

**As Amended by House Committee**

*Session of 2015*

**HOUSE BILL No. 2125**

By Committee on Federal and State Affairs

1-26

1 AN ACT concerning alcoholic beverages; relating to regulation of  
2 licensees; amending K.S.A. 41-321, 41-2609 and 41-2633a and K.S.A.  
3 2014 Supp. 41-319, 41-320, 41-326, 41-328, 41-719 and 41-2611 and  
4 repealing the existing sections; also repealing K.S.A. 41-314.

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

7 New Section 1. (a) Notwithstanding any other provision of law, any  
8 limited liability company applying for a retailer's license under the Kansas  
9 liquor control act shall be required to meet the qualifications for licensure  
10 of a copartnership under K.S.A. 41-311, and amendments thereto. Any  
11 limited liability company applying for a license other than a retailer's  
12 license shall be required to meet the qualifications for licensure of a  
13 corporation under K.S.A. 41-311 and K.S.A. 2014 Supp. 41-311b, and  
14 amendments thereto.

15 (b) Any limited liability company applying for a license under the  
16 Kansas liquor control act shall submit a copy of its article of organization  
17 and operating agreement to the director in such form and manner as  
18 prescribed by the director.

19 (c) This section shall be a part of and supplemental to the Kansas  
20 liquor control act.

21 New Sec. 2. (a) Notwithstanding any other provision of law, any  
22 limited liability company applying for a license under the club and  
23 drinking establishment act shall be required to meet the qualifications for  
24 licensure of a corporation under K.S.A. 41-2623, and amendments thereto.

25 (b) Any limited liability company applying for a license under the  
26 club and drinking establishment act shall submit a copy of its article of  
27 organization and operating agreement to the director in such form and  
28 manner as prescribed by the director.

29 (c) This section shall be a part of and supplemental to the club and  
30 drinking establishment act.

31 New Sec. 3. (a) Notwithstanding any other provision of law, any  
32 limited liability company applying for a license under the Kansas cereal  
33 malt beverage act shall be required to meet the qualifications for licensure  
34 of a corporation under K.S.A. 41-2703, and amendments thereto, except  
35 that only those individuals owning in the aggregate 25% or more of the  
36 ownership interest in such limited liability company shall be required to

1 meet the qualifications for an individual to obtain a license.

2 (b) Any limited liability company applying for a license under the  
3 Kansas cereal malt beverage act shall submit a copy of its article of  
4 organization and operating agreement to the director in such form and  
5 manner as prescribed by the director.

6 (c) This section shall be a part of and supplemental to the Kansas  
7 cereal malt beverage act.

8 New Sec. 4. (a) The director may suspend, involuntarily cancel or  
9 revoke any license issued pursuant to the Kansas liquor control act if, after  
10 notice and an opportunity for a hearing, the director determines that the  
11 licensee has:

12 (1) Fraudulently obtained the license by providing false information  
13 on the application therefor, or at any hearing thereon;

14 (2) violated any of the provisions of the Kansas liquor control act, or  
15 any rules or regulations adopted pursuant to such act; or

16 (3) become ineligible to obtain a license or permit under K.S.A. 41-  
17 311 or K.S.A. 2014 Supp. 41-311b, and amendments thereto.

18 (b) This section shall be a part of and supplemental to the Kansas  
19 liquor control act.

20 Sec. 5. K.S.A. 2014 Supp. 41-319 is hereby amended to read as  
21 follows: 41-319. (a) Except as provided by subsection (b), within 30 days  
22 after an application is filed for a retailer's, microbrewery, microdistillery or  
23 farm winery license and within 20 days after an application is filed for a  
24 manufacturer's, distributor's or nonbeverage user's license, the director  
25 shall enter an order either ~~refusing~~ *denying* or granting the license. If the  
26 director does not enter an order within the time prescribed, the license  
27 applied for shall be deemed to have been ~~refused~~ *denied*. The director,  
28 with the written consent of the applicant for a license, may delay entering  
29 an order on an application for an additional period of not to exceed 30  
30 days.

