

Senate Substitute for HOUSE BILL No. 2199

AN ACT concerning alcoholic beverages; amending K.S.A. 41-713 and 41-2610 and K.S.A. 2012 Supp. 41-104, 41-308d, 41-354, 41-2601, 41-2637, 41-2640, 41-2641, 41-2642, 41-2655 and 79-41a02 and repealing the existing sections.

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

New Section 1. (a) Notwithstanding the provisions of either the Kansas administrative procedure act, and amendments thereto, or any rule and regulation adopted pursuant to the Kansas liquor control act, and amendments thereto, governing the issuance of any written administrative notice or order concerning the imposition of any proposed civil fine or other penalty to be imposed for a violation of any of the provisions of the Kansas liquor control act, K.S.A. 41-101 et seq., and amendments thereto, such notice or order shall be issued no later than 90 days after the date a citation for such violation was issued.

(b) This section shall be part of and supplemental to the provisions of the Kansas liquor control act, K.S.A. 41-101 et seq., and amendments thereto.

New Sec. 2. (a) Notwithstanding the provisions of either the Kansas administrative procedure act, and amendments thereto, or any rule and regulation adopted pursuant to the club and drinking establishment act, and amendments thereto, governing the issuance of any written administrative notice or order concerning the imposition of any proposed civil fine or other penalty to be imposed for a violation of any of the provisions of the club and drinking establishment act, K.S.A. 41-2601 et seq., and amendments thereto, such notice or order shall be issued no later than 90 days after the date a citation for such violation was issued.

(b) This section shall be part of and supplemental to the provisions of the Kansas club and drinking establishment act, K.S.A. 41-2601 et seq., and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 41-104 is hereby amended to read as follows: 41-104. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, *and amendments thereto*, except that nothing contained in this act shall prevent:

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

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

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

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

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

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

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

(h) the serving of complimentary alcoholic liquor or cereal malt bev-

erages at fund raising activities of charitable organizations as defined by K.S.A. 17-1760, and amendments thereto, and as qualified pursuant to 26 U.S.C.A. § 501(c) and by committees formed pursuant to K.S.A. 25-4142 et seq., and amendments thereto. The serving of such alcoholic liquor at such fund raising activities shall not constitute a sale pursuant to this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto. Any such fund raising activity shall not be required to obtain a license or a temporary permit pursuant to this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto; or

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

Sec. 4. K.S.A. 2012 Supp. 41-308d is hereby amended to read as follows: 41-308d. (a) Notwithstanding any other provisions of the Kansas liquor control act to the contrary, any person or entity who is licensed to sell alcoholic liquor in the original package at retail may conduct wine, beer and distilled spirit tastings on the licensed premises, or adjacent premises, monitored and regulated by the division of alcoholic beverage control, as follows:

(1) Wine, beer and spirits for the tastings shall come from the inventory of the licensee. Except as provided by paragraph (2), a person other than the licensee or the licensee's agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this section.

(2) The holder of a supplier's permit or such permit holder's agent or employee may participate in and conduct product tastings of alcoholic beverages at a retail licensee's premises, or adjacent premises, monitored and regulated by the division of alcoholic beverage control, and may open, touch, or pour alcoholic beverages, make a presentation, or answer questions at the tasting. Any alcoholic beverage tasted under this subsection must be purchased from the retailer on whose premises the tasting is held. The retailer may not require the purchase of more alcoholic beverages than are necessary for the tasting. This section does not authorize the supplier or its agent to withdraw or purchase an alcoholic beverage from the holder of a distributor's permit or provide an alcoholic beverage for tasting on a retailer's premises that is not purchased from the retailer.

(3) No charge of any sort may be made for a sample serving.

(4) A person may be served more than one sample. Samples may not be served to a minor. No samples may be removed from the licensed premises.

