

As Amended by House Committee

As Further Amended by Senate Committee

As Amended by Senate Committee

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; **relating to licensure under the Kansas liquor control**
3 **act**; amending K.S.A. 2012 Supp. 41-104, **41-311** and 41-2640 and
4 repealing the existing ~~section~~ *sections*.

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

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

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

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

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

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

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

31 *(f) the possession and dispensation of wine by an authorized*
32 *representative of any church for the purpose of conducting any bona*

1 *fide rite or religious ceremony conducted by such church; or*

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

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

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

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

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

39 (2) offer or serve to any person an individual drink at a price that is
40 less than the acquisition cost of the individual drink to the licensee or
41 permit holder;

42 (3) sell, offer to sell or serve to any person an unlimited number of
43 individual drinks during any set period of time for a fixed price, except at

1 private functions not open to the general public or to the general
2 membership of a club;

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

6 (5) advertise or promote in any way, whether on or off the licensed
7 premises, any of the practices prohibited under subsections (a)(1) through
8 (4).

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

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

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

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

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

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

24 (6) advertise or promote in any way, whether on or off the licensed
25 premises, any of the practices prohibited under subsections (b)(1) through
26 (5).

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

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

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

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

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

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

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

1 ~~management and the Kansas racing and gaming commission.~~

2 (d) *A public venue club, drinking establishment, caterer or holder*
3 *of a temporary permit may, upon the approval of the director, offer*
4 *customer self-service of alcoholic liquor or cereal malt beverage from*
5 *automated devices on the licensed premises provided that the licensee*
6 *monitors and has the ability to control the consumption of such*
7 *alcoholic liquor and cereal malt beverage from automated devices.*

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

15 (e) *A hotel of which the entire premises is licensed as a drinking*
16 *establishment may, in accordance with rules and regulations adopted by*
17 *the secretary, distribute to its guests coupons redeemable on the hotel*
18 *premises for drinks containing alcoholic liquor. The hotel shall remit*
19 *liquor drink tax in accordance with the provisions of the liquor drink tax*
20 *act, K.S.A. 79-41a01 et seq., and amendments thereto, on each drink*
21 *served based on a price which is not less than the acquisition cost of the*
22 *drink.*

23 ~~(e)~~ (f) *A hotel of which the entire premises is not licensed as a*
24 *drinking establishment may, in accordance with rules and regulations*
25 *adopted by the secretary, through an agreement with one or more clubs or*
26 *drinking establishments, distribute to its guests coupons redeemable at*
27 *such clubs or drinking establishments for drinks containing alcoholic*
28 *liquor. Each club or drinking establishment redeeming coupons issued by*
29 *a hotel shall collect from the hotel the agreed price, which shall be not*
30 *less than the acquisition cost of the drink plus the liquor drink tax for each*
31 *drink served. The club or drinking establishment shall collect and remit*
32 *the liquor drink tax in accordance with the provisions of the liquor drink*
33 *tax act, K.S.A. 79-41a01 et seq., and amendments thereto.*

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

36 ~~(e)~~ ~~(g)~~ (h) *Violation of any provision of this section shall be grounds*
37 *for suspension or revocation of the licensee's license as provided by*
38 *K.S.A. 41-2609, and amendments thereto, and for imposition of a civil*
39 *fine on the licensee or temporary permit holder as provided by K.S.A. 41-*
40 *2633a, and amendments thereto.*

41 ~~(f) Every licensed club and drinking establishment shall make~~
42 ~~available at any time upon request a price list showing the club's or~~
43 ~~drinking establishment's current prices per individual drink for all~~

1 individual drinks.

2 ~~*New Sec. 2. 3. (a) If a person who has attained 18 years of age, or is*~~
3 ~~*an emancipated minor, enters premises licensed pursuant to the Kansas*~~
4 ~~*liquor control act or club and drinking establishment act where*~~
5 ~~*alcoholic liquor or cereal malt beverages are sold and offers or presents*~~
6 ~~*to a licensee or an agent or employee of the licensee written evidence of*~~
7 ~~*age, that is fraudulent or false or that is not actually the person's own,*~~
8 ~~*or otherwise misrepresents the person's age, for the purpose of inducing*~~
9 ~~*the licensee or an agent or employee of the licensee to sell, give, serve or*~~
10 ~~*furnish alcoholic beverages contrary to the law, shall be liable, in*~~
11 ~~*addition to any criminal penalty provided by law, for damages of \$1,000*~~
12 ~~*and, in addition, costs and reasonable attorney fees in a civil action*~~
13 ~~*brought by the licensee.*~~

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

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

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

36 Sec. 3. K.S.A. 2012 Supp. 41-311 is hereby amended to read as
37 follows: 41-311. (a) No license of any kind shall be issued pursuant to
38 the liquor control act to a person:

