



**Opposition Testimony to HB 2437  
House Agriculture Committee  
January 22, 2020**

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The Kansas Restaurant and Hospitality Association has a long history opposing the accompanying costs of new regulations. Most of our members are the smallest of businesses and are often impacted the most by any new rule. HB 2437 attempts to place into state law a requirement to label packaged products of plant based foods, served as meat replacements, as not containing meat.

The KRHA believes the intent of the proponents is to not increase regulation on the defined food establishments and that is an approach with which we agree. **However, KRHA would request an amendment clearly stating the requirement is not extended to “Food Establishments” as defined in Section 1 (v).**

The reason we request this is directly related to the structure of the Federal Nutrition Labeling and Education Act (NLEA) of 1990, and subsequent amendments made to the NLEA in the Affordable Care Act.

Additionally, and perhaps more consequentially, a Federal Court of Appeals decision viewed the entire regulatory scheme of the NLEA as ambiguous when they allowed state level menu labeling regulation and stated the following: “...the federal statutory scheme regulating labeling and branding of food is a labyrinth and interpreting the statute are a series of agency regulations that sometimes appear to conflict and are difficult to harmonize.”<sup>i</sup>

While the KRHA does agree some aspects of additional state action are preempted, as a general rule, the United States Supreme Court has held, “where the text of a preemption clause is ambiguous or open to more than one plausible reading, courts “have a duty to accept the reading that disfavors pre-emption.”<sup>ii</sup>

Further, to determine whether the NLEA actively exempts food establishments then depends on the distinction between “Nutrient Content” and “Nutrition Information Labeling.” The analysis is a murky as a Kansas river during the spring rains and our concern is it subjective enough to allow adventuring legal interpretations which may negatively affect our small business members.

Again, we would request an amendment for food establishments to be clearly removed from this bill.

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<sup>i</sup> New York State Rest. Ass'n v. New York City Bd. of Health, 556 F.3d 114, 117 (2d Cir. 2009)

<sup>ii</sup> Bates v. Dow Agrosciences LLC, 544 U.S. 431, 449, 125 S.Ct. 1788, 161 L.Ed.2d 687 (2005).