

CHAPTER 201

SENATE BILL No. 298

(Amends Chapter 186)

AN ACT concerning alcoholic beverages; relating to the regulation thereof; amending K.S.A. 41-208, 41-301, 41-302, 41-308a, 41-710, 41-712, 41-714 and 41-2704 and K.S.A. 2004 Supp. 41-303, 41-347 and 41-719 and K.S.A. 2004 Supp. 19-101a, as amended by section 8 of 2005 House Bill No. 2537, and repealing the existing sections.

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

Section 1. K.S.A. 2004 Supp. 19-101a, as amended by section 8 of 2005 House Bill No. 2537, is hereby amended to read as follows: 19-101a.

(a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271—74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2006.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2006.

(18) Counties may not exempt from or effect changes in K.S.A. 19-

15,139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated, *and amendments thereto*, and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-1,178 through 65-1,199, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2004 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) Counties may not exempt from or effect changes in the wireless enhanced 911 act or in the provisions of K.S.A. 12-5301 through 12-5308, and amendments thereto.

(34) Counties may not exempt from or effect changes in K.S.A. 2004 Supp. 26-601, and amendments thereto.

(35) (A) *From and after November 15, 2005, counties may not exempt from or effect changes in the Kansas liquor control act except as provided by paragraph (B).*

(B) *From and after November 15, 2005, counties may adopt resolutions which are not in conflict with the Kansas liquor control act.*

(36) (A) *From and after November 15, 2005, counties may not exempt from or effect changes in the Kansas cereal malt beverage act except as provided by paragraph (B).*

(B) *From and after November 15, 2005, counties may adopt resolutions which are not in conflict with the Kansas cereal malt beverage act.*

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 2. From and after November 15, 2005, K.S.A. 41-208 is hereby amended to read as follows: 41-208. (a) *Except as specifically provided in the Kansas liquor control act*, the power to regulate all phases ~~of the control~~ of the manufacture, distribution, sale, possession, transportation and traffic in alcoholic liquor and the manufacture of beer regardless of its alcoholic content, ~~except as specifically delegated in this act~~, is hereby *is* vested exclusively in the state and shall be exercised as provided in ~~this~~ act. ~~No city shall enact any ordinance in conflict with or contrary to the provisions of this act and any ordinance of any city in effect at the time this act takes effect or thereafter enacted which is in conflict with or contrary to the provisions of this~~ *the Kansas liquor control act*. ~~No city or county shall enact any ordinance or resolution which is in conflict with the provisions of the Kansas liquor control act and any such ordinance or resolution shall be null and void.~~

(b) Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty in any such ordinance shall not ~~exceed~~ *be less than* the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance exceed the maximum penalty prescribed by this act for the same violation.

(c) *The provisions of this act are severable. If any provision of this act is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.*

Sec. 3. From and after November 15, 2005, K.S.A. 41-301 is hereby amended to read as follows: 41-301. (a) *Except as provided by subsection (b)*, the director shall issue to qualified applicants, who have filed the bond and paid the registration and license fees required by this act, licenses to sell *at retail* alcoholic liquor ~~at retail~~ in the original package *on premises* within the corporate limits of cities and outside the corporate limits of cities in certain townships as provided in this act. *Provided*, That no such retailer's license shall be issued for any premises within any city of the first or second class wherein a majority of the qualified electors of such city who voted on the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election held in November, 1948, shall have voted against the adoption of such proposition or in cities of the third class located in a township, or townships, wherein a majority of the qualified electors of such township, or townships, who voted on said proposition to amend the constitution at said election shall have voted against its adoption, until a majority of the qualified electors of such city voting at an election held as provided by K.S.A. 41-302, shall have declared by their votes to be in favor of the licensing of the sale of alcoholic liquor by the package in such *any* city.

