

As Amended by House Committee

As Amended by Senate Committee

Session of 2012

SENATE BILL No. 288

By Committee on Federal and State Affairs

1-17

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 41-2722 and K.S.A. 2011 Supp. **41-719** and 41-2601 and repealing
4 the existing sections; **also repealing K.S.A. 41-333, 41-334, 41-335,**
5 **41-336, 41-337, 41-338, 41-339, 41-340 and 41-341.**
6

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

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

10 (a) The following terms shall have the meanings provided by K.S.A.
11 41-102, and amendments thereto: (1) "Alcoholic liquor"; (2) "director"; (3)
12 "original package"; (4) "person"; (5) "sale"; and (6) "to sell."

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

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

21 (d) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
22 2701, and amendments thereto.

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

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

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

34 (h) ~~"Minibar" means a closed cabinet, whether nonrefrigerated or~~

1 wholly or partially refrigerated, access to the interior of which is restricted
2 by means of a locking device which requires the use of a key, magnetic
3 card or similar device.

4 (†) (h) "Drinking establishment" means premises which may be open
5 to the general public, where alcoholic liquor by the individual drink is
6 sold.

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

10 (†) (j) "Food service establishment" has the meaning provided by
11 K.S.A. 36-501, and amendments thereto.

12 (†) (k) "Hotel" has the meaning provided by K.S.A. 36-501, and
13 amendments thereto.

14 (l) ~~"Individual drink" means an individual serving of a beverage~~
15 ~~containing alcoholic liquor or cereal malt beverage.~~

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

23 (†) (m) "Minibar" means a closed cabinet, whether nonrefrigerated
24 or wholly or partially refrigerated, access to the interior of which is
25 restricted by means of a locking device which requires the use of a key,
26 magnetic card or similar device.

27 (†) (n) "Minor" means a person under 21 years of age.

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

33 (†) (p) "Municipal corporation" means the governing body of any
34 county or city.

35 (†) (q) "Restaurant" means:

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

40 (2) in the case of a drinking establishment subject to a food sales
41 requirement under K.S.A. 41-2642, and amendments thereto, a licensed
42 food service establishment which, as determined by the director, derives
43 from sales of food for consumption on the licensed drinking establishment

1 premises not less than 30% of its gross receipts from all sales of food and
 2 beverages on such premises in a 12-month period; and

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

6 ~~(q)~~ ~~(s)~~ **(r)** "RV resort" means premises where a place to park
 7 recreational vehicles, as defined in K.S.A. 75-1212, and amendments
 8 thereto, is offered for pay, primarily to transient guests, for overnight or
 9 longer use while such recreational vehicles are used as sleeping or living
 10 accommodations.

11 ~~(t)~~ ~~(s)~~ **(s)** "Secretary" means the secretary of revenue.

12 ~~(s)~~ ~~(t)~~ **(t)** "Temporary permit" means a temporary permit issued
 13 pursuant to K.S.A. 41-2645, and amendments thereto.

14 Sec. 2. K.S.A. 41-2640 is hereby amended to read as follows: 41-
 15 2640. (a) No club, drinking establishment, caterer or holder of a temporary
 16 permit, nor any person acting as an employee or agent thereof, shall:

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

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

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

26 ~~(4) sell, offer to sell or serve any individual drink to any person at any~~
 27 ~~time at a price less than that charged all other purchasers of individual~~
 28 ~~drinks on that day;~~

29 ~~(5) increase the volume of alcoholic liquor contained in a drink or the~~
 30 ~~size of a drink of cereal malt beverage without increasing proportionately~~
 31 ~~the price regularly charged for the drink on that day;~~

32 ~~(6)~~ ~~(5)~~ **(4)** encourage or permit, on the licensed premises, any game or
 33 contest which involves drinking alcoholic liquor or cereal malt beverage or
 34 the awarding of *individual* drinks as prizes; or

35 ~~(7)~~ ~~(6)~~ **(5)** advertise or promote in any way, whether on or off the
 36 licensed premises, any of the practices prohibited under subsections (a)(1)
 37 through ~~(6)~~ ~~(5)~~ **(4)**.

