

Substitute for SENATE BILL No. 36

By Committee on Federal and State Affairs

2-6

1 AN ACT concerning alcoholic beverages; relating to clubs and drinking
2 establishments; permitting tastings on licensed premises; amending
3 K.S.A. 2012 Supp. 41-2601, 41-2637, 41-2640, 41-2641, 41-2642 and
4 79-41a02 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2012 Supp. 41-2601 is hereby amended to read as
8 follows: 41-2601. As used in the club and drinking establishment act:

9 (a) The following terms shall have the meanings provided by K.S.A.
10 41-102, and amendments thereto: (1) "Alcoholic liquor"; (2) "director"; (3)
11 "original package"; (4) "person"; (5) "sale"; and (6) "to sell."

12 (b) "Beneficial interest" shall not include any interest a person may
13 have as owner, operator, lessee or franchise holder of a licensed hotel or
14 motel on the premises of which a club or drinking establishment is located.

15 (c) "Caterer" means an individual, partnership or corporation which
16 sells alcoholic liquor by the individual drink, and provides services related
17 to the serving thereof, on unlicensed premises which may be open to the
18 public, but does not include a holder of a temporary permit, selling
19 alcoholic liquor in accordance with the terms of such permit.

20 (d) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
21 2701, and amendments thereto.

22 (e) "Class A club" means a premises which is owned or leased by a
23 corporation, partnership, business trust or association and which is
24 operated thereby as a bona fide nonprofit social, fraternal or war veterans'
25 club, as determined by the director, for the exclusive use of the corporate
26 stockholders, partners, trust beneficiaries or associates (hereinafter referred
27 to as members) and their families and guests accompanying them.

28 (f) "Class B club" means a premises operated for profit by a
29 corporation, partnership or individual, to which members of such club may
30 resort for the consumption of food or alcoholic beverages and for
31 entertainment.

32 (g) "Club" means a class A or class B club.

33 (h) "Drinking establishment" means premises which may be open to
34 the general public, where alcoholic liquor by the individual drink is sold.
35 Drinking establishment includes a railway car.

36 (i) "Food" means any raw, cooked or processed edible substance or

1 ingredient, other than alcoholic liquor or cereal malt beverage, used or
2 intended for use or for sale, in whole or in part, for human consumption.

3 (j) "Food service establishment" has the meaning provided by K.S.A.
4 36-501, and amendments thereto.

5 (k) "Hotel" has the meaning provided by K.S.A. 36-501, and
6 amendments thereto.

7 (l) "Individual drink" means a beverage containing alcoholic liquor or
8 cereal malt beverage served to an individual for consumption by such
9 individual or another individual, but which is not intended to be consumed
10 by two or more individuals. The term "individual drink" includes
11 beverages containing not more than: (1) Eight ounces of wine; (2) thirty-
12 two ounces of beer or cereal malt beverage; or (3) four ounces of a single
13 spirit or a combination of spirits.

14 (m) "Minibar" means a closed cabinet, whether nonrefrigerated or
15 wholly or partially refrigerated, access to the interior of which is restricted
16 by means of a locking device which requires the use of a key, magnetic
17 card or similar device.

18 (n) "Minor" means a person under 21 years of age.

19 (o) "Morals charge" means a charge involving prostitution; procuring
20 any person; soliciting of a child under 18 years of age for any immoral act
21 involving sex; possession or sale of narcotics, marijuana, amphetamines or
22 barbiturates; rape; incest; gambling; illegal cohabitation; adultery; bigamy;
23 or a crime against nature.

24 (p) "Municipal corporation" means the governing body of any county
25 or city.

26 (q) "Public venue" means an arena, stadium, hall or theater, used
27 primarily for athletic or sporting events, live concerts, live theatrical
28 productions or similar seasonal entertainment events, not operated on a
29 daily basis, and containing:

30 (1) Not less than 4,000 permanent seats; and

31 (2) not less than two private suites, which are enclosed or semi-
32 enclosed seating areas, having controlled access and separated from the
33 general admission areas by a permanent barrier.

34 (r) "Railway car" means a locomotive drawn conveyance used for the
35 transportation and accommodation of human passengers that is confined to
36 a fixed rail route and which derives from sales of food for consumption on
37 the railway car not less than 30% of its gross receipts from all sales of food
38 and beverages in a 12-month period.