(5) The act of providing samples to consumers shall be exempt from the requirement of holding a Kansas food service dealer license from the department of agriculture under the provisions of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

(b) Nothing in this section shall be construed to permit the licensee to sell wine, malt beverages or distilled spirits for on-premises consumption.

(c) The provisions of this section shall take effect and be in force from and after July 1, 2012.

(d) *All rules and regulations adopted on and after July 1, 2012, and prior to July 1, 2013, to implement this section shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary until revised, amended, revoked or nullified pursuant to law.*

(e) *This section shall be a part of and supplemental to the Kansas liquor control act.*

Sec. 5. K.S.A. 2012 Supp. 41-354 is hereby amended to read as follows: 41-354. (a) A microdistillery license shall allow:

(1) The manufacture of not more than 50,000 gallons of spirits per year and the storage thereof;

(2) the sale to spirit distributors of spirits, manufactured by the licensee;

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of spirits manufactured by the licensee;

(4) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of spirits manufactured by the licensee, if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

(5) if the licensee is also licensed as a club or drinking establishment, the sale of spirits and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act; and

(6) if the licensee is also licensed as a caterer, the sale of spirits and other alcoholic liquor for consumption on unlicensed premises as authorized by the club and drinking establishment act.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a microdistillery licensee, the director may issue not to exceed one microdistillery packaging and warehousing facility license to the microdistillery licensee. A microdistillery packaging and warehousing facility license shall allow:

(1) The transfer, from the licensed premises of the microdistillery to the licensed premises of the microdistillery packaging and warehousing facility, of spirits manufactured by the licensee, for the purpose of packaging or storage, or both;

(2) the transfer, from the licensed premises of the microdistillery packaging and warehousing facility to the licensed premises of the microdistillery, of spirits manufactured by the licensee; or

(3) the removal from the licensed premises of the microdistillery packaging and warehousing facility of spirits manufactured by the licensee for the purpose of delivery to a licensed spirits wholesaler.

(c) A microdistillery may sell spirits in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 11 a.m. and 7 p.m. on Sunday. If authorized by subsection (a), a microdistillery may serve samples of spirits and serve and sell spirits and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor.

(d) The director may issue to the Kansas state fair or any bona fide group of distillers a permit to import into this state small quantities of spirits. Such spirits shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such spirits shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of spirit to be imported, the quantity to be imported, the tasting programs for which the spirit is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of spirits pursuant to this subsection and the conduct of tasting programs for which such spirits are imported.

(e) A microdistillery license or microdistillery packaging and warehousing facility license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(f) No microdistillery shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premises supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

(g) Whenever a microdistillery licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and all fees paid for the license in accordance with the Kansas administrative procedure act.

(h) The provisions of this section shall take effect and be in force from and after July 1, 2012.

(i) *All rules and regulations adopted on and after July 1, 2012, and prior to July 1, 2013, to implement this section shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary until revised, amended, revoked or nullified pursuant to law.*

(j) *This section shall be a part of and supplemental to the Kansas liquor control act.*

Sec. 6. K.S.A. 41-713 is hereby amended to read as follows: 41-713.

(a) It shall be unlawful for a retailer of alcoholic liquor:

(1) To permit any person to mix drinks in or on the licensed premises, *except as provided in subsection (b)*;

(2) to employ any person under the age of ~~twenty-one (21)~~ years in connection with the operation of such retail establishment; or

(3) to employ any person in connection with the operation of such retail establishment who has been adjudged guilty of a felony.

(b) *The provisions of subsection (a)(1) shall not apply to the preparation or mixing of samples for the purposes of conducting wine, beer or distilled spirit tastings, or any combination thereof, as authorized by K.S.A. 2012 Supp. 41-308d, and amendments thereto.*

Sec. 7. K.S.A. 2012 Supp. 41-2601 is hereby amended to read as follows: 41-2601. As used in the club and drinking establishment act:

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

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

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

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

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

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

(g) “Club” means a class A or class B club.

