

HOUSE BILL No. 2206

By Committee on Taxation

2-4

Proposed Amendments for HB 2206
March 12, 2013
Prepared by: Ken Wilke
Office of Revisor of Statutes

1 AN ACT concerning alcoholic beverages; relating to retailer's licenses;
2 amending K.S.A. ~~41-713~~ and K.S.A. 2012 Supp. 41-102, 41-301, 41-
3 303, 41-308, 41-311, 41-313, 41-326 and 79-4108 and repealing the
4 existing sections; also repealing K.S.A. 41-103 ~~and 41-711~~.

41-711

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

(a)

6 New Section 1. From July 1, 2013, to June 30, ~~2015~~ the total number
7 of retailer's licenses issued by the director to sell alcoholic liquor shall not
8 exceed the number of such valid licenses issued as of June 30, 2013. The
9 director may only issue a retailer's license to sell alcoholic liquor to a
10 qualified applicant if the issuance of such license would not cause the total
11 number of such valid licenses issued ~~to exceed the number of such valid~~
12 ~~licenses issued as of June 30, 2013~~.

2016

pursuant to subsection (b).

13 New Sec. 2. (a) On and after January 1, 2014, any licensee holding a
14 valid retailer's license may transfer such license to any person qualified to
15 hold such license under the Kansas liquor control act. The transferee's
16 proposed premises to be licensed shall be located in the same county as the
17 licensed premises of the transferor.

(b) For the period from July 1, 2016, through June 30, 2026, the total number of retailer's licenses issued by the director to sell alcoholic liquor shall not exceed 103% of the number of such valid licenses issued as of June 30 of the preceding twelve month period. On July 1, 2026, the restriction imposed by this subsection shall expire

18 (b) Any transfer of a license pursuant to this section shall be

(1)

19 approved by the director. The director may require the transferor, the
20 transferee, or both, to submit such information as the director deems
21 necessary in order to determine that the license transfer satisfies the
22 requirements of the Kansas liquor control act. Such information shall be
23 submitted in the manner and on such forms as prescribed by the director,
24 and may include, but shall not be limited to, such information concerning
25 the transferee that shows such transferee is qualified to hold a retailer's
26 license and a copy of the agreement to transfer the license.

and:
(2)(A) If the transferee's proposed premises are located within the city limits, such proposed premises shall be located within five miles of the licensed premises of the transferor; or
(B) If the transferee's proposed premises are located outside the city limits and within the county, such proposed premises shall be located within 10 miles of the licensed premises of the transferor.

27 (c) On the effective date of the transfer of a license in accordance
28 with this section, the director shall issue a retailer's license to the
29 transferee. Such license shall be issued for the premises of the transferee as
30 stated in the transfer agreement. The term of such license shall be for the
31 remainder of the term of the license held by the transferor immediately
32 prior to the effective date of the transfer. The director shall not require the
33 payment of any new or additional retailer's license fee by the transferee.
34 The transferee shall pay a transfer fee in the amount of \$25, which fee
35 shall be submitted to the director at the same time the request for approval
36

1 of the transfer is submitted to the director.

2 New Sec. 3. On and after July 1, ~~2015~~ the director may issue to
3 qualified applicants a retailer's license. ~~There~~ shall be no limit on the
4 number of retailer's licenses the director may issue. A holder of a retailer's
5 license shall have all the privileges granted to such licensees under K.S.A.
6 41-308, and amendments thereto.

7 New Sec. 4. The director may propose rules and regulations
8 necessary to implement and administer the provisions of sections 1
9 through 3, and amendments thereto, and submit such rules and regulations
10 to the secretary in accordance with K.S.A. 41-210, and amendments
11 thereto. Such rules and regulations may include, but are not limited to:

12 (a) That on and after July 1, 2015, the number of retailer's licenses
13 that will be issued by the director in any one month may be limited to that
14 number which may be reasonably processed and issued by the director
15 based on the resources of the division of alcoholic beverage control; and

16 (b) that submission of applications for a retailer's license to the
17 director and review of such applications by the director for compliance
18 with the Kansas liquor control act may be permitted prior to July 1, 2015.