39 (s) "Restaurant" means:

40 (1) In the case of a club, a licensed food service establishment which,
41 as determined by the director, derives from sales of food for consumption
42 on the licensed club premises not less than 50% of its gross receipts from
43 all sales of food and beverages on such premises in a 12-month period;

1 (2) in the case of a drinking establishment subject to a food sales
2 requirement under K.S.A. 41-2642, and amendments thereto, a licensed
3 food service establishment which, as determined by the director, derives
4 from sales of food for consumption on the licensed drinking establishment
5 premises not less than 30% of its gross receipts from all sales of food and
6 beverages on such premises in a 12-month period; and

7 (3) in the case of a drinking establishment subject to no food sales
8 requirement under K.S.A. 41-2642, and amendments thereto, a licensed
9 food service establishment.

10 (t) "RV resort" means premises where a place to park recreational
11 vehicles, as defined in K.S.A. 75-1212, and amendments thereto, is offered
12 for pay, primarily to transient guests, for overnight or longer use while
13 such recreational vehicles are used as sleeping or living accommodations.

14 (u) "Sample" means a serving of alcoholic liquor which contains not
15 more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine;
16 or (3) two ounces of beer or cereal malt beverage. A sample of a mixed
17 alcoholic beverage shall contain not more than one-half ounce of distilled
18 spirits.

19 (v) "Secretary" means the secretary of revenue.

20 (w) "Temporary permit" means a temporary permit issued
21 pursuant to K.S.A. 41-2645, and amendments thereto.

22 Sec. 2. K.S.A. 2012 Supp. 41-2637 is hereby amended to read as
23 follows: 41-2637. (a) A license for a class A club shall allow the licensee
24 to: (1) Offer for sale, sell and serve alcoholic liquor for consumption on
25 the licensed premises by members and their families, and guests
26 accompanying them; and (2) serve samples of alcoholic liquor free of
27 charge for consumption by members and their families and guests
28 accompanying them.

29 *No charge of any sort may be made for a sample serving. A person may*
30 *be served no more than five samples per visit. Samples may not be served*
31 *to a minor. No samples may be removed from the licensed premises. No*
32 *consideration shall be requested or required for entry onto the premises,*
33 *participation in any event taking place on the premises or to remain on the*
34 *premises.*

35 (b)(1) Subject to the provisions of subsection (b)(2), any two or more
36 class A or class B clubs may permit, by an agreement filed with and
37 approved by the director, the members of each such club to have access to
38 all other clubs which are parties to such agreement. The privileges
39 extended to the visiting members of other clubs under such an agreement
40 shall be determined by the agreement and, if the agreement so provides,
41 any club which is a party to such agreement may sell, offer for sale and
42 serve, to any person who is a member of another club which is a party to
43 such agreement, alcoholic liquor for consumption on the licensed premises

1 by such person and such person's family, and guests accompanying them.

2 (2) A class B club may enter into a reciprocal agreement authorized
3 by subsection (b)(1) only if the class B club is a restaurant.

4 (c) A licensee may store on its premises wine sold to a customer for
5 consumption at a later date on its premises in the unopened container. Such
6 wine must be kept separate from all other alcohol stock and in a secure
7 locked area separated by customer. Such wine shall not be removed from
8 the licensed premises in its unopened condition.

9 Sec. 3. K.S.A. 2012 Supp. 41-2640 is hereby amended to read as
10 follows: 41-2640. (a) *Except as otherwise provided in this act*, no club,
11 drinking establishment, caterer or holder of a temporary permit, nor any
12 person acting as an employee or agent thereof, shall:

13 (1) Offer or serve any free cereal malt beverage or alcoholic liquor in
14 any form to any person;

15 (2) offer or serve to any person an individual drink at a price that is
16 less than the acquisition cost of the individual drink to the licensee or
17 permit holder;

18 (3) sell, offer to sell or serve to any person an unlimited number of
19 individual drinks during any set period of time for a fixed price, except at
20 private functions not open to the general public or to the general
21 membership of a club;

22 (4) encourage or permit, on the licensed premises, any game or
23 contest which involves drinking alcoholic liquor or cereal malt beverage or
24 the awarding of individual drinks as prizes; or

25 (5) advertise or promote in any way, whether on or off the licensed
26 premises, any of the practices prohibited under subsections (a)(1) through
27 (4).