(h) “Drinking establishment” means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold. Drinking establishment includes a railway car.

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

(j) “Food service establishment” has the meaning provided by K.S.A. 36-501, and amendments thereto.

(k) “Hotel” has the meaning provided by K.S.A. 36-501, and amendments thereto.

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

(m) “Minibar” means a closed cabinet, whether nonrefrigerated or wholly or partially refrigerated, access to the interior of which is restricted

by means of a locking device which requires the use of a key, magnetic card or similar device.

(n) “Minor” means a person under 21 years of age.

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

(p) “Municipal corporation” means the governing body of any county or city.

(q) “Public venue” means an arena, stadium, hall or theater, used primarily for athletic or sporting events, live concerts, live theatrical productions or similar seasonal entertainment events, not operated on a daily basis, and containing:

(1) Not less than 4,000 permanent seats; and

(2) not less than two private suites, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier.

(r) “Railway car” means a locomotive drawn conveyance used for the transportation and accommodation of human passengers that is confined to a fixed rail route and which derives from sales of food for consumption on the railway car not less than 30% of its gross receipts from all sales of food and beverages in a 12-month period.

(s) “Restaurant” means:

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

(2) in the case of a drinking establishment subject to a food sales requirement under K.S.A. 41-2642, and amendments thereto, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its gross receipts from all sales of food and beverages on such premises in a 12-month period; and

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

(t) “RV resort” means premises where a place to park recreational vehicles, as defined in K.S.A. 75-1212, and amendments thereto, is offered for pay, primarily to transient guests, for overnight or longer use while such recreational vehicles are used as sleeping or living accommodations.

(u) “Sample” means a serving of alcoholic liquor which contains not more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or (3) two ounces of beer or cereal malt beverage. A sample of a mixed alcoholic beverage shall contain not more than one-half ounce of distilled spirits.

~~(v)~~(v) “Secretary” means the secretary of revenue.

~~(w)~~(w) “Temporary permit” means a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto.

Sec. 8. K.S.A. 41-2610 is hereby amended to read as follows: 41-2610. It shall be unlawful for any licensee or holder of a temporary permit under this act to:

(a) Employ any person under the age of 18 years in connection with the serving of alcoholic liquor.

(b) Employ knowingly or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States.

~~(c) Employ knowingly or to continue in employment any person in connection with the dispensing or serving of alcoholic liquor or mixing of drinks containing alcoholic liquor who has been adjudged guilty of a violation of any intoxicating liquor law of this or any other state, or of the United States, during the two-year period immediately following such adjudging. Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor, or the mixing~~

*of drinks containing alcoholic liquor, who has been adjudged guilty of two or more violations of K.S.A. 2012 Supp. 21-5607, and amendments thereto, furnishing alcoholic liquor to minors or a similar law of any other state, or of the United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of this or any other state, or of the United States, not involving the furnishing of alcoholic liquor to minors within the immediately preceding five years.*

(d) In the case of a club, fail to maintain at the licensed premises a current list of all members and their residence addresses or refuse to allow the director, any of the director's authorized agents or any law enforcement officer to inspect such list.

(e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder.

(f) Permit any employee of the licensee or permit holder who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is 21 years of age or over.

(g) Employ any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.

Sec. 9. K.S.A. 2012 Supp. 41-2637 is hereby amended to read as follows: 41-2637. (a) A license for a class A club shall allow the licensee to: (1) Offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members and their families, and guests accompanying them; and (2) *serve samples of alcoholic liquor free of charge for consumption by members and their families and guests accompanying them.*

*No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.*

(b) (1) Subject to the provisions of subsection (b)(2), any two or more class A or class B clubs may permit, by an agreement filed with and approved by the director, the members of each such club to have access to all other clubs which are parties to such agreement. The privileges extended to the visiting members of other clubs under such an agreement shall be determined by the agreement and, if the agreement so provides, any club which is a party to such agreement may sell, offer for sale and serve, to any person who is a member of another club which is a party to such agreement, alcoholic liquor for consumption on the licensed premises by such person and such person's family, and guests accompanying them.