(b) *No retailer's license shall be issued for premises within a city if the governing body of such city, on or before February 15, 2006, adopts an ordinance prohibiting the licensing of the sale at retail of alcoholic liquor in the original package within such city. Upon adoption of such ordinance, the city clerk promptly shall transmit a copy of such ordinance to the director and the director shall refuse to issue licenses to sell at retail alcoholic liquor in the original package in such city. If the governing body adopts such an ordinance, the holder of any valid existing retailer's license for premises in such city shall have the right to continue to operate under such license for a period of 90 days after the effective date of the ordinance or until the expiration of such license, whichever period of time is shorter. If such period of time expires before the expiration of the term for which the retailer's license was issued, the licensee shall be entitled to a refund of the license fee for the unexpired portion of the license period which remains, in accordance with rules and regulations adopted by the secretary.*

(c) *No retailer's license shall be issued for premises within a city if, after November 15, 2005, a majority of the qualified voters of such city voting at an election held as provided by K.S.A. 41-302, and amendments thereto, votes against the licensing of the sale at retail of alcoholic liquor in the original package within such city unless, at a subsequent election, a majority of the qualified voters of such city voting at such election votes in favor of the licensing of the sale at retail of alcoholic liquor in the original package within such city.*

Sec. 4. From and after November 15, 2005, K.S.A. 41-302 is hereby amended to read as follows: 41-302. (a) The question of licensing the ~~retail sale at retail~~ of alcoholic liquors ~~by the liquor in the original package~~ shall be submitted by the governing body of ~~any~~ a city at any regular general city election occurring in such city whenever a petition requesting such submission has been filed with the city clerk of any such city as ~~hereinafter provided in this section. In cities of the first and second class,~~ ~~any~~ Such petition shall be signed by ~~such number of electors qualified voters~~ of such city ~~which equals 30% or more equal in number to not less than 30%~~ of the total vote cast in such city at the last general election for the office of secretary of state. ~~In cities of the third class, any such petition shall be signed by such number of electors of such city which equals 40% or more of the total vote cast at the last general city election held in such city of the third class for candidates for the city office for which the greatest number of total votes were cast.~~ Each sheet of each petition shall comply with the provisions of K.S.A. 25-3601 through 25-3607, and amendments thereto. No signature on such petition shall be valid unless appended to the petition within the last 90 days prior to the date of filing the petition with the city clerk. Such petition shall be filed not less than 40 nor more than 60 days prior to the date of the election. After any such petition has been filed no signature shall be withdrawn and no signature shall be added. The governing body of the city shall have the power to determine the sufficiency of any such petition.

Any person who signs a ~~proposal or~~ petition authorized by this section and who knowingly is not a qualified elector ~~in the place where such proposal or petition is made~~ voter of the city where submission of the question is sought, or who aids or abets any other persons in doing any of the acts mentioned in so doing, or any person who bribes, gives or pays any money or thing of value to any person directly or indirectly to induce such person to sign such ~~proposal or~~ petition shall be guilty of a misdemeanor ~~and~~. Upon conviction thereof such person shall be punished by a fine of not more than \$300 or by imprisonment of not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

(b) ~~Upon the ballot the proposition shall be stated as follows:~~

~~“Shall the sale of alcoholic liquors by the package YES be licensed in (here insert the name of the city)?” NO~~

~~—Voters desiring to vote in favor of the sale of alcoholic liquors by the package shall place a cross or check mark in the square opposite the word “Yes” and those desiring to vote against the sale of alcoholic liquor by the package shall place a cross or check mark in the square opposite the word “No.”~~

~~—(e) (b) Upon the filing of a sufficient petition, the governing body shall call any an election required by this section and notice of such election shall be given in the manner provided by the general bond law. The provisions of the laws of this state relating to election officers, voting places, election places and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of election, and recounts of votes, so far as applicable, shall apply to voting on the proposition under the provisions of this act. Such election shall be called and held in the manner provided by law for question-submitted elections.~~

(d) ~~The majority of those voting on the proposition shall be mandatory upon the director insofar as licensing the sale of such liquors therein by the package is concerned. In the absence of any vote on the question of licensing the sale of such liquors in cities of the first and second class wherein a majority of the qualified electors of such city who voted on the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election held in November, 1948, shall have voted in favor of the adoption of such proposition and in cities of the third class located in townships wherein a majority of the qualified electors voted in favor of such constitutional amendment and in the absence of any further vote in cities of the first, second or third class in which a majority of the qualified electors of such city shall have voted at any special or general city election in favor of the licensing of the sale of alcoholic liquor by the package, the director shall continue to issue licenses to sell the same by the package therein for periods of one year, subject to all the terms and conditions of this act.~~

(c) ~~The governing body of the city shall transmit to the director a~~

copy of the results of any election held pursuant to this section. The director shall issue or refuse to issue licenses to sell at retail alcoholic liquor in the original package in such city in accordance with the results of such election.

