

SENATE BILL No. 381

By Senator Steineger

2-6

1 AN ACT concerning alcoholic beverages; relating to sales of cereal malt
2 beverage; relating to retailer licenses under the Kansas liquor control
3 act; amending K.S.A. 41-308 and K.S.A. 2011 Supp. 41-102, 41-2703,
4 41-2704 and 41-2708 and repealing the existing sections; also repealing
5 K.S.A. 41-103.

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

8 Section 1. K.S.A. 2011 Supp. 41-102 is hereby amended to read as
9 follows: 41-102. As used in this act, unless the context clearly requires
10 otherwise:

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

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

19 (c) "Beer" means a beverage, containing more than 3.2% alcohol by
20 weight, obtained by alcoholic fermentation of an infusion or concoction of
21 barley, or other grain, malt and hops in water and includes beer, ale, stout,
22 lager beer, porter and similar beverages 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. 41-
26 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 the
30 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 within
33 the state, alcoholic liquor for sale or resale to retailers licensed under this
34 act or cereal malt beverage for sale or resale to retailers licensed under
35 K.S.A. 41-2702, and amendments thereto.

36 (i) "Domestic beer" means beer which contains not more than 10%

1 alcohol by weight and which is manufactured in this state.

2 (j) "Domestic fortified wine" means wine which contains more than
3 14%, but not more than 20% alcohol by volume and which is
4 manufactured in this state.

5 (k) "Domestic table wine" means wine which contains not more than
6 14% alcohol by volume and which is manufactured without rectification or
7 fortification in this state.

8 (l) "Drinking establishment" has the meaning provided by K.S.A. 41-
9 2601, and amendments thereto.

10 (m) "Farm winery" means a winery licensed by the director to
11 manufacture, store and sell domestic table wine and domestic fortified
12 wine.

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

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

21 (2) "Manufacturer" does not include a microbrewery or a farm
22 winery.

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

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

26 (r) "Nonbeverage user" means any manufacturer of any of the
27 products set forth and described in K.S.A. 41-501, and amendments
28 thereto, when the products contain alcohol or wine, and all laboratories
29 using alcohol for nonbeverage purposes.

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

35 (t) "Person" means any natural person, corporation, partnership, trust
36 or association.

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

- 1 (v) (1) "Retailer" means a person who sells at retail, or offers for sale
2 at retail, alcoholic liquors *and cereal malt beverage*.
- 3 (2) "Retailer" does not include a microbrewery or a farm winery.
- 4 (w) "Sale" means any transfer, exchange or barter in any manner or
5 by any means whatsoever for a consideration and includes all sales made
6 by any person, whether principal, proprietor, agent, servant or employee.
- 7 (x) "Salesperson" means any natural person who:
- 8 (1) Procures or seeks to procure an order, bargain, contract or
9 agreement for the sale of alcoholic liquor or cereal malt beverage; or
- 10 (2) is engaged in promoting the sale of alcoholic liquor or cereal malt
11 beverage, or in promoting the business of any person, firm or corporation
12 engaged in the manufacturing and selling of alcoholic liquor or cereal malt
13 beverage, whether the seller resides within the state of Kansas and sells to
14 licensed buyers within the state of Kansas, or whether the seller resides
15 without the state of Kansas and sells to licensed buyers within the state of
16 Kansas.
- 17 (y) "Secretary" means the secretary of revenue.
- 18 (z) (1) "Sell at retail" and "sale at retail" refer to and mean sales for
19 use or consumption and not for resale in any form and sales to clubs,
20 licensed drinking establishments, licensed caterers or holders of temporary
21 permits.
- 22 (2) "Sell at retail" and "sale at retail" do not refer to or mean sales by
23 a distributor, a microbrewery, a farm winery, a licensed club, a licensed
24 drinking establishment, a licensed caterer or a holder of a temporary
25 permit.
- 26 (aa) "To sell" includes to solicit or receive an order for, to keep or
27 expose for sale and to keep with intent to sell.
- 28 (bb) "Sleeve" means a package of two or more 50-milliliter (3.2-
29 fluid-ounce) containers of spirits.
- 30 (cc) "Spirits" means any beverage which contains alcohol obtained by
31 distillation, mixed with water or other substance in solution, and includes
32 brandy, rum, whiskey, gin or other spirituous liquors, and such liquors
33 when rectified, blended or otherwise mixed with alcohol or other
34 substances.
- 35 (dd) "Supplier" means a manufacturer of alcoholic liquor or cereal
36 malt beverage or an agent of such manufacturer, other than a salesperson.
- 37 (ee) "Temporary permit" has the meaning provided by K.S.A. 41-
38 2601, and amendments thereto.
- 39 (ff) "Wine" means any alcoholic beverage obtained by the normal
40 alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or
41 other agricultural products, including such beverages containing added
42 alcohol or spirits or containing sugar added for the purpose of correcting
43 natural deficiencies.