(2) A class B club may enter into a reciprocal agreement authorized by subsection (b)(1) only if the class B club is a restaurant.

(c) A licensee may store on its premises wine sold to a customer for consumption at a later date on its premises in the unopened container. Such wine must be kept separate from all other alcohol stock and in a secure locked area separated by customer. Such wine shall not be removed from the licensed premises in its unopened condition.

Sec. 10. K.S.A. 2012 Supp. 41-2640 is hereby amended to read as follows: 41-2640. (a) No club, drinking establishment, caterer or holder of a temporary permit, nor any person acting as an employee or agent thereof, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) *offer samples of alcohol liquor free of charge as authorized by this act; or*

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

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

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

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

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

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

Sec. 11. K.S.A. 2012 Supp. 41-2641 is hereby amended to read as follows: 41-2641. (a) A license for a class B club shall allow the licensee to: (1) Offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members of such club and guests accompanying them; and (2) *serve samples of alcoholic liquor free of charge on the licensed premises for consumption by such members and their families and guests accompanying them.*

*No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. Providing samples is prohibited for any licensee who charges a cover charge or entry fee at any time during the business day. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.*

(b) (1) Subject to the provisions of subsection (b)(2), any two or more class A or class B clubs may permit, by an agreement filed with and approved by the director, the members of each such club to have access to all other clubs which are parties to such agreement. The privileges extended to the visiting members of other clubs under such an agreement shall be determined by the agreement and, if the agreement so provides, any club which is a party to such agreement may sell, offer for sale and serve, to any person who is a member of another club which is a party to such agreement, alcoholic liquor for consumption on the licensed premises by such person and such person's family, and guests accompanying them.

(2) A class B club may enter into a reciprocal agreement authorized by subsection (b)(1) only if the class B club is a restaurant.

(c) Except as provided by subsection (d), an applicant for membership in a class B club shall, before becoming a member of such club:

- (1) Be screened by the club for good moral character;
- (2) pay an annual membership fee of not less than \$10; and
- (3) wait for a period of 10 days after completion of the application form and payment of the membership fee.

(d) Notwithstanding the membership fee and waiting period requirement of subsection (c):

(1) Any class B club located on the premises of a hotel or RV resort may establish rules whereby a guest, who registered at the hotel or RV resort and who is not a resident of the county in which the club is located, may file application for temporary membership in such club. The membership, if granted, shall be valid only for the period of time that the guest is a bona fide registered guest at the hotel or RV resort and such temporary membership shall not be subject to the waiting period or fee requirement of this section.

(2) Any class B club located on property which is owned or operated by a municipal airport authority and upon which consumption of alcoholic liquor is authorized by law may establish rules whereby an air traveler who is a holder of a current airline ticket may file application for temporary membership in such club for the day such air traveler's ticket is valid, and such temporary membership shall not be subject to the waiting period or fee requirement of this section.

(3) Any class B club may establish rules whereby military personnel of the armed forces of the United States on temporary duty and housed at or near any military installation located within the exterior boundaries of the state of Kansas may file application for temporary membership in such club. The membership, if granted, shall be valid only for the period of the training, not to exceed 20 weeks. Any person wishing to make application for temporary membership in a class B club under this subsection (d)(3) shall present the temporary duty orders to the club. Temporary membership issued under this subsection (d)(3) shall not be subject to the waiting period or fee requirements of this section.

(4) Any class B club may enter into a written agreement with a hotel or RV resort whereby a guest who is registered at the hotel or RV resort and who is not a resident of the county in which the club is located may file application for temporary membership in such club. The temporary membership, if granted, shall be valid only for the period of time that the guest is a bona fide registered guest at the hotel or RV resort and shall not be subject to the waiting period or dues requirement of this section. A club may enter into a written agreement with a hotel or RV resort

pursuant to this provision only if: (A) The hotel or RV resort is located in the same county as the club; (B) there is no class B club located on the premises of the hotel or RV resort; and (C) no other club has entered into a written agreement with the hotel or RV resort pursuant to this section.

