

As Amended by House Committee

As Amended by Senate Committee

Session of 2012

SENATE BILL No. 269

By Committee on Federal and State Affairs

1-11

1 AN ACT concerning alcoholic beverages; relating to retailer licenses
2 offering alcoholic liquor sampling; amending K.S.A. 41-308 **and**
3 **K.S.A. 2011 Supp. 41-305 and 41-2623** and repealing the existing
4 section sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 41-308 is hereby amended to read as follows: 41-
8 308. (a) *Except as provided in new section 2, and amendments thereto*, a
9 retailer's license shall allow the licensee to sell and offer for sale at retail
10 and deliver in the original package, as therein prescribed, alcoholic liquor
11 for use or consumption off of and away from the premises specified in
12 such license. A retailer's license shall permit sale and delivery of alcoholic
13 liquor only on the licensed premises and shall not permit sale of alcoholic
14 liquor for resale in any form, except that a licensed retailer may:

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

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

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

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

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

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

33 (4) distribute to the public, without charge, consumer advertising
34 specialities bearing advertising matter, subject to rules and regulations of

1 the secretary limiting the form and distribution of such specialities so that
2 they are not conditioned on or an inducement to the purchase of alcoholic
3 liquor.

4 **(c) The holder of a retailer's license or such licensee's employees,**
5 **managers or agents shall not, directly or indirectly, have any financial**
6 **interest in a club, drinking establishment, farm winery, microbrewery,**
7 **caterer or holder of a temporary license, except as provided in K.S.A.**
8 **41-2623, and amendments thereto. When the spouse of the holder of a**
9 **retailer's license applies for a club or drinking establishment license or**
10 **a caterer's license, each spouse must file with the director an affidavit**
11 **of no financial interest.**

12 ~~(e)~~(d) No licensed retailer shall furnish any entertainment in such
13 premises or permit any pinball machine or game of skill or chance to be
14 located in or on such premises.

15 ~~(d)~~(e) A retailer's license shall allow the licensee to store alcoholic
16 liquor in refrigerators, cold storage units, ice boxes or other cooling
17 devices, and the licensee may sell such alcoholic liquor to consumers in a
18 chilled condition.

19 New Sec. 2. (a) Notwithstanding any other provisions of the Kansas
20 liquor control act to the contrary, any person or entity who is licensed to
21 sell alcoholic liquor in the original package at retail may conduct wine,
22 ~~malt beverage~~ **beer** and distilled spirit tastings on the licensed premises, **or**
23 ***adjacent premises, monitored and regulated by the division of alcoholic***
24 ***beverage control***, as follows:

25 (1) Wine, beer and spirits for the tastings shall come from the
26 inventory of the licensee. Except as provided by paragraph (2), a person
27 other than the licensee or the licensee's agent or employee may not
28 dispense or participate in the dispensing of alcoholic beverages under this
29 section.

30 (2) The holder of a supplier's permit or such permit holder's agent or
31 employee may participate in and conduct product tastings of alcoholic
32 beverages at a retail licensee's premises, ***or adjacent premises, monitored***
33 ***and regulated by the division of alcoholic beverage control***, and may
34 open, touch, or pour alcoholic beverages, make a presentation, or answer
35 questions at the tasting. Any alcoholic beverage tasted under this
36 subsection must be purchased from the ~~package store~~ retailer on whose
37 premises the tasting is held. The retailer may not require the purchase of
38 more alcoholic beverages than are necessary for the tasting. This section
39 does not authorize the holder of a ~~nonresident seller's or manufacturer's~~
40 ~~agent's permit~~ **supplier or its agent** to withdraw or purchase an alcoholic
41 beverage from the holder of a ~~wholesaler's~~ **distributor's** permit or provide
42 an alcoholic beverage for tasting on a retailer's premises that is not
43 purchased from the retailer.

1 ~~(3) Sample portions at a product tasting shall be limited to no more~~
2 ~~than:~~

3 ~~(A) One half ounce for distilled spirits;~~

4 ~~(B) one ounce for wine; and~~

5 ~~(C) two ounces for beer and malt beverages.~~

6 ~~(4)~~(3) No charge of any sort may be made for a sample serving.

7 ~~(5)~~(4) A person may be served more than one sample. Samples may
8 not be served to a minor. No samples may be removed from the licensed
9 premises.

10 ~~(6)~~(5) The act of providing samples to consumers shall be exempt
11 from the requirement of holding a Kansas food service dealer license from
12 the department of agriculture under the provisions of chapter 65 of the
13 Kansas Statutes Annotated, and amendments thereto.

14 (b) Nothing in this section shall be construed to permit the licensee to
15 sell wine, malt beverages or distilled spirits for on-premises consumption.

16 **Sec. 3. K.S.A. 2011 Supp. 41-2623 is hereby amended to read as**
17 **follows: 41-2623. (a) No license shall be issued under the provisions of**
18 **this act to:**

19 (1) Any person described in subsection (a)(1), (2), (4), (5), (6), (7),
20 (8), (9), (12) or (13) of K.S.A. 41-311, and amendments thereto, except
21 that the provisions of subsection (a)(7) of such section shall not apply
22 to nor prohibit the issuance of a license for a class A club to an officer
23 of a post home of a congressionally chartered service or fraternal
24 organization, or a benevolent association or society thereof.

