

2012 AMENDMENTS TO KANSAS LIQUOR LAWS

The 2012 Legislature passed Senate Substitute for House Bill 2689 which amends the liquor control act, the club and drinking establishment act, the cereal malt beverage act, the liquor enforcement tax act, and the liquor drink tax act. Governor Brownback signed the bill into law on May 25, 2012 and the bill was published in the Kansas Register on May 31, 2012. Unless otherwise indicated, all these provisions become effective July 1, 2012.

Following are the changes made by the bill:

New License Type: Public Venue

A public venue is:

- An arena, stadium, hall or theater, used primarily for athletic and sporting events, live concerts, live theatrical productions or similar seasonal entertainment events, not operated on a daily basis, and containing:
 - Not less than 4,000 permanent seats; and
 - Not less than two private suites, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier.

A public venue license shall allow:

- The sale and service of liquor by the drink for consumption on the licensed premises;
- The sale and service of unlimited drinks for a fixed price in designated areas;
- The sale of all-inclusive packages that may include alcoholic liquor in designated areas;
- The sale of alcoholic liquor in the original containers in private suites;
- The return of unused liquor to the retailer or distributor from whom it was purchased if the next scheduled event for the venue is more than 90 days from the previous event.

New License type: Microdistillery

A microdistillery shall allow:

- The manufacture of not more than 50,000 gallons of spirits per year;
- The sale of manufactured spirits to distributors;
- The sale of spirits in the original unopened container to consumers for off-premise consumption;
- The serving, free of charge, of spirits manufactured by the licensee on the licensed premises, and off the licensed premises at special events monitored and regulated by the ABC;
 - The premises where the samples are served must be located in a county where the sale of liquor by the individual drink is allowed in drinking establishments.

Retailers

Retailers may serve free samples of alcoholic liquor on the retail premises and at adjacent premises, monitored and regulated by the ABC.

- All liquor used for sampling must be removed from the retailer's inventory;
- Suppliers or their agents may participate in tasting events hosted by the retailer, but must purchase the liquor used for sampling from the retailer;

- Samples must be served by the licensee, an agent or employee of the licensee, or an agent or employee of a supplier participating in the event.
- There is no limit on the size or number of samples any one person may receive;
- No sample may be removed from the premises where it was served;
- No sample may be served to a person under 21 years of age;
- No alcoholic liquor may be mixed with any other substance on the licensed premises.

Retailers who possess a federal basic wholesaler's permit may sell and deliver alcoholic liquor to the premises of a licensed public venue.

Manufacturers

Manufacturers may serve free samples of alcoholic liquor manufactured by the licensee on the manufacturer's licensed premises.

- The manufacturer's premise must be located in a county where the sale of liquor by the individual drink in drinking establishments is allowed;
- Samples must be served by the licensee, or an agent or employee of the licensee;
- There is no limit on the size or number of samples any one person may receive;
- No sample may be removed from the manufacturer's premise;
- No sample may be served to a person under 21 years of age.

Distributors

Wine Distributors may:

- Sell and deliver bulk wine to the licensed premises of a public venue.

Beer distributors may:

- Sell and deliver beer to the licensed premises of a public venue;
- Store beer on the licensed premises of a public venue for purchase by the venue on an as-needed basis, with proper payment and invoicing.

Spirits distributors may:

- Store and deliver spirits which were purchased by the public venue licensee from a local retailer to the licensed premises of a public venue.

Farm Wineries

Farm wineries may sell and serve domestic wine manufactured by the licensee for consumption on the farm winery premises.

- The winery's premise must be located in a county where the sale of liquor by the individual drink in drinking establishments is allowed;
- No drinking establishment license required if the only alcoholic liquor being sold for on-premise consumption is domestic wine manufactured by the licensee;
- All sales of domestic wine for consumption on the licensed premises by a farm winery who does not also possess a drinking establishment license are subject to the 8% liquor enforcement tax;
- This provision became effective upon publication in the Kansas Register.

Farm wineries and farm winery outlets may sell domestic wine manufactured by the licensee in the unopened container at special events monitored and regulated by the ABC.

- All sales of domestic wine in the unopened container are subject to the 8% liquor enforcement tax;
- This provision became effective upon publication in the Kansas Register.

The Kansas agricultural product requirement for the production of domestic wine is reduced to 30%.

