk to PHLC
Challenges?

If you have any questions or concerns once you start your local campaign, reach out to me:

Missty Lechner
Missty.Lechner@heart.org
785-228-3419

A statewide network of communities, organizations and individuals committed improving the health of Kansans by creating healthy food and beverage environments.