

HOUSE BILL No. 2296

By Committee on Judiciary

2-11

AN ACT concerning civil procedure; relating to civil liability for serving alcoholic beverages.

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

Section 1. (a) An aggrieved party shall have a cause of action against a licensee for breach of the duties imposed by K.S.A. 21-3610 or 41-715, and amendments thereto, if a jury or court finds the following: (1) That the purchaser consumed the alcoholic beverages sold by the licensee on the premises of the licensee; (2) the consumption of such alcoholic liquor or cereal malt beverage was a proximate cause of the harm sustained by the aggrieved party; and (3) the harm was a foreseeable consequence of the negligent service of alcoholic liquor or cereal malt beverage by the licensee. In any action thereon, evidence of acts or conduct by the licensee in violation of these statutes may be admissible. Any claim under this section shall survive death for purposes of K.S.A. 60-1801, and amendments thereto, and may be maintained in a wrongful death action under K.S.A. 60-1901, and amendments thereto.

(b) Any claim under subsection (a) shall be subject to and determined under K.S.A. 60-258a, and amendments thereto.

(c) In any claim under subsection (a) for breach of the duties imposed by K.S.A. 21-3610, and amendments thereto, evidence of the defenses codified in subsection (d) of K.S.A. 21-3610, and amendments thereto, as applicable, may be admissible for the purpose of determining comparative negligence under K.S.A. 60-258a, and amendments thereto.

(d) Except as expressly provided in subsections (a) and (c), there shall be no claim under K.S.A. 60-258a, and amendments thereto, for breach of the duties imposed by K.S.A. 21-3610 or 41-715, and amendments thereto, and alleged negligence or fault for furnishing or selling alcoholic liquor or cereal malt beverages shall not be admissible in an action under K.S.A. 60-258a, and amendments thereto.

(e) As used in this section:

(1) "Aggrieved party" means a person who sustains harm as a consequence of the acts or conduct of a minor, but does not include: (A) Such minor or incapacitated person, absent clear and convincing evidence that the furnishing or sale of the alcoholic liquor or cereal malt beverage

1 was knowing or intentional; or (B) any person who aided or abetted in
2 the furnishing or sale of the alcoholic liquor or cereal malt beverage to
3 the minor or incapacitated person.

4 (2) "Harm" has the meaning provided by subsection (d) of K.S.A. 60-
5 3302, and amendments thereto.

6 (3) "Licensee" means a licensee under the Kansas liquor control act,
7 the club and drinking establishment act or the provisions of article 27 of
8 chapter 41 of the Kansas Statutes Annotated, and amendments thereto.

9 (4) Any other terms shall have the meanings as provided by K.S.A.
10 21-3610 and 41-715, and amendments thereto, as applicable.

11 Sec. 2. As used in sections 2 through 10, and amendments thereto:

12 (a) "Director" means the director of the division.

13 (b) "Division" means the division of alcoholic beverage control of the
14 department of revenue.

15 (c) "Licensed premises" means:

16 (1) Premises licensed under the Kansas liquor control act, the club
17 and drinking establishment act or the provisions of article 27 of chapter
18 41 of the Kansas Statutes Annotated, and amendments thereto; or

19 (2) premises where a caterer licensed under the club and drinking
20 establishment act offers for sale, sells or serves alcoholic liquor.

21 (d) "Licensee" means a licensee under the Kansas liquor control act,
22 the club and drinking establishment act or the provisions of article 27 of
23 chapter 41 of the Kansas Statutes Annotated, and amendments thereto.

24 (e) Other terms have the meanings provided by K.S.A. 41-102, and
25 amendments thereto.

26 Sec. 3. Except as otherwise provided by law, on or after July 1, 2003:

27 (a) Any person who is employed by a licensee and who participates
28 in any manner in the sale of alcoholic liquor or cereal malt beverage for
29 consumption and not resale or in the mixing or serving of alcoholic liquor
30 or cereal malt beverage for consumption on licensed premises shall be
31 required to have a valid, unexpired server permit issued by the director.