1 Sec. 2. K.S.A. 41-308 is hereby amended to read as follows: 41-308.

2 (a) A retailer's license shall allow the licensee to sell and offer for sale at
3 retail and deliver in the original package, as therein prescribed, alcoholic
4 liquor for use or consumption off of and away from the premises specified
5 in such license. A retailer's license shall permit sale and delivery of
6 alcoholic liquor only on the licensed premises and shall not permit sale of
7 alcoholic liquor for resale in any form, except that a licensed retailer may:

8 (1) Sell alcoholic liquor to a temporary permit holder for resale by
9 such permit holder; and

10 (2) sell and deliver alcoholic liquor to a caterer or to the licensed
11 premises of a club or drinking establishment, if such premises are in the
12 county where the retailer's premises are located or in an adjacent county,
13 for resale by such club, establishment or caterer.

14 (b) The holder of a retailer's license shall not sell, offer for sale, give
15 away or permit to be sold, offered for sale or given away in or from the
16 premises specified in such license any service or thing of value whatsoever
17 except alcoholic liquor in the original package, except that a licensed
18 retailer may:

19 (1) Charge a delivery fee for delivery to a club, drinking
20 establishment or caterer pursuant to subsection (a);

21 (2) sell lottery tickets and shares to the public in accordance with the
22 Kansas lottery act, if the retailer is selected as a lottery retailer;

23 (3) include in the sale of alcoholic liquor any goods included by the
24 manufacturer in packaging with the alcoholic liquor, subject to the
25 approval of the director; and

26 (4) distribute to the public, without charge, consumer advertising
27 specialities bearing advertising matter, subject to rules and regulations of
28 the secretary limiting the form and distribution of such specialities so that
29 they are not conditioned on or an inducement to the purchase of alcoholic
30 liquor.

31 (c) No licensed retailer shall furnish any entertainment in such
32 premises or permit any pinball machine or game of skill or chance to be
33 located in or on such premises.

34 (d) A retailer's license shall allow the licensee to store alcoholic
35 liquor in refrigerators, cold storage units, ice boxes or other cooling
36 devices, and the licensee may sell such alcoholic liquor to consumers in a
37 chilled condition.

38 (e) *If the licensee also holds a retailer's license to sell cereal malt*
39 *beverage in accordance with the provisions of K.S.A. 41-2701 et seq., and*
40 *amendments thereto, a retailer's license shall allow the licensee to sell and*
41 *offer for sale at retail and deliver in the original package, cereal malt*
42 *beverage for use or consumption off of and away from the premises*
43 *specified in such license. The sale or resale of cereal malt beverage by the*

1 *licensee shall be subject to the provisions of this section applicable to the*
2 *sale or resale of alcoholic liquor.*

3 Sec. 3. K.S.A. 2011 Supp. 41-2703 is hereby amended to read as
4 follows: 41-2703. (a) After examination of an application for a retailer's
5 license, the board of county commissioners or the director shall, if they
6 approve the same, issue a license to the applicant. The governing body of
7 the city shall, if the applicant is qualified as provided by law, issue a
8 license to such applicant.

