

SENATE BILL No. 288

By Committee on Federal and State Affairs

1-17

Proposed Amendments to SB 288
For Committee on Federal & State Affairs
February 9, 2012
Prepared by: Jason B. Long, Senior Ass't Revisor

1 AN ACT concerning alcoholic beverages; relating to sales of alcoholic
2 liquor or cereal malt beverage by the drink; amending K.S.A. 41-2640
3 and K.S.A. 2011 Supp. 41-2601 and repealing the existing sections.

and 41-2722

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2011 Supp. 41-2601 is hereby amended to read as
6 follows: 41-2601. As used in the club and drinking establishment act:

7 (a) The following terms shall have the meanings provided by K.S.A.
8 41-102, and amendments thereto: (1) "Alcoholic liquor"; (2) "director"; (3)
9 "original package"; (4) "person"; (5) "sale"; and (6) "to sell."

10 (b) "Beneficial interest" shall not include any interest a person may
11 have as owner, operator, lessee or franchise holder of a licensed hotel or
12 motel on the premises of which a club or drinking establishment is located.

13 (c) "Caterer" means an individual, partnership or corporation which
14 sells alcoholic liquor by the individual drink, and provides services related
15 to the serving thereof, on unlicensed premises which may be open to the
16 public, but does not include a holder of a temporary permit, selling
17 alcoholic liquor in accordance with the terms of such permit.

18 (d) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
19 2701, and amendments thereto.

20 (e) "Class A club" means a premises which is owned or leased by a
21 corporation, partnership, business trust or association and which is
22 operated thereby as a *bona fide* nonprofit social, fraternal or war veterans'
23 club, as determined by the director, for the exclusive use of the corporate
24 stockholders, partners, trust beneficiaries or associates (hereinafter referred
25 to as members) and their families and guests accompanying them.

26 (f) "Class B club" means a premises operated for profit by a
27 corporation, partnership or individual, to which members of such club may
28 resort for the consumption of food or alcoholic beverages and for
29 entertainment.

30 (g) "Club" means a class A or class B club.

31 (h) "~~Mfriner~~" means a closed cabinet, whether nonrefrigerated or
32 wholly or partially refrigerated, access to the interior of which is restricted
33 by means of a locking device which requires the use of a key, magnetic
34 card or similar device.

35 (i) "~~Drinking establishment~~" means premises which may be open
36

1 to the general public, where alcoholic liquor by the individual drink is
2 sold.

3 (f) (i) "Food" means any raw, cooked or processed edible substance or
4 ingredient, other than alcoholic liquor or cereal malt beverage, used or
5 intended for use or for sale, in whole or in part, for human consumption.

6 (f) (j) "Food service establishment" has the meaning provided by
7 K.S.A. 36-501, and amendments thereto.

8 (f) (k) "Hotel" has the meaning provided by K.S.A. 36-501, and
9 amendments thereto.

10 (l) "Individual drink" means [an individual serving of a beverage
11 containing alcoholic liquor or cereal malt beverage.

12 (m) "Individual serving" means] a beverage containing alcoholic
13 liquor or cereal malt beverage served to an individual for consumption by
14 such individual or another individual, but which is not intended to be
15 consumed by two or more individuals. The term "individual serving"
16 includes beverages containing not more than: (1) Eight ounces of wine;
17 (2) thirty-two ounces of beer or cereal malt beverage; or (3) four ounces
18 of a single spirit or a combination of spirits.

19 (n) "Minibar" means a closed cabinet, whether nonrefrigerated or
20 wholly or partially refrigerated, access to the interior of which is
21 restricted by means of a locking device which requires the use of a key,
22 magnetic card or similar device.

23 (o) "Minor" means a person under 21 years of age.

24 (p) "Morals charge" means a charge involving prostitution;
25 procuring any person; soliciting of a child under 18 years of age for any
26 immoral act involving sex; possession or sale of narcotics, marijuana,
27 amphetamines or barbiturates; rape; incest; gambling; illegal cohabitation;
28 adultery; bigamy; or a crime against nature.

29 (q) "Municipal corporation" means the governing body of any
30 county or city.

31 (r) "Restaurant" means:

32 (1) In the case of a club, a licensed food service establishment which,
33 as determined by the director, derives from sales of food for consumption
34 on the licensed club premises not less than 50% of its gross receipts from
35 all sales of food and beverages on such premises in a 12-month period;

36 (2) in the case of a drinking establishment subject to a food sales
37 requirement under K.S.A. 41-2642, and amendments thereto, a licensed
38 food service establishment which, as determined by the director, derives
39 from sales of food for consumption on the licensed drinking establishment
40 premises not less than 30% of its gross receipts from all sales of food and
41 beverages on such premises in a 12-month period; and

42 (3) in the case of a drinking establishment subject to no food sales
43 requirement under K.S.A. 41-2642, and amendments thereto, a licensed

1 food service establishment.