25 (2) A person who has had the person's license revoked for cause
26 under the provisions of this act.

27 (3) A person who has not been a resident of this state for a period
28 of at least one year immediately preceding the date of application.

29 (4) A person who has a beneficial interest in the manufacture,
30 preparation or wholesaling or the retail sale of alcoholic liquors or a
31 beneficial interest in any other club, drinking establishment or caterer
32 licensed hereunder, except that:

33 (A) A license for premises located in a hotel may be granted to a
34 person who has a beneficial interest in one or more other clubs or
35 drinking establishments licensed hereunder if such other clubs or
36 establishments are located in hotels.

37 (B) A license for a club or drinking establishment which is a
38 restaurant may be issued to a person who has a beneficial interest in
39 other clubs or drinking establishments which are restaurants.

40 (C) A caterer's license may be issued to a person who has a
41 beneficial interest in a club or drinking establishment and a license for
42 a club or drinking establishment may be issued to a person who has a
43 beneficial interest in a caterer.

1 **(D)** A license for a class A club may be granted to an organization
2 of which an officer, director or board member is a distributor or
3 retailer licensed under the liquor control act if such distributor or
4 retailer sells no alcoholic liquor to such club.

5 **(E)** Any person who has a beneficial interest in a microbrewery
6 or farm winery licensed pursuant to the Kansas liquor control act may
7 be issued any or all of the following: (1) Class B club license; (2)
8 drinking establishment license; and (3) caterer's license.

9 **(F)** *The spouse of a retailer's license may be issued any or all of the`*
10 *following: (i) Drinking establishment license; and*

11 *(ii) caterer's license.*

12 **(5)** A copartnership, unless all of the copartners are qualified to
13 obtain a license.

14 **(6)** A corporation, if any officer, manager or director thereof, or
15 any stockholder owning in the aggregate more than 5% of the
16 common or preferred stock of such corporation would be ineligible to
17 receive a license hereunder for any reason other than citizenship and
18 residence requirements.

19 **(7)** A corporation, if any officer, manager or director thereof, or
20 any stockholder owning in the aggregate more than 5% of the
21 common or preferred stock of such corporation, has been an officer,
22 manager or director, or a stockholder owning in the aggregate more
23 than 5% of the common or preferred stock, of a corporation which:

24 **(A)** Has had a license revoked under the provisions of the club
25 and drinking establishment act; or

26 **(B)** has been convicted of a violation of the club and drinking
27 establishment act or the cereal malt beverage laws of this state.

28 **(8)** A corporation organized under the laws of any state other
29 than this state.

30 **(9)** A trust, if any grantor, beneficiary or trustee would be
31 ineligible to receive a license under this act for any reason, except that
32 the provisions of subsection (a)(6) of K.S.A. 41-311, and amendments
33 thereto shall not apply in determining whether a beneficiary would be
34 eligible for a license.

35 **(b)** No club or drinking establishment license shall be issued
36 under the provisions of the club and drinking establishment act to:

37 **(1)** A person who does not own the premises for which a license is
38 sought, or does not, at the time the application is submitted, have a
39 written lease thereon, except that an applicant seeking a license for a
40 premises which is owned by a city or county, or is a stadium, arena,
41 convention center, theater, museum, amphitheater or other similar
42 premises may submit an executed agreement to provide alcoholic
43 beverage services at the premises listed in the application in lieu of a

1 lease.

2 (2) A person who is not a resident of the county in which the
3 premises sought to be licensed are located.

4 **Sec. 4. K.S.A. 2011 Supp. 41-305 is hereby amended to read as**
5 **follows: 41-305. (a) A manufacturer's license shall allow the**
6 **manufacture and storage of alcoholic liquor and cereal malt beverage**
7 **and the sale of alcoholic liquor and cereal malt beverage to**
8 **distributors and nonbeverage users licensed in this state and to such**
9 **persons outside this state as permitted by law.**

10 (b) *A manufacturer's license also shall allow the serving free of*
11 *charge on the licensed premises of samples of alcoholic liquor*
12 *manufactured by the licensee, provided the premises are located in a*
13 *county where the sale of alcoholic liquor is permitted by law in licensed*
14 *drinking establishments. Samples shall be served by the licensee, or an*
15 *employee or agent thereof. No sample shall be served to an individual who*
16 *is a minor. No individual shall remove all or any portion of a sample from*
17 *the licensed premises. Nothing in this subsection shall be construed to*
18 *permit the licensee to sell any alcoholic liquor for consumption on the*
19 *premises.*

20 (c) **A person holding a farm winery license issued pursuant to**
21 **K.S.A. 41-308a, and amendments thereto, may also be issued a**
22 **manufacturer's license; provided, that no alcoholic liquor or cereal**
23 **malt beverage manufactured by such licensee shall be sold by such**
24 **licensee at its licensed premises or at any of such licensee's winery**
25 **outlets.**

26 ~~Sec. 3.~~ **5. K.S.A. 41-308 ~~is~~ and K.S.A. 2011 Supp. 41-305 and 41-**
27 **2623 are hereby repealed.**

28 ~~Sec. 4.~~ **6. This act shall take effect and be in force from and after its**
29 **publication in the statute book.**