



# **KANSAS CLUB AND DRINKING ESTABLISHMENT ACT**

**K.S.A. Chapter 41, Article 26**

**For Public Distribution**

**Includes notes by ABC Attorney but not annotations by Revisor of Statutes**

**Last amended in 2009**

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**41-2601. Definitions.** As used in the club and drinking establishment act:

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

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

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

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

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

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

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

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

(i) "Drinking establishment" means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

(j) "Food" means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

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

(l) "Hotel" has the meaning provided by K.S.A. 36-501 and amendments thereto.

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

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

(o) "Restaurant" means:

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

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

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

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

(q) "Secretary" means the secretary of revenue.

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

**History:** L. 1965, ch. 316, § 1; L. 1969, ch. 243, § 1; L. 1974, ch. 196, § 1; L. 1975, ch. 252, § 1; L. 1977, ch. 169, § 1; L. 1978, ch. 186, § 3; L. 1979, ch. 152, § 5; L. 1981, ch. 200, § 2; L. 1985, ch. 171, § 8; L. 1985, ch. 168, § 4; L. 1987, ch. 182, § 60; L. 1989, ch. 95, § 11; L. 1990, ch. 179, § 5; L. 1995, ch. 266, § 2; July 1.

#### **41-2602 [Repealed]**

**History:** L. 1965, ch. 316, § 2; Repealed, L. 1987, ch. 182, § 144; April 30.

#### **41-2603. [Repealed 1987]**

**41-2604. Allowing consumption of liquor in violation of act; penalties.** Any person allowing consumption of alcoholic liquor in violation of this act on any property owned, leased or otherwise under his control shall thereby subject himself and the property on which said illegal consumption takes place to the penalties hereinafter provided.

(a) The person allowing such consumption shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed five hundred dollars (\$500) or confinement in the county jail not to exceed six (6) months or both such fine and imprisonment.

(b) The property on which the violation takes place is declared to be a public nuisance and as such is subject to abatement as provided for any other liquor nuisance in K.S.A. 41-805.

**History:** L. 1965, ch. 316, § 4; May 22.

**41-2605. Licenses; to whom issued.** The director shall issue an annual license to each applicant for licensure which qualifies under this act. Such license shall be issued in the name of the corporation, partners, trustees, association officers or individual applying.

**History:** L. 1965, ch. 316, § 5; L. 1987, ch. 182, § 61; April 30.

**41-2606. Same; application; fees.** (a) Applications for all licenses under this act shall be upon forms prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by an application fee of \$50, for each initial application, and \$10, for each renewal application, to defray the cost of preparing and furnishing standard forms incident to the administration of this act and the cost of processing such application. Each application shall also be accompanied by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount of the license fee prescribed by K.S.A. 41-2622, and amendments thereto, which fee shall be returned to the applicant if the application is denied.

(b) Each application for licensure as a club shall be accompanied by a copy of the current bylaws and rules of the club and a current list of the officers of the club.

(c) All application fees collected by the director shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

**History:** L. 1965, ch. 316, § 6; L. 1987, ch. 182, § 62; L. 2001, ch. 5, § 130; July 1.

**41-2607. Club licenses; term; refunds.** The license provided herein shall be issued for a term of one year, renewable on expiration. The secretary of revenue shall adopt, in accordance with K.S.A. 41-210 and amendments thereto, rules and regulations providing for the authorization of refunds of the license fees paid for any period in which the licensee shall not use such license as the result of the license being canceled at the request of the licensee and for voluntary reasons.

**History:** L. 1965, ch. 316, § 7; L. 1985, ch. 170, § 19; July 1.

**41-2608. Same; premises licensed; zoning compliance.** Any club or drinking establishment license issued pursuant to this act shall be for one particular premises which shall be stated in the application and in the license. No license shall be issued for a club or drinking establishment unless the city, township or county zoning code allows a club or drinking establishment at that location.

**History:** L. 1965, ch. 316, § 8; L. 1987, ch. 182, § 63; April 30.

**41-2609. Same; suspension or revocation; procedure.** The provisions of K.S.A. 41-320, 41-321, 41-322, 41-323 and 41-324, and amendments thereto, relating to proceedings for the suspension or revocation of licenses issued under the Kansas liquor control act, appeals from orders of the director refusing, suspending or revoking such licenses and judicial review of decisions on such appeals and duties of county attorneys relating to such review shall apply in the same manner to proceedings for the suspension or revocation of licenses issued under this act, appeals from orders of the director refusing, suspending or revoking licenses issued under this act, orders refusing temporary permits, appeals from orders of the director and judicial review of decisions on such appeals.

**History:** L. 1965, ch. 316, § 9; L. 1986, ch. 318, § 50; L. 1987, ch. 182, § 64; April 30.

**41-2610. Unlawful acts of licensee.** It shall be unlawful for any licensee or holder of a temporary permit under this act to:

(a) Employ any person under the age of 18 years in connection with the serving of alcoholic liquor.