2 (4) (s) "RV resort" means premises where a place to park recreational
3 vehicles, as defined in K.S.A. 75-1212, and amendments thereto, is offered
4 for pay, primarily to transient guests, for overnight or longer use while
5 such recreational vehicles are used as sleeping or living accommodations.

6 (4) (t) "Secretary" means the secretary of revenue.

7 (4) (u) "Temporary permit" means a temporary permit issued pursuant
8 to K.S.A. 41-2645, and amendments thereto.

9 Sec. 2. K.S.A. 41-2640 is hereby amended to read as follows: 41-
10 2640. (a) No club, drinking establishment, caterer or holder of a temporary
11 permit, nor any person acting as an employee or agent thereof, shall:

12 (1) Offer or serve any free cereal malt beverage or alcoholic liquor in
13 any form to any person;

14 (2) offer or serve to any person a *an individual* drink at a price that is
15 less than the acquisition cost of the *individual* drink to the licensee or
16 permit holder;

17 (3) sell, offer to sell or serve to any person an unlimited number of
18 *individual* drinks during any set period of time for a fixed price, except at
19 private functions not open to the general public or to the general
20 membership of a club;

21 (4) sell, offer to sell or serve any *individual* drink to any person at any
22 time at a price less than that charged all other purchasers of *individual*
23 drinks on that day;

24 (5) ~~increase the volume of alcoholic liquor contained in a drink or the
25 size of a drink of cereal malt beverage without increasing proportionately
26 the price regrettably charged for the drink on that day;~~

27 (6) (5) encourage or permit, on the licensed premises, any game or
28 contest which involves drinking alcoholic liquor or cereal malt beverage or
29 the awarding of *individual* drinks as prizes; or

30 (7) (6) advertise or promote in any way, whether on or off the
31 licensed premises, any of the practices prohibited under subsections (a)(1)
32 through (6) (5).

33 (b) ~~Nothing in subsection (a) shall be construed to prohibit a club,
34 drinking establishment, caterer or holder of a temporary permit from may:~~

- 35 (1) Offering free food or entertainment at any time; or
- 36 (2) ~~selling or delivering sell or deliver~~ wine by the bottle or carafe;

37 or
38 (3) ~~sell or serve beer or cereal malt beverage in a pitcher capable of
39 containing not more than 64 fluid ounces.~~

40 (c) Violation of any provision of this section is a misdemeanor
41 punishable as provided by K.S.A. 41-2633, and amendments thereto.

42 (d) Violation of any provision of this section shall be grounds for
43 suspension or revocation of the licensee's license as provided by K.S.A.

(3) sell, offer to sell and serve individual drinks at different prices throughout any day; or

1 41-2609, and amendments thereto, and for imposition of a civil fine on the
2 licensee or temporary permit holder as provided by K.S.A. 41-2633a, and
3 amendments thereto.

4 (e) Every licensed club and drinking establishment shall make
5 available at any time upon request a price list showing the club's or
6 drinking establishment's current prices per *individual* drink for all
7 *individual* drinks.

8 ~~(f) As used in this section, "drink" means an individual serving of any
9 beverage containing alcoholic liquor or an individual serving of cereal
10 malt beverage.~~

11 Sec. 3. K.S.A. 41-2640 and K.S.A. 2011 Supp. 41-2601 are hereby
12 repealed.

13 Sec. 4. This act shall take effect and be in force from and after its
14 publication in the statute book.
15

Sec. 4. Amendment to K.S.A. 41-2722 (see attachment)

41-2722 and

41-2722. Certain sales practices prohibited; penalties; drink defined. (a) No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverage for consumption on the licensed premises shall:

(1) Offer or serve any free cereal malt beverage to any person;

(2) offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee;

(3) sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;

~~(4) sell, offer to sell or serve any drink to any person at any time at a price less than that charged the general public on that day, except at private functions not open to the general public;~~

~~(5) increase the size of a drink of cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;~~

(6) encourage or permit, on the licensed premises, any game or contest which involves drinking cereal malt beverage or the awarding of drinks as prizes; or

(7) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (6).

(b) ~~Nothing in subsection (a) shall be construed to prohibit~~ A retailer from offering *may*:

(1) Offer free food or entertainment at any time;

(2) *sell, offer to sell and serve individual drinks at different prices throughout any day; or*

(3) *sell or serve cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.*

(c) Violation of any provisions of this section is a misdemeanor punishable as provided by K.S.A. 41-2711 and amendments thereto.

(d) Violation of any provision of this act shall be grounds for suspension or revocation of the retailer's license as provided by K.S.A. 41-2708 and amendments thereto.

(e) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages.

~~(f) As used in this section, "drink" means an individual serving of cereal malt beverage.~~

(g) This section shall be part of and supplemental to K.S.A. 41-2701 through 41-2721, and amendments thereto.