~~(e)~~ (d) If a majority of the ~~electors~~ voters voting at any ~~such~~ election shall vote pursuant to this section votes against licensing the sale at retail of alcoholic liquors ~~by the liquor in the original package~~, the holder of any valid existing retailer's license for premises in such city shall have the right to continue to operate under such license for a period ~~not to exceed~~ of 90 days after the result of such election is canvassed or until the expiration of such license, whichever period of time is ~~the~~ shorter. If such period of time expires before the expiration of the term for which the retailer's license was issued, ~~such~~ the licensee shall be entitled to a refund of ~~that the licensee fee for the unexpired portion of the license period which is unavailable to such licensee remains~~, in accordance with rules and regulations ~~established~~ adopted by the secretary of revenue.

~~(f)~~ For the purpose of determining as provided in K.S.A. 41-301, and amendments thereto, and in this section whether a majority of the qualified electors of a township in which a city of the third class is located voted against the adoption of the liquor amendment at the general election held in November, 1948, if any city of the third class is located in two or more townships, the total vote for and against the amendment in all the townships in which such city is located shall be used to determine whether such city is located in a township in which a majority of the qualified electors voted against the amendment.

Sec. 5. From and after November 15, 2005, K.S.A. 2004 Supp. 41-303 is hereby amended to read as follows: 41-303. (a) The director may ~~license the sale of~~ issue to qualified applicants licenses to sell at retail alcoholic liquor ~~at retail~~ in the original package on premises not located in an incorporated city for use or consumption off the premises, if such premises are located in ~~any~~ a township having a population of more than 5,000. No such license shall be ~~granted~~ issued to any applicant unless the applicant possesses all the qualifications required of other applicants for retailers' licenses except the qualification of ~~residence~~ residency within a city. ~~In the event that~~ If any license has been issued under the provisions of this section in a township having a population of more than 5,000; and thereafter such township population decreases or has decreased to 5,000 or less, such licenses shall continue to be valid and the licensees shall be eligible for renewal of such licenses at the appropriate time if they are otherwise qualified.

No such license shall be ~~granted~~ issued to any applicant under this section unless the board of county commissioners of the county in which ~~such township is the premises for which licensure is sought~~ are located adopts a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a license authorized by this section.

~~In the event that any~~ (b) If a license has been issued under the provisions of this section in a township having a population of more than 5,000; and thereafter the premises so licensed are annexed to a city wherein retail liquor licenses may be issued, such ~~licenses~~ license shall continue to be valid and ~~the licensees shall be eligible for renewal of such licenses may be renewed~~ at the appropriate time even though the ~~licensees shall~~ licensee does not reside in the ~~cities~~ city to which the ~~areas are~~ area is annexed if the ~~licensees are otherwise~~ licensee otherwise is qualified and if they ~~reside in the township~~ resides in the township in which the premises were ~~originally~~ located prior to annexation or in the city to which the premises have been annexed.

~~(b)~~ (c) Any retail license issued prior to the effective date of this act for premises not located in an incorporated city or in a township having a population of more than 5,000 shall continue to be valid and such premises shall continue to be eligible for licensure if the board of county commissioners of the county in which the premises are located has adopted a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a license authorized by this subsection.

Sec. 6. From and after November 15, 2005, K.S.A. 2004 Supp. 41-347 is hereby amended to read as follows: 41-347. (a) The director may issue, in accordance with rules and regulations of the secretary: (1) To one or more charitable organizations a temporary permit authorizing the

sale of alcoholic liquor at an auction; or (2) to an individual a temporary permit authorizing the sale of one or more limited issue porcelain containers containing alcoholic liquor. The permit shall be issued in the names of the charitable organizations or individual to which it is issued.

(b) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application for a permit authorizing an auction shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued; ~~which.~~ *Such fee shall be paid in full by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount thereof.* All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises ~~where the city, county or township zoning code allows use for which the permit is issued~~ *which comply with all applicable zoning regulations.*

(d) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. Not more than one temporary permit may be issued to any one applicant in a calendar year.

(e) All proceeds from an auction for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(f) A temporary permit shall not be transferable or assignable.

(g) The director may refuse to issue a temporary permit to any charitable organization or individual which has violated any provision of the Kansas liquor control act.

(h) This section shall be part of and supplemental to the Kansas liquor control act.