19 New Sec. 5. All retailers licensed pursuant to the Kansas liquor
20 control act shall verify the age of any purchaser of alcoholic liquor who
21 reasonably appears to be not more than 27 years of age. Retailers shall
22 utilize age verification technology that is consistent with nationally
23 recognized industry standards for making such determinations.

24 New Sec. 6. The provisions of sections 1 through 5, and amendments
25 thereto, shall be a part of and supplemental to the Kansas liquor control
26 act.

27 Sec. 7. K.S.A. 2012 Supp. 41-102 is hereby amended to read as
28 follows: 41-102. As used in this act, unless the context clearly requires
29 otherwise:

30 (a) "Alcohol" means the product of distillation of any fermented
31 liquid, whether rectified or diluted, whatever its origin, and includes
32 synthetic ethyl alcohol but does not include denatured alcohol or wood
33 alcohol.

34 (b) "Alcoholic liquor" means alcohol, spirits, wine, beer and every
35 liquid or solid, patented or not, containing alcohol, spirits, wine or beer
36 and capable of being consumed as a beverage by a human being, but shall
37 not include any cereal malt beverage.

38 (c) "Beer" means a beverage, containing more than 3.2% alcohol by
39 weight, obtained by alcoholic fermentation of an infusion or concoction of
40 barley, or other grain, malt and hops in water and includes beer, ale, stout,
41 lager beer, porter and similar beverages having such alcoholic content.

42 (d) "Caterer" has the meaning provided by K.S.A. 41-2601, and
43 amendments thereto.

2016

Except as provided in subsection (b) of section 1,
and amendments thereto,

1 (e) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
2 2701, and amendments thereto.

3 (f) "Club" has the meaning provided by K.S.A. 41-2601, and
4 amendments thereto.

5 (g) "Convenience store" means a retail business with primary
6 emphasis placed on providing the public a convenient location to quickly
7 purchase from a wide array of consumable products (predominantly food
8 or food and gasoline) and services, and includes stores classified under
9 the NAICS as NAICS 44512, 445120 or 447110 on the effective date of this
10 act.

11 ~~(h)~~ (h) "Director" means the director of alcoholic beverage control of
12 the department of revenue.

13 ~~(i)~~ (i) "Distributor" means the person importing or causing to be
14 imported into the state, or purchasing or causing to be purchased within
15 the state, alcoholic liquor for sale or resale to retailers licensed under this
16 act or cereal malt beverage for sale or resale to retailers licensed under
17 K.S.A. 41-2702, and amendments thereto.

18 ~~(j)~~ (j) "Domestic beer" means beer which contains not more than 10%
19 alcohol by weight and which is manufactured in this state.

20 ~~(k)~~ (k) "Domestic fortified wine" means wine which contains more
21 than 14%, but not more than 20% alcohol by volume and which is
22 manufactured in this state.

23 ~~(l)~~ (l) "Domestic table wine" means wine which contains not more
24 than 14% alcohol by volume and which is manufactured without
25 rectification or fortification in this state.

26 ~~(m)~~ (m) "Drinking establishment" has the meaning provided by K.S.A.
27 41-2601, and amendments thereto.

28 ~~(n)~~ (n) "Farm winery" means a winery licensed by the director to
29 manufacture, store and sell domestic table wine and domestic fortified
30 wine.

31 (o) "Grocery store" means an establishment primarily engaged in
32 retailing a general line of groceries, including, but not limited to,
33 packaged food, fresh and frozen food, prepared foods and other
34 consumable products, and includes establishments primarily engaged in
35 retailing a general line of groceries in combination with general lines of
36 new merchandise, including, but not limited to, establishments classified
37 under the NAICS as NAICS 445110, 446110, 452111, 452112, 452910 or
38 452990 on the effective date of this act.

