SENATE BILL NO. 408

By Committee on Ways and Means

2-11

AN ACT concerning the Kansas state fair; relating to alcoholic liquor; sales within a common consumption area during the state fair; issuance of temporary permits; liquor enforcement tax and liquor drink tax, transferring moneys collected to the state fair capital improvements fund; amending K.S.A. 79-4108 and 79-41a03 and K.S.A. 2019 Supp. 41-719 and 41-1201 and repealing the existing sections.

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

Section 1. K.S.A. 2019 Supp. 41-719 is hereby amended to read as follows: 41-719. (a) (1) Except as otherwise provided herein and in K.S.A. 8-1599, and amendments thereto, no person shall drink or consume alcoholic liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

(2) Alcoholic liquor may be consumed on public streets, alleys, roads, sidewalks or highways when:

(A) A temporary permit has been issued pursuant to K.S.A. 41-2703, and amendments thereto, or K.S.A. 2019 Supp. 41-1201, and amendments thereto, for such an event;

(B) a caterer's licensee has provided the required notification for a catered event pursuant to K.S.A. 41-2643, and amendments thereto; or

(C) a public venue, hotel, hotel caterer, drinking establishment caterer or drinking establishment licensee has been authorized to extend its licensed premises pursuant to K.S.A. 41-2608, and amendments thereto.

(3) Consumption of alcoholic liquor on public streets, alleys, roads, sidewalks or highways must be approved, by ordinance or resolution, by the local governing body of any city, county or township where such consumption will occur. No alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads or highways at any time.

(4) No person shall remove any alcoholic liquor from inside the boundaries of an event as designated by the governing body of any city, county or township, from the boundaries of a catered event or from the extended licensed premises of a public venue, hotel, hotel caterer, drinking establishment caterer or drinking establishment. Such boundaries shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed.
(b) Alcoholic liquor may be consumed within common consumption areas designated by a city or county on public streets, alleys, roads, sidewalks or highways pursuant to K.S.A. 2019 Supp. 41-2659, and amendments thereto, except that no alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads or highways within a common consumption area. Further, no person shall remove any alcoholic liquor from inside the boundaries of the common consumption area which shall be clearly designated by a physical barrier.

(c) No person shall drink or consume alcoholic liquor on private property except:
   (1) On premises where the sale of liquor by the individual drink is authorized by the club and drinking establishment act;
   (2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;
   (3) in a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;
   (4) in a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;
   (5) on the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by K.S.A. 41-305, 41-308a, 41-308b and amendments thereto, or K.S.A. 2019 Supp. 41-354, and amendments thereto;
   (6) on the premises of an unlicensed business as authorized pursuant to subsection (j); or
   (7) within a common consumption area established pursuant to K.S.A. 2019 Supp. 41-2659, and amendments thereto.

(d) No person shall drink or consume alcoholic liquor on public property except:
   (1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto.
   (2) In any state-owned or operated building or structure, and on the
surrounding premises, which is furnished to and occupied by any state
doctor or employee as a residence.

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

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

(5) On the state fairgrounds, within boundaries that have been
marked with a three-dimensional barrier, if: (A) The alcoholic liquor is
domestic beer or wine or wine imported under K.S.A. 41-308a(e), and
amendments thereto, and is consumed only for purposes of judging
competitions; (B) the alcoholic liquor is wine or beer and is sold and
consumed during the days of the Kansas state fair on premises leased by
the state fair board to a person who holds a temporary permit issued
pursuant to K.S.A. 41-2703, and amendments thereto, or K.S.A. 2019-
Supp. 41-1201, and amendments thereto, authorizing the sale and serving
of such wine or beer, or both the Kansas state fair board establishes a
common consumption area within the limits of the Kansas state
fairgrounds, authorizes the sale, possession and consumption of wine or
beer, or both, within the common consumption area, notifies the director of
the division of alcoholic beverage control of the establishment of such
common consumption area and receives a temporary permit for the
consumption of wine and beer on the Kansas state fairgrounds pursuant to
alcoholic liquor is wine or beer, or both, that is sold during the days of
the Kansas state fair, or as authorized by the Kansas state fair board, by
the holder of a temporary permit in accordance with the provisions of
K.S.A. 41-1201(g), and amendments thereto; or (C) the alcoholic liquor is
consumed on nonfair days in conjunction with bona fide scheduled events
involving not less than 75 invited guests and the state fair board, in its
discretion, authorizes the consumption of the alcoholic liquor, subject to
any conditions or restrictions the board may require.

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

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

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

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

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

(11) On property exempted from this subsection pursuant to subsection (e), (f), (g), (h) or (i).

(12) On the premises of the state capitol building or on its surrounding premises during an official state function of a nonpartisan nature that has been approved by the legislative coordinating council.