(5) Any class B club located in a racetrack facility where races with parimutuel wagering are conducted under the Kansas parimutuel racing act may establish rules whereby persons attending such races may file an application for temporary membership in such club for the day such person is attending such races, and such temporary membership shall not be subject to the waiting period or fee requirement of this section.

(e) A licensee may store on its premises wine sold to a customer for consumption at a later date on its premises in the unopened container. Such wine must be kept separate from all other alcohol stock and in a secure locked area separated by customer. Such wine shall not be removed from the licensed premises in its unopened condition.

Sec. 12. K.S.A. 2012 Supp. 41-2642 is hereby amended to read as follows: 41-2642. (a) A license for a drinking establishment shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises which may be open to the public, *and to serve samples of alcoholic liquor free of charge on licensed premises subject to the requirements of subsection (c)*, but only if such premises are located in a county where the qualified electors of the county:

(1) (A) Approved, by a majority vote of those voting thereon, the proposition to amend 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 sales of alcoholic 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.

(b) A drinking establishment shall be required to derive from sales of food for consumption on the licensed premises not less than 30% of all the establishment's gross receipts from sales of food and beverages on such premises unless the licensed premises are located in a county where the qualified electors of the county:

(1) Have approved, at an election pursuant to K.S.A. 41-2646, and amendments thereto, a proposition to allow sales of alcoholic liquor by the individual drink in public places within the county without a requirement that any portion of their gross receipts be derived from the sale of food; 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.

(c) *No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. Providing samples is prohibited for any licensee who charges a cover charge or entry fee at any time during the business day. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.*

~~(e)~~(d) A drinking establishment shall specify in the application for a license or renewal of a license the premises to be licensed, which may include all premises which are in close proximity and are under the control of the applicant or licensee.

~~(d)~~(e) Notwithstanding any other provision of law to the contrary, any hotel of which the entire premises are licensed as a drinking establishment or as a drinking establishment/caterer may sell alcoholic liquor or cereal malt beverage by means of minibars located in guest rooms of such hotel, subject to the following:

(1) The key, magnetic card or other device required to attain access to a minibar in a guest room shall be provided only to guests who are registered to stay in such room and who are 21 or more years of age;

(2) containers or packages of spirits or wine sold by means of a minibar shall hold not less than 50 nor more than 200 milliliters; and

(3) a minibar shall be restocked with alcoholic liquor or cereal malt

beverage only during hours when the hotel is permitted to sell alcoholic liquor and cereal malt beverage as a drinking establishment.

~~(e)~~(f) A drinking establishment may store on its premises wine sold to a customer for consumption at a later date on its premises in the unopened container. Such wine must be kept separate from all other alcohol stock and in a secure locked area separated by customer. Such wine shall not be removed from the licensed premises in its unopened condition.

Sec. 13. K.S.A. 2012 Supp. 41-2655 is hereby amended to read as follows: 41-2655. (a) A license for a public venue shall allow the licensee to:

(1) Offer for sale, sell and serve alcoholic liquor by the individual drink for consumption on the licensed premises;

(2) offer for sale, sell and serve unlimited drinks for a fixed price in designated areas of the licensed premises;

(3) offer for sale and sell all inclusive packages which include unlimited drinks in designated areas of the licensed premises;

(4) offer for sale, sell and serve alcoholic liquor in the original container for consumption on the licensed premises in private suites, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier;

(5) store, in each private suite, which ~~are~~ *is an* enclosed or semi-enclosed seating ~~areas~~ *area*, having controlled access and separated from the general admission areas by a permanent barrier, alcoholic liquor sold in the original container to a customer in that private suite; and

(6) with the approval of the retailer or distributor, return for a full refund of the original purchase price unopened containers of alcoholic liquor to the retailer or distributor from whom such items were purchased upon the conclusion of an event if the next scheduled event for that premises is more than 90 days from the date of the concluded event.