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

10 (1) A person who is not a resident of the county in which the place of
11 business covered by the license is located, has not been a resident of such
12 county for at least six months or has not been a resident in good faith of
13 the state of Kansas.

14 (2) A person who has not been a resident of this state for at least one
15 year immediately preceding application for a retailer's license.

16 (3) A person who is not of good character and reputation in the
17 community in which the person resides.

18 (4) A person who is not a citizen of the United States.

19 (5) A person who, within two years immediately preceding the date
20 of application approval, has been convicted of, released from incarceration
21 for or released from probation or parole for a felony or any crime
22 involving moral turpitude, drunkenness, driving a motor vehicle while
23 under the influence of intoxicating liquor or violation of any other
24 intoxicating liquor law of any state or of the United States.

25 (6) A partnership, unless all the members of the partnership are
26 otherwise qualified to obtain a license.

27 (7) A corporation, if any manager, officer or director thereof, or any
28 stockholder owning in the aggregate more than 25% of the stock of such
29 corporation, would be ineligible to receive a license hereunder for any
30 reason other than the citizenship and residency requirements.

31 (8) A person whose place of business is conducted by a manager or
32 agent unless the manager or agent possesses all the qualifications of a
33 licensee.

34 (9) A person whose spouse would be ineligible to receive a retailer's
35 license for any reason other than citizenship, residence requirements or
36 age, except that this subsection (b)(9) shall not apply in determining
37 eligibility for a renewal license.

38 (10) A person whose spouse has been convicted of a felony or other
39 crime which would disqualify a person from licensure under this section
40 and such felony or other crime was committed during the time that the
41 spouse held a license under this act.

42 (c) After examination of an application for a retailer's license, the
43 board of county commissioners or the governing body of a city may deny a

1 license to a person, partnership or corporation if any manager, officer or
2 director thereof, or any stockholder owning in the aggregate more than
3 25% of the stock of such corporation, has been an officer, manager,
4 director or a stockholder owning in the aggregate more than 25% of the
5 stock, of a corporation which has:

6 (1) Had a retailer's license revoked under K.S.A. 41-2708, and
7 amendments thereto; or

8 (2) been convicted of a violation of the *Kansas liquor control act, the*
9 *club and drinking establishment act* or the cereal malt beverage laws of
10 this state.

11 (d) Retailers' licenses shall be issued either on an annual basis or for
12 the calendar year. If such licenses are issued on an annual basis, the board
13 of county commissioners or the governing body of the city shall notify the
14 distributors supplying the county or city on or before April 1 of the year if
15 a retailer's license is not renewed.

16 (e) In addition to, and consistent with the requirements of K.S.A. 41-
17 2701 *et seq.*, and amendments thereto, the board of county commissioners
18 of any county or the governing body of any city may provide by resolution
19 or ordinance for the issuance of a special event retailers' permit which
20 shall allow the permit holder to offer for sale, sell and serve cereal malt
21 beverage for consumption on unpermitted premises, which may be open to
22 the public, subject to the following:

23 (1) A special event retailers' permit shall specify the premises for
24 which the permit is issued;

25 (2) a special event retailers' permit shall be issued for the duration of
26 the special event, the dates and hours of which shall be specified in the
27 permit;

28 (3) no more than four special event retailers' permits may be issued to
29 any one applicant in a calendar year; and

30 (4) a special event retailers' permit shall not be transferable or
31 assignable.

32 (f) A special event retailers' permit holder shall not be subject to the
33 provisions of the beer and cereal malt beverage keg registration act, K.S.A.
34 41-2901 *et seq.*, and amendments thereto.

