

As Further Amended by Senate Committee

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Session of 2013

SENATE BILL NO. 203

By Committee on Federal and State Affairs

2-14

1 AN ACT concerning intoxicating liquor; dealing with club and drinking
2 establishments; amending K.S.A. 2012 Supp. 41-104 and 41-2640 and
3 repealing the existing sections.

41-311

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

6 Section 1. K.S.A. 2012 Supp. 41-104 is hereby amended to read as
7 follows: 41-104. No person shall manufacture, bottle, blend, sell, barter,
8 transport, deliver, furnish or possess any alcoholic liquor for beverage
9 purposes, except as specifically provided in this act, the club and
10 drinking establishment act or article 27 of chapter 41 of the Kansas
11 Statutes Annotated, and amendments thereto, except that nothing
12 contained in this act shall prevent:

13 (a) The possession and transportation of alcoholic liquor for the
14 personal use of the possessor, the possessor's family and guests except
15 that the provisions of K.S.A. 41-407, and amendments thereto, shall be
16 applicable to all persons;

17 (b) the making of wine, cider or beer by a person from fruits,
18 vegetables or grains, or the product thereof, by simple fermentation and
19 without distillation, if it is made solely for the use of the maker and the
20 maker's family;

21 (c) any duly licensed practicing physician or dentist from
22 possessing or using alcoholic liquor in the strict practice of the medical
23 or dental profession;

24 (d) any hospital or other institution caring for sick and diseased
25 persons, from possessing and using alcoholic liquor for the treatment of
26 bona fide patients of such hospital or institution;

27 (e) any drugstore employing a licensed pharmacist from possessing
28 and using alcoholic liquor in the compounding of prescriptions of duly
29 licensed physicians;

30 (f) the possession and dispensation of wine by an authorized
31 representative of any church for the purpose of conducting any bona
32 fide rite or religious ceremony conducted by such church; or

33 (g) the sale of wine to a consumer in this state by a person which
34 holds a valid license authorizing the manufacture of wine in this or

1 another state and the shipment of such wine directly to such consumer,
2 subject to the following: (1) The consumer must be at least 21 years of
3 age; (2) the consumer must purchase the wine while physically present
4 on the premises of the wine manufacturer; (3) the wine must be for the
5 consumer's personal consumption and not for resale; and (4) the
6 consumer shall comply with the provisions of K.S.A. 41-407, and
7 amendments thereto, by payment of all applicable taxes within such time
8 after purchase of the wine as prescribed by rules and regulations
9 adopted by the secretary.

10 (b) The serving of complimentary alcoholic liquor or cereal malt
11 beverages at fund raising activities of charitable organizations as
12 defined by K.S.A. 17-1760, and amendments thereto, and as qualified
13 pursuant to 26 U.S.C.A. § 501(c) and by committees formed pursuant to
14 K.S.A. 25-4142 et seq., and amendments thereto. The serving of such
15 alcoholic liquor at such fund raising activities shall not constitute a sale
16 pursuant to this act, the club and drinking establishment act or article
17 27 of chapter 41 of the Kansas Statutes Annotated, and amendments
18 thereto. Any such fund raising activity shall not be required to obtain a
19 license or a temporary permit pursuant to this act, the club and drinking
20 establishment act or article 27 of chapter 41 of the Kansas Statutes
21 Annotated, and amendments thereto.

22 (j) The serving of complimentary alcoholic liquor or cereal malt
23 beverage on the unlicensed premises of a business by the business owner
24 or owner's agent at an event sponsored by a nonprofit organization
25 promoting the arts and which has been approved by ordinance or
26 resolution of the governing body of the city, county or township wherein
27 the event will take place and whereby the director of the alcoholic
28 beverage control has been notified thereof no less than 10 days in
29 advance.

30 Section 1. Sec. 2. K.S.A. 2012 Supp. 41-2640 is hereby amended to
31 read as follows: 41-2640. (a) No club, drinking establishment, caterer or
32 holder of a temporary permit, nor any person acting as an employee or
33 agent thereof, shall:

34 (1) Offer or serve any free cereal malt beverage or alcoholic liquor in
35 any form to any person;
36 (2) offer or serve to any person an individual drink at a price that is
37 less than the acquisition cost of the individual drink to the licensee or
38 permit holder;

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

43 (4) encourage or permit, on the licensed premises, any game or

1 contest which involves drinking alcoholic liquor or cereal malt beverage or
2 the awarding of individual drinks as prizes; or

3 (5) advertise or promote in any way, whether on or off the licensed
4 premises, any of the practices prohibited under subsections (a)(1) through
5 (4).

