

HOUSE BILL No. 2697

By Committee on Federal and State Affairs

2-12

9 AN ACT concerning alcoholic beverages; relating to retailer's licenses
10 under the Kansas liquor control act; amending K.S.A. 41-308 and 41-
11 713 and K.S.A. 2009 Supp. 41-102, 41-311, 41-313 and 41-710 and
12 repealing the existing sections; also repealing K.S.A. 41-103 and 41-
13 711.

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

16 Section 1. K.S.A. 2009 Supp. 41-102 is hereby amended to read as
17 follows: 41-102. As used in this act, unless the context clearly requires
18 otherwise:

19 (a) "Alcohol" means the product of distillation of any fermented liq-
20 uid, whether rectified or diluted, whatever its origin, and includes syn-
21 thetic ethyl alcohol but does not include denatured alcohol or wood
22 alcohol.

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

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

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

34 (e) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
35 2701, and amendments thereto.

36 (f) "Club" has the meaning provided by K.S.A. 41-2601, and amend-
37 ments thereto.

38 (g) "Director" means the director of alcoholic beverage control of the
39 department of revenue.

40 (h) "Distributor" means the person importing or causing to be im-
41 ported into the state, or purchasing or causing to be purchased within
42 the state, alcoholic liquor for sale or resale to retailers licensed under this
43 act or cereal malt beverage for sale or resale to retailers licensed under

- 1 K.S.A. 41-2702, and amendments thereto.
- 2 (i) “Domestic beer” means beer which contains not more than 8%
3 alcohol by weight and which is manufactured in this state.
- 4 (j) “Domestic fortified wine” means wine which contains more than
5 14%, but not more than 20% alcohol by volume and which is manufac-
6 tured in this state without rectification.
- 7 (k) “Domestic table wine” means wine which contains not more than
8 14% alcohol by volume and which is manufactured without rectification
9 or fortification in this state.
- 10 (l) “Drinking establishment” has the meaning provided by K.S.A. 41-
11 2601, and amendments thereto.
- 12 (m) “Farm winery” means a winery licensed by the director to man-
13 ufacture, store and sell domestic table wine and domestic fortified wine.
- 14 (n) “Manufacture” means to distill, rectify, ferment, brew, make, mix,
15 concoct, process, blend, bottle or fill an original package with any alco-
16 holic liquor, beer or cereal malt beverage.
- 17 (o) (1) “Manufacturer” means every brewer, fermenter, distiller, rec-
18 tifier, wine maker, blender, processor, bottler or person who fills or refills
19 an original package and others engaged in brewing, fermenting, distilling,
20 rectifying or bottling alcoholic liquor, beer or cereal malt 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 prod-
27 ucts set forth and described in K.S.A. 41-501, and amendments thereto,
28 when the products contain alcohol or wine, and all laboratories using
29 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
32 or 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,
38 the owner of alcoholic liquor at the time it becomes a marketable product
39 or the manufacturer’s or owner’s exclusive agent who, if the alcoholic
40 liquor cannot be secured directly from such manufacturer or owner by
41 American wholesalers, is the source closest to such manufacturer or
42 owner in the channel of commerce from which the product can be se-
43 cured by American wholesalers.

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

1 natural deficiencies.

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

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

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

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

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

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

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

24 (3) include in the sale of alcoholic liquor any goods included by the
 25 manufacturer in packaging with the alcoholic liquor, subject to the ap-
 26 proval of the director; ~~and~~

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

32 (5) *sell any other good or service on the licensed premise.*

33 (c) No licensed retailer shall ~~furnish any entertainment in such prem-~~
 34 ~~ises or permit any pinball machine or game of skill or game of chance to~~
 35 be located in or on such premises.

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

40 Sec. 3. K.S.A. 2009 Supp. 41-311 is hereby amended to read as fol-
 41 lows: 41-311. (a) No license of any kind shall be issued pursuant to the
 42 liquor control act to a person:

43 (1) Who has not been a citizen of the United States for at least 10

1 years, except that the spouse of a deceased retail licensee may receive
2 and renew a retail license notwithstanding the provisions of this subsec-
3 tion (a)(1) if such spouse is otherwise qualified to hold a retail license and
4 is a United States citizen or becomes a United States citizen within one
5 year after the deceased licensee's death;

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

8 (3) who has had a license revoked for cause under the provisions of
9 the liquor control act, the beer and cereal malt beverage keg registration
10 act or who has had any license issued under the cereal malt beverage laws
11 of any state revoked for cause except that a license may be issued to a
12 person whose license was revoked for the conviction of a misdemeanor
13 at any time after the lapse of 10 years following the date of the revocation;

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

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

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

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

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

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

30 (10) who is the holder of a valid and existing license issued under
31 article 27 of chapter 41 of the Kansas Statutes Annotated unless the per-
32 son agrees to and does surrender the license to the officer issuing the
33 same upon the issuance to the person of a license under this act, except
34 that a retailer licensed pursuant to K.S.A. 41-2702, and amendments
35 thereto, shall be eligible to receive a retailer's license under the Kansas
36 liquor control act;