Sec. 7. From and after November 15, 2005, K.S.A. 41-710 is hereby amended to read as follows: 41-710. (a) No retailer's license shall be issued for premises ~~which are located in areas not zoned for general commercial or business purposes, if the city or township in which the premises are located is zoned or are not approved by the director, if the premises sought to be licensed are located outside an incorporated city in a township which is not zoned~~ *unless such premises comply with all applicable zoning regulations.*

(b) No microbrewery license or farm winery license shall be issued for premises which are zoned for any purpose except agricultural, commercial or business purposes.

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

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

(2) ~~do not conform to the building ordinances or laws of the state or city or, in the absence of such ordinances or laws, are not structurally in good condition or are in a dilapidated condition~~ *all applicable building regulations.*

Sec. 8. From and after November 15, 2005, K.S.A. 41-712 is hereby amended to read as follows: 41-712. (a) *Within any city where the days of sale at retail of alcoholic liquor in the original package have not been expanded as provided by section 9, and amendments thereto, or have been so expanded and subsequently restricted as provided by section 9, and amendments thereto, and within any township where the days of sale at retail of alcoholic liquor in the original package have not been expanded as provided by section 9, and amendments thereto, or have been so expanded and subsequently restricted as provided by section 9, and amendments thereto, no person shall sell at retail any alcoholic liquor in the original package:* (1) On Sunday; (2) on Memorial Day, Independence

Day, Labor Day, Thanksgiving Day or Christmas Day; or (3) before 9 a.m. or after 11 p.m. on any day when the sale is permitted, ~~except that~~. The governing body of any city by ordinance may require *the closing of premises* prior to 11 p.m., but such ordinance shall not require closing prior to 8 p.m.

(b) *Within any city where the days of sale at retail of alcoholic liquor in the original package have been expanded as provided by section 9, and amendments thereto, and have not been subsequently restricted as provided by section 9, and amendments thereto, and within any township where the days of sale at retail of alcoholic liquor in the original package have been expanded as provided by section 9, and amendments thereto, and have not been subsequently restricted as provided by section 9, and amendments thereto, no person shall sell at retail alcoholic liquor in the original package: (1) On Sunday before 12 noon or after 8 p.m.; (2) on Easter Sunday, Thanksgiving Day or Christmas Day; or (3) before 9 a.m. or after 11 p.m. on any day when the sale is permitted. The governing body of any city by ordinance may require the closing of premises prior to 11 p.m., but such ordinance shall not require closing prior to 8 p.m.*

New Sec. 9. (a) (1) The board of county commissioners of any county may, by resolution:

(A) Expand the days of sale at retail of cereal malt beverage in the original package to allow such sale within the unincorporated area of the county on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and expand the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the unincorporated area of the county, to allow such sale within the unincorporated area of the county on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day; or

(B) restrict the days of sale at retail of cereal malt beverage in the original package to prohibit such sale within the unincorporated area of the county on Sunday and restrict the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the unincorporated area of the county, to prohibit such sale within the unincorporated area of the county on Sunday, Memorial Day, Independence Day and Labor Day.

Such resolution shall be published once, within two weeks after its adoption, in the official county newspaper. Such resolution shall not become effective earlier than 60 days following the date of its publication or November 15, 2005, whichever is later. If, within 60 days following publication of the resolution, a petition requesting that a proposition be submitted for approval by the voters is filed in accordance with subsection (a)(2), such resolution shall not become effective until a proposition is submitted to and approved at an election as provided by this subsection (a).

(2) A petition to submit a proposition to the qualified voters of a county pursuant to this subsection (a) shall be filed with the county election officer. The petition shall be signed by qualified voters of the county who reside within the unincorporated area of the county equal in number to not less than 5% of the voters of the county residing within the unincorporated area of the county who voted for the office of president of the United States at the last preceding general election at which such office was elected. The appropriate version of the following shall appear on the petition:

(A) If licensing of sale at retail of alcoholic liquor in the original package is not authorized within the unincorporated area of the county, the petition shall read: "We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the unincorporated area of _____ county."

(B) If licensing of sale at retail of alcoholic liquor is authorized within the unincorporated area of the county, the petition shall read: "We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the unincorporated area of _____ county and whether sale at retail of alcoholic liquor in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and

on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day) within the unincorporated area of _____ county.”

