

*[As Amended by Senate Committee of the Whole]*

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*Session of 2005*

## SENATE BILL No. 267

By Committee on Federal and State Affairs

2-16

12 AN ACT concerning alcoholic liquors; amending K.S.A. ~~41-308, 41-308a~~  
13 ~~and 41-803~~ **41-308a** and K.S.A. 2004 Supp. 41-719 and repealing the  
14 existing sections **section**.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 ~~Section 1. K.S.A. 41-308 is hereby amended to read as follows: 41-~~  
18 ~~308. (a) A retailer's license shall allow the licensee to sell and offer for~~  
19 ~~sale at retail and deliver in the original package, as therein prescribed,~~  
20 ~~alcoholic liquor for use or consumption off of and away from the premises~~  
21 ~~specified in such license. A retailer's license shall permit sale and delivery~~  
22 ~~of alcoholic liquor only on the licensed premises and shall not permit sale~~  
23 ~~of alcoholic liquor for resale in any form, except that a licensed retailer~~  
24 ~~may:~~

25 ~~—(1) Sell alcoholic liquor to a temporary permit holder for resale by~~  
26 ~~such permit holder, and~~

27 ~~—(2) sell and deliver alcoholic liquor to a caterer or to the licensed~~  
28 ~~premises of a club or drinking establishment, if such premises are in the~~  
29 ~~county where the retailer's premises are located or in an adjacent county,~~  
30 ~~for resale by such club, establishment or caterer.~~

31 ~~—(b) A retailer's license shall allow the licensee to serve samples of~~  
32 ~~alcoholic liquor on the licensed premises if the premises are located in a~~  
33 ~~county where the sale of alcoholic liquor is permitted by law in licensed~~  
34 ~~drinking establishments.~~

35 ~~—(c) The holder of a retailer's license shall not sell, offer for sale, give~~  
36 ~~away or permit to be sold, offered for sale or given away in or from the~~  
37 ~~premises specified in such license any service or thing of value whatsoever~~  
38 ~~except alcoholic liquor in the original package, except that a licensed~~  
39 ~~retailer may:~~

40 ~~—(1) Charge a delivery fee for delivery to a club, drinking establishment~~  
41 ~~or caterer pursuant to subsection (a);~~

42 ~~—(2) sell lottery tickets and shares to the public in accordance with the~~  
43 ~~Kansas lottery act, if the retailer is selected as a lottery retailer;~~

- 1 ~~—(3) include in the sale of alcoholic liquor any goods included by the~~  
 2 ~~manufacturer in packaging with the alcoholic liquor, subject to the ap-~~  
 3 ~~proval of the director, and~~  
 4 ~~(4) distribute to the public, without charge, consumer advertising~~  
 5 ~~specialities bearing advertising matter, subject to rules and regulations of~~  
 6 ~~the secretary limiting the form and distribution of such specialities so that~~  
 7 ~~they are not conditioned on or an inducement to the purchase of alcoholic~~  
 8 ~~liquor; and~~  
 9 ~~—(5) serve samples of alcoholic liquor if authorized by subsection (b).~~  
 10 ~~—(c) (d) No licensed retailer shall furnish any entertainment in such~~  
 11 ~~premises or permit any pinball machine or game of skill or chance to be~~  
 12 ~~located in or on such premises.~~  
 13 ~~—(d) (e) A retailer's license shall allow the licensee to store alcoholic~~  
 14 ~~liquor in refrigerators, cold storage units, ice boxes or other cooling de-~~  
 15 ~~vices, and the licensee may sell such alcoholic liquor to consumers in a~~  
 16 ~~chilled condition.~~  
 17 ~~—Sec. 2. **Section 1.** K.S.A. 41-308a is hereby amended to read as fol-~~  
 18 ~~lows: 41-308a. (a) A farm winery license shall allow:~~  
 19 (1) The manufacture of domestic table wine and domestic fortified  
 20 wine and the storage thereof;  
 21 (2) the sale of wine, manufactured by the licensee, to licensed wine  
 22 distributors, retailers, clubs, drinking establishments and caterers;  
 23 (3) the sale, on the licensed premises in the original unopened con-  
 24 tainer to consumers for consumption off the licensed premises, of wine  
 25 manufactured by the licensee;  
 26 (4) the serving **free of charge** on the licensed premises *and at special*  
 27 *events, monitored and regulated by the division of alcoholic beverage*  
 28 *control*, of samples of wine manufactured by the licensee or imported  
 29 under subsection (f), if the premises are located in a county where the  
 30 sale of alcoholic liquor is permitted by law in licensed drinking establish-  
 31 ments; and  
 32 (5) if the licensee is also licensed as a club or drinking establishment,  
 33 the sale of domestic wine, domestic fortified wine and other alcoholic  
 34 liquor for consumption on the licensed premises as authorized by the  
 35 club and drinking establishment act.  
 36 (b) Upon application and payment of the fee prescribed by K.S.A.  
 37 41-310, and amendments thereto, by a farm winery licensee, the director  
 38 may issue not to exceed ~~two five~~ **three** winery outlet licenses to the farm  
 39 winery licensee. A winery outlet license shall allow:  
 40 (1) The sale, on the licensed premises in the original unopened con-  
 41 tainer to consumers for consumption off the licensed premises, of wine  
 42 manufactured by the licensee; and  
 43 (2) the serving on the licensed premises of samples of wine manu-