6 (b) No public venue, nor any person acting as an employee or agent
7 thereof, shall:

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

10 (2) offer or serve to any person a drink or original container of
11 alcoholic liquor or cereal malt beverage at a price that is less than the
12 acquisition cost of the drink or original container of alcoholic liquor or
13 cereal malt beverage to the licensee;

14 (3) sell or serve alcoholic liquor in glass containers to customers in
15 the general admission area;

16 (4) sell or serve more than two drinks per customer at any one time in
17 the general admission area;

18 (5) encourage or permit, on the licensed premises, any game or
19 contest which involves drinking alcoholic liquor or cereal malt beverage or
20 the awarding of drinks as prizes; or

21 (6) advertise or promote in any way, whether on or off the licensed
22 premises, any of the practices prohibited under subsections (b)(1) through
23 (5).

24 (c) A public venue club, drinking establishment, caterer or holder of a
25 temporary permit may:

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

27 (2) sell or deliver wine by the bottle or carafe;

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

30 (4) sell or serve beer or cereal malt beverage in a pitcher capable of
31 containing not more than 64 fluid ounces; or

32 (5) sell or serve margarita, sangria, daiquiri, mojito or other mixed
33 alcoholic beverages as approved by the director in a pitcher containing
34 not more than 64 fluid ounces; or

35 ~~(6) offer customer self-service of alcoholic liquor, beer, cereal malt
36 beverage or wine from automated devices on the licensee's premises so
37 long as the licensee monitors and has the ability to control the
38 consumption of such alcoholic liquor, beer, cereal malt beverage or wine
39 from such automated devices; and such consumption is monitored by
40 video surveillance under the real-time review of the licensee's
41 management and the Kansas racing and gaming commission.~~

42 (d) A public venue club, drinking establishment, caterer or holder
43 of a temporary permit may, upon the approval of the director, offer

1 customer self-service of alcoholic liquor or cereal malt beverage from
2 automated devices on the licensed premises provided that the licensee
3 monitors and has the ability to control the consumption of such
4 alcoholic liquor and cereal malt beverage from automated devices.

5 *Criteria that the director shall require for approval of such*
6 *automated devices include, but are not limited to, having video*
7 *surveillance, operation of such devices by a smart card system capable of*
8 *limiting or ceasing service, and limiting operation of the devices during*
9 *business hours when the licensee's management is present at the*
10 *licensed premises and maintains constant visual contact with the*
11 *automated devices.*

12 *(e) A hotel of which the entire premises is licensed as a drinking*
13 *establishment may, in accordance with rules and regulations adopted by*
14 *the secretary, distribute to its guests coupons redeemable on the hotel*
15 *premises for drinks containing alcoholic liquor. The hotel shall remit*
16 *liquor drink tax in accordance with the provisions of the liquor drink tax*
17 *act, K.S.A. 79-11a01 et seq., and amendments thereto, on each drink*
18 *served based on a price which is not less than the acquisition cost of the*
19 *drink.*

20 ~~(f)~~ *(f) A hotel of which the entire premises is not licensed as a*
21 *drinking establishment may, in accordance with rules and regulations*
22 *adopted by the secretary, through an agreement with one or more clubs or*
23 *drinking establishments, distribute to its guests coupons redeemable at*
24 *such clubs or drinking establishments for drinks containing alcoholic*
25 *liquor. Each club or drinking establishment redeeming coupons issued by*
26 *a hotel shall collect from the hotel the agreed price, which shall be not*
27 *less than the acquisition cost of the drink plus the liquor drink tax for each*
28 *drink served. The club or drinking establishment shall collect and remit*
29 *the liquor drink tax in accordance with the provisions of the liquor drink*
30 *tax act, K.S.A. 79-11a01 et seq., and amendments thereto.*

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

33 ~~(h)~~ *(h)* Violation of any provision of this section shall be grounds
34 for suspension or revocation of the licensee's license as provided by
35 K.S.A. 41-2609, and amendments thereto, and for imposition of a civil
36 fine on the licensee or temporary permit holder as provided by K.S.A. 41-
37 2633a, and amendments thereto.

38 ~~(i)~~ ~~(i)~~ Every licensed club and drinking establishment shall make
39 available at any time upon request a price list showing the club's or
40 drinking establishment's current prices per individual drink for all
41 individual drinks.

42 ~~New Sec. 2-3. (a) If a person who has attained 18 years of age, or is~~
43 ~~an emancipated minor, enters premises licensed pursuant to the Kansas~~

1 liquor control act or club and drinking establishment act where
2 alcoholic liquor or cereal malt beverages are sold and offers or presents
3 to a licensee or an agent or employee of the licensee written evidence of
4 age, that is fraudulent or false or that is not actually the person's own,
5 or otherwise misrepresents the person's age, for the purpose of inducing
6 the licensee or an agent or employee of the licensee to sell, give, serve or
7 furnish alcoholic beverages contrary to the law, shall be liable, in
8 addition to any criminal penalty provided by law, for damages of \$1,000
9 and, in addition, costs and reasonable attorney fees in a civil action
10 brought by the licensee.