39 (p) "Liquor store" means a store whose primary business is the retail
40 sale of alcoholic liquor in the original and unopened container and not for
41 consumption on the premises, and includes stores classified under the
42 North American industry classification system (NAICS) as NAICS 445310
43 on the effective date of this act.

1 (††) (g) "Manufacture" means to distill, rectify, ferment, brew, make,
2 mix, concoct, process, blend, bottle or fill an original package with any
3 alcoholic liquor, beer or cereal malt beverage.

4 (††) (r) (1) "Manufacturer" means every brewer, fermenter, distiller,
5 rectifier, wine maker, blender, processor, bottler or person who fills or
6 refills an original package and others engaged in brewing, fermenting,
7 distilling, rectifying or bottling alcoholic liquor, beer or cereal malt
8 beverage.

9 (2) "Manufacturer" does not include a microbrewery, microdistillery
10 or a farm winery.

11 (††) (s) "Microbrewery" means a brewery licensed by the director to
12 manufacture, store and sell domestic beer.

13 (††) (t) "Microdistillery" means a facility which produces spirits from
14 any source or substance that is licensed by the director to manufacture,
15 store and sell spirits.

16 (††) (u) "Minor" means any person under 21 years of age.

17 (††) (v) "Nonbeverage user" means any manufacturer of any of the
18 products set forth and described in K.S.A. 41-501, and amendments
19 thereto, when the products contain alcohol or wine, and all laboratories
20 using alcohol for nonbeverage purposes.

21 (††) (w) "Original package" means any bottle, flask, jug, can, cask,
22 barrel, keg, hoghead or other receptacle or container whatsoever, used,
23 corked or capped, sealed and labeled by the manufacturer of alcoholic
24 liquor, to contain and to convey any alcoholic liquor. Original container
25 does not include a sleeve.

26 (††) (x) "Person" means any natural person, corporation, partnership,
27 trust or association.

28 (††) (y) "Primary American source of supply" means the manufacturer,
29 the owner of alcoholic liquor at the time it becomes a marketable product
30 or the manufacturer's or owner's exclusive agent who, if the alcoholic
31 liquor cannot be secured directly from such manufacturer or owner by
32 American wholesalers, is the source closest to such manufacturer or owner
33 in the channel of commerce from which the product can be secured by
34 American wholesalers.

35 (††) (z) (1) "Retailer" means a person who sells at retail, or offers for
36 sale at retail, alcoholic liquors.

37 (2) "Retailer" does not include a microbrewery, microdistillery or a
38 farm winery.

39 (aa) "Retailer's license" means a license to sell at retail alcoholic
40 liquor in the original packaging issued pursuant to the Kansas liquor
41 control act.

42 (††) (bb) "Sale" means any transfer, exchange or barter in any manner
43 or by any means whatsoever for a consideration and includes all sales

1 made by any person, whether principal, proprietor, agent, servant or
2 employee.

3 ~~(f)~~ (cc) "Salesperson" means any natural person who:

4 (1) Procures or seeks to procure an order, bargain, contract or
5 agreement for the sale of alcoholic liquor or cereal malt beverage; or

6 (2) is engaged in promoting the sale of alcoholic liquor or cereal malt
7 beverage, or in promoting the business of any person, firm or corporation
8 engaged in the manufacturing and selling of alcoholic liquor or cereal malt
9 beverage, whether the seller resides within the state of Kansas and sells to
10 licensed buyers within the state of Kansas, or whether the seller resides
11 without the state of Kansas and sells to licensed buyers within the state of
12 Kansas.

13 ~~(g)~~ (dd) "Secretary" means the secretary of revenue.

14 ~~(h)~~ (ee) (1) "Sell at retail" and "sale at retail" refer to and mean sales
15 for use or consumption and not for resale in any form and sales to clubs,
16 licensed drinking establishments, licensed caterers or holders of temporary
17 permits.