(b) Employ knowingly or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States.

(c) Employ knowingly or to continue in employment any person in connection with the dispensing or serving of alcoholic liquor or mixing of drinks containing alcoholic liquor who has been adjudged guilty of a violation of any intoxicating liquor law of this or any other state, or of the United States, during the two-year period immediately following such adjudging.

(d) In the case of a club, fail to maintain at the licensed premises a current list of all members and their residence addresses or refuse to allow the director, any of the director's authorized agents or any law enforcement officer to inspect such list.

(e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder.

(f) Permit any employee of the licensee or permit holder who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is 21 years of age or over.

(g) Employ any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.

**History:** L. 1965, ch. 316, § 10; L. 1975, ch. 52, § 17; L. 1978, ch. 189, § 15; L. 1979, ch. 152, § 6; L. 1985, ch. 171, § 4; L. 1987, ch. 182, § 65; April 30.

**41-2611. Revocation or suspension of license; grounds for.** The director may revoke or suspend any license issued pursuant to the club and drinking establishment act for any one or more of the following reasons:

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

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

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

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

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

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

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

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

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

(j) There has been a violation of K.S.A. 21-4106 or 21-4107, and amendments thereto, on premises where alcoholic liquor is sold by such licensee.

**History:** L. 1965, ch. 316, § 11; L. 1978, ch. 186, § 4; L. 1979, ch. 152, § 7; L. 1987, ch. 182, § 66; L. 1991, ch. 148, § 1; L. 2004, ch. 1, § 1; Mar 4.

**41-2612. Display of license.** Every holder of a license for a club or drinking establishment shall cause such license to be framed and hung in plain view in a conspicuous place on the licensed premises.

**History:** L. 1965, ch. 316, § 12; L. 1987, ch. 182, § 67; April 30.

**41-2613. Immediate entry to and inspection of premises condition of license or permit; revocation for refusal.** The right of immediate entry to and inspection of any premises licensed as a club or drinking establishment or any premises where alcoholic liquor is sold by a holder of a temporary permit, or any premises subject to the control of any licensee or temporary permit holder, by any duly authorized officer or agent of the director, or by any law enforcement officer, shall be a condition on which every license or temporary permit is issued, and the application for, and acceptance of, any license or temporary permit shall conclusively be deemed to be the consent of the applicant and licensee or permit holder to such immediate entry and inspection. Such right of immediate entry and inspection shall be at any time when the premises are occupied and is not limited to hours when the club or drinking establishment is open for business. Such consent shall not be revocable during the term of the license or temporary permit. Refusal of such entry shall be grounds for revocation of the license or temporary permit.

**History:** L. 1965, ch. 316, § 13; L. 1987, ch. 182, § 68; L. 1991, ch. 142, § 1; July 1.

**41-2614. Hours of operation.** (a) Except as provided by subsection (c), no club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(b) No caterer shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day at an event catered by such caterer.

(c) A hotel of which the entire premises are licensed as a drinking establishment or as a drinking establishment/caterer may allow at any time the serving, mixing and consumption of alcoholic liquor and cereal malt beverage from a minibar in a guest room by guests registered to stay in such room, and guests of guests registered to stay in such room.

**History:** L. 1965, ch. 316, § 14; Repealed, L. 1985, ch. 174, § 5; L. 1987, ch. 182, § 69; Repealed, L. 1987, ch. 182, § 144; Revived and amended, L. 1987, ch. 183, § 2; L. 1995, ch. 266, § 3; July 1.

**41-2615. Possession or consumption by minor prohibited.** (a) No licensee or permit holder, or any owner, officer or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverage by a minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than 18 years of age may serve alcoholic liquor or cereal malt beverage under the on-premises supervision of the licensee or permit holder, or an employee who is 21 years of age or older.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than \$100 and not more than \$250 or imprisonment not exceeding 30 days, or both.

(c) It shall be a defense to a prosecution under this section if: (1) The defendant permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (2) to possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

**History:** L. 1965, ch. 316, § 15; L. 1987, ch. 182, § 70; L. 1993, ch. 173, § 3; L. 1994, ch. 300, § 2; L. 2008, ch. 126, § 9; July 1.

**41-2616. [Repealed 1979]**

**41-2617. [Repealed 1979]**

**41-2618. [Repealed 1979]**

**41-2619. Search warrant for premises where liquor sold by the drink without license or permit.** The existence of any place for which a license or temporary permit has not been issued pursuant to this act and which purports, or is held out to the public or to any person by the proprietors or their agents or employees, to be a place where alcoholic liquor is sold by the individual drink, shall be deemed to be sufficient probable cause for any judge of the district court to issue a search warrant to any law enforcement officer of the state or a subdivision of the state for the purpose of searching such place for alcoholic liquor being sold, possessed or consumed in violation of this act, any other law of the state or any ordinance of a municipal subdivision of the state.