11 (b) A person who is of legal age for the consumption of alcoholic
12 liquor or cereal malt beverage who solicits another person or who
13 themselves purchases or receives alcoholic liquor from a licensee under
14 the liquor control act or the club and drinking establishment act, an
15 agent or employee of the licensee, or another person, for the purpose of
16 selling, giving, or serving it to a person under the age of 21 years shall
17 be liable to the licensee for damages in a civil action for a penalty of
18 \$1,000 and, in addition, costs and reasonable attorney fees.

19 (c) It is a condition precedent to maintaining a civil action under
20 this section that the licensee send by first class mail to the defendant at
21 the defendant's last known address 15 days or more before the civil
22 action is commenced, a notice demanding the relief authorized. It is not
23 a condition precedent to maintaining an action under this section that
24 the person who allegedly violated subsection (a) or (b) was charged with
25 or convicted under any criminal statute or ordinance regarding
26 furnishing cereal malt beverages or alcoholic liquor to minors.

27 (d) A person does not violate this section if the person performs an
28 act proscribed under this section at the request of law enforcement or
29 the alcoholic beverage control, and such enforcement officers
30 accompany, supervise or otherwise observe the person's act, and the
31 purpose of the act is to assist in the enforcement of and compliance with
32 Kansas law.

33 ~~Sec. 2-3~~ 4. K.S.A. 2012 Supp. 41-104 and 41-2640 is hereby
34 repealed.

35 Sec. 2-45. This act shall take effect and be in force from and after its
36 publication in the statute book.

Insert Attachment A
, 41-311

And by redesignating sections accordingly.

Attachment A

Sec. 4. K.S.A. 2012 Supp. 41-311 is hereby amended to read as follows: 41-311. (a) No license of any kind shall be issued for a liquor control act to a person:

- (1) Who has not been a citizen of the United States for at least 10 years, except that the spouse of a deceased retail licensee and renew a retail license notwithstanding the provisions of this subsection (a) (1) if such spouse is otherwise qualified to license and is a United States citizen or becomes a United States citizen within one year after the deceased licensee's death;
 - (2) who has been convicted of a felony under the laws of this state, any other state or the United States;
 - (3) who has had a license revoked for cause under the provisions of the liquor control act, the beer and cereal malt beverage registration act or who has had any license issued under the cereal malt beverage laws of any state revoked for cause except may be issued to a person whose license was revoked for the conviction of a misdemeanor at any time after the lapse of 1 the date of the revocation;
 - (4) who has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court on charges of being a keeper of a house of prostitution;
 - (5) who has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency; has forfeited bond to appear in court to answer charges for any of those crimes;
 - (6) who is not at least 21 years of age;
 - (7) who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer or law enforcement official or who is an employee of the director;
 - (8) who intends to carry on the business authorized by the license as agent of another;
 - (9) who at the time of application for renewal of any license issued under this act would not be eligible for the license if application, except as provided by subsection (a)(12);
 - (10) who is the holder of a valid and existing license issued under article 27 of chapter 41 of the Kansas Statutes Annotated amendments thereto, unless the person agrees to and does surrender the license to the officer issuing the same upon the issuance of a license under this act, except that a retailer licensed pursuant to K.S.A. 41-2702, and amendments thereto, shall receive a retailer's license under the Kansas liquor control act;
 - (11) who does not own the premises for which a license is sought, or does not, at the time of application, have a written agreement with the spouse would be ineligible to receive a license under this act for any reason other than citizenship, residence, age, except that this subsection (a)(12) shall not apply in determining eligibility for a renewal license;
 - (13) whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under such felony or other crime was committed during the time that the spouse held a license under this act; or
 - (14) who does not provide any data or information required by K.S.A. 2012 Supp. 41-311b, and amendments thereto.
- (b) No retailer's license shall be issued to:
- (1) A person who is not a resident of this state;
 - (2) a person who has not been a resident of this state for at least four years immediately preceding the date of application.

Attachment A cont.