35 Sec. 4. K.S.A. 2011 Supp. 41-2704 is hereby amended to read as
36 follows: 41-2704. (a) In addition to and consistent with the requirements
37 of the cereal malt beverage act, the board of county commissioners of any
38 county or the governing body of any city may prescribe hours of closing,
39 standards of conduct and rules and regulations concerning the moral,
40 sanitary and health conditions of places licensed pursuant to this act and
41 may establish zones within which no such place may be located.

42 (b) Within any city where the days of sale at retail of cereal malt
43 beverage in the original package have not been expanded as provided by

1 K.S.A. 2011 Supp. 41-2911, and amendments thereto, or have been so
2 expanded and subsequently restricted as provided by K.S.A. 2011 Supp.
3 41-2911, and amendments thereto, and within any township where the
4 hours and days of sale at retail of cereal malt beverage in the original
5 package have not been expanded as provided by K.S.A. 2011 Supp. 41-
6 2911, and amendments thereto, or have been so expanded and
7 subsequently restricted as provided by K.S.A. 2011 Supp. 41-2911, and
8 amendments thereto, no cereal malt beverages may be sold:

9 (1) Between the hours of 12 midnight and 6 a.m.; or

10 (2) on Sunday, except in a place of business which is licensed to sell
11 cereal malt beverage for consumption on the premises, which derives not
12 less than 30% of its gross receipts from the sale of food for consumption
13 on the licensed premises and which is located in a county where such sales
14 on Sunday have been authorized by resolution of the board of county
15 commissioners of the county or in a city where such sales on Sunday have
16 been authorized by ordinance of the governing body of the city.

17 (c) Within any city where the days of sale at retail of cereal malt
18 beverage in the original package have been expanded as provided by
19 K.S.A. 2011 Supp. 41-2911, and amendments thereto, and have not been
20 subsequently restricted as provided in K.S.A. 2011 Supp. 41-2911, and
21 amendments thereto, and within any township where the days of sale at
22 retail of cereal malt beverage in the original package have been expanded
23 as provided by K.S.A. 2011 Supp. 41-2911, and amendments thereto, and
24 have not been subsequently restricted as provided by K.S.A. 2011 Supp.
25 41-2911, and amendments thereto, no person shall sell at retail cereal malt
26 beverage:

27 (1) Between the hours of 12 midnight and 6 a.m.;

28 (2) in the original package before 12 noon *or* after 8 p.m. on Sunday;

29 (3) on Easter Sunday; or

30 (4) for consumption on the licensed premises on Sunday, except in a
31 place of business which is licensed to sell cereal malt beverage for
32 consumption on the premises, which derives not less than 30% of its gross
33 receipts from the sale of food for consumption on the licensed premises
34 and which is located in a county where such sales on Sunday have been
35 authorized by resolution of the board of county commissioners of the
36 county or in a city where such sales on Sunday have been authorized by
37 ordinance of the governing body of the city.

38 (d) No private rooms or closed booths shall be operated in a place of
39 business, but this provision shall not apply if the licensed premises also are
40 licensed as a club pursuant to the club and drinking establishment act.

41 (e) Each place of business shall be open to the public and to law
42 enforcement officers at all times during business hours, except that a
43 premises licensed as a club pursuant to the club and drinking establishment

1 act shall be open to law enforcement officers and not to the public.

2 (f) Except as otherwise provided by this subsection, no licensee shall
3 permit a person under the legal age for consumption of cereal malt
4 beverage to consume or purchase any cereal malt beverage in or about a
5 place of business. A licensee's employee who is not less than 18 years of
6 age may dispense or sell cereal malt beverage, if:

7 (1) The licensee's place of business is licensed only to sell at retail
8 cereal malt beverage in the original package and not for consumption on
9 the premises; or

10 (2) the licensee's place of business is a licensed food service
11 establishment, as defined by K.S.A. 36-501, and amendments thereto, and
12 not less than 50% of the gross receipts from the licensee's place of
13 business is derived from the sale of food for consumption on the premises
14 of the licensed place of business.

