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4 **Substitute for SENATE BILL No. 328**

5
6 By Committee on Federal and State Affairs

7
8 3-1

9
10 AN ACT concerning beer and cereal malt beverages; enacting the keg
11 registration act; amending K.S.A. 41-311 and 41-2708 and repealing
12 the existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) This section and sections 2 and 3, and amend-
16 ments thereto, shall be known and may be cited as the beer and cereal
17 malt beverage keg registration act.

18 (b) ~~The power to regulate the sale at retail and the possession of beer~~
19 ~~and cereal malt beverages in containers having a liquid capacity of four~~
20 ~~or more gallons, except as specifically delegated in K.S.A. 41-2708, and~~
21 ~~amendments thereto, is hereby vested exclusively in the state and shall~~
22 ~~be exercised as provided in this act.~~ Any ordinance or resolution adopted
23 by a city or county which is in conflict with or contrary to the provisions
24 of this act shall be null and void.

25 New Sec. 2. (a) Prior to the sale at retail of any beer in a container
26 having a liquid capacity of four or more gallons, the retailer or the re-
27 tailer's employee or agent shall affix to the beer container a keg identi-
28 fication number. At the time of sale at retail of any such container of beer,
29 the retailer or the retailer's employee or agent shall record the keg num-
30 ber; the date of the sale; the purchaser's name, address and signature;
31 and the number of a piece of identification bearing both the purchaser's
32 picture and the purchaser's signature. Such record shall be kept by the
33 retailer for not less than six months at the premises where the purchase
34 was made.

35 (b) For the purpose of investigating ~~violations~~ **[a violation]** of laws
36 prohibiting the possession or consumption of beer by persons under the
37 age of 21 and if such violation involves a container required to be regis-
38 tered under the beer and cereal malt beverage keg registration act and if
39 there is reason to believe that a retailer sold such container, such retailer's
40 ~~records~~ **[relating to the sale of such container which are]** required to
41 be kept by this section ~~and which are related to a specific violation,~~ shall
42 be available for inspection by any law enforcement officer during normal
43 business hours of the retailer or at any other reasonable time. **[Records**

1 **required to be kept by this section shall not be available for in-**
2 **spection or subject to subpoena in any civil or administrative action**
3 **or criminal prosecution other than a civil or administrative action**
4 **or criminal prosecution relating to a specific violation of the liquor**
5 **control act.]**

6 (c) Upon a determination that a retailer or a retailer's employee or
7 agent has **[Substantially and intentionally]** violated this section or any
8 rules and regulations adopted pursuant to this section, the director may
9 suspend or revoke the retailer's license in the manner provided by K.S.A.
10 41-320, and amendments thereto, and may impose a fine as provided by
11 K.S.A. 41-328, and amendments thereto.

12 (d) It is a class B nonperson misdemeanor **[for a person who is not**
13 **a retailer acting in the ordinary course of business]** to: (1) Remove
14 from a beer container all or part of a keg identification number required
15 pursuant to this section; (2) make unreadable all or any part of a keg
16 identification number required by this section to be affixed to a beer
17 container; or (3) possess a beer container **[required to be registered**
18 **under this act]** that does not have the keg identification number re-
19 quired by this section.

20 (e) The secretary of revenue shall adopt any rules and regulations
21 necessary to implement the provisions of this section. Such rules and
22 regulations may include, but shall not be limited to, provisions establish-
23 ing standards for marking and handling containers which are required to
24 be registered under this section.

25 (f) The secretary of revenue shall provide any forms and keg identi-
26 fication tags or labels necessary under the provisions of this section. There
27 shall be no charge for such forms, tags or labels provided by the secretary.

28 (g) It shall be a defense to any criminal prosecution or civil **[or ad-**
29 **ministrative]** action under this section if the defendant legally sold beer
30 in **[substantial]** compliance with the provisions of this section and any
31 rules and regulations adopted pursuant thereto.

32 (h) The provisions of this section shall not apply to sales by retailers
33 to clubs, drinking establishments and caterers licensed under the club
34 and drinking establishment act.

35 (i) Words or phrases used in this section shall have the meaning as-
36 cribed thereto by K.S.A. 41-102, and amendments thereto.

37 New Sec. 3. (a) Prior to the sale by a retailer or a retailer's employee
38 or agent of any cereal malt beverage in a container having a liquid capacity
39 of four or more gallons, the retailer or the retailer's employee or agent
40 shall affix to the cereal malt beverage container a keg identification num-
41 ber. At the time of sale of any such container of cereal malt beverage,
42 the retailer, or the retailer's employee or agent, shall record the keg num-
43 ber; the date of the sale; the purchaser's name, address and signature;

1 and the number of a piece of identification bearing both the purchaser's
2 picture and the purchaser's signature. Such record shall be kept by the
3 retailer for not less than six months at the premises where the purchase
4 was made.

