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Michael W. Merriam, #09019 700 SW Jackson St Roof Garden Ste 1104 Topeka KS 66603 (785) 233-3700



2010 JUN -8 P 2: 17

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS DIVISION _____

DOWNTOWN BAR AND GRILL, LLC, Plaintiff,)	
v.)	Case No. 10C822
STATE OF KANSAS,	j	
Defendant.)	

VERIFIED APPLICATION FOR TEMPORARY INJUNCTION

COMES NOW THE PLAINTIFF, Downtown Bar and Grill, L.L.C., by and through its counsel, Michael W. Merriam, and submits the following Verified Application for Temporary Injunction.

- Plaintiff has filed a Petition in the captioned matter setting forth facts supporting its claim to denial of constitutional rights of equal protection of the law due to the enactment of HB 2221 Section 3(d)(8) & (9).
- This application seeks temporary and permanent injunctive relief on the equal protection claims pursuant to K.S.A. 60-905. The factual allegations of the Petition are incorporated into this application by this reference.
- The conduct requiring injunctive relief consists of the imminent enforcement of HB
 the general statewide smoking ban, and specifically its classification system which distinguishes between identically situated class A and class B clubs with no rational basis to do so.

- 4. Plaintiff seeks a temporary and permanent injunction to prevent enforcement of that portion of HB 2221 as above stated (Section 3(d)(8), distinguishing between class A and class B clubs depending upon the date of licensure.
- 5. Plaintiff has no adequate remedy at law or otherwise for the harm and damages that will be done by denial of equal protection of the law. If such conduct is allowed to continue, it will be impossible for Plaintiff to determine the amount of damages done thereby. Immediacy is required in the granting of injunctive relief because of the pending effective date of HB 2221.

WHEREFORE, Plaintiff prays for a temporary injunction upon the terms and conditions stated hereinabove.

Respectfully submitted:

Michael W. Merriam, #09019

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Topeka KS 66603

(785) 233-3700

Fax: (785) 234-8997 Attorney for Plaintiff

VERIFICATION

State of KANSAS	
County of Leavenworth)

I, Kevin Haislip, of lawful age, being first duly sworn, state that I am the owner of Downtown B&G, L.L.C., the Plaintiff herein and that the above facts are true and correct.

Kevin Haislin

Subscribed and sworn to before me this _____ day of June, 2010.

Heather R. Heim

My Appl. Exp. 12/23/20/2

Notary Public

My Appointment Expires: 2