

HOUSE BILL No. 2088

By Committee on Federal and State Affairs

1-23

1 AN ACT concerning alcoholic beverages; relating to the issuance of
2 citations for statutory violations; **{relating to sales of powdered**
3 **alcohol;}** amending K.S.A. 41-106 **{and K.S.A. 2014 Supp. 41-102**
4 **and 41-2640}** and repealing the existing section **{sections}**.
5

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

7 Section 1. K.S.A. 41-106 is hereby amended to read as follows: 41-
8 106. (a) Any citation issued by an agent of the division of alcoholic
9 beverage control for a violation of the liquor control act or the club and
10 drinking establishment act shall be delivered to the ~~person allegedly~~
11 ~~committing the violation licensee or licensee's agent or employee~~ **{a**
12 **person in charge of the licensed premises}** at the time of the alleged
13 violation. A copy of such citation also shall be delivered by United States
14 mail to the licensee within 30 days of the alleged violation. ~~If such citation~~
15 ~~and copy are not so delivered, the citation shall be void and unenforceable.~~

16 (b) Any duly authorized law enforcement officer who observes a
17 violation of the liquor control act or the club and drinking establishment
18 act may, after serving notice to the licensee or ~~licensee's agent or~~
19 ~~employee~~ **{a person in charge of the licensed premises}**, submit a report
20 of such violation to the division of alcoholic beverage control for review.
21 Upon receipt of such report, the director shall review the report and
22 determine if administrative action will be taken against the licensee. If the
23 director determines that administrative action will be taken, an
24 administrative citation and notice of administrative action shall be
25 delivered by United States mail to the licensee within 30 days of the date
26 of the alleged violation.

27 (c) The notice required to be served to the licensee **{or a person in**
28 **charge of the licensed premises}** at the time of the alleged violation
29 pursuant to subsection (b) shall be in writing and shall contain the
30 following:

- 31 (1) The name of the licensee;
- 32 (2) the date and time of the alleged violation;
- 33 (3) a description of the alleged violation; and
- 34 (4) a statement that a report of the alleged violation will be submitted
35 to the division of alcoholic beverage control for review.

36 (d) Any citations not issued in accordance with the provisions of this

1 *section shall be void and unenforceable.*

2 **{New Sec. 2. (a) No form of powdered alcohol shall be sold or**
3 **offered for sale by any person licensed under the Kansas liquor**
4 **control act.**

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

7 **Sec. 3. K.S.A. 2014 Supp. 41-102 is hereby amended to read as**
8 **follows: 41-102. As used in this act, unless the context clearly requires**
9 **otherwise:**

10 **(a) "Alcohol" means the product of distillation of any fermented**
11 **liquid, whether rectified or diluted, whatever its origin, and includes**
12 **synthetic ethyl alcohol but does not include denatured alcohol or wood**
13 **alcohol.**

14 **(b) "Alcoholic liquor" means alcohol, spirits, wine, beer and**
15 **every liquid or solid, patented or not, containing alcohol, spirits, wine**
16 **or beer and capable of being consumed as a beverage by a human**
17 **being, but shall not include any cereal malt beverage.**

18 **(c) "Beer" means a beverage, containing more than 3.2% alcohol**
19 **by weight, obtained by alcoholic fermentation of an infusion or**
20 **concoction of barley, or other grain, malt and hops in water and**
21 **includes beer, ale, stout, lager beer, porter and similar beverages**
22 **having such alcoholic content.**

23 **(d) "Caterer" has the meaning provided by K.S.A. 41-2601, and**
24 **amendments thereto.**

25 **(e) "Cereal malt beverage" has the meaning provided by K.S.A.**
26 **41-2701, and amendments thereto.**

27 **(f) "Club" has the meaning provided by K.S.A. 41-2601, and**
28 **amendments thereto.**

29 **(g) "Director" means the director of alcoholic beverage control of**
30 **the department of revenue.**