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

40 (1) ~~Offering~~ *Offer* free food or entertainment at any time; ~~or~~

41 (2) ~~selling or delivering~~ *sell or deliver* wine by the bottle or carafe;
 42 ~~or~~

43 (3) *sell, offer to sell and serve individual drinks at different prices*

1 ***throughout any day; or***

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

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

6 ***(d) Violation of any provision of this section shall be grounds for***
7 ***suspension or revocation of the licensee's license as provided by K.S.A.***
8 ***41-2609, and amendments thereto, and for imposition of a civil fine on the***
9 ***licensee or temporary permit holder as provided by K.S.A. 41-2633a, and***
10 ***amendments thereto.***

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

15 ~~***(f) As used in this section, "drink" means an individual serving of any***~~
16 ~~***beverage containing alcoholic liquor or an individual serving of cereal***~~
17 ~~***malt beverage.***~~

18 ***Sec. 3. K.S.A. 41-2722 is hereby amended to read as follows: 41-***
19 ***2722. (a) No retailer, or employee or agent of a retailer, licensed to sell***
20 ***cereal malt beverage for consumption on the licensed premises shall:***

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

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

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

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

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

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

36 ***(7) (5) advertise or promote in any way, whether on or off the***
37 ***licensed premises, any of the practices prohibited under subsections (a)***
38 ***(1) through (6) (4).***

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

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

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

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

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

5 (d) *Violation of any provision of this act shall be grounds for*
6 *suspension or revocation of the retailer's license as provided by K.S.A.*
7 *41-2708, and amendments thereto.*

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

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

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

15 **Sec. 4. On and after January 1, 2013, K.S.A. 2011 Supp. 41-719 is**
16 **hereby amended to read as follows: 41-719. (a) (1) Except as otherwise**
17 **provided herein and in K.S.A. 8-1599, and amendments thereto, no**
18 **person shall drink or consume alcoholic liquor on the public streets,**
19 **alleys, roads or highways or inside vehicles while on the public streets,**
20 **alleys, roads or highways.**

21 **(2) Alcoholic liquor may be consumed at a special event held on**
22 **public streets, alleys, roads, sidewalks or highways when a temporary**
23 **permit has been issued pursuant to K.S.A 41-2645, and amendments**
24 **thereto, for such special event. Such special event must be approved,**
25 **by ordinance or resolution, by the local governing body of any city,**
26 **county or township where such special event is being held. No**
27 **alcoholic liquor may be consumed inside vehicles while on public**
28 **streets, alleys, roads or highways at any such special event.**

29 **(3) No person shall remove any alcoholic liquor from inside the**
30 **boundaries of a special event as designated by the governing body of**
31 **any city, county or township. The boundaries of such special event**
32 **shall be clearly marked by signs, a posted map or other means which**
33 **reasonably identify the area in which alcoholic liquor may be**
34 **possessed or consumed at such special event.**

35 **(4) No person shall possess or consume alcoholic liquor inside the**
36 **premises licensed as a special event that was not sold or provided by**
37 **the licensee holding the temporary permit for such special event.**

38 **(b) No person shall drink or consume alcoholic liquor on private**
39 **property except:**

40 **(1) On premises where the sale of liquor by the individual drink is**
41 **authorized by the club and drinking establishment act;**

42 **(2) upon private property by a person occupying such property as**
43 **an owner or lessee of an owner and by the guests of such person, if no**

1 charge is made for the serving or mixing of any drink or drinks of
2 alcoholic liquor or for any substance mixed with any alcoholic liquor
3 and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and
4 amendments thereto, takes place;

5 (3) in a lodging room of any hotel, motel or boarding house by the
6 person occupying such room and by the guests of such person, if no
7 charge is made for the serving or mixing of any drink or drinks of
8 alcoholic liquor or for any substance mixed with any alcoholic liquor
9 and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and
10 amendments thereto, takes place;

11 (4) in a private dining room of a hotel, motel or restaurant, if the
12 dining room is rented or made available on a special occasion to an
13 individual or organization for a private party and if no sale of
14 alcoholic liquor in violation of K.S.A. 41-803, and amendments
15 thereto, takes place; or

16 (5) on the premises of a microbrewery or farm winery, if
17 authorized by K.S.A. 41-308a or 41-308b, and amendments thereto.

18 (c) No person shall drink or consume alcoholic liquor on public
19 property except:

20 (1) On real property leased by a city to others under the
21 provisions of K.S.A. 12-1740 through 12-1749, and amendments
22 thereto, if such real property is actually being used for hotel or motel
23 purposes or purposes incidental thereto.

24 (2) In any state-owned or operated building or structure, and on
25 the surrounding premises, which is furnished to and occupied by any
26 state officer or employee as a residence.