18 (2) "Sell at retail" and "sale at retail" do not refer to or mean sales by
19 a distributor, a microbrewery, a farm winery, a licensed club, a licensed
20 drinking establishment, a licensed caterer or a holder of a temporary
21 permit.

22 ~~(i)~~ (ff) "To sell" includes to solicit or receive an order for, to keep or
23 expose for sale and to keep with intent to sell.

24 ~~(j)~~ (gg) "Sleeve" means a package of two or more 50-milliliter (3.2-
25 fluid-ounce) containers of spirits.

26 ~~(k)~~ (hh) "Spirits" means any beverage which contains alcohol
27 obtained by distillation, mixed with water or other substance in solution,
28 and includes brandy, rum, whiskey, gin or other spirituous liquors, and
29 such liquors when rectified, blended or otherwise mixed with alcohol or
30 other substances.

31 ~~(l)~~ (ii) "Supplier" means a manufacturer of alcoholic liquor or cereal
32 malt beverage or an agent of such manufacturer, other than a salesperson.

33 ~~(m)~~ (jj) "Temporary permit" has the meaning provided by K.S.A. 41-
34 2601, and amendments thereto.

35 ~~(n)~~ (kk) "Wine" means any alcoholic beverage obtained by the
36 normal alcoholic fermentation of the juice of sound, ripe grapes, fruits,
37 berries or other agricultural products, including such beverages containing
38 added alcohol or spirits or containing sugar added for the purpose of
39 correcting natural deficiencies.

40 Sec. 8. K.S.A. 2012 Supp. 41-301 is hereby amended to read as
41 follows: 41-301. (a) ~~Except as provided by subsection (b), the director~~
42 ~~shall issue to qualified applicants, who have filed the bond and paid the~~
43 ~~registration and license fees required by this act, licenses to sell at retail~~

1 alcoholic liquor in the original package on premises within the corporate
2 limits of cities and outside the corporate limits of any city.

3 (b) No retailer's license shall be issued for premises within a city if
4 the governing body of such city, on or before February 15, 2006, adopts
5 *adopted* an ordinance prohibiting the licensing of the sale at retail of
6 alcoholic liquor in the original package within such city. Upon adoption of
7 such ordinance, the city clerk promptly shall transmit a copy of such
8 ordinance to the director and the director shall refuse to issue licenses to
9 sell at retail alcoholic liquor in the original package in such city. If the
10 governing body adopts such an ordinance, the holder of any valid existing
11 retailer's license for premises in such city shall have the right to continue
12 to operate under such license for a period of 90 days after the effective
13 date of the ordinance or until the expiration of such license, whichever
14 period of time is shorter. If such period of time expires before the
15 expiration of the term for which the retailer's license was issued, the
16 licensee shall be entitled to a refund of the license fee for the unexpired
17 portion of the license period which remains, in accordance with rules and
18 regulations adopted by the secretary.

19 (c) (b) No retailer's license shall be issued for premises within a city
20 if, after November 15, 2005, a majority of the qualified voters of such city
21 voting at an election held as provided by K.S.A. 41-302, and amendments
22 thereto, votes against the licensing of the sale at retail of alcoholic liquor
23 in the original package within such city unless, at a subsequent election, a
24 majority of the qualified voters of such city voting at such election votes in
25 favor of the licensing of the sale at retail of alcoholic liquor in the original
26 package within such city.