28 (b) No public venue, nor any person acting as an employee or agent
29 thereof, shall:

30 (1) Offer or serve any free cereal malt beverage or alcoholic liquor in
31 any form to any person;

32 (2) offer or serve to any person a drink or original container of
33 alcoholic liquor or cereal malt beverage at a price that is less than the
34 acquisition cost of the drink or original container of alcoholic liquor or
35 cereal malt beverage to the licensee;

36 (3) sell or serve alcoholic liquor in glass containers to customers in
37 the general admission area;

38 (4) sell or serve more than two drinks per customer at any one time in
39 the general admission area;

40 (5) encourage or permit, on the licensed premises, any game or
41 contest which involves drinking alcoholic liquor or cereal malt beverage or
42 the awarding of drinks as prizes; or

43 (6) advertise or promote in any way, whether on or off the licensed

1 premises, any of the practices prohibited under subsections (b)(1) through
2 (5).

3 (c) A public venue club, drinking establishment, caterer or holder of a
4 temporary permit may:

5 (1) Offer free food or entertainment at any time;

6 (2) sell or deliver wine by the bottle or carafe;

7 (3) sell, offer to sell and serve individual drinks at different prices
8 throughout any day; or

9 (4) sell or serve beer or cereal malt beverage in a pitcher capable of
10 containing not more than 64 fluid ounces; *or*

11 (5) *offer samples of alcoholic liquor free of charge as authorized by*
12 *this act.*

13 (d) Violation of any provision of this section is a misdemeanor
14 punishable as provided by K.S.A. 41-2633, and amendments thereto.

15 (e) Violation of any provision of this section shall be grounds for
16 suspension or revocation of the licensee's license as provided by K.S.A.
17 41-2609, and amendments thereto, and for imposition of a civil fine on the
18 licensee or temporary permit holder as provided by K.S.A. 41-2633a, and
19 amendments thereto.

20 (f) Every licensed club and drinking establishment shall make
21 available at any time upon request a price list showing the club's or
22 drinking establishment's current prices per individual drink for all
23 individual drinks.

24 Sec. 4. K.S.A. 2012 Supp. 41-2641 is hereby amended to read as
25 follows: 41-2641. (a) A license for a class B club shall allow the licensee
26 to: (1) Offer for sale, sell and serve alcoholic liquor for consumption on
27 the licensed premises by members of such club and guests accompanying
28 them; and (2) *serve samples of alcoholic liquor free of charge on the*
29 *licensed premises for consumption by such members and their families*
30 *and guests accompanying them.*

31 *No charge of any sort may be made for a sample serving. A person may*
32 *be served no more than five samples per visit. Samples may not be served*
33 *to a minor. No samples may be removed from the licensed premises.*
34 *Providing samples is prohibited for any licensee who charges a cover*
35 *charge or entry fee at any time during the business day. No consideration*
36 *shall be requested or required for entry onto the premises, participation in*
37 *any event taking place on the premises or to remain on the premises.*

38 (b) (1) Subject to the provisions of subsection (b)(2), any two or more
39 class A or class B clubs may permit, by an agreement filed with and
40 approved by the director, the members of each such club to have access to
41 all other clubs which are parties to such agreement. The privileges
42 extended to the visiting members of other clubs under such an agreement
43 shall be determined by the agreement and, if the agreement so provides,

1 any club which is a party to such agreement may sell, offer for sale and
2 serve, to any person who is a member of another club which is a party to
3 such agreement, alcoholic liquor for consumption on the licensed premises
4 by such person and such person's family, and guests accompanying them.

5 (2) A class B club may enter into a reciprocal agreement authorized
6 by subsection (b)(1) only if the class B club is a restaurant.

7 (c) Except as provided by subsection (d), an applicant for
8 membership in a class B club shall, before becoming a member of such
9 club:

10 (1) Be screened by the club for good moral character;

11 (2) pay an annual membership fee of not less than \$10; and

12 (3) wait for a period of 10 days after completion of the application
13 form and payment of the membership fee.

14 (d) Notwithstanding the membership fee and waiting period
15 requirement of subsection (c):

16 (1) Any class B club located on the premises of a hotel or RV resort
17 may establish rules whereby a guest, who registered at the hotel or RV
18 resort and who is not a resident of the county in which the club is located,
19 may file application for temporary membership in such club. The
20 membership, if granted, shall be valid only for the period of time that the
21 guest is a bona fide registered guest at the hotel or RV resort and such
22 temporary membership shall not be subject to the waiting period or fee
23 requirement of this section.

24 (2) Any class B club located on property which is owned or operated
25 by a municipal airport authority and upon which consumption of alcoholic
26 liquor is authorized by law may establish rules whereby an air traveler
27 who is a holder of a current airline ticket may file application for
28 temporary membership in such club for the day such air traveler's ticket is
29 valid, and such temporary membership shall not be subject to the waiting
30 period or fee requirement of this section.