31 (b) In order to complete any national criminal history record check of  
32 an applicant who submitted any application after January 31, 2001, and if  
33 the applicant is not a resident of the state of Kansas on the date of  
34 submission of such application or has not been a resident for at least one  
35 year immediately preceding the date of submission of such application the  
36 director shall enter an order either ~~refusing~~ *denying* or granting the license  
37 within 90 days after such application is filed. If the director does not enter  
38 an order within the time prescribed, the license applied for shall be deemed  
39 to have been ~~refused~~ *denied*. The director, with the written consent of the  
40 applicant for a license, may delay entering an order on an application for  
41 an additional period of not to exceed 30 days.

42 Sec. 6. K.S.A. 2014 Supp. 41-320 is hereby amended to read as  
43 follows: 41-320. (a) ~~All proceedings for the suspension and revocation of~~

1 licenses of manufacturers, distributors, retailers, microbreweries,  
2 microdistilleries, farm wineries and nonbeverage users shall be before the  
3 director, and the proceedings shall be in accordance with the provisions of  
4 the Kansas administrative procedure act. Except as provided in subsection  
5 (b), no license shall be suspended or revoked except after a hearing by the  
6 director. *The provisions of the Kansas administrative procedure act shall*  
7 *apply to all proceedings involving the following:*

8 (1) *Denial of an application for any license to be issued pursuant to*  
9 *the Kansas liquor control act;*

10 (2) *suspension of any license issued pursuant to the Kansas liquor*  
11 *control act;*

12 (3) *involuntary cancellation of any license issued pursuant to the*  
13 *Kansas liquor control act;*

14 (4) *revocation of any license issued pursuant to the Kansas liquor*  
15 *control act; and*

16 (5) *assessment of any civil fine pursuant to K.S.A. 41-328, and*  
17 *amendments thereto.*

18 (b) *Except as provided in subsection (c), no license shall be*  
19 *suspended, involuntarily canceled or revoked unless there is an*  
20 *opportunity for a hearing before the director.*

21 (c) When proceedings for the suspension, *involuntary cancellation* or  
22 *revocation* of a distributor's license are filed and the distributor has been  
23 issued more than one license for distributing places of business in this  
24 state, any order of the director suspending or revoking the license at any  
25 one place of business shall suspend or revoke all licenses issued to the  
26 distributor. When one person is the holder of stock *or an ownership*  
27 *interest* in two or more corporations licensed as distributors under the  
28 provisions of this act, any order of the director suspending or revoking the  
29 license of any such corporation shall operate as a suspension or revocation  
30 of the license of all corporations licensed as distributors in which the  
31 person is a stockholder.

32 **(d) Notwithstanding any provision of the law to the contrary, the**  
33 **secretary may designate the director to be the presiding officer in any**  
34 **proceeding conducted pursuant to this section.**

35 Sec. 7. K.S.A. 41-321 is hereby amended to read as follows: 41-321.

36 (a) Whenever the director ~~refuses~~ *denies* an application for any license or  
37 suspends, *involuntarily cancels* or revokes any license, the director shall  
38 prepare an order so providing which shall be signed by the director, or a  
39 person designated by the director, and the seal of the director shall be  
40 affixed thereto. The order shall state the reason or reasons for the ~~refusal~~  
41 *denial*, suspension, *involuntary cancellation* or revocation. The order shall  
42 be served in accordance with the provisions of K.S.A. 77-531, and  
43 amendments thereto.

1       (b) Any applicant or licensee aggrieved by any order of the director  
2 may appeal from such order to the secretary by filing a notice of appeal  
3 with the secretary. Such notice of appeal must either be mailed to the  
4 secretary by certified mail or filed with the secretary within 15 days after  
5 service of the order appealed from or, if such appeal is taken because the  
6 director has failed to enter the order on an application for a license, within  
7 15 days after the date an application for a license is considered to have  
8 been ~~refused~~ *denied* as provided in K.S.A. 41-319, and amendments  
9 thereto. The notice of appeal shall be on a form which shall be prescribed  
10 and furnished by the secretary. Whenever any such notice of appeal is  
11 filed, the secretary shall notify, in writing, the director of such appeal. ~~The~~  
12 ~~secretary at least 10 days before the time fixed for the hearing shall notify~~  
13 ~~the director and the applicant or licensee of the time when, and place~~  
14 ~~where, the appeal will be heard. The hearing shall be conducted by the~~  
15 ~~secretary, or by a person designated by the secretary, in accordance with~~  
16 ~~the provisions of the Kansas administrative procedure act and shall be held~~  
17 ~~within 30 days after the date of the filing of the notice of appeal unless the~~  
18 ~~person appealing consents to a later hearing.~~