**History:** L. 1965, ch. 316, § 19; L. 1976, ch. 145, § 194; L. 1987, ch. 182, § 71; April 30.

**41-2620. Sale of liquor by the drink without license or permit prohibited.** (a) No person shall maintain or operate any club or drinking establishment in this state without having in such person's possession for the location of the establishment a valid unexpired and unrevoked license issued by the director for such club or establishment.

(b) No person shall act as a caterer in this state without having in such person's possession a valid unexpired and unrevoked caterer's license issued by the director.

(c) No person or organization shall sponsor, conduct or hold an event in this state which requires a temporary permit unless such person or organization has in such person's or organization's possession a temporary permit issued by the director for such event and such event is conducted in accordance with the terms of such permit.

**History:** L. 1965, ch. 316, § 20; L. 1987, ch. 182, § 72; April 30.

**41-2621. Club or drinking establishment license limited to premises specified.** A club or drinking establishment license shall allow the licensee to operate a club or drinking establishment only at the premises specified in such license in accordance with the provisions of this act and the rules and regulations adopted by the secretary as provided by K.S.A. 41-210 and amendments thereto.

**History:** L. 1965, ch. 316, § 21; L. 1985, ch. 170, § 20; L. 1987, ch. 182, § 73; April 30.

**41-2622. Annual license fees; state, county or city; disposition; other state fees fund; use.** (a) At the time application is made to the director for a license pursuant to the club and drinking establishment act, the applicant shall pay the following annual license fee in the manner provided by K.S.A. 41-2606, and amendments thereto:

(1) For a class A club which is a bona fide nonprofit fraternal or war veterans' club, as defined by rules and regulations of the secretary, \$250;

(2) for a class A club which is a bona fide nonprofit social club, as defined by rules and regulations of the secretary, and which has not more than 500 members, \$500;

(3) for a class A club which is a bona fide nonprofit social club, as defined by rules and regulations of the secretary, and which has more than 500 members, \$1,000;

(4) for a class B club, \$1,000;

(5) for a drinking establishment, \$1,000;

(6) for a hotel of which the entire premises are licensed as a drinking establishment, \$3,000;

(7) for a caterer, \$500;

(8) for a drinking establishment/caterer, \$1,500; and

(9) for a drinking establishment/caterer, if the drinking establishment is a hotel of which the entire premises are licensed as a drinking establishment, \$3,500.

If a licensee is described by more than one of the above, the highest fee shall apply.

(b) In addition to the fee provided by subsection (a), any city where the licensed premises of a club or drinking establishment are located or, if such licensed premises are not located in a city, the board of county commissioners of the county where the licensed premises are located may levy and collect an annual occupation or license tax from the licensee in an amount equal to not less than \$100 nor more than \$250.

(c) No occupational or excise tax or license fee other than that authorized by subsection (b) shall be levied by any city or county against or collected from a licensed club or drinking establishment.

(d) The director shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Of each such deposit, 50% shall be credited to the state general fund, and the remaining 50% shall be credited to the other state fees fund of the department of social and rehabilitation services. In addition to other purposes for which expenditures may be made from the other state fees fund of the department of social and rehabilitation services, expenditures may be made by the secretary of social and

rehabilitation services for the purpose of implementing the powers and duties of the secretary under the provisions of K.S.A. 65-4006 and 65-4007, and amendments thereto.

**History:** L. 1965, ch. 316, § 22; L. 1969, ch. 244, § 1; L. 1970, ch. 187, § 1; L. 1975, ch. 252, § 3; L. 1987, ch. 182, § 74; L. 1987, ch. 183, § 3; L. 1988, ch. 165, § 5; L. 1995, ch. 219, § 13; L. 2001, ch. 5, § 131; July 1.

**41-2623. Qualifications for license.** (a) No license shall be issued under the provisions of this act to:

(1) Any person described in subsection (a)(1), (2), (4), (5), (6), (7), (8), (9), (12) or (13) of K.S.A. 41-311, and amendments thereto, except that the provisions of subsection (a)(7) of such section shall not apply to nor prohibit the issuance of a license for a class A club to an officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof.

(2) A person who has had the person's license revoked for cause under the provisions of this act.

(3) A person who has not been a resident of this state for a period of at least one year immediately preceding the date of application.

(4) A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquors or a beneficial interest in any other club, drinking establishment or caterer licensed hereunder, except that:

(A) A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more other clubs or drinking establishments licensed hereunder if such other clubs or establishments are located in hotels.

(B) A license for a club or drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants.

(C) A caterer's license may be issued to a person who has a beneficial interest in a club or drinking establishment and a license for a club or drinking establishment may be issued to a person who has a beneficial interest in a caterer.

(D) A license for a class A club may be granted to an organization of which an officer, director or board member is a distributor or retailer licensed under the liquor control act if such distributor or retailer sells no alcoholic liquor to such club.

(E) Any person who has a beneficial interest in a microbrewery or farm winery licensed pursuant to the Kansas liquor control act may be issued any or all of the following: (1) Class B club license; (2) drinking establishment license; and (3) caterer's license.