31 (3) Any class B club may establish rules whereby military personnel
32 of the armed forces of the United States on temporary duty and housed at
33 or near any military installation located within the exterior boundaries of
34 the state of Kansas may file application for temporary membership in such
35 club. The membership, if granted, shall be valid only for the period of the
36 training, not to exceed 20 weeks. Any person wishing to make application
37 for temporary membership in a class B club under this subsection (d)(3)
38 shall present the temporary duty orders to the club. Temporary
39 membership issued under this subsection (d)(3) shall not be subject to the
40 waiting period or fee requirements of this section.

41 (4) Any class B club may enter into a written agreement with a hotel
42 or RV resort whereby a guest who is registered at the hotel or RV resort
43 and who is not a resident of the county in which the club is located may

1 file application for temporary membership in such club. The temporary
2 membership, if granted, shall be valid only for the period of time that the
3 guest is a bona fide registered guest at the hotel or RV resort and shall not
4 be subject to the waiting period or dues requirement of this section. A club
5 may enter into a written agreement with a hotel or RV resort pursuant to
6 this provision only if: (A) The hotel or RV resort is located in the same
7 county as the club; (B) there is no class B club located on the premises of
8 the hotel or RV resort; and (C) no other club has entered into a written
9 agreement with the hotel or RV resort pursuant to this section.

10 (5) Any class B club located in a racetrack facility where races with
11 parimutuel wagering are conducted under the Kansas parimutuel racing act
12 may establish rules whereby persons attending such races may file an
13 application for temporary membership in such club for the day such person
14 is attending such races, and such temporary membership shall not be
15 subject to the waiting period or fee requirement of this section.

16 (e) A licensee may store on its premises wine sold to a customer for
17 consumption at a later date on its premises in the unopened container. Such
18 wine must be kept separate from all other alcohol stock and in a secure
19 locked area separated by customer. Such wine shall not be removed from
20 the licensed premises in its unopened condition.

21 Sec. 5. K.S.A. 2012 Supp. 41-2642 is hereby amended to read as
22 follows: 41-2642. (a) A license for a drinking establishment shall allow the
23 licensee to offer for sale, sell and serve alcoholic liquor for consumption
24 on the licensed premises which may be open to the public, *and to serve*
25 *samples of alcoholic liquor free of charge on licensed premises subject to*
26 *the requirements of subsection (c), and amendments thereto*, but only if
27 such premises are located in a county where the qualified electors of the
28 county:

29 (1) (A) Approved, by a majority vote of those voting thereon, the
30 proposition to amend section 10 of article 15 of the constitution of the state
31 of Kansas at the general election in November 1986, or (B) have approved
32 a proposition to allow sales of alcoholic liquor by the individual drink in
33 public places within the county at an election pursuant to K.S.A. 41-2646,
34 and amendments thereto; and

35 (2) have not approved a proposition to prohibit such sales of alcoholic
36 liquor in such places at a subsequent election pursuant to K.S.A. 41-2646,
37 and amendments thereto.

38 (b) A drinking establishment shall be required to derive from sales of
39 food for consumption on the licensed premises not less than 30% of all the
40 establishment's gross receipts from sales of food and beverages on such
41 premises unless the licensed premises are located in a county where the
42 qualified electors of the county:

43 (1) Have approved, at an election pursuant to K.S.A. 41-2646, and

1 amendments thereto, a proposition to allow sales of alcoholic liquor by the
2 individual drink in public places within the county without a requirement
3 that any portion of their gross receipts be derived from the sale of food;
4 and

5 (2) have not approved a proposition to prohibit such sales of alcoholic
6 liquor in such places at a subsequent election pursuant to K.S.A. 41-2646,
7 and amendments thereto.

8 (c) *No charge of any sort may be made for a sample serving. A*
9 *person may be served no more than five samples per visit. Samples may*
10 *not be served to a minor. No samples may be removed from the licensed*
11 *premises. Providing samples is prohibited for any licensee who charges a*
12 *cover charge or entry fee at any time during the business day. No*
13 *consideration shall be requested or required for entry onto the premises,*
14 *participation in any event taking place on the premises or to remain on the*
15 *premises.*

16 (d) A drinking establishment shall specify in the application for a
17 license or renewal of a license the premises to be licensed, which may
18 include all premises which are in close proximity and are under the control
19 of the applicant or licensee.

