

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

Balloon #2 for SB 203
Striking new section 3
March 25, 2013
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Office of the Revisor of Statutes

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 section sections.

4
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 (h) 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 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 (i) 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. 79-41a01 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. 79-41a01 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 ~~§ 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 prescribed 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 [A.] K.S.A. 2012 Supp. 41-104 and 41-2640 is are hereby
34 repealed.~~

~~35 Sec. 3. 4 [5.] This act shall take effect and be in force from and after its
36 publication in the statute book.~~

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