(5) A copartnership, unless all of the copartners are qualified to obtain a license.

(6) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and residence requirements.

(7) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 5% of the common or preferred stock, of a corporation which:

(A) Has had a license revoked under the provisions of the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(8) A corporation organized under the laws of any state other than this state.

(9) A trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) of K.S.A. 41-311, and amendments thereto shall not apply in determining whether a beneficiary would be eligible for a license.

(b) No club or drinking establishment license shall be issued under the provisions of the club and drinking establishment act to:

(1) A person described in subsection (a)(11) of K.S.A. 41-311, and amendments thereto.

(2) A person who is not a resident of the county in which the premises sought to be licensed are located.

**History:** L. 1965, ch. 316, § 23; L. 1969, ch. 245, § 1; L. 1978, ch. 186, § 7; L. 1985, ch. 170, § 32; L. 1987, ch. 182, § 75; L. 1992, ch. 201, § 6; L. 2001, ch. 189, § 4; L. 2007, ch. \_\_\_\_, § 1; May 24.

#### **41-2624. [Repealed 1987]**

**41-2625. Same; corporations and partnerships.** (a) No corporation shall be issued a license as a club, drinking establishment or caterer unless such corporation first appoints a citizen of the United States, and resident of Kansas, as its agent and files with the director a duly authenticated copy of a duly executed power of attorney authorizing such agent to: (1) Accept service of process from the director and the courts of this state; and (2) exercise full authority of such corporation and full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to the business licensed. Such agent must have the qualifications of a licensee except for the qualification of residence. Such agent shall at all times be maintained by such corporation.

(b) No corporation shall be issued a license as a club, drinking establishment or caterer unless such corporation first files with the director a copy of its articles of incorporation and its bylaws.

(c) No partnership shall be issued a license as a club, drinking establishment or caterer unless such partnership first files with the director a copy of the partnership agreement.

**History:** L. 1965, ch. 316, § 25; L. 1987, ch. 182, § 76; April 30.

**41-2626. Violations of act or rules and regulations; revocation or suspension of license.** Whenever any licensee under this act has been convicted by any court of a violation of any of the provisions of this act, or the rules and regulations lawfully promulgated thereunder, the director shall revoke or suspend the licensee's license in an original proceeding brought before the director for that purpose. The proceeding shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

**History:** L. 1965, ch. 316, § 26; L. 1987, ch. 182, § 77; L. 1988, ch. 356, § 136; July 1, 1989.

**41-2627. Club or drinking establishment license; change in premises.** The provisions of K.S.A. 41-315 and amendments thereto relating to retail licenses under the Kansas liquor control act are hereby made applicable to licenses issued under the provisions of this act for clubs and drinking establishments.

**History:** L. 1965, ch. 316, § 27; L. 1987, ch. 182, § 78; April 30.

**41-2628. Time limit for grant or denial of license.** The provisions of K.S.A. 41-319 and amendments thereto relating to applications for retailers' licenses under the Kansas liquor control act shall apply to applications for licenses made under the provisions of this act.

**History:** L. 1965, ch. 316, § 28; L. 1987, ch. 182, § 79; April 30.

**41-2629. Class B club, drinking establishment or caterer's license; nature of; term; transfer limited; refund of fees.** A class B club license, drinking establishment license or caterer's license shall be purely a personal privilege, good for not to exceed one year after issuance unless sooner suspended or revoked as provided in this act and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. A class B club license, drinking establishment license or caterer's license shall not descend by the laws of testate or intestate devolution but shall cease or expire upon the death of the licensee subject to the following provision. An executor, administrator or representative of the estate of any deceased holder of a class B club, drinking establishment or caterer's license or the trustee of any insolvent or bankrupt class B club, drinking establishment or caterer's license may continue the licensee's business under order of the appropriate court and may exercise the privilege of the deceased, insolvent or bankrupt licensee after the death of such licensee or after such insolvency or bankruptcy until the expiration of such license, but in no case longer than one year after the death, insolvency or bankruptcy of such licensee. A refund shall be made of that portion of the license fee paid for any period in which the licensee shall be prevented from operating under such license in accordance with the provisions of this act, other than that caused by suspension or revocation. The secretary shall adopt, in accordance with K.S.A. 41-210 and amendments thereto, rules and regulations providing for the authorization of refunds of the license fees paid for any period in which the licensee does not use such license being canceled upon the request of the licensee and for voluntary reasons.

**History:** L. 1965, ch. 316, § 29; L. 1977, ch. 169, § 2; L. 1985, ch. 170, § 21; L. 1987, ch. 182, § 80; April 30.

**41-2630. Injunction for violation of act by licensee.** The attorney general, the attorney for the director or any county or district attorney, within their county or district, shall at all times have the power to enjoin any person from operating or maintaining a club or drinking establishment or business as a caterer within their respective jurisdictions, notwithstanding the person has a license therefor, if it appears that the licensee has violated any provision of this act, or any of the rules and regulations adopted under this act. Such injunction proceedings shall be the same as is now prescribed for the enjoining of alcoholic liquor nuisances under the Kansas liquor control act.