27 Sec. 9. K.S.A. 2012 Supp. 41-303 is hereby amended to read as
28 follows: 41-303. (a) ~~The director may issue to qualified applicants licenses~~
29 ~~to sell at retail alcoholic liquor in the original package on premises not~~
30 ~~located in an incorporated city for use or consumption off the premises. No~~
31 ~~such license shall be issued to any applicant unless the applicant possesses~~
32 ~~all the qualifications required of other applicants for retailers' licenses~~
33 ~~except the qualification of residency within a city.~~

34 ~~No such No retailer's license shall be issued to any applicant under this~~
35 ~~section for premises not located in an incorporated city unless the board of~~
36 ~~county commissioners of the county in which the premises for which~~
37 ~~licensure is sought are located adopts a resolution approving the issuance~~
38 ~~of such license. A certified copy of such resolution shall accompany the~~
39 ~~application for a such license authorized by this section.~~

40 (b) ~~If a license has been issued under the provisions of this section in~~
41 ~~the unincorporated area of a county and thereafter the premises so licensed~~
42 ~~are annexed to a city wherein retail liquor licenses may be issued, such~~
43 ~~license shall continue to be valid and may be renewed at the appropriate~~

~~time even though the licensee does not reside in the city to which the area is annexed if the licensee otherwise is qualified and resides in the township in which the premises were located prior to annexation or in the city to which the premises have been annexed.~~

~~(e) Any retail *any retailer's* license issued prior to the effective date of this act for premises not located in an incorporated city shall continue to be valid and such premises shall continue to be eligible for licensure if the board of county commissioners of the county in which the premises are located has adopted a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a ~~such license authorized by this subsection.~~~~

~~Sec. 10. K.S.A. 2012 Supp. 41-308 is hereby amended to read as follows: 41-308. (a) (1) *On or before June 30, 2015*, except as provided in K.S.A. 2012 Supp. 41-308d, and amendments thereto, a retailer's license *issued to a liquor store* shall allow the licensee to sell and offer for sale at retail and deliver in the original package, as therein prescribed, alcoholic liquor for use or consumption off and away from the premises specified in such license. A retailer's license shall permit sale and delivery of alcoholic liquor only on the licensed premises and shall not permit sale of alcoholic liquor for resale in any form, except that a licensed retailer may:~~

~~(1) (A) Sell alcoholic liquor to a temporary permit holder for resale by such permit holder; and~~

~~(2) (B) sell and deliver alcoholic liquor to a caterer or to the licensed premises of a public venue, club or drinking establishment, if such premises are in the county where the retailer's premises are located or in an adjacent county, for resale by such public venue, club, establishment or caterer.~~

~~(b) (2) The holder of a retailer's license shall not sell, offer for sale, give away or permit to be sold, offered for sale or given away in or from the premises specified in such license any service or thing of value whatsoever except alcoholic liquor in the original package, except that a licensed retailer may:~~

~~(1) (A) Charge a delivery fee for delivery to a public venue, club, drinking establishment or caterer pursuant to subsection (a);~~

~~(2) (B) sell lottery tickets and shares to the public in accordance with the Kansas lottery act, if the retailer is selected as a lottery retailer;~~

~~(3) (C) include in the sale of alcoholic liquor any goods included by the manufacturer in packaging with the alcoholic liquor, subject to the approval of the director; and~~

~~(4) (D) distribute to the public, without charge, consumer advertising specialties bearing advertising matter, subject to rules and regulations of the secretary limiting the form and distribution of such specialties so that they are not conditioned on or an inducement to the purchase of alcoholic~~