15 (g) No person shall have any alcoholic liquor in such person's
16 possession while in a place of business, unless the premises are currently
17 licensed as a club or drinking establishment pursuant to the club and
18 drinking establishment act.

19 (h) *Notwithstanding any provision of this section to the contrary:*

20 (1) Cereal malt beverages may be sold on premises which are
21 licensed pursuant to both the cereal malt beverage act and the club and
22 drinking establishment act at any time when alcoholic liquor is allowed by
23 law to be served on the premises; *and*

24 (2) *cereal malt beverages may be sold on premises which are*
25 *licensed pursuant to both the cereal malt beverage act and the Kansas*
26 *liquor control act at any time when alcoholic liquor is allowed by law to*
27 *be served on the premises.*

28 Sec. 5. K.S.A. 2011 Supp. 41-2708 is hereby amended to read as
29 follows: 41-2708. (a) The board of county commissioners or the governing
30 body of any city, upon five days' notice to the persons holding a license,
31 may revoke or suspend the license for any one of the following reasons:

32 (1) The licensee has violated any of the provisions of K.S.A. 41-2701
33 *et seq.*, and amendments thereto, or any rules or regulations made by the
34 board or the city, as the case may be;

35 (2) drunkenness of the licensee or permitting any intoxicated person
36 to remain in or upon the licensee's place of business;

37 (3) the sale of cereal malt beverages to any person under the legal age
38 for consumption of cereal malt beverage;

39 (4) permitting any person to mix drinks with materials purchased in
40 or upon the place of business or brought in for that purpose;

41 (5) the sale or possession of, or permitting any person to use or
42 consume on the licensed premises, any alcoholic liquor, as defined by
43 K.S.A. 41-102, and amendments thereto; or

1 (6) the licensee has been convicted of a violation of the beer and
2 cereal malt beverage keg registration act.

3 (b) The provisions of subsections (a)(4) and (a)(5) shall not apply if
4 ~~the place of business or premises is also~~ ~~are~~ currently licensed as a club or
5 drinking establishment pursuant to the club and drinking establishment
6 act, *or as a retailer pursuant to the Kansas liquor control act.*

7 (c) The board of county commissioners or the governing body of any
8 city, upon five days' notice to the persons holding a license, shall revoke or
9 suspend the license for any one of the following reasons:

10 (1) The licensee has fraudulently obtained the license by giving false
11 information in the application therefor;

12 (2) the licensee has become ineligible to obtain a license under this
13 act;

14 (3) the nonpayment of any license fees;

15 (4) permitting any gambling in or upon the licensee's place of
16 business;

17 (5) the employment of persons under 18 years of age in dispensing or
18 selling cereal malt beverages;

19 (6) the employment or continuation in employment of a person in
20 connection with the sale, serving or dispensing of cereal malt beverages if
21 the licensee knows such person has been, within the preceding two years,
22 adjudged guilty of a felony or of any violation of the intoxicating liquor
23 laws of this state, another state or the United States; or

24 (7) there has been a violation of K.S.A. 21-4106 or 21-4107, prior to
25 their repeal, or K.S.A. 2011 Supp. 21-6204, and amendments thereto, in or
26 upon the licensee's place of business.

27 (d) Within 20 days after the order of the board revoking or
28 suspending any license, the licensee may appeal to the district court and
29 the district court shall proceed to hear such appeal as though such court
30 had original jurisdiction of the matter. Any appeal taken from an order
31 revoking or suspending the license shall not suspend the order of
32 revocation or suspension during the pendency of any such appeal.

33 Sec. 6. K.S.A. 41-103 and 41-308 and K.S.A. 2011 Supp. 41-102, 41-
34 2703, 41-2704 and 41-2708 are hereby repealed.

35 Sec. 7. This act shall take effect and be in force from and after its
36 publication in the statute book.