- (3) a person who has a beneficial interest in a manufacturer, distributor, farm winery or microbrewery licensed under that the spouse of an applicant for a retailer's license may own and hold a farm winery license, microbrewery license, or does not hold a retailer's license issued under this act;
 - (4) a person who has a beneficial interest in any other retail establishment licensed under this act, except that the spouse may own and hold a retailer's license for another retail establishment;
 - (5) a copartnership, unless all of the copartners are qualified to obtain a license;
 - (6) a corporation; or
 - (7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, e provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.
- (c) No manufacturer's license shall be issued to:
- (1) A corporation, if any officer or director thereof, or any stockholder owning in the aggregate more than 25% of the corporation would be ineligible to receive a manufacturer's license for any reason other than citizenship and residence re
 - (2) a copartnership, unless all of the copartners shall have been residents of this state for at least five years immediately of application and unless all the members of the copartnership would be eligible to receive a manufacturer's license unde
 - (3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, e provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license;
 - (4) an individual who is not a resident of this state;
 - (5) an individual who has not been a resident of this state for at least five years immediately preceding the date of app
 - (6) a person who has a beneficial interest in a distributor, retailer, farm winery or microbrewery licensed under this ac in K.S.A. 41-305, and amendments thereto.
- (d) No distributor's license shall be issued to:
- (1) A corporation, if any officer, director or stockholder of the corporation would be ineligible to receive a distributor' reason other than citizenship and residence requirements, provided, that at least one officer and one director of the corp residence requirement. It shall be unlawful for any stockholder of a corporation licensed as a distributor to transfer any s corporation to any person who would be ineligible to receive a distributor's license for any reason, and any such transfer void, except that: (A) If any stockholder owning stock in the corporation dies and an heir or devisee to whom stock of th descends by descent and distribution or by will is ineligible to receive a distributor's license, the legal representatives of the stockholder's estate and the ineligible heir or devisee shall have 14 months from the date of the death of the stockholder the stock to a person eligible to receive a distributor's license, any such sale by a legal representative to be made in acco provisions of the probate code; or (B) if the stock in any such corporation is the subject of any trust and any trustee or be trust who is 21 years of age or older is ineligible to receive a distributor's license, the trustee, within 14 months after the trust, shall sell the stock to a person eligible to receive a distributor's license and hold and disburse the proceeds in accor terms of the trust. If any legal representatives, heirs, devisees or trustees fail, refuse or neglect to sell any stock as requir subsection, the stock shall revert to and become the property of the corporation, and the corporation shall pay to the lega heirs, devisees or trustees the book value of the stock. During the period of 14 months prescribed by this subsection, the not be denied a distributor's license or have its distributor's license revoked if the corporation meets all of the other requi to have a distributor's license;

Attachment A cont.

- (2) a copartnership, unless all of the copartners are eligible to receive a distributor's license;
- (3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license; or
- (4) a person who has a beneficial interest in a manufacturer, retailer, farm winery or microbrewery licensed under this act;
- (e) No nonbeverage user's license shall be issued to a corporation, if any officer, manager or director of the corporation owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a nonbeverage user license other than citizenship and residence requirements.
- (f) No microbrewery license, microdistillery license or farm winery license shall be issued to a:
 - (1) Person who is not a resident of this state;
 - (2) person who has not been a resident of this state for at least one year immediately preceding the date of application;
 - (3) person who has a beneficial interest in a manufacturer or distributor licensed under this act, except as provided in K.S.A. 2012 Supp. 41-311b and amendments thereto;
 - (4) person, copartnership or association which has a beneficial interest in any retailer licensed under this act or under provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license; or
 - (5) the spouse does not hold a microbrewery or farm winery license issued under this act;
 - (6) copartnership, unless all of the copartners are qualified to obtain a license;
 - (7) corporation, unless stockholders owning in the aggregate 50% or more of the stock of the corporation would be eligible to receive such license except for reason of citizenship or residency;
 - (8) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.
 - (g) The provisions of subsections (b)(1), (b)(2), (c)(3), (c)(4), (d)(3), (f)(1), (f)(2) and K.S.A. 2012 Supp. 41-311b, and shall not apply in determining eligibility for the 10th, or a subsequent consecutive renewal of a license if the applicant has been convicted of a felony under the laws of this state, any other state or the United States who is a resident of Kansas as the applicant's agent and filed with the director a duly authenticated copy of the certificate of execution of the power of attorney, authorizing the agent to accept service of process from the director and the courts of this state, and the authority, control and responsibility for the conduct of all business and transactions within the state relative to alcoholic beverage licensed. The agent must be satisfactory to and approved by the director, except that the director shall not approve a person who:
 - (1) Has been convicted of a felony under the laws of this state, any other state or the United States;
 - (2) has had a license issued under the alcoholic liquor or cereal malt beverage laws of this or any other state revoked for a period of 10 years from the date of the conviction of a misdemeanor and 10 years from the date of the revocation;

Attachment A cont.

- (3) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court being a keeper of a house of prostitution;
- (4) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and forfeited bond to appear in court to answer charges for any of those crimes; or
- (5) is less than 21 years of age.