31 **(h) "Distributor" means the person importing or causing to be**
32 **imported into the state, or purchasing or causing to be purchased**
33 **within the state, alcoholic liquor for sale or resale to retailers licensed**
34 **under this act or cereal malt beverage for sale or resale to retailers**
35 **licensed under K.S.A. 41-2702, and amendments thereto.**

36 **(i) "Domestic beer" means beer which contains not more than**
37 **10% alcohol by weight and which is manufactured in this state.**

38 **(j) "Domestic fortified wine" means wine which contains more**
39 **than 14%, but not more than 20% alcohol by volume and which is**
40 **manufactured in this state.**

41 **(k) "Domestic table wine" means wine which contains not more**
42 **than 14% alcohol by volume and which is manufactured without**
43 **rectification or fortification in this state.**

1 (l) "Drinking establishment" has the meaning provided by K.S.A.
2 41-2601, and amendments thereto.

3 (m) "Farm winery" means a winery licensed by the director to
4 manufacture, store and sell domestic table wine and domestic fortified
5 wine.

6 (n) "Manufacture" means to distill, rectify, ferment, brew, make,
7 mix, concoct, process, blend, bottle or fill an original package with any
8 alcoholic liquor, beer or cereal malt beverage.

9 (o) (1) "Manufacturer" means every brewer, fermenter, distiller,
10 rectifier, wine maker, blender, processor, bottler or person who fills or
11 refills an original package and others engaged in brewing, fermenting,
12 distilling, rectifying or bottling alcoholic liquor, beer or cereal malt
13 beverage.

14 (2) "Manufacturer" does not include a microbrewery,
15 microdistillery or a farm winery.

16 (p) "Microbrewery" means a brewery licensed by the director to
17 manufacture, store and sell domestic beer.

18 (q) "Microdistillery" means a facility which produces spirits
19 from any source or substance that is licensed by the director to
20 manufacture, store and sell spirits.

21 (r) "Minor" means any person under 21 years of age.

22 (s) "Nonbeverage user" means any manufacturer of any of the
23 products set forth and described in K.S.A. 41-501, and amendments
24 thereto, when the products contain alcohol or wine, and all
25 laboratories using alcohol for nonbeverage purposes.

26 (t) "Original package" means any bottle, flask, jug, can, cask,
27 barrel, keg, hogshead or other receptacle or container whatsoever,
28 used, corked or capped, sealed and labeled by the manufacturer of
29 alcoholic liquor, to contain and to convey any alcoholic liquor.
30 Original container does not include a sleeve.

31 (u) "Person" means any natural person, corporation,
32 partnership, trust or association.

33 (v) *"Powdered alcohol" means alcohol that is prepared in a*
34 *powdered or crystal form for either direct use or for reconstitution in a*
35 *nonalcoholic liquid.*

36 ~~(w)~~ (w) "Primary American source of supply" means the
37 manufacturer, the owner of alcoholic liquor at the time it becomes a
38 marketable product or the manufacturer's or owner's exclusive agent
39 who, if the alcoholic liquor cannot be secured directly from such
40 manufacturer or owner by American wholesalers, is the source closest
41 to such manufacturer or owner in the channel of commerce from
42 which the product can be secured by American wholesalers.

43 ~~(x)~~ (x) (1) "Retailer" means a person who sells at retail, or offers

1 for sale at retail, alcoholic liquors.

2 (2) "Retailer" does not include a microbrewery, microdistillery or
3 a farm winery.

4 ~~(x)~~ (y) "Sale" means any transfer, exchange or barter in any
5 manner or by any means whatsoever for a consideration and includes
6 all sales made by any person, whether principal, proprietor, agent,
7 servant or employee.