19       ~~The secretary shall adopt, pursuant to K.S.A. 41-210, and amendments~~  
20 ~~thereto, such rules and regulations as necessary to govern the procedure in~~  
21 ~~such hearings. At any such hearing the applicant or licensee and the~~  
22 ~~director may be present in person or by agent or counsel. The secretary or~~  
23 ~~person conducting the hearing shall have the power to adjourn any~~  
24 ~~hearing, but no such adjournment shall be for more than five days unless~~  
25 ~~consented to by the person appealing. Review of a director's order by the~~  
26 ~~secretary shall be conducted in accordance with the provisions of the~~  
27 ~~Kansas administrative procedure act.~~

28       Sec. 8. K.S.A. 2014 Supp. 41-326 is hereby amended to read as  
29 follows: 41-326. (a) A license shall be purely a personal privilege, valid  
30 for not to exceed two years after issuance, except as otherwise provided by  
31 law, unless sooner suspended, *involuntarily canceled* or revoked, and shall  
32 not constitute property, nor shall it be subject to attachment, garnishment  
33 or execution, nor shall it be alienable or transferable, voluntarily or  
34 involuntarily, or subject to being encumbered or hypothecated. A license  
35 shall not descend by the laws of testate or intestate devolution but shall  
36 cease and expire upon the death of the licensee except that executors,  
37 administrators or representatives of the estate of any deceased licensee and  
38 the trustee of any insolvent or bankrupt licensee, when such estate consists  
39 in part of alcoholic liquor, may continue the business of the sale,  
40 distribution or manufacture of alcoholic liquor under order of the  
41 appropriate court and may exercise the privilege of the deceased, insolvent  
42 or bankrupt licensee after the death of such decedent, or after such  
43 insolvency or bankruptcy, until the expiration of such license but not

1 longer than one year after the death, bankruptcy or insolvency of such  
2 licensee.

3 (b) When the licensee pays the full amount of the license fee upon  
4 application and is prevented from operating under such license in  
5 accordance with the provisions of this act for the entire second year of the  
6 license term, a refund shall be made of one-half of the license fee paid by  
7 such licensee. The secretary of revenue may adopt rules and regulations  
8 pursuant to K.S.A. 41-210, and amendments thereto, which provide for the  
9 authorization of refunds of one-half of the license fee paid when the  
10 licensee does not use such license for the entire second year of the license  
11 term as a result of the cancellation of the license upon the request of the  
12 licensee for voluntary reasons.

13 Sec. 9. K.S.A. 2014 Supp. 41-328 is hereby amended to read as  
14 follows: 41-328. (a) In addition to or in lieu of any other civil or criminal  
15 penalty provided by law, the director, upon a finding that a licensee under  
16 the Kansas liquor control act has violated any provision thereof, may  
17 impose on such licensee a civil fine not exceeding \$1,000 for each  
18 violation.

19 (b) No fine shall be imposed pursuant to this section except upon the  
20 written order of the director to the licensee who committed the violation.  
21 Such order shall state the violation, the fine to be imposed and the right of  
22 the licensee to appeal the order. Such order shall be subject to appeal and  
23 review in the manner provided by K.S.A. 41-321, 41-322 and 41-323, and  
24 ~~amendments thereto~~ *accordance with the provisions of the Kansas*  
25 *administrative procedure act and K.S.A. 41-321, and amendments thereto.*

26 (c) Any fine imposed pursuant to this section shall be remitted to the  
27 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
28 amendments thereto. Upon receipt of each such remittance, the state  
29 treasurer shall deposit the entire amount in the state treasury to the credit  
30 of the state general fund.

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

33 Sec. 10. K.S.A. 2014 Supp. 41-719 is hereby amended to read as  
34 follows: 41-719. (a) (1) Except as otherwise provided herein and in K.S.A.  
35 8-1599, and amendments thereto, no person shall drink or consume  
36 alcoholic liquor on the public streets, alleys, roads or highways or inside  
37 vehicles while on the public streets, alleys, roads or highways.