**History:** L. 1965, ch. 316, § 30; L. 1985, ch. 170, § 22; L. 1987, ch. 182, § 81; April 30.

**41-2631. City ordinance conflicting with act void; ordinance limitations.** No city shall enact any ordinance in conflict with or contrary to the provisions of this act and any ordinance of any city in effect at the time this act takes effect or thereafter enacted which is in conflict with or contrary to the provisions of this act shall be null and void. Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violations thereof, but the minimum penalty in any such ordinance shall not exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance exceed the maximum penalty prescribed by this act for the same violation.

**History:** L. 1965, ch. 316, § 31; May 22.

**41-2632. Influencing purchases by licensees prohibited.** (a) As used in this section: (1) The word "distributor" means a person, firm, association or corporation which is the holder of an alcoholic liquor distributor's license issued under the Kansas liquor control act; (2) the word "retailer" means a person, copartnership or association which is the holder of a retailer's license issued under the Kansas liquor control act; and (3) the word "manufacturer" shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(b) It shall be unlawful for a distributor of alcoholic liquor, or a manufacturer, or any officer, agent or employee thereof, to influence, coerce or induce or attempt to influence, coerce or induce, either directly or indirectly, any holder of a license issued under this act, or any officer, agent or employee of the holder of such a license, to: (1) Purchase any particular brand or kind of alcoholic liquor to be dispensed by the licensee, except that a distributor or manufacturer may provide to a licensee information regarding the availability of brands in the market and things of value as authorized by subsection (d) of K.S.A. 41-703 and amendments thereto; or (2) purchase from a particular retailer alcoholic liquor to be dispensed by the licensee.

(c) Violation of this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000 or by imprisonment for not more than six months, or by both.

**History:** L. 1965, ch. 316, § 32; L. 1987, ch. 182, § 82; L. 1991, ch. 141, § 4; July 1.

**41-2633. Violations of act or rules and regulations; criminal penalty.** Violation of any provision of the club and drinking establishment act, and amendments thereto, or any rule or regulation adopted thereunder, for which a penalty is not otherwise specifically provided is punishable by a fine not to exceed \$500 or imprisonment not to exceed six months, or both.

**History:** L. 1965, ch. 316, § 33; L. 1978, ch. 186, § 9; L. 1979, ch. 152, § 8; L. 1987, ch. 182, § 83; April 30.

**41-2633a. Violations of act by licensee or permit holder; civil fine.** (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the director, upon a finding that a licensee or temporary permit holder under the club and drinking establishment act has violated any provision thereof, may impose on such licensee or temporary permit holder a civil fine not exceeding \$1,000 for each violation.

(b) No fine shall be imposed pursuant to this section except upon the written order of the director to the licensee or temporary permit holder who committed the violation. Such order shall state the violation, the fine to be imposed and the right of the licensee or temporary permit holder to appeal the order. Such order shall be subject to appeal and review in the manner provided by K.S.A. 41-321, 41-322 and 41-323, and amendments thereto.

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

**History:** L. 1979, ch. 151, § 2; L. 1986, ch. 318, § 51; L. 1987, ch. 184, § 3; L. 1987, ch. 182, § 84; April 30.

**41-2634. Rules and regulations; criteria for class A clubs.** (a) The secretary of revenue may adopt rules and regulations for the administration and enforcement of article 26 of chapter 41 of Kansas Statutes Annotated.

(b) The secretary of revenue shall adopt rules and regulations establishing criteria for determining whether an applicant or licensee is a bona fide nonprofit social, fraternal or war veterans club, based on the following standards:

(1) An applicant or licensee is a bona fide nonprofit social club if:

(A) It is organized and operated exclusively for pleasure, recreation and other non-profitable purposes; and

(B) no part of its net earnings inures to the benefit of any of its private shareholders or members.

(2) An applicant or licensee is a bona fide nonprofit fraternal club if:

(A) It is a fraternal beneficiary society, order or association which operates under the lodge system, or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and

(B) such society, order or association provides for the payment of life, sickness, accident or other benefits to its members or their dependents.

(3) An applicant or licensee is a bona fide nonprofit war veterans club if:

(A) It is a post or organization of war veterans or an auxiliary unit or society of, or a trust or foundation for, any such post or organization, organized in the United States or any of its possessions;

(B) not less than seventy-five percent (75%) of its members are war veterans and substantially all of its other members are veterans or widows or widowers of veterans; and

(C) no part of its net earnings inures to the benefit of any private shareholder or individual.

(c) Any rules and regulations adopted pursuant to subsection (d) shall be based on the same criteria and standards used to determine the right to exemption from federal income taxes pursuant to section 501(c)(7), (8) and (19) of the internal revenue code of 1954, as amended.