39 (1) ~~Who has not been~~ *is not* a citizen of the United States for at least
40 10 years, except that the spouse of a deceased retail licensee may receive
41 and renew a retail license notwithstanding the provisions of this subsection
42 (a)(1) if such spouse is otherwise qualified to hold a retail license and is a
43 United States citizen or becomes a United States citizen within one year

1 after the deceased licensee's death;

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

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

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

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

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

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

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

24 (9) who at the time of application for renewal of any license
25 issued under this act would not be eligible for the license upon a first
26 application, except as provided by subsection (a)(12);

27 (10) who is the holder of a valid and existing license issued under
28 article 27 of chapter 41 of the Kansas Statutes Annotated unless the
29 person agrees to and does surrender the license to the officer issuing
30 the same upon the issuance to the person of a license under this act,
31 except that a retailer licensed pursuant to K.S.A. 41-2702, and
32 amendments thereto, shall be eligible to receive a retailer's license
33 under the Kansas liquor control act;

34 (11) who does not own the premises for which a license is sought,
35 or does not, at the time of application, have a written lease thereon;

36 (12) whose spouse would be ineligible to receive a license under
37 this act for any reason other than citizenship, residence requirements
38 or age, except that this subsection (a)(12) shall not apply in
39 determining eligibility for a renewal license;

40 (13) whose spouse has been convicted of a felony or other crime
41 which would disqualify a person from licensure under this section and
42 such felony or other crime was committed during the time that the
43 spouse held a license under this act; or

1 (14) who does not provide any data or information required by
2 K.S.A. 2012 Supp. 41-311b, and amendments thereto.

3 (b) No retailer's license shall be issued to:

4 (1) A person who is not a resident of this state;

5 (2) a person who has not been a resident of this state for at least
6 four years immediately preceding the date of application;

7 (3) a person who has a beneficial interest in a manufacturer,
8 distributor, farm winery or microbrewery licensed under this act,
9 except that the spouse of an applicant for a retailer's license may own
10 and hold a farm winery license, microbrewery license, or both, if the
11 spouse does not hold a retailer's license issued under this act;

12 (4) a person who has a beneficial interest in any other retail
13 establishment licensed under this act, except that the spouse of a
14 licensee may own and hold a retailer's license for another retail
15 establishment;

16 (5) a copartnership, unless all of the copartners are qualified to
17 obtain a license;

18 (6) a corporation; or

19 (7) a trust, if any grantor, beneficiary or trustee would be
20 ineligible to receive a license under this act for any reason, except that
21 the provisions of subsection (a)(6) shall not apply in determining
22 whether a beneficiary would be eligible for a license.

23 (c) No manufacturer's license shall be issued to:

24 (1) A corporation, if any officer or director thereof, or any
25 stockholder owning in the aggregate more than 25% of the stock of
26 the corporation would be ineligible to receive a manufacturer's license
27 for any reason other than citizenship and residence requirements;

28 (2) a copartnership, unless all of the copartners shall have been
29 residents of this state for at least five years immediately preceding the
30 date of application and unless all the members of the copartnership
31 would be eligible to receive a manufacturer's license under this act;

32 (3) a trust, if any grantor, beneficiary or trustee would be
33 ineligible to receive a license under this act for any reason, except that
34 the provisions of subsection (a)(6) shall not apply in determining
35 whether a beneficiary would be eligible for a license;

36 (4) an individual who is not a resident of this state;

37 (5) an individual who has not been a resident of this state for at
38 least five years immediately preceding the date of application; or

39 (6) a person who has a beneficial interest in a distributor, retailer,
40 farm winery or microbrewery licensed under this act, except as
41 provided in K.S.A. 41-305, and amendments thereto.

42 (d) No distributor's license shall be issued to:

43 (1) A corporation, if any officer, director or stockholder of the

1 corporation would be ineligible to receive a distributor's license for
2 any reason. It shall be unlawful for any stockholder of a corporation
3 licensed as a distributor to transfer any stock in the corporation to any
4 person who would be ineligible to receive a distributor's license for
5 any reason, and any such transfer shall be null and void, except that:
6 (A) If any stockholder owning stock in the corporation dies and an
7 heir or devisee to whom stock of the corporation descends by descent
8 and distribution or by will is ineligible to receive a distributor's
9 license, the legal representatives of the deceased stockholder's estate
10 and the ineligible heir or devisee shall have 14 months from the date of
11 the death of the stockholder within which to sell the stock to a person
12 eligible to receive a distributor's license, any such sale by a legal
13 representative to be made in accordance with the provisions of the
14 probate code; or (B) if the stock in any such corporation is the subject
15 of any trust and any trustee or beneficiary of the trust who is 21 years
16 of age or older is ineligible to receive a distributor's license, the
17 trustee, within 14 months after the effective date of the trust, shall sell
18 the stock to a person eligible to receive a distributor's license and hold
19 and disburse the proceeds in accordance with the terms of the trust. If
20 any legal representatives, heirs, devisees or trustees fail, refuse or
21 neglect to sell any stock as required by this subsection, the stock shall
22 revert to and become the property of the corporation, and the
23 corporation shall pay to the legal representatives, heirs, devisees or
24 trustees the book value of the stock. During the period of 14 months
25 prescribed by this subsection, the corporation shall not be denied a
26 distributor's license or have its distributor's license revoked if the
27 corporation meets all of the other requirements necessary to have a
28 distributor's license;