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

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

- 1 (13) whose spouse has been convicted of a felony or other crime
 2 which would disqualify a person from licensure under this section and
 3 such felony or other crime was committed during the time that the spouse
 4 held a license under this act; or
- 5 (14) who does not provide any data or information required by K.S.A.
 6 2009 Supp. 41-311b, and amendments thereto.
- 7 (b) No retailer's license shall be issued to:
- 8 (1) ~~A person who is not a resident of this state;~~
 9 ~~(2) a person who has not been a resident of this state for at least four~~
 10 ~~years immediately preceding the date of application;~~
 11 ~~(3) A person who has a beneficial interest in a manufacturer, distrib-~~
 12 ~~utor, farm winery or microbrewery licensed under this act;~~
 13 ~~(4) a person who has a beneficial interest in any other retail estab-~~
 14 ~~lishment licensed under this act, except that the spouse of a licensee may~~
 15 ~~own and hold a retailer's license for another retail establishment;~~
 16 ~~(5) a copartnership, unless all of the copartners are qualified to obtain~~
 17 ~~a license;~~
 18 ~~(6) (2) a corporation; or~~
 19 ~~(7) a trust, if any grantor, beneficiary or trustee would be ineligible~~
 20 ~~to receive a license under this act for any reason, except that the provi-~~
 21 ~~sions of subsection (a)(6) shall not apply in determining whether a ben-~~
 22 ~~eficiary would be eligible for a license, if any officer, manager or director~~
 23 ~~thereof, or any stockholder owning in the aggregate more than 25% of~~
 24 ~~the common or preferred stock of such corporation would be ineligible to~~
 25 ~~receive a license under this act; or~~
- 26 (3) a corporation, if any officer, manager or director thereof, or any
 27 stockholder owning in the aggregate more than 25% of the common or
 28 preferred stock of such corporation, has been an officer, manager or di-
 29 rector, or a stockholder owning in the aggregate more than 25% of the
 30 common or preferred stock, of a corporation which:
- 31 (A) Has had a license revoked under the provisions of the Kansas
 32 liquor control act or the club and drinking establishment act; or
- 33 (B) has been convicted of a violation of the Kansas liquor control act,
 34 the club and drinking establishment act or the Kansas cereal malt bev-
 35 erage act.
- 36 (c) No manufacturer's license shall be issued to:
- 37 (1) A corporation, if any officer or director thereof, or any stockholder
 38 owning in the aggregate more than 25% of the stock of the corporation
 39 would be ineligible to receive a manufacturer's license for any reason
 40 other than citizenship and residence requirements;
- 41 (2) a copartnership, unless all of the copartners shall have been res-
 42 idents of this state for at least five years immediately preceding the date
 43 of application and unless all the members of the copartnership would be

1 eligible to receive a manufacturer's license under this act;

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

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

7 (5) an individual who has not been a resident of this state for at least
8 five years immediately preceding the date of application; or

9 (6) a person who has a beneficial interest in a distributor, retailer,
10 farm winery or microbrewery licensed under this act.

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

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

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

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

- 1 eficiary would be eligible for a license; or
- 2 (4) a person who has a beneficial interest in a manufacturer, retailer,
- 3 farm winery or microbrewery licensed under this act.
- 4 (e) No nonbeverage user’s license shall be issued to a corporation, if
- 5 any officer, manager or director of the corporation or any stockholder
- 6 owning in the aggregate more than 25% of the stock of the corporation
- 7 would be ineligible to receive a nonbeverage user’s license for any reason
- 8 other than citizenship and residence requirements.
- 9 (f) No microbrewery license or farm winery license shall be issued to
- 10 a:
- 11 (1) Person who is not a resident of this state;
- 12 (2) person who has not been a resident of this state for at least four
- 13 years immediately preceding the date of application;
- 14 (3) person who has a beneficial interest in a manufacturer or distrib-
- 15 utor licensed under this act or a person who currently has a beneficial
- 16 interest in a farm winery;
- 17 (4) person, copartnership or association which has a beneficial inter-
- 18 est in any retailer licensed under this act or under K.S.A. 41-2702, and
- 19 amendments thereto;
- 20 (5) copartnership, unless all of the copartners are qualified to obtain
- 21 a license;
- 22 (6) corporation, unless stockholders owning in the aggregate 50% or
- 23 more of the stock of the corporation would be eligible to receive such
- 24 license and all other stockholders would be eligible to receive such license
- 25 except for reason of citizenship or residency; or
- 26 (7) a trust, if any grantor, beneficiary or trustee would be ineligible
- 27 to receive a license under this act for any reason, except that the provi-
- 28 sions of subsection (a)(6) shall not apply in determining whether a ben-
- 29 eficiary would be eligible for a license.
- 30 (g) The provisions of subsections ~~(b)(1), (b)(2)~~, (c)(3), (c)(4), (d)(3),
- 31 (f)(1), (f)(2) and K.S.A. 2009 Supp. 41-311b, and amendments thereto,
- 32 shall not apply in determining eligibility for the 10th, or a subsequent,
- 33 consecutive renewal of a license if the applicant has appointed a citizen
- 34 of the United States who is a resident of Kansas as the applicant’s agent
- 35 and filed with the director a duly authenticated copy of a duly executed
- 36 power of attorney, authorizing the agent to accept service of process from
- 37 the director and the courts of this state and to exercise full authority,
- 38 control and responsibility for the conduct of all business and transactions
- 39 within the state relative to alcoholic liquor and the business licensed. The
- 40 agent must be satisfactory to and approved by the director, except that
- 41 the director shall not approve as an agent any person who:
- 42 (1) Has been convicted of a felony under the laws of this state, any
- 43 other state or the United States;