**History:** L. 1965, ch. 316, § 34; L. 1972, ch. 342, § 60; L. 1974, ch. 196, § 2; L. 1978, ch. 186, § 5; L. 1987, ch. 182, § 85; July 1.

**41-2635. Severability.** If any phrase, clause, sentence or section of this act is declared invalid or unconstitutional by any court of competent jurisdiction it shall be conclusively presumed that the legislature would have passed the remainder of the act without the part so held invalid or unconstitutional.

**History:** L. 1965, ch. 316, § 38; May 22.

**41-2636. Sale of class A club license prohibited.** (a) No person shall sell or offer for sale any class A club license.

(b) This section shall be part of and supplemental to K.S.A. 41-2601 to 41-2635, inclusive, and amendments thereto.

**History:** L. 1978, ch. 186, § 6; July 1.

**41-2637. Class A club license; rights of licensee.** (a) A license for a class A club shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members and their families, and guests accompanying them.

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

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

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

**History:** L. 1978, ch. 186, § 11; L. 1979, ch. 152, § 9; L. 1982, ch. 211, § 1; L. 1987, ch. 182, § 86; L. 1994, ch. 300, § 4; L. 2009, ch. 114, § 7; July 1.

**41-2638. [Repealed 1979]**

**41-2639. Sale of club memberships; restrictions.** (a) No person shall receive a commission or other compensation for the sale of any membership to a club.

(b) No person shall sell or offer for sale any membership to a club except on the licensed premises of such club.

(c) This section shall be part of and supplemental to K.S.A. 41-2601 to 41-2637, inclusive, and amendments thereto.

**History:** L. 1979, ch. 152, § 10; July 1.

**41-2640. Certain sales practices prohibited; penalties; "drink" defined.** (a) No club, drinking establishment, caterer or holder of a temporary permit, nor any person acting as an employee or agent thereof, shall:

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

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

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

(4) sell, offer to sell or serve any drink to any person at any time at a price less than that charged all other purchasers of drinks on that day;

(5) increase the volume of alcoholic liquor contained in a drink or the size of a drink of cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;

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

(7) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (6).

(b) Nothing in subsection (a) shall be construed to prohibit a club, drinking establishment, caterer or holder of a temporary permit from:

(1) Offering free food or entertainment at any time; or

(2) selling or delivering wine by the bottle or carafe.

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

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

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

(f) As used in this section, "drink" means an individual serving of any beverage containing alcoholic liquor or an individual serving of cereal malt beverage.

**History:** L. 1985, ch. 173, § 4; L. 1986, ch. 185, § 7; L. 1987, ch. 182, § 94; April 30.

**41-2641. Class B club license; rights of licensee.** (a) A license for a class B club shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members of such club and guests accompanying them.

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

liquor for consumption on the licensed premises by such person and such person's family, and guests accompanying them.

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

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

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

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

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

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

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

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

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

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

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

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

**History:** L. 1987, ch. 182, § 87; L. 1990, ch. 179, § 6; L. 1994, ch. 300, § 5; L. 2009, ch. 114, § 8; July 1.

**41-2642. Drinking establishment license; rights of licensee; hotel minibars.** (a) A license for a drinking establishment shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises which may be open to the public, but only if such premises are located in a county where the qualified electors of the county:

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

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

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

(1) Have approved, at an election pursuant to K.S.A. 41-2646 and amendments thereto, a proposition to allow sales of alcoholic liquor by the individual drink in public places within the county without a requirement that any portion of their gross receipts be derived from the sale of food; and

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

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

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

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

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

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

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

**History:** L. 1987, ch. 182, § 88; L. 1995, ch. 266, § 4; L. 2009, ch. 114, § 6; July 1.

**41-2643. Caterer's license; rights of licensee.** (a) A caterer's license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, but only if such premises are located in a county where the qualified electors of the county:

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

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

(b) A caterer shall be required to derive from sales of food at catered events not less than 30% of the caterer's gross receipts from all sales of food and beverages at catered events in a 12-month period unless the caterer offers for sale, sells and serves alcoholic liquor only in counties where the qualified electors of the county:

(1) Have approved, at an election pursuant to K.S.A. 41-2646 and amendments thereto, a proposition to allow sales of alcoholic liquor by the individual drink in public places within the county without a requirement that any portion of their gross receipts be derived from the sale of food; and

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

(c) Each caterer shall maintain the caterer's principal place of business in a county in this state where the caterer is authorized by this section to sell alcoholic liquor by the individual drink in a public place. All records of the caterer relating to the caterer's licensed business and the caterer's license shall be kept at such place of business. The caterer's principal place of business shall be stated in the application for a caterer's license and the caterer shall notify the director of any change in its location within 10 days after such change.

(d) A caterer shall notify the director at least 10 days prior to any event at which the caterer will sell alcoholic liquor by the individual drink unless the director waives the 10-day requirement for good cause shown. In addition, prior to the event, the caterer shall notify:

(1) The police chief of the city where the event will take place, if the event will take place within the corporate limits of a city; or

(2) the county sheriff of the county where the event will take place, if the event will be outside the corporate limits of any city.