8 ~~(y)~~ (z) "Salesperson" means any natural person who:

9 (1) Procures or seeks to procure an order, bargain, contract or
10 agreement for the sale of alcoholic liquor or cereal malt beverage; or

11 (2) is engaged in promoting the sale of alcoholic liquor or cereal
12 malt beverage, or in promoting the business of any person, firm or
13 corporation engaged in the manufacturing and selling of alcoholic
14 liquor or cereal malt beverage, whether the seller resides within the
15 state of Kansas and sells to licensed buyers within the state of Kansas,
16 or whether the seller resides without the state of Kansas and sells to
17 licensed buyers within the state of Kansas.

18 ~~(z)~~ (aa) "Secretary" means the secretary of revenue.

19 ~~(aa)~~ (bb) (1) "Sell at retail" and "sale at retail" refer to and mean
20 sales for use or consumption and not for resale in any form and sales
21 to clubs, licensed drinking establishments, licensed caterers or holders
22 of temporary permits.

23 (2) "Sell at retail" and "sale at retail" do not refer to or mean
24 sales by a distributor, a microbrewery, a farm winery, a licensed club,
25 a licensed drinking establishment, a licensed caterer or a holder of a
26 temporary permit.

27 ~~(bb)~~ (cc) "To sell" includes to solicit or receive an order for, to
28 keep or expose for sale and to keep with intent to sell.

29 ~~(ee)~~ (dd) "Sleeve" means a package of two or more 50-milliliter
30 (3.2-fluid-ounce) containers of spirits.

31 ~~(dd)~~ (ee) "Spirits" means any beverage which contains alcohol
32 obtained by distillation, mixed with water or other substance in
33 solution, and includes brandy, rum, whiskey, gin or other spirituous
34 liquors, and such liquors when rectified, blended or otherwise mixed
35 with alcohol or other substances.

36 ~~(ee)~~ (ff) "Supplier" means a manufacturer of alcoholic liquor or
37 cereal malt beverage or an agent of such manufacturer, other than a
38 salesperson.

39 ~~(ff)~~ (gg) "Temporary permit" has the meaning provided by
40 K.S.A. 41-2601, and amendments thereto.

41 ~~(gg)~~ (hh) "Wine" means any alcoholic beverage obtained by the
42 normal alcoholic fermentation of the juice of sound, ripe grapes,
43 fruits, berries or other agricultural products, including such beverages

1 containing added alcohol or spirits or containing sugar added for the
2 purpose of correcting natural deficiencies.

3 Sec. 4. K.S.A. 2014 Supp. 41-2640 is hereby amended to read as
4 follows: 41-2640. (a) No club, drinking establishment, caterer or
5 holder of a temporary permit, nor any person acting as an employee
6 or agent thereof, shall:

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

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

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

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

19 (5) *sell, offer to sell or serve free of charge any form of powdered*
20 *alcohol, as defined in K.S.A. 41-102, and amendments thereto; or*

21 ~~(5)~~ (6) advertise or promote in any way, whether on or off the
22 licensed premises, any of the practices prohibited under subsections
23 (a)(1) through ~~(4)~~ (5).

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

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

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

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

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

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

39 (6) *sell, offer to sell or serve free of charge any form of powdered*
40 *alcohol, as defined in K.S.A. 41-102, and amendments thereto; or*

41 ~~(6)~~ (7) advertise or promote in any way, whether on or off the
42 licensed premises, any of the practices prohibited under subsections
43 (b)(1) through ~~(5)~~ (6).

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

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

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

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

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

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

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

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

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

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

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

41 {(h) For purposes of this section, the term "person in charge"
42 means any individual or employee present on the licensed premises at
43 the time of the alleged violation who is responsible for the operation of

1 **the licensed premises. If no designated individual or employee is a**
2 **person in charge, then any employee present is the person in charge.}**

3 ~~Sec. 2. {5.}~~ K.S.A. 41-106 ~~is~~ **{and K.S.A. 2014 Supp. 41-102 and**
4 **41-2640 are}** hereby repealed.

5 ~~Sec. 3. {6.}~~ This act shall take effect and be in force from and after its
6 publication in the statute book.