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

(f) The board of county commissioners of any county may exempt, by resolution, from the provisions of subsection (d) specified property the title of which is vested in such county.

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

(h) The board of regents of Washburn university may exempt from the provisions of subsection (d) the Mulvane art center and the Bradbury Thompson alumni center on the campus of Washburn university, and other specified property the title of which is vested in such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

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

(j) (1) An unlicensed business may authorize patrons or guests of such business to consume alcoholic liquor on the premises of such business provided:

(A) Such alcoholic liquor is in the personal possession of the patron and is not sold, offered for sale or given away by the owner of such business or any employees thereof;

(B) possession and consumption of alcoholic liquor shall not be
authorized between the hours of 12 a.m. and 9 a.m.;
(C) the business, or any owner thereof, shall not have had a license
issued under either the Kansas liquor control act or the club and drinking
establishment act revoked for any reason; and
(D) no charge of any sort may be made by the business for the
privilege of possessing or consuming alcoholic liquor on the premises, or
for mere entry onto the premises.
(2) It shall be a violation of this section for any unlicensed business to
authorize the possession or consumption of alcoholic liquor by a patron of
such business when such authorization is not in accordance with the
provisions of this subsection.
(3) For the purposes of this subsection, "patron" means a natural
person who is a customer or guest of an unlicensed business.
(k) Violation of any provision of this section is a misdemeanor
punishable by a fine of not less than $50 or more than $200 or by
imprisonment for not more than six months, or both.
(l) For the purposes of this section, "common consumption area" has
meaning as that term is defined in K.S.A. 2019 Supp. 41-2659, and amendments thereto.
Sec. 2. K.S.A. 2019 Supp. 41-1201 is hereby amended to read as
follows: 41-1201. (a) A temporary permit shall allow the permit holder to
offer for sale, sell and serve alcoholic liquor for consumption on licensed
or unlicensed premises, or on premises that are otherwise subject to a
separate temporary permit, that may be open to the public, subject to the
terms of such permit. A temporary permit shall also authorize the permit
holder to sell, in accordance with rules and regulations adopted by the
secretary, alcoholic liquor at a charitable auction, or one or more limited
issue porcelain containers containing alcoholic liquor.
(b) A temporary permit holder may charge a fee for entrance into the
premises described in the permit, or any portion thereof.
(c) The director may issue a temporary permit to any one or more
persons or organizations applying for such a permit, in accordance with
rules and regulations of the secretary. The permit shall be issued in the
names of the persons or organizations to which it is issued.
(d) Applications for temporary permits shall be required to be filed
with the director not less than 14 days before the event for which the
permit is sought, unless the director waives such requirement for good
cause. The application shall be upon a form prescribed by the director.
Each application shall be electronically submitted and accompanied by a
non-refundable permit fee of $25 for each day for which the permit is
issued, and such fee shall be paid by a check or credit card in the full
amount thereof. All permit fees collected by the director pursuant to this
section shall be remitted to the state treasurer in accordance with the
provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
each such remittance, the state treasurer shall deposit the entire amount in
the state treasury to the credit of the state general fund.

(e) Each application for a temporary permit shall specify the premises
for which they are such permit is issued, including a diagram of the
premises covered by the temporary permit. The diagram shall clearly show
the boundaries of the premises, entrances to and exits from the premises
and the area in which the service of alcoholic liquor would take place. A
temporary permit shall be issued only for premises where the city, county
or township zoning code allows the use for which the permit is issued. No
temporary permit shall be issued for premises that are not located in a
county where the qualified electors of the county:

(1) (A) Approved, by a majority vote of those voting thereon, to
adopt the proposition amending section 10 of article 15 of the constitution
of the state of Kansas at the general election in November, 1986; or
(B) have approved a proposition to allow the sale of liquor by the
individual drink in public places within the county at an election pursuant
to K.S.A. 41-2646, and amendments thereto; and
(2) have not approved a proposition to prohibit such sales of alcoholic
liquor in such places at a subsequent election pursuant to K.S.A. 41-2646,
and amendments thereto.

(f) (1) (A) A temporary permit may be issued for the consumption of
alcoholic liquor on a city, county or township street, alley, road, sidewalk
or highway for an event if: (A)(i) Such street, alley, road, sidewalk or
highway is closed to motor vehicle traffic by the governing body of such
city, county or township for such event; (B)(ii) a written request for such
consumption and possession of such alcoholic liquor has been made to the
local governing body; and (C)(iii) the event has been approved by the
governing body of such city, county or township by ordinance or
resolution.

(B) The boundaries of any such event shall be clearly marked by
signs, a posted map or other means which reasonably identify the area
in which alcoholic liquor may be possessed or consumed at such event.