1 factured by the licensee or imported under subsection (f), if the premises  
2 are located in a county where the sale of alcoholic liquor is permitted by  
3 law in licensed drinking establishments.

4 (c) Not less than 60% of the products utilized in the manufacture of  
5 domestic table wine and domestic fortified wine by a farm winery shall  
6 be grown in Kansas except when a lesser proportion is authorized by the  
7 director based upon the director's findings and judgment. The label of  
8 domestic wine and domestic fortified wine shall indicate that a majority  
9 of the products utilized in the manufacture of the wine at such winery  
10 were grown in Kansas.

11 (d) A farm winery having a capacity of ~~50,000~~ ~~250,000~~ **100,000** gal-  
12 lons per year or more which sells wine to any distributor shall be required  
13 to comply with all provisions of article 4 of chapter 41 of the Kansas  
14 Statutes Annotated and of K.S.A. 41-701 through 41-705 and 41-709, and  
15 amendments thereto, in the same manner and subject to the same pen-  
16 alties as a manufacturer.

17 (e) A farm winery or winery outlet may sell domestic wine and do-  
18 mestic fortified wine in the original unopened container to consumers for  
19 consumption off the licensed premises at any time between 6 a.m. and  
20 12 midnight on any day except Sunday and between 12 noon and 6 p.m.  
21 on Sunday. If authorized by subsection (a), a farm winery may serve sam-  
22 ples of domestic wine, domestic fortified wine and wine imported under  
23 subsection (f) and serve and sell domestic wine, domestic fortified wine  
24 and other alcoholic liquor for consumption on the licensed premises at  
25 any time when a club or drinking establishment is authorized to serve  
26 and sell alcoholic liquor. If authorized by subsection (b), a winery outlet  
27 may serve samples of domestic wine, domestic fortified wine and wine  
28 imported under subsection (f) at any time when the winery outlet is au-  
29 thorized to sell domestic wine and domestic fortified wine.

30 (f) The director may issue to the Kansas state fair or any bona fide  
31 group of grape growers or wine makers a permit to import into this state  
32 small quantities of wines. Such wine shall be used only for bona fide  
33 educational and scientific tasting programs and shall not be resold. Such  
34 wine shall not be subject to the tax imposed by K.S.A. 41-501, and amend-  
35 ments thereto. The permit shall identify specifically the brand and type  
36 of wine to be imported, the quantity to be imported, the tasting programs  
37 for which the wine is to be used and the times and locations of such  
38 programs. The secretary shall adopt rules and regulations governing the  
39 importation of wine pursuant to this subsection and the conduct of tasting  
40 programs for which such wine is imported.

41 (g) A farm winery license or winery outlet license shall apply only to  
42 the premises described in the application and in the license issued and  
43 only one location shall be described in the license.

- 1 (h) No farm winery or winery outlet shall:
- 2 (1) Employ any person under the age of 18 years in connection with
- 3 the manufacture, sale or serving of any alcoholic liquor;
- 4 (2) permit any employee of the licensee who is under the age of 21
- 5 years to work on the licensed premises at any time when not under the
- 6 on-premise supervision of either the licensee or an employee of the li-
- 7 censee who is 21 years of age or over;
- 8 (3) employ any person under 21 years of age in connection with mix-
- 9 ing or dispensing alcoholic liquor; or
- 10 (4) employ any person in connection with the manufacture or sale of
- 11 alcoholic liquor if the person has been convicted of a felony.
- 12 (i) Whenever a farm winery or winery outlet licensee is convicted of
- 13 a violation of the Kansas liquor control act, the director may revoke the
- 14 licensee's license and order forfeiture of all fees paid for the license, after
- 15 a hearing before the director for that purpose in accordance with the
- 16 provisions of the Kansas administrative procedure act.
- 17 (j) This section shall be part of and supplemental to the Kansas liquor
- 18 control act.