(e) A caterer may rebate a portion of the caterer's receipts from the sale of alcoholic liquor at an event to the person or organization contracting with the caterer to sell alcoholic liquor at such event.

**History:** L. 1987, ch. 182, § 89; L. 1990, ch. 179, § 7; July 1.

**41-2644. Drinking establishment/caterer license; rights of licensee.** A license for a drinking establishment/caterer shall allow the licensee all the rights and privileges of a holder of a drinking establishment license and of a licensed caterer, subject to all provisions of law relating to such an establishment or caterer.

**History:** L. 1987, ch. 182, § 90; April 30.

**41-2645. Temporary permit.** (a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of such permit.

(b) The director may issue a temporary permit to any one or more persons or organizations applying for such a permit, in accordance with rules and regulations of the secretary. The permit shall be issued in the names of the persons or organizations to which it is issued.

(c) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued, which fee shall be paid by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount thereof. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance,

the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises where the city, county or township zoning code allows use for which the permit is issued. No temporary permit shall be issued for premises which are not located in a county where the qualified electors of the county:

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

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

(e) (1) A temporary permit may be issued for the consumption of alcoholic liquor on a city, county or township street, alley, road, sidewalk or highway for a special event; provided, that such street, alley, road, sidewalk or highway is closed to motor vehicle traffic by the governing body of such city, county or township for such special event, a written request for such consumption and possession of such alcoholic liquor has been made to the local governing body and the special event is approved by the governing body of such city, county or township by ordinance or resolution. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(2) Drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event.

(3) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(4) For the purposes of this section, "special event" shall have the same meaning given that term in K.S.A. 41-719, and amendments thereto.

(f) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit, except that the director may issue one temporary permit, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of only wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose. Not more than four temporary permits may be issued to any one applicant in a calendar year.

(g) All proceeds from an event for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(h) A temporary permit shall not be transferable or assignable.

(i) The director may refuse to issue a temporary permit to any person or organization which has violated any provision of the Kansas liquor control act, the drinking establishment act or K.S.A. 79-41a01 *et seq.*, and amendments thereto.

**History:** L. 1987, ch. 182, § 91; L. 1990, ch. 179, § 8; L. 2001, ch. 5, § 132; L. 2006, Ch. 206, § 2; L. 2008, Ch. 126, § 3; L. 2009, Ch. 114, § 10; July 1.

**41-2646. Sale of liquor by the drink in public places; election to prohibit or permit.** (a) The board of county commissioners may, by resolution, or shall, upon a petition filed in accordance with subsection (b), submit to the qualified electors of the county at any state general election a proposition to:

(1) Prohibit the sale of alcoholic liquor by the individual drink in public places within the county;

(2) permit the sale of alcoholic liquor by the individual drink in public places within the county which derive not less than 30% of their gross receipts from the sale of food for consumption on the premises; or

(3) permit the sale of alcoholic liquor by the individual drink in public places within the county without a requirement that any portion of their gross receipts be derived from the sale of food.

(b) A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the county election officer. The petition shall be signed by qualified electors of the county equal in number to not less than 10% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The appropriate version following shall appear on the petition:

"We request an election to determine whether the sale of alcoholic liquor by the individual drink in \_\_\_\_\_ county shall be (prohibited in public places) (allowed in public places where at least 30% of the gross receipts are from sales of food for consumption on the premises) (allowed in public places without a requirement that any portion of their gross receipts be from sales of food)."

(c) Upon the adoption of a resolution or the submission of a valid petition calling for an election pursuant to this section, the county election officer shall cause the appropriate version of the following proposition to be placed on the ballot at the next succeeding state general election which occurs more than 90 days after the resolution is adopted or the petition is filed with the county election officer:

"Shall sale of alcoholic liquor by the individual drink in \_\_\_\_\_ county be (prohibited) (allowed in public places where at least 30% of the gross receipts are from sales of food for consumption on the premises and prohibited in all other public places) (allowed in public places without a requirement that any portion of their gross receipts be from sales of food)?"

(d) If a majority of the votes cast and counted is in favor of the proposition, the county election officer shall transmit a copy of the results to the director, who shall issue or refuse to issue temporary permits and licenses for drinking establishments and caterers within the county accordingly and the rights of licensees holding licenses on the date of the election shall be modified in accordance with the result of the election as provided by rules and regulations of the secretary.

(e) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

**History:** L. 1987, ch. 182, § 92; April 30.

**41-2647. Possession of liquor or cereal malt beverage on licensed premises.** (a) Nothing in the club and drinking establishment act shall be construed to prohibit a person from possessing, on premises licensed pursuant to such act, alcoholic liquor or cereal malt beverage not purchased from the licensee.

(b) Nothing in this section shall prevent a licensee from adopting a policy prohibiting the possession, on the licensee's licensed premises, of alcoholic liquor or cereal malt beverage not purchased from the licensee.