(3) Upon submission of a valid petition calling for an election pursuant to this subsection (a), the county commission shall call a special election to be held not later than 45 days after submission of the petition unless a countywide primary or general election is to be held within 90 days after submission of the petition, in which case the proposition shall be submitted at such countywide election. Thereupon, the county election officer shall cause the appropriate version of the following proposition to be placed on the ballot in the unincorporated area of the county at such election:

(A) If licensing of sale at retail of alcoholic liquor is not authorized within the unincorporated area of the county, the following proposition shall be placed on the ballot: “Within the unincorporated area of _____ county shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday)?”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the unincorporated area of the county, the following proposition shall be placed on the ballot: “Within the unincorporated area of _____ county shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) and shall the sale at retail of alcoholic liquor in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day)?”

(b) (1) The governing body of any city may, by ordinance:

(A) Expand the days of sale at retail of cereal malt beverage in the original package to allow such sale within the city on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and expand the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the city, to allow such sale within the city on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day; or

(B) restrict the days of sale at retail of cereal malt beverage in the original package to prohibit such sale within the city on Sunday and restrict the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the city, to prohibit such sale within the city on Sunday, Memorial Day, Independence Day and Labor Day.

Such ordinance shall be published at least once each week for two consecutive weeks in the official city newspaper. Such ordinance shall not become effective earlier than 60 days following the date of its publication or November 15, 2005, whichever is later. If, within 60 days following publication of the ordinance, a petition requesting that a proposition be submitted for approval by the voters is filed in accordance with subsection (b)(2), such ordinance shall not become effective until a proposition is submitted to and approved at an election as provided by this subsection (b).

(2) A petition to submit a proposition to the qualified voters of a city pursuant to this subsection (b) shall be filed with the county election officer. The petition shall be signed by qualified voters of the city equal in number to not less than 5% of the voters of the city who voted for the office of president of the United States at the last preceding general election at which such office was elected. The appropriate version of the following shall appear on the petition:

(A) If licensing of sale at retail of alcoholic liquor in the original package is not authorized within the city, the petition shall read: “We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the city of _____.”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the city, the petition shall read: “We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon

and 8 p.m.) (prohibited on Sunday) within the city of _____ and whether sale at retail of alcoholic liquor in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day) within the city of _____.”

(3) Upon submission of a valid petition calling for an election pursuant to this subsection (b), the city governing body shall call a special election to be held not later than 45 days after submission of the petition unless a citywide primary or general election is to be held within 90 days after submission of the petition, in which case the proposition shall be submitted at such citywide election. Thereupon, the county election officer shall cause the appropriate version of the following proposition to be placed on the ballot in the city at such election:

(A) If licensing of sale at retail of alcoholic liquor is not authorized within the city, the following proposition shall be placed on the ballot: “Within the city of _____ shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday)?”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the city, the following proposition shall be placed on the ballot: “Within the city of _____ shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) and shall the sale at retail of alcoholic liquor in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day)?”

(c) The county election officer shall transmit to the director a copy of the results of an election pursuant to this section.

(d) An election provided for by this section shall be called and held in the manner provided by the general bond law.

Sec. 10. From and after November 15, 2005, K.S.A. 41-714 is hereby amended to read as follows: 41-714. ~~(a) It shall be unlawful for:~~

~~—(1) Any person to advertise any alcoholic liquor by means of handbills;~~
~~—(2) any retailer of alcoholic liquor to advertise any alcoholic liquor by means of billboards along public highways, roads and streets or to have on the retailer’s licensed premises any billboard advertising alcoholic liquor; or~~

~~—(3) any licensee to display alcoholic liquor in any window of the licensed premises.~~

~~—(b) The provisions of this section shall not be interpreted to prohibit the advertising of a microbrewery or farm winery: (a) Any advertising of a farm winery or microbrewery shall be subject to approval by the director prior to its dissemination.~~

~~(c) The provisions of this section shall not be interpreted to:~~

~~—(1) Preempt any city ordinance or county resolution restricting or prohibiting signs or outdoor advertising; or~~

~~—(2) prohibit advertising of the price of any alcoholic liquor or advertising of any alcoholic liquor by brand name, other than by means declared unlawful by subsection (a), and no rule and regulation adopted hereunder shall prohibit such advertising.~~

~~—(d) (b) The secretary of revenue may adopt, in accordance with K.S.A. 41-210 and amendments thereto, rules and regulations necessary to regulate and control the advertising, in any form, and display of alcoholic liquor and nothing contained in this section shall be construed as limiting the secretary’s power to adopt such rules and regulations not in conflict with this act.~~

