

As Amended by House Committee

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As Amended by Senate Committee

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Session of 2005

## SENATE BILL No. 144

By Committee on Judiciary

1-31

12 AN ACT concerning civil procedure; relating to civil liability for certain  
13 actions involving alcoholic beverages; ~~amending K.S.A. 41-715 and re-~~  
14 ~~pealing the existing section.~~  
15

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

17 New Section 1. (a) ~~(1) An aggrieved party shall have a cause of action~~  
18 ~~against a licensee for selling or serving alcohol to an incapacitated person~~  
19 ~~in violation of K.S.A. 41-715, and amendments thereto, or furnishing al-~~  
20 ~~cohol or cereal malt beverage to a minor in violation of K.S.A. 21-3610,~~  
21 ~~and amendments thereto, if a jury or court finds the following: (A) That~~  
22 ~~alcoholic liquor or cereal malt beverage was consumed by the minor or~~  
23 ~~incapacitated person and sold by the licensee on the licensed premises~~  
24 ~~of such licensee; (B) the consumption of such alcoholic liquor or cereal~~  
25 ~~malt beverage was a proximate cause of the damages sustained by the~~  
26 ~~aggrieved party; and (C) the damages were a foreseeable consequence of~~  
27 ~~such negligent service of alcoholic liquor or cereal malt beverage by the~~  
28 ~~licensee.~~

29 ~~(2)~~ An aggrieved party shall have a cause of action against a person  
30 who violates ~~is convicted of violating~~ **K.S.A. 2004 Supp. 21-3610c, and**  
31 ~~amendments thereto~~ **intentionally permitted such person's resi-**  
32 **dence or any land, building, structure or room owned, occupied**  
33 **or procured by such person to be used by an invitee of such person**  
34 **or an invitee of such person's child or ward, in a manner that re-**  
35 **sults in the possession or consumption therein of alcoholic liquor**  
36 **or cereal malt beverages by persons under the age of 18, if a jury**  
37 **or court finds the following: (A) (1) That alcoholic liquor or cereal malt**  
38 **beverage was possessed or consumed by the minor and such possession**  
39 **or consumption occurred in such person's residence or on any land, build-**  
40 **ing structure or room owned, occupied or procured by such person; (B)**  
41 **(2) the consumption of such alcoholic liquor or cereal malt beverage was**  
42 **a proximate cause of the damages sustained by the aggrieved party; and**  
43 **(C) (3) the damages were a foreseeable consequence of the person's**

1 ~~conviction of violating K.S.A. 2004 Supp. 21-3610c, and amendments~~  
 2 ~~thereto such intentional action.~~

3 (b) In any action thereon, evidence of acts or conduct by the licensee  
 4 or person in violation of these statutes may be admissible. Any claim  
 5 under this section shall survive death for purposes of K.S.A. 60-1801, and  
 6 amendments thereto, and may be maintained in a wrongful death action  
 7 under K.S.A. 60-1901, and amendments thereto.

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

10 ~~(d) Blood alcohol content obtained at a different time than the point~~  
 11 ~~when the alcoholic liquor or cereal malt beverage was served and evi-~~  
 12 ~~dence that the incapacitated person was furnished such alcoholic liquor~~  
 13 ~~or cereal malt beverage without additional evidence that the licensee~~  
 14 ~~acted knowingly or intentionally shall not constitute prima facie evidence~~  
 15 ~~of liability under this section.~~

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

21 ~~(f) (d) As used in this section:~~

22 (1) “Aggrieved party” means a person who sustains damages as a con-  
 23 sequence of the acts or conduct of a minor or incapacitated person, as  
 24 applicable, but does not include: (A) Such minor or incapacitated person;  
 25 or (B) any person who aided or abetted in the furnishing or sale of the  
 26 alcoholic liquor or cereal malt beverages to the minor or incapacitated  
 27 person, or (C) any person who aided or abetted in the procurement of a  
 28 residence or any land, building structure or room used in when violation  
 29 of ~~the person’s conviction of violating K.S.A. 2004 Supp. 21-3610c,~~  
 30 ~~and amendments thereto possession or consumption of alcoholic liq-~~  
 31 ~~uor or cereal malt beverage occurred.~~

32 ~~(2) “Licensee” means a licensee under the Kansas liquor control act,~~  
 33 ~~the club and drinking establishment act or the provisions of article 27 of~~  
 34 ~~chapter 41 of the Kansas Statutes Annotated, and amendments thereto.~~

35 ~~(3) “Incapacitated person” means a person who is physically or men-~~  
 36 ~~tally incapacitated by the consumption of alcoholic liquor or cereal malt~~  
 37 ~~beverage.~~

38 ~~(4) (2) Any other terms shall have the meanings as provided by K.S.A.~~  
 39 ~~21-3610 and 41-715 and K.S.A. 2004 Supp. 21-3610c, and amendments~~  
 40 ~~thereto 41-102, and amendments thereto, except for the purposes~~  
 41 ~~of this section “minor” means a person under the age of 18, as~~  
 42 ~~applicable.~~

43 ~~Sec. 2. K.S.A. 41-715 is hereby amended to read as follows: 41-715.~~

1 ~~(a) No person shall knowingly sell, give away, dispose of, exchange or~~  
2 ~~deliver, or permit the sale, gift or procuring of any alcoholic liquor to or~~  
3 ~~for any person who is an incapacitated person, or any person who is phys-~~  
4 ~~ically or mentally incapacitated by the consumption of such liquor.~~  
5 ~~(b) Violation of this section is a misdemeanor punishable by a fine of~~  
6 ~~not less than \$100 and not exceeding \$250 or imprisonment not exceeding~~  
7 ~~30 days, or both.~~  
8 ~~Sec. 3. K.S.A. 41-715 is hereby repealed.~~  
9 Sec. **4 2**. This act shall take effect and be in force from and after its  
10 publication in the statute book.