- Not less than 30% of the products used in the manufacture of domestic wine must be grown in Kansas, unless the ABC Director authorizes a lesser amount;
- Compliance with the Kansas product requirement is measured on annual production;
- There is no longer a requirement that the label bear a statement that the majority of the products utilized in the manufacture of the wine were grown in Kansas;
- This provision becomes effective on July 1, 2012.

Microbreweries

Effective with the July 1, 2012 report period (due August 15, 2012), Kansas microbreweries are required to utilize the Kansas Microbrewery Monthly Gallonage Tax Return and Sales Report (ABC-1025) which is available on our website at: <http://www.ksrevenue.org/abcmicro.html>. Reports and returns filed on obsolete forms will be returned without processing, resulting in potential administrative action for failing to properly file your taxes.

If you have questions or need assistance completing the new form, please contact our Marketing Unit at 785-296-7015, option #2; or, by email to abc.marketing.unit@kdor.ks.gov

On-Premise Licensees: Clubs, Drinking Establishments, Caterers and Temporary Permits

Alcoholic liquor may be sold and served by the individual drink by a railway car which possesses a drinking establishment license:

- Railway car is defined as a locomotive drawn conveyance used for the transportation and accommodation of human passengers that is confined to a fixed rail route;
- 30% food sales requirement;
- License must be posted at the railway's main office;
- Of all liquor drink tax revenues collected from drinking establishments which are railway cars, 70% is to be divided equally among the counties in which the railway car operates, if those counties have approved the sale of alcoholic liquor by the individual drink to the general public.

Licensees and permit holders may charge different prices for the same drink throughout the business day.

- Allows happy hours and different prices for different groups of people, i.e. "ladies night";
- Drink must be sold for at least acquisition cost plus tax.

Licensees and permit holders may charge any price over acquisition cost plus tax for any drink.

- The "proportionate pricing" requirement is repealed;
- The amount of liquor in a drink or the size of a drink may be increased without proportionately increasing the price of the drink;
- Drink must be sold for at least acquisition cost plus tax.

Licensees and permit holders may serve beer and cereal malt beverage in pitchers.

- Pitchers containing not more than 64 fluid ounces;
- No other alcoholic drink is authorized to be served in pitchers.

Individual drink is defined as a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. May contain:

- Not more than 8 ounces of wine;
- Not more than 32 ounces of beer or cereal malt beverage;
- Not more than 4 ounces of a single spirit or a combination of spirits.

No more than one licensed premise may exist at a single address.

Temporary Permits

Temporary permit for a special event extended.

- May be issued, with the ABC Director's approval, for the duration of the event, but not exceeding 30 days;

Holder of a temporary permit may return unused liquor to the retailer.

- Within three business days after the end of the event;
- Requires written permission from the Director.

Cereal Malt Beverage – on premise

Licensees may charge different prices for the same drink throughout the business day.

- Allows happy hours and different prices for different groups of people, i.e. "ladies night";
- Drink must be sold for at least acquisition cost plus tax.

Licensees may charge any price over acquisition cost plus tax for any drink.

- The “proportionate pricing” requirement is repealed;
- The amount of CMB in the size of a drink may be increased without proportionately increasing the price of the drink;
- Drink must be sold for at least acquisition cost plus tax.

Licensees may sell and serve cereal malt beverage in pitchers containing not more than 64 fluid ounces.

Salespersons permits

All statutes relating to salespersons’ permits are repealed.

- No disqualifying factors for employment as a salesperson;
- No permit or application to ABC required.

Update on the Clean Indoor Air Act:

In *Downtown Bar & Grill, LLC v. State of Kansas*, the Kansas Supreme Court ruled, on April 6, 2012, that only class A and class B clubs **licensed on or before January 1, 2009** are exempt from the provisions of the Clean Indoor Air Act. Of those clubs, only those who notified the Kansas Department of Health and Environment within 90 days of the bill becoming law may continue to allow smoking in the club premises. Smoking is not permissible in any other licensed premises.

ABC will be promulgating regulations implementing the provisions of HB 2689. Proposed regulations and notice of public hearing will be published in the Kansas Register. Persons wishing to provide comment on the proposed regulations should check the Kansas Register regularly to locate the allowed public comment period.

The Kansas Register is available for download from the Kansas Secretary of State’s website at: http://kssos.org/pubs/pubs_kansas_register.asp

House Bill 2689 may be viewed in its entirety on the Kansas Legislature’s Web page at <http://kslegislature.org/li/>



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