(b) An applicant or public venue licensee shall specify in the application for a license, or renewal of a license, the premises to be licensed. No public venue licensee may offer for sale, sell or serve any alcoholic liquor in any area not included in the licensed premises.

(c) The term “designated areas” for purposes of this section shall mean an area identified in the license application, which may include suites, that has controlled access and is separated from the general admission by a barrier.

(d) The provisions of this section shall take effect and be in force from and after July 1, 2012.

*(e) All rules and regulations adopted on and after July 1, 2012, and prior to July 1, 2013, to implement this section shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary until revised, amended, revoked or nullified pursuant to law.*

*(f) This section shall be a part of and supplemental to the club and drinking establishment act.*

Sec. 14. K.S.A. 2012 Supp. 79-41a02 is hereby amended to read as follows: 79-41a02. (a) There is hereby imposed, for the privilege of selling alcoholic liquor, a tax at the rate of 10% upon the gross receipts derived from the sale of alcoholic liquor by any club, caterer, drinking establishment, public venue or temporary permit holder, *and upon the acquisition costs of any alcoholic liquor served as samples by clubs and drinking establishments.*

(b) The tax imposed by this section shall be paid by the consumer to the club, caterer, drinking establishment, public venue or temporary permit holder and it shall be the duty of each and every club, caterer, drinking establishment, public venue or temporary permit holder subject to this section to collect from the consumer the full amount of such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto. Each club, caterer, drinking establishment, public venue or temporary permit holder collecting the tax imposed hereunder shall be responsible for paying over the same to the state department of revenue in the manner prescribed by K.S.A. 79-41a03, and amendments thereto, and the state department of revenue shall administer and enforce the collection of such tax.

*(c) Any club or drinking establishment that serves free samples of alcoholic liquor shall remit the tax imposed by subsection (a) in the man-*

ner prescribed by K.S.A. 79-41a03, and amendments thereto, and the state department of revenue shall administer and enforce the payment of such tax.

New Sec. 15. (a) Alcoholic liquor and cereal malt beverage for the sampling as provided for in K.S.A. 41-2637, 41-2640, 41-2641 and 41-2642, and amendments thereto, shall be withdrawn from the inventory of the licensee. Except as provided by subsection (b), a person other than the licensee or the licensee’s agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this section.

(b) The holder of a supplier’s permit or such permit holder’s agent or employee may participate in and conduct product tastings of alcoholic beverages at a licensee’s premises, monitored and regulated by the division of alcoholic beverage control, and may open, touch or pour alcoholic beverages, make a presentation or answer questions at the tasting. Any alcoholic beverage or cereal malt beverages sampled under this subsection must be purchased from the licensee on whose premises the sampling is held. The licensee may not require the purchase of more alcoholic beverages or cereal malt beverages than is necessary for the tasting. This section does not authorize the supplier or its agent to withdraw or purchase an alcoholic beverage or cereal malt beverage from the holder of a distributor’s license or provide an alcoholic beverage or cereal malt beverage for sampling on the licensee’s premises that is not purchased from the licensee.

New Sec. 16. Each licensee licensed under this act who provides samples shall pay the drink tax imposed by K.S.A. 79-41a01 et seq., and amendments thereto, on the alcoholic liquor and cereal malt beverage inventory when the inventory is withdrawn from the licensee’s stock based on the licensee’s acquisition cost.

Sec. 17. K.S.A. 41-713 and 41-2610 and K.S.A. 2012 Supp. 41-104, 41-308d, 41-354, 41-2601, 41-2637, 41-2640, 41-2641, 41-2642, 41-2655 and 79-41a02 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

\_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*