19 ~~Sec. 3.—K.S.A. 2004 Supp. 41-719 is hereby amended to read as fol-~~

20 ~~lows: 41-719. (a) No person shall drink or consume alcoholic liquor on~~

21 ~~the public streets, alleys, roads or highways or inside vehicles while on~~

22 ~~the public streets, alleys, roads or highways.~~

23 ~~—(b) No person shall drink or consume alcoholic liquor on private~~

24 ~~property except:~~

25 ~~—(1) On premises where the sale of liquor by the individual drink is~~

26 ~~authorized by the club and drinking establishment act;~~

27 ~~—(2) upon private property by a person occupying such property as an~~

28 ~~owner or lessee of an owner and by the guests of such person, if no charge~~

29 ~~is made for the serving or mixing of any drink or drinks of alcoholic liquor~~

30 ~~or for any substance mixed with any alcoholic liquor and if no sale of~~

31 ~~alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto,~~

32 ~~takes place;~~

33 ~~—(3) in a lodging room of any hotel, motel or boarding house by the~~

34 ~~person occupying such room and by the guests of such person, if no~~

35 ~~charge is made for the serving or mixing of any drink or drinks of alcoholic~~

36 ~~liquor or for any substance mixed with any alcoholic liquor and if no sale~~

37 ~~of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto,~~

38 ~~takes place;~~

39 ~~—(4) in a private dining room of a hotel, motel or restaurant, if the~~

40 ~~dining room is rented or made available on a special occasion to an in-~~

41 ~~dividual or organization for a private party and if no sale of alcoholic liquor~~

42 ~~in violation of K.S.A. 41-803, and amendments thereto, takes place; or~~

43 ~~—(5) on the premises of a microbrewery or farm winery, if authorized~~

- 1 by K.S.A. 41-308a or 41-308b, and amendments thereto, or  
2 ~~—(6)— on the licensed premises of a retailer if authorized by K.S.A. 41-~~  
3 ~~308, and amendments thereto.~~  
4 ~~—(c)— No person shall drink or consume alcoholic liquor on public prop-~~  
5 ~~erty except:~~  
6 ~~—(1)— On real property leased by a city to others under the provisions~~  
7 ~~of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real~~  
8 ~~property is actually being used for hotel or motel purposes or purposes~~  
9 ~~incidental thereto.~~  
10 ~~—(2)— In any state-owned or operated building or structure, and on the~~  
11 ~~surrounding premises, which is furnished to and occupied by any state~~  
12 ~~officer or employee as a residence.~~  
13 ~~—(3)— On premises licensed as a club or drinking establishment and~~  
14 ~~located on property owned or operated by an airport authority created~~  
15 ~~pursuant to chapter 27 of the Kansas Statutes Annotated or established~~  
16 ~~by a city having a population of more than 200,000.~~  
17 ~~—(4)— On the state fair grounds on the day of any race held thereon~~  
18 ~~pursuant to the Kansas parimutuel racing act.~~  
19 ~~—(5)— On the state fairgrounds, if such liquor is domestic beer or wine~~  
20 ~~or wine imported under subsection (c) of K.S.A. 41-308a, and amend-~~  
21 ~~ments thereto, and is consumed only for purposes of judging competi-~~  
22 ~~tions. The state fair board, in its discretion, may authorize the consump-~~  
23 ~~tion of such alcoholic liquor on nonfair days in conjunction with bona fide~~  
24 ~~scheduled events involving not less than 75 invited guests and subject to~~  
25 ~~any conditions or restrictions as the board may require.~~  
26 ~~—(6)— In the state historical museum provided for by K.S.A. 76-2036,~~  
27 ~~and amendments thereto, on the surrounding premises and in any other~~  
28 ~~building on such premises, as authorized by rules and regulations of the~~  
29 ~~state historical society.~~  
30 ~~—(7)— On the premises of any state-owned historic site under the juris-~~  
31 ~~isdiction and supervision of the state historical society, on the surrounding~~  
32 ~~premises and in any other building on such premises, as authorized by~~  
33 ~~rules and regulations of the state historical society.~~  
34 ~~—(8)— In a lake resort within the meaning of K.S.A. 32-867, and amend-~~  
35 ~~ments thereto, on state-owned or leased property.~~  
36 ~~—(9)— In the Hiram Price Dillon house or on its surrounding premises,~~  
37 ~~subject to limitations established in policies adopted by the legislative~~  
38 ~~coordinating council, as provided by K.S.A. 75-3682, and amendments~~  
39 ~~thereto.~~  
40 ~~—(10)— On the premises of the Kansas national guard regional training~~  
41 ~~center located in Saline county, and any building on such premises, as~~  
42 ~~authorized by rules and regulations of the adjutant general and upon~~  
43 ~~approval of the Kansas military board.~~