27 (3) On premises licensed as a club or drinking establishment and
28 located on property owned or operated by an airport authority
29 created pursuant to chapter 27 of the Kansas Statutes Annotated, and
30 amendments thereto, or established by a city.

31 (4) On the state fair grounds on the day of any race held thereon
32 pursuant to the Kansas parimutuel racing act.

33 (5) On the state fairgrounds, if: (A) The alcoholic liquor is
34 domestic beer or wine or wine imported under subsection (e) of K.S.A.
35 41-308a, and amendments thereto, and is consumed only for purposes
36 of judging competitions; (B) the alcoholic liquor is wine or beer and is
37 sold and consumed during the days of the Kansas state fair on
38 premises leased by the state fair board to a person who holds a
39 temporary permit issued pursuant to K.S.A. 41-2645, and
40 amendments thereto, authorizing the sale and serving of such wine or
41 beer, or both; or (C) the alcoholic liquor is consumed on nonfair days
42 in conjunction with bona fide scheduled events involving not less than
43 75 invited guests and the state fair board, in its discretion, authorizes

1 the consumption of the alcoholic liquor, subject to any conditions or
2 restrictions the board may require.

3 (6) In the state historical museum provided for by K.S.A. 76-
4 2036, and amendments thereto, on the surrounding premises and in
5 any other building on such premises, as authorized by rules and
6 regulations of the state historical society.

7 (7) On the premises of any state-owned historic site under the
8 jurisdiction and supervision of the state historical society, on the
9 surrounding premises and in any other building on such premises, as
10 authorized by rules and regulations of the state historical society.

11 (8) In a lake resort within the meaning of K.S.A. 32-867, and
12 amendments thereto, on state-owned or leased property.

13 (9) In the Hiram Price Dillon house or on its surrounding
14 premises, subject to limitations established in policies adopted by the
15 legislative coordinating council, as provided by K.S.A. 75-3682, and
16 amendments thereto.

17 (10) On the premises of any Kansas national guard regional
18 training center or armory, and any building on such premises, as
19 authorized by rules and regulations of the adjutant general and upon
20 approval of the Kansas military board.

21 (11) *On the premises of any land or waters owned or managed by the*
22 *department of wildlife, parks and tourism, except as otherwise prohibited*
23 *by rules and regulations of the department adopted by the secretary*
24 *pursuant to K.S.A. 32-805, and amendments thereto.*

25 (12) On property exempted from this subsection (c) pursuant to
26 subsection (d), (e), (f), (g) or (h).

27 (d) Any city may exempt, by ordinance, from the provisions of
28 subsection (c) specified property the title of which is vested in such
29 city.

30 (e) The board of county commissioners of any county may
31 exempt, by resolution, from the provisions of subsection (c) specified
32 property the title of which is vested in such county.

33 (f) The state board of regents may exempt from the provisions of
34 subsection (c) the Sternberg museum on the campus of Fort Hays state
35 university, or other specified property which is under the control of
36 such board and which is not used for classroom instruction, where
37 alcoholic liquor may be consumed in accordance with policies adopted
38 by such board.

39 (g) The board of regents of Washburn university may exempt
40 from the provisions of subsection (c) the Mulvane art center and the
41 Bradbury Thompson alumni center on the campus of Washburn
42 university, and other specified property the title of which is vested in
43 such board and which is not used for classroom instruction, where

1 alcoholic liquor may be consumed in accordance with policies adopted
2 by such board.

3 (h) The board of trustees of a community college may exempt
4 from the provisions of subsection (c) specified property which is under
5 the control of such board and which is not used for classroom
6 instruction, where alcoholic liquor may be consumed in accordance
7 with policies adopted by such board.

8 (i) Violation of any provision of this section is a misdemeanor
9 punishable by a fine of not less than \$50 or more than \$200 or by
10 imprisonment for not more than six months, or both.

11 (j) For the purposes of this section, "special event" means a
12 picnic, bazaar, festival or other similar community gathering, which
13 has been approved by the local governing body of any city, county or
14 township.

15 Sec. ~~3-4~~ 5. K.S.A. 41-333, 41-334, 41-335, 41-336, 41-337, 41-338,
16 41-339, 41-340, 41-341, 41-2640 and 41-2722 and K.S.A. 2011 Supp. 41-
17 2601 are hereby repealed.

18 Sec. 6. On and after January 1, 2013, K.S.A. 2011 Supp. 41-719 is
19 hereby repealed.

20 Sec. ~~4-5~~ 7. This act shall take effect and be in force from and after
21 its publication in the statute book.
22