1 (2) has had a license issued under the alcoholic liquor or cereal malt
2 beverage laws of this or any other state revoked for cause, except that a
3 person may be appointed as an agent if the person's license was revoked
4 for the conviction of a misdemeanor and 10 years have lapsed since the
5 date of the revocation;

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

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

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

14 Sec. 4. K.S.A. 2009 Supp. 41-313 is hereby amended to read as fol-
15 lows: 41-313. (a) No corporation, either organized under the laws of this
16 state, any other state or a foreign country, shall be issued a *retailer's*,
17 manufacturer's, distributor's, microbrewery or farm winery license unless
18 the corporation has first procured a certificate of authority from the sec-
19 retary of state to do business in this state as provided by law, appointed
20 a citizen of the United States, and resident of Kansas, as its agent and
21 filed with the director a duly authenticated copy of a duly executed power
22 of attorney, authorizing the agent to accept service of process from the
23 director and the courts of this state and to exercise full authority of the
24 corporation and full authority, control and responsibility for the conduct
25 of all business and transactions of the corporation within the state relative
26 to alcoholic liquor and the business licensed. The agent must be satisfac-
27 tory to and approved by the director with respect to the agent's character.
28 The agent shall at all times be maintained by the corporation.

29 In addition, any corporation organized under the laws of any other state
30 or foreign country, as a condition precedent to the issuance to it of any
31 license, shall file with the secretary of state of the state of Kansas, a duly
32 authorized and executed power of attorney, authorizing the secretary of
33 state to accept service of process from the director and the courts of this
34 state and to accept service of any notice or order provided for in this act,
35 and all such acts by the secretary of state shall be fully binding upon the
36 corporation.

37 (b) Every nonresident applicant on applying for a license or permit
38 under this act, and as a condition precedent to obtaining such license or
39 permit, shall file with the secretary of state of this state its written consent,
40 irrevocable, that any action or garnishment proceeding may be com-
41 menced against such applicant in the proper court of any county in this
42 state in which the cause of action shall arise or in which the plaintiff may
43 reside by the service of process on the resident agent specified in sub-

1 section (a), and stipulating and agreeing that such service shall be taken
2 and held in all courts to be as valid and binding as if due service had been
3 made upon the applicant. The written consent shall state that the courts
4 of this state have jurisdiction over the person of such applicant and are
5 the proper and convenient forum for such action and shall waive the right
6 to request a change of jurisdiction or venue to a court outside this state
7 and that all actions arising under this act and commenced by the applicant
8 shall be brought in this state's courts as the proper and convenient forum.
9 Such consent shall be executed by the applicant and if a corporation, by
10 the president and secretary of the corporate applicant, and shall be ac-
11 companied by a duly certified copy of the order or resolution of the board
12 of directors, trustees or managers authorizing the president and secretary
13 to execute the same.

14 Sec. 5. K.S.A. 2009 Supp. 41-710 is hereby amended to read as fol-
15 lows: 41-710. (a) No retailer's license shall be issued for premises unless
16 such premises comply with all applicable zoning regulations, *and conform*
17 *to all applicable building regulations.*

18 (b) No microbrewery license or farm winery license shall be issued
19 for premises which are zoned for any purpose except agricultural, com-
20 mercial or business purposes.

21 (c) No ~~retailer's~~ microbrewery or farm winery license shall be issued
22 for premises which:

23 (1) Are located within 200 feet of any public or parochial school or
24 college or church, except that if any such school, college or church is
25 established within 200 feet of any licensed premises after the premises
26 have been licensed, the premises shall be an eligible location for retail
27 licensing; or

28 (2) do not conform to all applicable building regulations.

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

30 It shall be unlawful for a retailer of alcoholic liquor: (1) To permit any
31 person to mix drinks in or on the licensed premises; (2) to ~~employ au-~~
32 ~~thorize or allow~~ any person under the age of ~~twenty-one (21)~~ 21 years ~~in~~
33 ~~connection with the operation of such retail establishment to sell at retail~~
34 ~~any alcoholic liquor;~~ or (3) to ~~employ authorize or allow~~ any person ~~in~~
35 ~~connection with the operation of such retail establishment~~ who has been
36 adjudged guilty of a felony *to sell at retail any alcoholic liquor.*

37 Sec. 7. K.S.A. 41-103, 41-308, 41-711 and 41-713 and K.S.A. 2009
38 Supp. 41-102, 41-311, 41-313 and 41-710 are hereby repealed.

39 Sec. 8. This act shall take effect and be in force from and after its
40 publication in the statute book.