1 liquor.
2 (e) (3) No licensed retailer shall furnish any entertainment in such
3 premises or permit any pinball machine or game of skill or chance to be
4 located in or on such premises.
5 (f) (4) A retailer's license shall allow the licensee to store alcoholic
6 liquor in refrigerators, cold storage units, ice boxes or other cooling
7 devices, and the licensee may sell such alcoholic liquor to consumers in a
8 chilled condition.
9 (b) (1) A retailer's license issued to a convenience store or grocery
10 store and, on and after July 1, 2015, a retailer's license issued to a liquor
11 store shall allow the licensee to sell and offer for sale at retail and deliver
12 in the original package, as therein prescribed, alcoholic liquor for use or
13 consumption off of and away from the premises specified in such license.
14 (2) A retailer's license shall permit the sale and delivery of alcoholic
15 liquor only on the licensed premises and shall not permit the sale of
16 alcoholic liquor for resale in any form, except that the licensee may:
17 (A) Sell alcoholic liquor to a temporary permit holder for resale by
18 such temporary permit holder; and
19 (B) sell and deliver alcoholic liquor to a caterer or to the licensed
20 premises of a club or drinking establishment, if such premises are in the
21 county where the retailer's licensed premises are located or in an adjacent
22 county, for resale by such caterer, club or drinking establishment.
23 (3) A retailer's licensee may:
24 (A) Charge a delivery fee for delivery of alcoholic liquor to a caterer,
25 club or drinking establishment pursuant to paragraph (2);
26 (B) sell lottery tickets and shares to the public in accordance with the
27 Kansas lottery act, if the licensee is selected as a lottery retailer;
28 (C) include in the sale of alcoholic liquor any goods included by the
29 manufacturer in packaging with the alcoholic liquor, subject to the
30 approval of the director;
31 (D) distribute to the public, without charge, consumer advertising
32 specialties bearing advertising matter, subject to rules and regulations of
33 the secretary limiting the form and distribution of such specialties so that
34 they are not conditioned on or an inducement to the purchase of alcoholic
35 liquor;
36 (E) store alcoholic liquor in refrigerators, cold storage units, ice
37 boxes or other cooling devices, and sell such alcoholic liquor to
38 consumers in a chilled condition; and
39 (F) sell any other good or service on the licensed premises.
40 (c) On and after July 1, 2015, the provisions of subsection (a) shall
41 have no force and effect.
42 (d) A retailer's license shall be subject to the provisions of K.S.A. 41-
43 1101, and amendments thereto, prohibiting a retailer from purchasing

1 alcoholic liquor from a distributor who has not filed with the director a
2 sworn statement agreeing to sell to all retailers in the distributor's
3 franchised territory at the same unit price and prohibiting a distributor
4 from selling alcoholic liquor to a retailer at a discount for multiple case
5 lots. A retailer's license also shall be subject to the provisions of K.S.A.
6 41-729, and amendments thereto, prohibiting the sale of alcoholic liquor
7 at less than the acquisition cost thereof.

8 Sec. 11, K.S.A. 2012 Supp. 41-311 is hereby amended to read as
9 follows: 41-311 (a) No license of any kind shall be issued pursuant to the
10 liquor control act to ~~a person~~ an individual.

11 (1) Who has not been a citizen of the United States for at least 10
12 years, except that the spouse of a deceased retail licensee may receive and
13 renew a retail license notwithstanding the provisions of this subsection (a)
14 (1) if such spouse is otherwise qualified to hold a retail license and is a
15 United States citizen or becomes a United States citizen within one year
16 after the deceased licensee's death;

17 (2) who has been convicted of a felony under the laws of this state,
18 any other state or the United States;

19 (3) who has had a license revoked for cause under the provisions of
20 the liquor control act, the beer and cereal malt beverage keg registration
21 act or who has had any license issued under the cereal malt beverage laws
22 of any state revoked for cause except that a license may be issued to a
23 person whose license was revoked for the conviction of a misdemeanor or at
24 any time after the lapse of 10 years following the date of the revocation;

25 (4) who has been convicted of being the keeper or is keeping a house
26 of prostitution or has forfeited bond to appear in court to answer charges of
27 being a keeper of a house of prostitution;

28 (5) who has been convicted of being a proprietor of a gambling
29 house, pandering or any other crime opposed to decency and morality or
30 has forfeited bond to appear in court to answer charges for any of those
31 crimes;

32 (6) who is not at least 21 years of age;

33 (7) who, other than as a member of the governing body of a city or
34 county, appoints or supervises any law enforcement officer, who is a law
35 enforcement official or who is an employee of the director;

36 (8) who intends to carry on the business authorized by the license as
37 agent of another;