32 (b) No licensee shall permit any person employed by the licensee to
33 sell alcoholic liquor or cereal malt beverage for consumption and not
34 resale or to mix or serve any alcoholic liquor or cereal malt beverage on
35 the licensee's licensed premises unless such person has a valid, unexpired
36 server permit issued under this act.

37 (c) A permittee shall make the server permit available at any time
38 while on duty for immediate inspection by any agent employed by the
39 division or by any other law enforcement officer.

40 Sec. 4. (a) A server permit shall be a purely personal privilege, valid
41 only upon licensed premises, for the period of time stated in the permit.
42 A server permit may be suspended or revoked for any reason specified
43 in section 7, and amendments thereto.

1 (b) No server permit shall be used by any person other than the
2 person to whom it is issued. A licensee shall verify the identification of
3 the permittee and determine that the permittee has in the permittee's
4 possession a valid, unexpired server permit before allowing the permittee
5 to sell alcoholic liquor or cereal malt beverage for consumption and not
6 resale or to mix or serve alcoholic liquor or cereal malt beverage for
7 consumption on the licensee's licensed premises.

8 Sec. 5. Unless suspended or revoked, a server permit issued on or
9 after July 1, 2003, shall expire on the anniversary date of the permittee's
10 birthday three years after the date of issuance of the permit or, if a tem-
11 porary permit authorized by rules and regulations promulgated here-
12 under, on the expiration date stated in such temporary permit.

13 Sec. 6. (a) An applicant for a server permit must: (1) Be 18 or more
14 years of age; (2) not have had a permit denied or revoked or have a permit
15 currently under suspension; and (3) have successfully completed the ed-
16 ucation program and examination required by section 9, and amendments
17 thereto.

18 (b) Server permits shall be issued, in accordance with rules and reg-
19 ulations of the secretary, by instructors of the education program required
20 by section 9, and amendments thereto. Application for a permit shall be
21 made on a form approved by the director. The applicant shall truthfully
22 answer all questions, provide any further information required by rules
23 and regulations adopted by the director and pay such fees as may be
24 required.

25 (c) An applicant for a server permit must: (1) Authorize a criminal
26 records check to be conducted by the Kansas bureau of investigation; (2)
27 tender the appropriate fee; and (3) authorize, on a form prescribed by
28 the director, the release of the report of the criminal records check to
29 the instructor, subject to applicable laws and rules and regulations re-
30 garding disclosure of such records.

31 Sec. 7. (a) The director may suspend or revoke a server permit if
32 the director has reasonable grounds to believe that:

33 (1) The permittee has made any false statement to the instructor in
34 the permit application;

35 (2) the permittee is not eligible under law for employment by a
36 licensee;

37 (3) the permittee has not successfully completed the education pro-
38 gram and examination required by section 9, and amendments thereto;
39 or

40 (4) the permittee has performed or permitted any act which would
41 constitute a violation of the Kansas liquor control act, the club and drink-
42 ing establishment act or the provisions of article 27 of chapter 41 of the
43 Kansas Statutes Annotated, and amendments thereto, or any rule and

1 regulation adopted thereunder.

2 (b) In addition to or in lieu of suspending or revoking a server permit
3 pursuant to subsection (a)(4), the director may suspend or revoke the
4 license of the licensee upon whose licensed premises the violation
5 occurred.

6 (c) All proceedings for suspension or revocation of a permit or license
7 pursuant to subsection (a) or (b) shall be in accordance with the provisions
8 of the Kansas administrative procedure act.

9 (d) (1) The director may impose a civil fine not to exceed \$1,000 in
10 addition to or in lieu of suspension or revocation of a permit or license
11 pursuant to this section.

12 (2) No fine shall be imposed pursuant to this subsection except upon
13 the written order of the director to the permittee or licensee. The order
14 shall state the violation, the fine to be imposed and the right of the per-
15 mittee or licensee to appeal the order. The order shall be subject to appeal
16 and review in the manner provided by K.S.A. 41-321, 41-322 and 41-323,
17 and amendments thereto.