5 (b) No person under the age of 21 shall sell at retail any cereal malt
6 beverage in a container having a liquid capacity of four or more gallons.

7 (c) For the purpose of investigating ~~violations~~ **[a violation]** of laws
8 prohibiting the possession or consumption of cereal malt beverage by
9 persons under the legal age for consumption of cereal malt beverage and
10 if such violation involves a container required to be registered under the
11 beer and cereal malt beverage keg registration act and if there is reason
12 to believe that such retailer sold such container, such retailer's records
13 **[relating to the sale of such containers which are]** required to be kept
14 by this section ~~which are related to a specific violation~~ shall be available
15 for inspection by any law enforcement officer during normal business
16 hours or at any other reasonable time. **[Records required to be kept by**
17 **this section shall not be available for inspection or subject to sub-**
18 **poena in any civil or administrative action or criminal prosecution**
19 **other than a civil or administrative action or criminal prosecution**
20 **relating to a specific violation of K.S.A. 41-2701 et seq., and amend-**
21 **ments thereto.]**

22 (d) Upon a determination that a retailer or a retailer's employee or
23 agent **[substantially and intentionally]** has violated this section or any
24 rules and regulations adopted pursuant to this section, the board of county
25 commissioners or the governing body of the city may suspend or revoke
26 the retailer's license in the manner provided by K.S.A. 41-2708, and
27 amendments thereto, and may impose a fine pursuant to K.S.A. 41-2711,
28 and amendments thereto.

29 (e) It is a class B nonperson misdemeanor **[for a person who is not**
30 **a retailer acting in the ordinary course of business]** to: (1) Remove
31 from a cereal malt beverage container all or part of a keg identification
32 number required pursuant to this section; (2) make unreadable all or any
33 part of a keg identification number required by this section to be affixed
34 to a cereal malt beverage container; or (3) possess a cereal malt beverage
35 container **[required to be registered under this act]** that does not have
36 the keg identification number required by this section.

37 (f) The secretary of revenue shall adopt any rules and regulations
38 necessary to implement the provisions of this section. Such rules and
39 regulations may include, but shall not be limited to, provisions establish-
40 ing standards for marking and handling of containers which are required
41 to be registered under this section.

42 (g) The secretary of revenue shall provide any forms and keg iden-
43 tification tags or labels necessary under the provisions of this act. There

1 shall be no charge for such forms, tags or labels provided by the secretary.
2 (h) It shall be a defense to any criminal prosecution or civil **[or ad-**
3 **ministrative]** action under this section if the defendant legally sold cereal
4 malt beverage in **[substantial]** compliance with the provisions of this
5 section and any rules and regulations adopted pursuant thereto.

6 (i) Words and phrases used in this section shall have the meaning
7 ascribed thereto by K.S.A. 41-2701, and amendments thereto.

8 Sec. 4. K.S.A. 41-311 is hereby amended to read as follows: 41-311.

9 (a) No license of any kind shall be issued pursuant to the liquor control
10 act to a person:

11 (1) Who has not been a citizen of the United States for at least 10
12 years, except that the spouse of a deceased retail licensee may receive
13 and renew a retail license notwithstanding the provisions of this subsec-
14 tion (a)(1) if such spouse is otherwise qualified to hold a retail license and
15 is a United States citizen or becomes a United States citizen within one
16 year after the deceased licensee's death;

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

19 (3) who has had a license revoked for cause under the provisions of
20 ~~this~~ *the liquor control act, the beer and cereal malt beverage keg regis-*
21 *tration act* or who has had any license issued under the cereal malt bev-
22 erage laws of any state revoked for cause except that a license may be
23 issued to a person whose license was revoked for the conviction of a
24 misdemeanor at any time after the lapse of 10 years following the date of
25 the revocation;

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

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

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

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

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

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

42 (10) who is the holder of a valid and existing license issued under
43 article 27 of chapter 41 of the Kansas Statutes Annotated unless the per-

1 son agrees to and does surrender the license to the officer issuing the
2 same upon the issuance to the person of a license under this act, except
3 that a retailer licensed pursuant to K.S.A. 41-2702 and amendments
4 thereto shall be eligible to receive a retailer's license under the Kansas
5 liquor control act;

6 (11) who does not own the premises for which a license is sought, or
7 does not have a written lease thereon for at least $\frac{3}{4}$ of the period for
8 which the license is to be issued; or

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

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

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

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

17 (3) a person who has beneficial interest in the manufacture, prepa-
18 ration or wholesaling of alcoholic beverages;

19 (4) a person who has beneficial interest in any other retail establish-
20 ment licensed under this act, except that the spouse of a licensee may
21 own and hold a retailer's license for another retail establishment;

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

24 (6) a corporation; or

25 (7) a trust, if any grantor, beneficiary or trustee would be ineligible
26 to receive a license under this act for any reason, except that the provi-
27 sions of subsection (a)(6) shall not apply in determining whether a ben-
28 eficiary would be eligible for a license.