20 (e) Notwithstanding any other provision of law to the contrary,
21 any hotel of which the entire premises are licensed as a drinking
22 establishment or as a drinking establishment/caterer may sell alcoholic
23 liquor or cereal malt beverage by means of minibars located in guest
24 rooms of such hotel, subject to the following:

25 (1) The key, magnetic card or other device required to attain access to
26 a minibar in a guest room shall be provided only to guests who are
27 registered to stay in such room and who are 21 or more years of age;

28 (2) containers or packages of spirits or wine sold by means of a
29 minibar shall hold not less than 50 nor more than 200 milliliters; and

30 (3) a minibar shall be restocked with alcoholic liquor or cereal malt
31 beverage only during hours when the hotel is permitted to sell alcoholic
32 liquor and cereal malt beverage as a drinking establishment.

33 (f) A drinking establishment may store on its premises wine sold
34 to a customer for consumption at a later date on its premises in the
35 unopened container. Such wine must be kept separate from all other
36 alcohol stock and in a secure locked area separated by customer. Such
37 wine shall not be removed from the licensed premises in its unopened
38 condition.

39 Sec. 6. K.S.A. 2012 Supp. 79-41a02 is hereby amended to read as
40 follows: 79-41a02. (a) There is hereby imposed, for the privilege of selling
41 alcoholic liquor, a tax at the rate of 10% upon the gross receipts derived
42 from the sale of alcoholic liquor by any club, caterer, drinking
43 establishment, public venue or temporary permit holder, *and upon the*

1 *acquisition costs of any alcoholic liquor served as samples by clubs and*
2 *drinking establishments.*

3 (b) The tax imposed by this section shall be paid by the consumer to
4 the club, caterer, drinking establishment, public venue or temporary permit
5 holder and it shall be the duty of each and every club, caterer, drinking
6 establishment, public venue or temporary permit holder subject to this
7 section to collect from the consumer the full amount of such tax, or an
8 amount equal as nearly as possible or practicable to the average equivalent
9 thereto. Each club, caterer, drinking establishment, public venue or
10 temporary permit holder collecting the tax imposed hereunder shall be
11 responsible for paying over the same to the state department of revenue in
12 the manner prescribed by K.S.A. 79-41a03, and amendments thereto, and
13 the state department of revenue shall administer and enforce the collection
14 of such tax.

15 (c) *Any club or drinking establishment that serves free samples of*
16 *alcoholic liquor shall remit the tax imposed by subsection (a) in the*
17 *manner prescribed by K.S.A. 79-41a03, and amendments thereto, and the*
18 *state department of revenue shall administer and enforce the payment of*
19 *such tax.*

20 New Sec. 7. (a) Alcoholic liquor and cereal malt beverage for the
21 sampling as provided for in K.S.A. 41-2637, 41-2640, 41-2641 and 41-
22 2642, and amendments thereto, shall be withdrawn from the inventory of
23 the licensee. Except as provided by subsection (b), a person other than the
24 licensee or the licensee's agent or employee may not dispense or
25 participate in the dispensing of alcoholic beverages under this section.

26 (b) The holder of a supplier's permit or such permit holder's agent or
27 employee may participate in and conduct product tastings of alcoholic
28 beverages at a licensee's premises, monitored and regulated by the division
29 of alcoholic beverage control, and may open, touch or pour alcoholic
30 beverages, make a presentation or answer questions at the tasting. Any
31 alcoholic beverage or cereal malt beverages sampled under this subsection
32 must be purchased from the licensee on whose premises the sampling is
33 held. The licensee may not require the purchase of more alcoholic
34 beverages or cereal malt beverage than is necessary for the tasting. This
35 section does not authorize the supplier or its agent to withdraw or purchase
36 an alcoholic beverage or cereal malt beverage from the holder of a
37 distributor's license or provide an alcoholic beverage or cereal malt
38 beverage for sampling on licensee's premises that is not purchased from
39 the licensee.

40 New Sec. 8. Each licensee licensed under this act who provides
41 samples shall pay the drink tax imposed by K.S.A. 79-41a01 et seq., and
42 amendments thereto, on the alcoholic liquor and cereal malt beverage
43 inventory when the inventory is withdrawn from the licensee's stock based

1 on the licensee's acquisition cost.

2 Sec. 9. K.S.A. 2012 Supp. 41-2601, 41-2637, 41-2640, 41-2641, 41-
3 2642 and 79-41a02 are hereby repealed.

4 Sec. 10. This act shall take effect and be in force from and after its
5 publication in the statute book.