29 (2) a copartnership, unless all of the copartners are eligible to
30 receive a distributor's license;

31 (3) a trust, if any grantor, beneficiary or trustee would be
32 ineligible to receive a license under this act for any reason, except that
33 the provisions of subsection (a)(6) shall not apply in determining
34 whether a beneficiary would be eligible for a license; or

35 (4) a person who has a beneficial interest in a manufacturer,
36 retailer, farm winery or microbrewery licensed under this act.

37 (e) No nonbeverage user's license shall be issued to a corporation,
38 if any officer, manager or director of the corporation or any
39 stockholder owning in the aggregate more than 25% of the stock of
40 the corporation would be ineligible to receive a nonbeverage user's
41 license for any reason other than citizenship and residence
42 requirements.

43 (f) No microbrewery license, microdistillery license or farm

1 winery license shall be issued to a:

2 (1) Person who is not a resident of this state;

3 (2) person who has not been a resident of this state for at least one
4 year immediately preceding the date of application;

5 (3) person who has a beneficial interest in a manufacturer or
6 distributor licensed under this act, except as provided in K.S.A. 41-
7 305, and amendments thereto;

8 (4) person, copartnership or association which has a beneficial
9 interest in any retailer licensed under this act or under K.S.A. 41-2702,
10 and amendments thereto, except that the spouse of an applicant for a
11 microbrewery or farm winery license may own and hold a retailer's
12 license if the spouse does not hold a microbrewery or farm winery
13 license issued under this act;

14 (5) copartnership, unless all of the copartners are qualified to
15 obtain a license;

16 (6) corporation, unless stockholders owning in the aggregate 50%
17 or more of the stock of the corporation would be eligible to receive
18 such license and all other stockholders would be eligible to receive
19 such license except for reason of citizenship or residency; or

20 (7) a trust, if any grantor, beneficiary or trustee would be
21 ineligible to receive a license under this act for any reason, except that
22 the provisions of subsection (a)(6) shall not apply in determining
23 whether a beneficiary would be eligible for a license.

24 (g) The provisions of subsections (b)(1), (b)(2), (c)(3), (c)(4), (d)
25 (3), (f)(1), (f)(2) and K.S.A. 2012 Supp. 41-311b, and amendments
26 thereto, shall not apply in determining eligibility for the 10th, or a
27 subsequent, consecutive renewal of a license if the applicant has
28 appointed a citizen of the United States who is a resident of Kansas as
29 the applicant's agent and filed with the director a duly authenticated
30 copy of a duly executed power of attorney, authorizing the agent to
31 accept service of process from the director and the courts of this state
32 and to exercise full authority, control and responsibility for the
33 conduct of all business and transactions within the state relative to
34 alcoholic liquor and the business licensed. The agent must be
35 satisfactory to and approved by the director, except that the director
36 shall not approve as an agent any person who:

37 (1) Has been convicted of a felony under the laws of this state, any
38 other state or the United States;

39 (2) has had a license issued under the alcoholic liquor or cereal
40 malt beverage laws of this or any other state revoked for cause, except
41 that a person may be appointed as an agent if the person's license was
42 revoked for the conviction of a misdemeanor and 10 years have lapsed
43 since the date of the revocation;

1 **(3) has been convicted of being the keeper or is keeping a house of**
2 **prostitution or has forfeited bond to appear in court to answer charges**
3 **of being a keeper of a house of prostitution;**

4 **(4) has been convicted of being a proprietor of a gambling house,**
5 **pandering or any other crime opposed to decency and morality or has**
6 **forfeited bond to appear in court to answer charges for any of those**
7 **crimes; or**

8 **(5) is less than 21 years of age.**

9 Sec. ~~2~~ ~~3~~ ~~4~~. K.S.A. 2012 Supp. 41-104, **41-311** and 41-2640 is are
10 hereby repealed.

11 Sec. ~~3~~ ~~4~~ ~~5~~. This act shall take effect and be in force from and after its
12 publication in the statute book.