

## Substitute for HOUSE BILL No. 2114

By Committee on Judiciary

2-18

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9 AN ACT concerning civil procedure; relating to civil liability for serving  
10 alcoholic beverages.

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

13 Section 1. (a) An aggrieved party shall have a cause of action against  
14 a licensee who knowingly sells, gives away, or permits the sale, gift or  
15 procuring of any alcoholic liquor or cereal malt beverage to or for any  
16 person who is visibly intoxicated by the consumption of such alcoholic  
17 liquor or cereal malt beverage, or a licensee who directly or indirectly,  
18 sells to, buys for, gives or furnishes any alcoholic liquor or cereal malt  
19 beverage to any minor, if a jury or court finds, by clear and convincing  
20 evidence, the following: (1) That alcoholic liquor or cereal malt beverage  
21 was sold by the licensee on the licensed premises of such licensee to the  
22 minor or visibly intoxicated person and consumed by the minor or visibly  
23 intoxicated person on the licensed premises of such licensee; (2) the con-  
24 sumption of such alcoholic liquor or cereal malt beverage was a proximate  
25 cause of the damages sustained by the aggrieved party; and (3) the dam-  
26 ages were a foreseeable consequence of such service of alcoholic liquor  
27 or cereal malt beverage by the licensee.

28 (b) Any claim under subsection (a) shall survive death for purposes  
29 of K.S.A. 60-1801, and amendments thereto, and may be maintained in  
30 a wrongful death action under K.S.A. 60-1901, and amendments thereto.

31 (c) Except as provided further, any claim under subsection (a) shall  
32 be subject to and determined under K.S.A. 60-258a, and amendments  
33 thereto. The actions of an employee shall not be attributable to the em-  
34 ployer if:

35 (1) The employer requires its employees to attend a server/seller  
36 training program certified by the director of alcoholic beverage control  
37 of the department of revenue;

38 (2) the employee has actually attended such a training program; and

39 (3) the employer has not directly or indirectly encouraged the em-  
40 ployee to sell, give away, or permit the sale, gift or procuring of any  
41 alcoholic liquor or cereal malt beverage to or for any person who is visibly  
42 intoxicated by the consumption of such alcoholic liquor or cereal malt  
43 beverage, or directly or indirectly, sell to, buy for, give or furnish any

- 1 alcoholic liquor or cereal malt beverage to any minor.
- 2 (d) Blood alcohol content obtained at a different time than the point  
3 when the alcoholic liquor or cereal malt beverage was served and evi-  
4 dence that the visibly intoxicated person was furnished such alcoholic  
5 liquor or cereal malt beverage without additional evidence that the li-  
6 censee acted knowingly or intentionally shall not constitute *prima facie* ev-  
7 idence of liability under this section.
- 8 (e) It shall be an absolute defense in any civil cause of action claimed  
9 under subsection (a), in regard to a minor, if the licensee shows, by clear  
10 and convincing evidence that: (1) At the time of the occurrence of the  
11 act giving rise to the cause of action, the licensee held a valid license or  
12 valid temporary permit; (2) the licensee sold the alcoholic liquor or cereal  
13 malt beverage to the minor with reasonable cause to believe that the  
14 minor was 21 or more years of age or of legal age for the consumption  
15 of alcoholic liquor or cereal malt beverage; and (3) to purchase the al-  
16 coholic liquor or cereal malt beverage, the person exhibited to the li-  
17 censee a driver's license, Kansas nondriver's identification card or other  
18 official or apparently official document, containing a photograph of the  
19 minor and purporting to establish that such minor was 21 or more years  
20 of age or of legal age for the consumption of alcoholic liquor or cereal  
21 malt beverage. This defense shall not apply if the minor is a visibly in-  
22 toxicated person.
- 23 (f) As used in this section:
- 24 (1) "Aggrieved party" means a person who sustains damages as a con-  
25 sequence of the acts or conduct of a minor or visibly intoxicated person,  
26 but does not include: (A) Such minor or visibly intoxicated person or such  
27 minor or visibly intoxicated person's spouse, dependents, personal rep-  
28 resentative, heirs or assigns; or (B) any person who aided or abetted in  
29 the furnishing or sale of the alcoholic liquor or cereal malt beverages to  
30 the minor or visibly intoxicated person.
- 31 (2) "Licensee" means a licensee under, except as provided further,  
32 the Kansas liquor control act, article 1 of chapter 41 of the Kansas Statutes  
33 Annotated, and amendments thereto; the club and drinking establishment  
34 act, article 26 of chapter 41 of the Kansas Statutes Annotated, and amend-  
35 ments thereto; or except as provided further, the provisions of article 27  
36 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto.  
37 "Licensee" shall not include a person who holds a license to sell only  
38 cereal malt beverages in original and unopened containers, and not for  
39 consumption on the premises or a person who sells at retail alcoholic  
40 liquor.
- 41 (3) "Visibly intoxicated person" means a person who is physically or  
42 mentally intoxicated by the consumption of alcoholic liquor or cereal malt  
43 beverage to the extent that such person presents a clear danger to such

1 person's self and others.

2 (4) "Alcoholic liquor", "cereal malt beverage", "minor" and "sell at  
3 retail" shall have the meanings ascribed thereto in K.S.A. 41-102, and  
4 amendments thereto.

5 Sec. 2. This act shall take effect and be in force from and after its  
6 publication in the statute book.