38 (2) Alcoholic liquor may be consumed at a special event held on  
39 public streets, alleys, roads, sidewalks or highways when a temporary  
40 permit has been issued pursuant to K.S.A. 41-2645, and amendments  
41 thereto, for such special event. Such special event must be approved, by  
42 ordinance or resolution, by the local governing body of any city, county or  
43 township where such special event is being held. No alcoholic liquor may

1 be consumed inside vehicles while on public streets, alleys, roads or  
2 highways at any such special event.

3 (3) No person shall remove any alcoholic liquor from inside the  
4 boundaries of a special event as designated by the governing body of any  
5 city, county or township. The boundaries of such special event shall be  
6 clearly marked by signs, a posted map or other means which reasonably  
7 identify the area in which alcoholic liquor may be possessed or consumed  
8 at such special event.

9 (4) No person shall possess or consume alcoholic liquor inside the  
10 premises licensed as a special event that was not sold or provided by the  
11 licensee holding the temporary permit for such special event.

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

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

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

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

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

33 (5) on the premises of a manufacturer, microbrewery, microdistillery  
34 or farm winery, if authorized by K.S.A. 41-305, 41-308a, 41-308b or  
35 K.S.A. 2014 Supp. 41-354, and amendments thereto.

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

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

42 (2) In any state-owned or operated building or structure, and on the  
43 surrounding premises, which is furnished to and occupied by any state

1 officer or employee as a residence.

2 (3) On premises licensed as a club or drinking establishment and  
3 located on property owned or operated by an airport authority created  
4 pursuant to chapter 27 of the Kansas Statutes Annotated, and amendments  
5 thereto, or established by a city.

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

8 (5) On the state fairgrounds, if: (A) The alcoholic liquor is domestic  
9 beer or wine or wine imported under ~~subsection (e) of~~ K.S.A. 41-308a(e),  
10 and amendments thereto, and is consumed only for purposes of judging  
11 competitions; (B) the alcoholic liquor is wine or beer and is sold and  
12 consumed during the days of the Kansas state fair on premises leased by  
13 the state fair board to a person who holds a temporary permit issued  
14 pursuant to K.S.A. 41-2645, and amendments thereto, authorizing the sale  
15 and serving of such wine or beer, or both; or (C) the alcoholic liquor is  
16 consumed on nonfair days in conjunction with bona fide scheduled events  
17 involving not less than 75 invited guests and the state fair board, in its  
18 discretion, authorizes the consumption of the alcoholic liquor, subject to  
19 any conditions or restrictions the board may require.

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

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

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

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

34 ~~(H)~~ (9) On the premises of any Kansas national guard regional  
35 training center or armory, and any building on such premises, as  
36 authorized by rules and regulations of the adjutant general and upon  
37 approval of the Kansas military board.

38 ~~(H)~~ (10) On the premises of any land or waters owned or managed  
39 by the department of wildlife, parks and tourism, except as otherwise  
40 prohibited by rules and regulations of the department adopted by the  
41 secretary pursuant to K.S.A. 32-805, and amendments thereto.

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

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

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

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

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

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

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

26 (j) For the purposes of this section, "special event" means a picnic,  
27 bazaar, festival or other similar community gathering, which has been  
28 approved by the local governing body of any city, county or township.

29 Sec. 11. K.S.A. 41-2609 is hereby amended to read as follows: 41-  
30 2609. ~~The provisions of K.S.A. 41-320, 41-321, 41-322, 41-323 and 41-~~  
31 ~~324, and amendments thereto, relating to proceedings for the suspension or~~  
32 ~~revocation of licenses issued under the Kansas liquor control act, appeals~~  
33 ~~from orders of the director refusing, suspending or revoking such licenses~~  
34 ~~and judicial review of decisions on such appeals and duties of county~~  
35 ~~attorneys relating to such review shall apply in the same manner to~~  
36 ~~proceedings for the suspension or revocation of licenses issued under this~~  
37 ~~act, appeals from orders of the director refusing, suspending or revoking~~  
38 ~~licenses issued under this act, orders refusing temporary permits, appeals~~  
39 ~~from orders of the director and judicial review of decisions on such~~  
40 ~~appeals. (a) The provisions of the Kansas administrative procedure act~~  
41 ~~shall apply to all proceedings involving the following:~~

42 (1) *Denial of an application for any license to be issued pursuant to*  
43 *the club and drinking establishment act;*