- 1 ~~—(11) On property exempted from this subsection (c) pursuant to sub-~~  
2 ~~section (d), (e), (f), (g), (h) or (i):~~
- 3 ~~—(d) Any city may exempt, by ordinance, from the provisions of sub-~~  
4 ~~section (c) specified property the title of which is vested in such city:~~
- 5 ~~—(e) The board of county commissioners of any county may exempt,~~  
6 ~~by resolution, from the provisions of subsection (c) specified property the~~  
7 ~~title of which is vested in such county:~~
- 8 ~~—(f) The state board of regents may exempt from the provisions of~~  
9 ~~subsection (c) the Sternberg museum on the campus of Fort Hays state~~  
10 ~~university, or other specified property which is under the control of such~~  
11 ~~board and which is not used for classroom instruction, where alcoholic~~  
12 ~~liquor may be consumed in accordance with policies adopted by such~~  
13 ~~board:~~
- 14 ~~—(g) The board of regents of Washburn university may exempt from~~  
15 ~~the provisions of subsection (c) the Mulvane art center and the Bradbury~~  
16 ~~Thompson alumni center on the campus of Washburn university, and~~  
17 ~~other specified property the title of which is vested in such board and~~  
18 ~~which is not used for classroom instruction, where alcoholic liquor may~~  
19 ~~be consumed in accordance with policies adopted by such board:~~
- 20 ~~—(h) Any city may exempt, by ordinance, from the provisions of sub-~~  
21 ~~section (c) any national guard armory in which such city has a leasehold~~  
22 ~~interest, if the Kansas military board consents to the exemption:~~
- 23 ~~—(i) The board of trustees of a community college may exempt from~~  
24 ~~the provisions of subsection (c) specified property which is under the~~  
25 ~~control of such board and which is not used for classroom instruction,~~  
26 ~~where alcoholic liquor may be consumed in accordance with policies~~  
27 ~~adopted by such board:~~
- 28 ~~—(j) Violation of any provision of this section is a misdemeanor punish-~~  
29 ~~able by a fine of not less than \$50 or more than \$200 or by imprisonment~~  
30 ~~for not more than six months, or both:~~
- 31 ~~—Sec. 4.—K.S.A. 41-803 is hereby amended to read as follows: 41-803.~~
- 32 ~~(a) It shall be unlawful for any person to own, maintain, operate or con-~~  
33 ~~duct, either directly or indirectly, an open saloon:~~
- 34 ~~—(b) As used in this section, “open saloon” means any place, public or~~  
35 ~~private, where alcoholic liquor is sold or offered or kept for sale by the~~  
36 ~~drink or in any quantity of less than 100 milliliters (3.4 fluid ounces) or~~  
37 ~~sold or offered or kept for sale for consumption on the premises where~~  
38 ~~sold, but does not include:~~
- 39 ~~—(1) Any premises where the sale of liquor is authorized by the club~~  
40 ~~and drinking establishment act or, on and after January 1, 1988,;~~
- 41 ~~—(2) any microbrewery or farm winery, if authorized by K.S.A. 41-308a~~  
42 ~~or K.S.A. 41-308b, and amendments thereto; or~~
- 43 ~~—(3) any licensed retailer, if authorized by K.S.A. 41-308, and amend-~~

1 ~~ments thereto.~~

2 ~~—(c) Any violation of the provisions of this section is a misdemeanor~~  
3 ~~punishable by a fine of not more than \$500 and by imprisonment for not~~  
4 ~~more than 90 days.~~

5 Sec. ~~5~~ **2**. K.S.A. ~~41-308, 41-308a and 41-803 and K.S.A. 2004 Supp.~~  
6 ~~41-719~~ **are 41-308a is** hereby repealed.

7 Sec. ~~6~~ **3**. This act shall take effect and be in force from and after its  
8 publication in the statute book.