18 (3) Any fine imposed pursuant to this subsection shall be paid to the
19 state treasurer, who shall deposit the entire amount in the state treasury
20 and credit it to the state general fund.

21 Sec. 8. (a) If a server permit issued under this act is lost, mutilated
22 or destroyed, the permittee shall apply immediately for a duplicate permit
23 on a form supplied by the director and shall forward to the director the
24 application and a fee of \$25.

25 (b) If a permittee changes name by marriage or otherwise, the per-
26 mittee shall apply immediately for a new server permit on a form supplied
27 by the director and shall forward to the director the application, the per-
28 mit, evidence of the change of name and a fee of \$25.

29 (c) The director may issue a duplicate permit or cause a duplicate to
30 be issued by an instructor, in accordance with rules and regulations of
31 the secretary.

32 Sec. 9. (a) The director shall require each licensee and each holder
33 of a server permit and each person applying to become a licensee or
34 permit holder to complete an approved alcohol server education program
35 and examination in order to qualify or requalify for a license or permit
36 unless an extension is granted for hardship reasons. After satisfactory
37 completion of the initial education program and examination, each li-
38 censee or permittee, in order to qualify for renewal of the license or
39 permit, shall be required to complete an alcohol server education pro-
40 gram and examination every three years thereafter unless an extension is
41 granted for hardship reasons. The secretary by rule and regulation may
42 exempt from the requirements of this subsection licensees who do not
43 participate in the management of the business.

1 (b) The standards and curriculum of the alcohol server education
2 program shall include, but not be limited to, the following:

3 (1) Alcohol as a drug and its effects on the body and behavior, es-
4 pecially driving ability. Instruction shall include information regarding:
5 (A) Physiological and behavioral effects of alcohol use; (B) absorption rate
6 factors; (C) laws affecting servers and sellers of alcohol; (D) potential
7 alcohol-related problems in professional or social settings; and (E) strat-
8 egies for dealing with problem situations.

9 (2) Effects of alcohol in combination with commonly used, legal pre-
10 scription or nonprescription drugs and illegal drugs.

11 (3) Recognition of the problem drinker and community treatment
12 programs and agencies.

13 (4) State alcoholic beverage laws such as prohibition of sale to minors
14 and sale to intoxicated persons, sale for on-premises or off-premises con-
15 sumption, hours of operation and penalties for violation of the laws.

16 (5) Drunk driving laws and alcoholic liquor or cereal malt beverage
17 liability statutes.

18 (6) Intervention with a problem customer, including ways to cut off
19 service, methods of dealing with a belligerent customer, alternative means
20 of transportation to get a customer safely home and how to assess and
21 evaluate situations and behavior with discussion of both effective and
22 ineffective intervention techniques.

23 (7) Advertising and marketing for safe and responsible drinking pat-
24 terns and standard operating procedures for dealing with customers.

25 (c) The secretary shall establish, by rules and regulations, a fee not
26 to exceed \$10 a year for each permittee subject to the education require-
27 ment of this section, to be used for administrative costs in certification of
28 instructors.

29 (d) The director shall provide for the education program required by
30 this section through independent contractors, private persons or private
31 or public schools certified by the director.

32 Sec. 10. The secretary of revenue shall adopt rules and regulations
33 in accordance with K.S.A. 41-210 and amendments thereto for the ad-
34 ministration of the education program required by this act, for the issu-
35 ance of server permits and for the certification of instructors. The rules
36 and regulations shall establish the length of training programs, the qual-
37 ifications for instructor certification, maintenance of instructor certifica-
38 tion, permittee and instructor certification examinations, program admin-
39 istration quality control and such other matters as required to implement
40 and administer the provisions of this act.

41 Sec. 11. Sections 2 through 10, and amendments thereto, shall be
42 part of and supplemental to the Kansas liquor control act.

1 Sec. 12. This act shall take effect and be in force from and after its
2 publication in the statute book.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43