~~(e) As used in this section, “billboard” means any board or panel erected, constructed or maintained for the purpose of displaying outdoor advertising by means of painted letters, posters, pictures or pictorial or reading matter, either illuminated or nonilluminated, when such sign is supported by uprights or braces placed upon the ground or upon a structure affixed thereto. Billboard does not include a sign containing statements pertaining to a business conducted within or on the premises on which the sign is maintained.~~

Sec. 11. From and after November 15, 2005, K.S.A. 2004 Supp. 41-719 is hereby amended to read as follows: 41-719. (a) No person shall drink or consume alcoholic liquor on the public streets, alleys, roads or

highways or inside vehicles while on the public streets, alleys, roads or highways.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by the club and drinking establishment act;

(2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(3) in a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(4) in a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place; or

(5) on the premises of a microbrewery or farm winery, if authorized by K.S.A. 41-308a or 41-308b, and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto.

(2) In any state-owned or operated building or structure, and on the surrounding premises, which is furnished to and occupied by any state officer or employee as a residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated, *and amendments thereto*, or established by a city ~~having a population of more than 200,000.~~

(4) On the state fair grounds on the day of any race held thereon pursuant to the Kansas parimutuel racing act.

(5) On the state fairgrounds, if such liquor is domestic beer or wine or wine imported under subsection (e) of K.S.A. 41-308a, and amendments thereto, and is consumed only for purposes of judging competitions. The state fair board, in its discretion, may authorize the consumption of such alcoholic liquor on nonfair days in conjunction with bona fide scheduled events involving not less than 75 invited guests and subject to any conditions or restrictions as the board may require.

(6) In the state historical museum provided for by K.S.A. 76-2036, and amendments thereto, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(7) On the premises of any state-owned historic site under the jurisdiction and supervision of the state historical society, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(8) In a lake resort within the meaning of K.S.A. 32-867, and amendments thereto, on state-owned or leased property.

(9) In the Hiram Price Dillon house or on its surrounding premises, subject to limitations established in policies adopted by the legislative coordinating council, as provided by K.S.A. 75-3682, and amendments thereto.

(10) On the premises of ~~the any~~ Kansas national guard regional training center ~~located in Saline county~~, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(11) On property exempted from this subsection (c) pursuant to subsection (d), (e), (f), (g), ~~(h) or (i)~~ or (h).

(d) Any city may exempt, by ordinance, from the provisions of subsection (c) specified property the title of which is vested in such city.

(e) The board of county commissioners of any county may exempt, by resolution, from the provisions of subsection (c) specified property the title of which is vested in such county.

(f) The state board of regents may exempt from the provisions of subsection (c) the Sternberg museum on the campus of Fort Hays state university, or other specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(g) The board of regents of Washburn university may exempt from the provisions of subsection (c) the Mulvane art center and the Bradbury Thompson alumni center on the campus of Washburn university, and other specified property the title of which is vested in such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

~~(h) Any city may exempt, by ordinance, from the provisions of subsection (c) any national guard armory in which such city has a leasehold interest, if the Kansas military board consents to the exemption.~~

~~(i)(h)~~ The board of trustees of a community college may exempt from the provisions of subsection (c) specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

~~(j)(i)~~ Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both.

New Sec. 12. From and after November 15, 2005:

(a) K.S.A. 41-2701 through 41-2727 and section 14, and amendments thereto, shall be known and may be cited as the Kansas cereal malt beverage act.

(b) Except as specifically provided in the Kansas cereal malt beverage act, the power to regulate all phases of the manufacture, distribution, sale, possession, transportation and traffic in cereal malt beverages is vested exclusively in the state and shall be exercised as provided in the Kansas cereal malt beverage act. No city or county shall enact any ordinance or resolution which is in conflict with the provisions of the Kansas cereal malt beverage act and any such ordinance or resolution shall be null and void.

(c) The provisions of this act are severable. If any provision of this act is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would have enacted the remainder if this act without such invalid or unconstitutional provision.