**History:** L. 1987, ch. 182, § 93; April 30.

**41-2648. Effective date of license; conversion of club license to drinking establishment license.** (a) No drinking establishment license, caterer's license or temporary permit shall be effective before July 1, 1987.

(b) On and after July 1, 1987, the director may provide procedures whereby a license for a class B club issued before July 1, 1987, may be converted to a drinking establishment license or a drinking establishment/caterer license if all requirements of this act are met and the licensee pays that portion of the additional license fee, if any, attributable to the remaining unexpired license term.

**History:** L. 1987, ch. 182, § 95; April 30.

**41-2649. Title of act.** K.S.A. 41-2601, 41-2604 through 41-2615, 41-2619 through 41-2623, 41-2625 through 41-2633, 41-2633a, 41-2634 through 41-2637, 41-2639 and 41-2640, and amendments thereto, and K.S.A. 41-2641 through 41-2648 shall be known and may be cited as the club and drinking establishment act.

**History:** L. 1987, ch. 182, § 96; April 30.

**41-2650. Severability.** If any provisions of this act or the application thereof to any person or circumstances is held invalid the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application and to this end the provisions of this act are severable.

**History:** L. 1987, ch. 182, § 143; April 30.

**41-2651. Application for licensure or renewal; notice to governing body of city or county; hearing.** (a) When application for licensure or renewal of licensure as a club or drinking establishment is received by the director, the director shall notify the governing body of the city or county where the premises to be licensed are located, if such governing body requests such notification.

(b) No such license or renewal shall be granted by the director until the expiration of at least 10 days from the time of filing the application for licensure or renewal with the director, during which period the governing body of any city or county notified pursuant to subsection (a) may request the director to hold a hearing on the granting or refusal to grant such license or renewal.

(c) At any time, the governing body of any city or county may request the director to hold a hearing on whether any license issued pursuant to this act should be revoked or suspended. The governing body shall provide the director reasonable cause to believe a hearing is necessary based upon factors included in rules and regulations by the secretary. The director may refuse the governing body's request absent such reasonable cause.

(d) Any hearing held pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act as provided in K.S.A. 41-2609 and amendments thereto.

(e) At any hearing held pursuant to this section the governing body of such city or county shall have the right to appear before the director and present testimony and evidence and make recommendations regarding the granting or refusal to grant such license or renewal, or whether such license should be revoked or suspended. In determining whether to grant or to refuse to grant such license or renewal, or to revoke or suspend such license, the director shall take into consideration the testimony and evidence and recommendations of the governing body of such city or county. The director may refuse to grant such license or renewal, or may revoke or suspend such license based on the evidence gathered at such hearing, in the interest of protecting the public welfare, and in accordance with rules and regulations adopted by the secretary.

(f) This section shall be part of and supplemental to the club and drinking establishment act.

**History:** L. 1991, ch. 142, § 2; L. 2009, ch. 114, § 11; July 1.

**41-2652. Use of minors to determine compliance with law, limitations.** (a) Any person listed in subsections (b)(1), (b)(2) or (b)(3) may engage or direct a person under 21 years of age to violate the

provisions of the club and drinking establishment act in order to develop a program or system which determines and encourages compliance with the provisions of such act prohibiting the furnishing or sale of alcoholic liquor to a person under 21 years of age or the consumption of alcoholic liquor by such persons.

(b) No person shall engage or direct a person under 21 years of age to violate any provision of the club and drinking establishment act for purposes of determining compliance with the provisions of such act unless such person is:

(1) An officer having authority to enforce the provisions of the club and drinking establishment act;

(2) an authorized representative of the attorney general, a county attorney or a district attorney; or

(3) a licensee or permittee under the club and drinking establishment act or such licensee's or permittee's designee pursuant to a self-compliance program designed to increase compliance with the provisions of the club and drinking establishment act if such program has been approved by the director.

**History:** L. 2000, ch. 166, § 6; July 1.

**41-2653. Removal of unconsumed alcoholic liquor from premises of club and drinking establishment.** (a) In addition to the rights of a licensee pursuant to provisions of K.S.A. 41-2637, 41-2641 or 41-2642, and amendments thereto, a class A club license, class B club license or drinking establishment license shall allow the licensee to allow legal patrons of the club or drinking establishment to remove from the licensed premises one or more opened containers of alcoholic liquor, subject to the following conditions:

(1) It must be legal for the licensee to sell the alcoholic liquor in its original container;

(2) the alcoholic liquor must be in its original container;

(3) each container of alcoholic liquor must have been purchased by a patron and the alcoholic liquor in each container must have been partially consumed on the licensed premises;

(4) the licensee or the licensee's employee must provide the patron with a dated receipt for the unfinished container or containers of alcoholic liquor; and

(5) before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must securely reseal each container, place the container in a tamper-proof, transparent bag which is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

(b) This section shall be part of and supplemental to the club and drinking establishment act.

**History:** L. 2006, ch. 206; § 7; July 1.