(2) Drinking establishments that are immediately adjacent to, or
located within the licensed premises of an event, for which a temporary
permit has been issued and the consumption of alcoholic liquor on public
property has been approved, may request that the drinking establishment's
licensed premises be extended into and made a part of the licensed
premises of the event, for the duration of the temporary permit issued for
such event.

(3) Each licensee selling alcoholic liquor for consumption on the
premises of an event for which a temporary permit has been issued shall be
liable for violations of all laws governing the sale and consumption of
(4) Each temporary permit holder selling alcoholic liquor for consumption on the permit premises shall be liable for all violations of laws governing the sale and consumption of alcoholic liquor that occur in areas covered by multiple temporary permits.

(g) (1) A temporary permit may be issued for the consumption sale of wine or beer, or both, on the Kansas state fairgrounds during the days of the Kansas state fair, or as authorized by the Kansas state fair board, if the Kansas state fair board has authorized such consumption and possession of such wine or beer, or both. Each application for such temporary permit shall specify the premises within the fairgrounds for which the permit is issued, including a diagram of the premises covered by the temporary permit. Such diagram shall match the entirety of the premises as leased from the Kansas state fair board. The boundaries of the Kansas state fairgrounds shall be clearly marked by signs, a posted map or other means that reasonably identify the area in which wine or beer, or both, may be possessed or consumed at the state fair.

(2) Each temporary permit holder selling wine or beer, or both, for consumption on the premises of the Kansas state fairgrounds that is covered by such temporary permit shall be liable for all violations of laws governing the sale and consumption of such alcoholic liquor that occur on such temporary premises.

(3) Any temporary permit holder who has received a temporary permit for the sale of beer or wine, or both, on the Kansas state fairgrounds may allow such beer or wine to be removed from the temporary permit premises and onto the Kansas state fairgrounds.

(h) (1) Except as otherwise provided in this subsection, a temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. An applicant may not be issued more than four temporary permits in a calendar year.

(2) The director may issue a sufficient number of temporary permits as required by the state fair board, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose subject to the conditions imposed by the state fair board. Nothing in this paragraph shall be construed to limit the number of temporary permits the director may issue for the sale of wine or beer, or both, on the state fairgrounds consistent with the requirements of the state fair board.

(3) For an event approved by the governing body of a city, county or
township pursuant to subsection (e)(1), the director may issue a temporary permit, which may, at the director's discretion, be valid for the entire period of such event, but in no event shall such permit be issued for a period of time that exceeds 30 consecutive days.

(h) An application for a temporary permit may be rejected by the director if:

1. The applicant has been granted four permits in the current calendar year;
2. the application was not filed with the director at least 14 days prior to the event;
3. the applicant, or any officer, director, partner, registered agent, trustee, manager or owner of the applicant has previously owned or operated any entity holding a temporary permit, club, drinking establishment or caterer's license, had such permit or license surrendered, and at the time such permit or license was surrendered had been ordered to appear and show cause why the permit or license should not be revoked or suspended;
4. the applicant has designated an area for an event that was the subject of the order to appear and show cause as set forth in paragraph (3), and it appears that the new application for a temporary permit covering the premises is an attempt to avoid any possible remedial action taken by the director against the former permit or license holder; or
5. the applicant has had a license or permit revoked under the club and drinking establishment act, or has been convicted of a violation of the Kansas liquor control act, the club and drinking establishment act, the Kansas cereal malt beverage act or the provisions of K.S.A. 79-41a01 et seq., and amendments thereto.

(i) (1) A temporary permit holder may purchase and possess alcoholic liquor for resale for a period of three days prior to the first day of sale of such alcoholic liquor. A distributor may, without any further permission from the director, deliver such alcoholic liquor to the permit premises.
2. If a licensee has sold alcoholic liquor to a temporary permit holder, and a distributor directly delivers such alcoholic liquor to such temporary permit holder, but such licensee's normal hours of operation make immediate payment to the distributor impossible, the licensee may pay the retailer and the retailer may pay the distributor for such alcoholic liquor within 48 hours of the sale.
3. Within three business days after the end of an event conducted pursuant to a temporary permit, the temporary permit holder may sell back to the retailer or farm winery from whom alcoholic liquor was purchased any alcoholic liquor sold to the temporary permit holder for such event.
4. Upon written permission from the director and after four business days after the end of an event conducted pursuant to a temporary permit,
the temporary permit holder may sell back to the licensee from whom alcoholic liquor was purchased any alcoholic liquor sold to the temporary permit holder for such event.

(j) A temporary permit shall not be transferable or assignable.

(k) Each temporary permit holder shall not employ or use the services of any person:

(1) Who is under the age of 18 years to serve alcoholic liquor;

(2) who is under the age of 21 years to mix or dispense drinks containing alcoholic liquor;

(3) who is under the age of 21 years of age and not supervised by the temporary permit holder or an employee who is at least 21 years of age;

(4) who has been convicted of a felony or of any crime involving a morals charge to dispense, mix or serve alcoholic liquor; or

(5) who has been convicted within the previous two years of a violation of any intoxicating liquor law of this state, any other state or the United States, to dispense, mix or serve alcoholic liquor.