Sec. 13. From and after November 15, 2005, K.S.A. 41-2704 is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the requirements of ~~this~~ *the cereal malt beverage act*, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) ~~Except as provided by subsection (g)~~ *Within any city where the days of sale at retail of cereal malt beverage in the original package have not been expanded as provided by section 9, and amendments thereto, or have been so expanded and subsequently restricted as provided by section 9, and amendments thereto, and within any township where the hours and days of sale at retail of cereal malt beverage in the original package have not been expanded as provided by section 9, and amendments thereto, or have been so expanded and subsequently restricted as provided by section 9, and amendments thereto, no cereal malt beverages may be sold:*

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

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

(c) *Within any city where the days of sale at retail of cereal malt*

beverage in the original package have been expanded as provided by section 9, and amendments thereto, and have not been subsequently restricted as provided in section 9, and amendments thereto, and within any township where the days of sale at retail of cereal malt beverage in the original package have been expanded as provided by section 9, and amendments thereto, and have not been subsequently restricted as provided by section 9, and amendments thereto, no person shall sell at retail cereal malt beverage:

- (1) Between the hours of 12 midnight and 6 a.m.;
- (2) in the original package before 12 noon after 8 p.m. on Sunday;
- (3) on Easter Sunday; or
- (4) for consumption on the licensed premises on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city.

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

~~(d)~~ (e) Each place of business shall be open to the public and to law enforcement officers at all times during business hours, except that a premises licensed as a club pursuant to the club and drinking establishment act shall be open to law enforcement officers and not to the public.

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

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

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

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

~~(g)~~ (h) Cereal malt beverages may be sold on premises which are licensed pursuant to both the ~~acts contained in article 27 of chapter 41 of the Kansas Statutes Annotated~~ *cereal malt beverage act* and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.

Sec. 14. K.S.A. 41-308a is hereby amended to read as follows: 41-308a. (a) A farm winery license shall allow:

(1) The manufacture of domestic table wine and domestic fortified wine and the storage thereof;

(2) the sale of wine, manufactured by the licensee, to licensed wine distributors, retailers, clubs, drinking establishments and caterers;

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(4) the serving *free of charge* on the licensed premises *and at special events, monitored and regulated by the division of alcoholic beverage control*, of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments; and

(5) if the licensee is also licensed as a club or drinking establishment, the sale of domestic wine, domestic fortified wine and other alcoholic

liquor for consumption on the licensed premises as authorized by the club and drinking establishment act.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a farm winery licensee, the director may issue not to exceed ~~two~~ *three* winery outlet licenses to the farm winery licensee. A winery outlet license shall allow:

(1) The sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee; and

(2) the serving on the licensed premises of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments.

(c) Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director's findings and judgment. The label of domestic wine and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas.

(d) A farm winery having a capacity of ~~50,000~~ *100,000* gallons per year or more which sells wine to any distributor shall be required to comply with all provisions of article 4 of chapter 41 of the Kansas Statutes Annotated and of K.S.A. 41-701 through 41-705 and 41-709, and amendments thereto, in the same manner and subject to the same penalties as a manufacturer.

(e) A farm winery or winery outlet may sell domestic wine and domestic fortified wine in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (f) and serve and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (f) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

(f) The director may issue to the Kansas state fair or any bona fide group of grape growers or wine makers a permit to import into this state small quantities of wines. Such wine shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such wine shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of wine to be imported, the quantity to be imported, the tasting programs for which the wine is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of wine pursuant to this subsection and the conduct of tasting programs for which such wine is imported.

(g) A farm winery license or winery outlet license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(h) No farm winery or winery outlet shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premise supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

(i) Whenever a farm winery or winery outlet licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and order forfeiture of all fees paid for the license, after a hearing before the director for that purpose in accordance with the provisions of the Kansas administrative procedure act.

(j) This section shall be part of and supplemental to the Kansas liquor control act.

New Sec. 15. (a) It shall be unlawful for any person to:

(1) Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or

(2) purchase, sell or offer for sale an alcohol without liquid machine.

(b) Violation of this section is a class A nonperson misdemeanor.

(c) As used in this section, "alcohol without liquid machine" means a device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

Sec. 16. K.S.A. 41-308a and K.S.A. 2004 Supp. 19-101a, as amended by section 8 of 2005 House Bill No. 2537, are hereby repealed.

Sec. 17. From and after November 15, 2005, K.S.A. 41-208, 41-301, 41-302, 41-710, 41-712, 41-714 and 41-2704 and K.S.A. 2004 Supp. 41-303, 41-347 and 41-719 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 13, 2005.
