

HOUSE Substitute for SENATE BILL No. 437

By Committee on Judiciary

3-10

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

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

13 Section 1. (a) An aggrieved party shall have a cause of action against
14 a licensee for breach of the duties imposed by K.S.A. 21-3610 or 41-715,
15 and amendments thereto, if a jury or court finds the following: (1) That
16 on the licensed premises of such licensee, the alcoholic liquor or cereal
17 malt beverage was consumed by the minor or incapacitated person and
18 sold by the licensee; (2) the consumption of such alcoholic liquor or cereal
19 malt beverage was a proximate cause of the damages sustained by the
20 aggrieved party; and (3) the damages were a foreseeable consequence of
21 the negligent service of alcoholic liquor or cereal malt beverage by the
22 licensee. In any action thereon, evidence of acts or conduct by the li-
23 censee in violation of these statutes may be admissible. Any claim under
24 this section shall survive death for purposes of K.S.A. 60-1801, and
25 amendments thereto, and may be maintained in a wrongful death action
26 under K.S.A. 60-1901, and amendments thereto.

27 (b) Any claim under subsection (a) shall be subject to and determined
28 under K.S.A. 60-258a, and amendments thereto. Blood alcohol content
29 obtained at a different time than the point when the alcoholic liquor or
30 cereal malt beverage was served and evidence that the incapacitated per-
31 son was furnished such alcoholic liquor or cereal malt beverage without
32 additional evidence that the licensee acted knowingly or intentionally shall
33 not constitute prima facie evidence of liability under this section.

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

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

1 K.S.A. 60-258a, and amendments thereto.

2 (e) As used in this section:

3 (1) "Aggrieved party" means a person who sustains damages as a con-
4 sequence of the acts or conduct of a minor or incapacitated person, but
5 does not include: (A) Such minor or incapacitated person; or (B) any
6 person who aided or abetted in the furnishing or sale of the alcoholic
7 liquor or cereal malt beverages to the minor or incapacitated person.

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

11 (3) "Incapacitated person" means a person who is physically or men-
12 tally incapacitated by the consumption of alcoholic liquor or cereal malt
13 beverage.

14 (4) Any other terms shall have the meanings as provided by K.S.A.
15 21-3610 and 41-715, and amendments thereto, as applicable.

16 Sec. 2. This act shall take effect and be in force from and after De-
17 cember 31, 2004, and its publication in the statute book.