1       (2) *suspension of any license issued pursuant to the club and drinking*  
2 *establishment act;*

3       (3) *involuntary cancellation of any license issued pursuant to the club*  
4 *and drinking establishment act;*

5       (4) *revocation of any license issued pursuant to the club and drinking*  
6 *establishment act; and*

7       (5) *assessment of any civil fine pursuant to K.S.A. 41-2633a, and*  
8 *amendments thereto.*

9       (b) *No license shall be suspended, involuntarily canceled or revoked*  
10 *except after an opportunity for a hearing before the director.*

11       Sec. 12. K.S.A. 2014 Supp. 41-2611 is hereby amended to read as  
12 follows: 41-2611. The director may ~~revoke or~~ suspend, *involuntarily*  
13 *cancel or revoke* any license issued pursuant to the club and drinking  
14 establishment act for any one or more of the following reasons:

15       (a) The licensee has fraudulently obtained the license by giving false  
16 information in the application therefor or any hearing thereon.

17       (b) The licensee has violated any of the provisions of this act or any  
18 rules or regulations adopted hereunder.

19       (c) The licensee has become ineligible to obtain a license or permit  
20 under this act.

21       (d) The licensee's manager or employee has been intoxicated while on  
22 duty.

23       (e) The licensee, or its manager or employee, has permitted any  
24 disorderly person to remain on premises where alcoholic liquor is sold by  
25 such licensee.

26       (f) There has been a violation of a provision of the laws of this state,  
27 or of the United States, pertaining to the sale of intoxicating or alcoholic  
28 liquors or cereal malt beverages, or any crime involving a morals charge,  
29 on premises where alcoholic liquor is sold by such licensee.

30       (g) The licensee, or its managing officers or any employee, has  
31 purchased and displayed, on premises where alcoholic liquor is sold by  
32 such licensee, a federal wagering occupational stamp issued by the United  
33 States treasury department.

34       (h) The licensee, or its managing officers or any employee, has  
35 purchased and displayed, on premises where alcoholic liquor is sold by  
36 such licensee, a federal coin operated gambling device stamp for the  
37 premises issued by the United States treasury department.

38       (i) The licensee holds a license as a class B club, drinking  
39 establishment or caterer and has been found guilty of a violation of article  
40 10 of chapter 44 of the Kansas Statutes Annotated, and amendments  
41 thereto, under a decision or order of the Kansas human rights commission  
42 which has become final or such licensee has been found guilty of a  
43 violation of K.S.A. 21-4003, prior to its repeal, or K.S.A. 2014 Supp. 21-

1 6102, and amendments thereto.

2 (j) There has been a violation of K.S.A. 21-4106 or 21-4107, prior to  
3 their repeal, or K.S.A. 2014 Supp. 21-6204, and amendments thereto, on  
4 premises where alcoholic liquor is sold by such licensee.

5 Sec. 13. K.S.A. 41-2633a is hereby amended to read as follows: 41-  
6 2633a. (a) In addition to or in lieu of any other civil or criminal penalty  
7 provided by law, the director, upon a finding that a licensee or temporary  
8 permit holder under the club and drinking establishment act has violated  
9 any provision thereof, may impose on such licensee or temporary permit  
10 holder a civil fine not exceeding \$1,000 for each violation.

11 (b) No fine shall be imposed pursuant to this section except upon the  
12 written order of the director to the licensee or temporary permit holder  
13 who committed the violation. Such order shall state the violation, the fine  
14 to be imposed and the right of the licensee or temporary permit holder to  
15 appeal the order. Such order shall be subject to appeal and review in ~~the~~  
16 ~~manner provided by K.S.A. 41-321, 41-322 and 41-323, and amendments~~  
17 ~~thereto~~ *accordance with the provisions of the Kansas administrative*  
18 *procedure act.*

19 (c) Any fine imposed pursuant to this section shall be paid to the state  
20 treasurer, who shall deposit the same in the state treasury and credit it to  
21 the state general fund.

22 Sec. 14. K.S.A. 41-314, 41-321, 41-2609 and 41-2633a and K.S.A.  
23 2014 Supp. 41-319, 41-320, 41-326, 41-328, 41-719 and 41-2611 are  
24 hereby repealed.

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