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

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

34 (2) a copartnership, unless all of the copartners shall have been res-
35 idents of this state for at least five years immediately preceding the date
36 of application and unless all the members of the copartnership would be
37 eligible to receive a manufacturer's license under this act;

38 (3) a trust, if any grantor, beneficiary or trustee would be ineligible
39 to receive a license under this act for any reason, except that the provi-
40 sions of subsection (a)(6) shall not apply in determining whether a ben-
41 eficiary would be eligible for a license;

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

43 (5) an individual who has not been a resident of this state for at least

1 five years immediately preceding the date of application.

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

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

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

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

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

37 (5) an individual who has not been a resident of this state for at least
38 10 years immediately preceding the date of application, except that:

39 (A) A wholesaler of cereal malt beverages properly licensed on Sep-
40 tember 1, 1948, shall be eligible for a beer distributor's license; and

41 (B) a person who has been a resident of the state for at least one year
42 immediately preceding the date of application shall be eligible for a beer
43 distributor's license.

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

6 (f) No microbrewery license or farm winery license shall be issued to
7 a:

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

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

11 (3) person who has beneficial interest in the manufacture, prepara-
12 tion or wholesaling of alcoholic beverages other than that produced by
13 such brewery or winery;

14 (4) person, copartnership or association which has beneficial interest
15 in any retailer licensed under this act or under K.S.A. 41-2702 and amend-
16 ments thereto;

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

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

23 (7) a trust, if any grantor, beneficiary or trustee would be ineligible
24 to receive a license under this act for any reason, except that the provi-
25 sions of subsection (a)(6) shall not apply in determining whether a ben-
26 eficiary would be eligible for a license.

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

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

41 (2) has had a license issued under the alcoholic liquor or cereal malt
42 beverage laws of this or any other state revoked for cause, except that a
43 person may be appointed as an agent if the person's license was revoked

1 for the conviction of a misdemeanor and 10 years have lapsed since the
2 date of the revocation;

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

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

10 (5) is less than 21 years of age.

11 Sec. 5. K.S.A. 41-2708 is hereby amended to read as follows: 41-
12 2708. (a) The board of county commissioners or the governing body of
13 any city, upon five days' notice to the persons holding a license, shall
14 revoke or suspend the license for any one of the following reasons:

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

17 (2) the licensee has violated any of the provisions of ~~this act~~ K.S.A.
18 *41-2701 et seq., and amendments thereto*, or any rules or regulations made
19 by the board or the city, as the case may be;

20 (3) the licensee has become ineligible to obtain a license under this
21 act;

22 (4) drunkenness of the licensee or permitting any intoxicated person
23 to remain in the licensee's place of business;

24 (5) the sale of cereal malt beverages to any person under the legal
25 age for consumption of cereal malt beverage;

26 (6) the nonpayment of any license fees;

27 (7) permitting any gambling in or upon the licensee's place of
28 business;

29 (8) permitting any person to mix drinks with materials purchased in
30 the place of business or brought in for that purpose;

31 (9) the employment of persons under 18 years of age in dispensing
32 or selling cereal malt beverages;

33 (10) the employment or continuation in employment of a person in
34 connection with the sale, serving or dispensing of cereal malt beverages
35 if the licensee knows such person has been, within the preceding two
36 years, adjudged guilty of a felony or of any violation of the intoxicating
37 liquor laws of this state, another state or the United States; ~~or~~

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

41 *(12) the licensee has been convicted of a violation of the beer and*
42 *cereal malt beverage keg registration act.*

43 (b) The provisions of subsections (a)(8) and (11) shall not apply if the

1 place of business or premises are also currently licensed as a club or
2 drinking establishment pursuant to the club and drinking establishment
3 act.

4 (c) Within 20 days after the order of the board revoking or suspending
5 any license, the licensee may appeal to the district court and the district
6 court shall proceed to hear such appeal as though such court had original
7 jurisdiction of the matter. Any appeal taken from an order revoking or
8 suspending the license shall not suspend the order of revocation or sus-
9 pension during the pendency of any such appeal. In case of the revocation
10 of the license of any licensee, no new license shall be issued to the former
11 licensee, or to any person acting for or on the former licensee's behalf,
12 for a period of six months thereafter.

13 Sec. 6. K.S.A. 41-311 and 41-2708 are hereby repealed.

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

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