Sec. 3. K.S.A. 79-4108 is hereby amended to read as follows:

(a) All revenue collected or received by the director of taxation from taxes imposed by K.S.A. 79-4101 through 79-4105, and amendments thereto, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of.

(b) Except as provided in subsection (c), the entire amount of any such remittance shall be credited to the state general fund. The state treasurer shall transfer any moneys remaining in the county and city alcoholic liquor control enforcement fund on the effective date of this act to the state general fund.

(c) For each remittance of the taxes collected upon the gross receipts derived from the sale of alcoholic liquor to consumers while on the Kansas state fairgrounds, 16.154% 30% shall be credited to the state general fund, and the remainder shall be credited to the state fair capital improvements fund established pursuant to K.S.A. 2-223, and amendments thereto. The provisions of this subsection shall expire and have no effect if the state fair is located outside the city limits of the city of Hutchinson, Kansas.

Sec. 4. K.S.A. 79-41a03 is hereby amended to read as follows:

(a) The tax levied and collected pursuant to K.S.A. 79-41a02, and amendments thereto, shall become due and payable by the club, caterer, drinking establishment, public venue or temporary permit holder monthly, or on or before the 25th day of the month immediately succeeding the month in which it is collected, but any club, caterer, drinking establishment, public venue or temporary permit holder filing an annual or
quarterly return under the Kansas retailers' sales tax act, as prescribed in K.S.A. 79-3607, and amendments thereto, shall, upon such conditions as the secretary of revenue may prescribe, pay the tax required by this act on the same basis and at the same time the club, caterer, drinking establishment, public venue or temporary permit holder pays such retailers' sales tax. Each club, caterer, drinking establishment, public venue or temporary permit holder shall make a true report to the department of revenue, on a form prescribed by the secretary of revenue, providing such information as may be necessary to determine the amounts to which any such tax shall apply for all gross receipts derived from the sale of alcoholic liquor by the club, caterer, drinking establishment, public venue or temporary permit holder for the applicable month or months, which report shall be accompanied by the tax disclosed thereby. Records of gross receipts derived from the sale of alcoholic liquor shall be kept separate and apart from the records of other retail sales made by a club, caterer, drinking establishment, public venue or temporary permit holder in order to facilitate the examination of books and records as provided herein.

(b) The secretary of revenue or the secretary's authorized representative shall have the right at all reasonable times during business hours to make such examination and inspection of the books and records of a club, caterer, drinking establishment, public venue or temporary permit holder as may be necessary to determine the accuracy of such reports required hereunder.

(c) The secretary of revenue is hereby authorized to administer and collect the tax imposed hereunder and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection thereof. Whenever any club, caterer, drinking establishment, public venue or temporary permit holder liable to pay the tax imposed hereunder refuses or neglects to pay the same, the amount, including any penalty, shall be collected in the manner prescribed for the collection of the retailers' sales tax by K.S.A. 79-3617, and amendments thereto.

(d) (1) The secretary of revenue shall remit all revenue collected under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury.

(2) Except as provided for in paragraph (3) and subject to the maintenance requirements of the local alcoholic liquor refund fund created under K.S.A. 79-41a09, and amendments thereto, 25% of the remittance shall be credited to the state general fund, 5% shall be credited to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and the balance shall be credited to the
local alcoholic liquor fund created by K.S.A. 79-41a04, and amendments thereto.

(3) For each remittance of the taxes collected upon the gross receipts derived from the sale of alcoholic liquor by any temporary permit holder to consumers while on the Kansas state fairgrounds, 16.154% 30% shall be credited to the state general fund, and the remainder shall be credited to the state fair capital improvements fund established pursuant to K.S.A. 2-223, and amendments thereto. The provisions of this paragraph shall expire and have no effect if the state fair is located outside the city limits of the city of Hutchinson, Kansas.

(e) Whenever, in the judgment of the secretary of revenue, it is necessary, in order to secure the collection of any tax, penalties or interest due, or to become due, under the provisions of this act, the secretary may require any person subject to such tax to file a bond with the director of taxation under conditions established by and in such form and amount as prescribed by rules and regulations adopted by the secretary.

(f) The amount of tax imposed by this act shall be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period except in the cases of fraud. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. No refund or credit shall be allowed by the director after three years from the date of payment of the tax as provided in this act unless before the expiration of such period a claim therefor is filed by the taxpayer, and no suit or action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing a claim therefor with the director. Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the periods of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Sec. 5. K.S.A. 79-4108 and 79-41a03 and K.S.A. 2019 Supp. 41-719 and 41-1201 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.