

**HOUSE BILL No. 2453**

By Committee on Federal and State Affairs

3-29

1 AN ACT concerning alcoholic beverages; relating to the cereal malt  
2 beverage act; authorizing the sale and delivery by the licensee or a  
3 third-party of cereal malt beverage and beer containing not more than  
4 6% alcohol by volume for consumption off the licensed premises;  
5 amending K.S.A. 2020 Supp. 41-2728 and repealing the existing  
6 section.

7

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

9 New Section 1. (a) In addition to the rights of a retailer under the  
10 Kansas cereal malt beverage act, a retailer license shall allow the licensee's  
11 representative or a third-party delivery platform agent to deliver cereal  
12 malt beverage and beer containing not more than 6% alcohol by volume in  
13 the original unopened package that is lawfully sold by the retailer and  
14 purchased by a patron to an address designated by such patron for  
15 consumption off the licensed premises and not for resale in accordance  
16 with this section.

17 (b) A licensee representative shall:

18 (1) Prior to any cereal malt beverage or beer containing not more than  
19 6% alcohol by volume leaving the licensed premises for delivery, finalize  
20 all payments for such cereal malt beverage or beer or obtain a debit or  
21 credit card authorization for the total payment for such cereal malt  
22 beverage or beer; and

23 (2) assemble, package and fulfill each order at the licensed premises  
24 from inventory located at such licensed premises.

25 (c) All cereal malt beverage and beer containing not more than 6%  
26 alcohol by volume that leaves the licensed premises for delivery shall:

27 (1) Remain in the possession of the licensee representative or the  
28 third-party delivery platform agent that removed the cereal malt beverage  
29 or beer containing not more than 6% alcohol by volume from the licensed  
30 premises for delivery and shall not be transferred to any other person until  
31 delivered to the address designated by the patron or until the return of such  
32 cereal malt beverage or beer containing not more than 6% alcohol by  
33 volume to the licensee if delivery is not completed; and

34 (2) only be transported by a person who:

35 (A) Is at least 21 years of age;

36 (B) holds a valid permit issued pursuant to subsection (e);

1 (C) holds a valid Kansas driver's license; and

2 (D) is a driver or vehicle owner that maintains primary automobile  
3 insurance that meets the minimum coverage requirements in K.S.A. 40-  
4 284 and 40-3107, and amendments thereto.

5 (d) (1) The licensee representative or the third-party delivery platform  
6 agent shall only deliver cereal malt beverage and beer containing not more  
7 than 6% alcohol by volume to an individual who is at least 21 years of age  
8 and presents proper identification verifying the age of such individual. The  
9 identity and age of the individual accepting delivery shall be verified by  
10 validating the proper identification of the individual accepting delivery in  
11 person and obtaining such person's signature on a written or electronic  
12 acknowledgment of receipt of the order and certification of legal age to  
13 purchase cereal malt beverage and beer containing not more than 6%  
14 alcohol by volume.

15 (2) The licensee representative or the third-party delivery platform  
16 shall not make a delivery if:

17 (A) No individual is visibly present and available at the address to  
18 accept delivery; or

19 (B) the individual visibly present and available attempting to accept  
20 the delivery:

21 (i) Is less than 21 years of age;

22 (ii) fails to produce proper identification verifying such individual's  
23 age; or

24 (iii) is noticeably intoxicated.

25 (3) Deliveries shall only be made:

26 (A) To an address that is located within a 20-mile radius from the  
27 licensed premises of the retailer who sold the cereal malt beverage or beer  
28 containing not more than 6% alcohol by volume that is being delivered;

29 (B) during the lawful times when cereal malt beverage and beer  
30 containing not more than 6% alcohol by volume can be sold by the retailer  
31 for consumption off the premises; and

32 (C) on the same calendar day that the cereal malt beverage and beer  
33 containing not more than 6% alcohol by volume leaves the licensed  
34 premises for delivery.

35 (4) A licensee representative or third-party delivery platform agent  
36 shall not knowingly deliver to any property that is part of any:

37 (A) Public or private elementary or secondary school, including, but  
38 not limited to, any dormitory, housing or common space located on the  
39 campus of any elementary or secondary school;

40 (B) prison, jail, reformatory or other correctional facility;

41 (C) addiction or substance abuse treatment facilities; or

42 (D) locker, mailbox, package shipping location or similar service or  
43 storage facility business.

1 (5) All deliveries shall be inspected at the time of delivery by the  
2 individual accepting such delivery. The transaction shall be deemed  
3 complete upon acceptance of delivery of the cereal malt beverage or beer  
4 containing not more than 6% alcohol by volume and all sales shall be  
5 final.

6 (e) Any licensee representative or third-party delivery platform  
7 making deliveries pursuant to this section shall hold a valid delivery  
8 permit issued by the director. Applications for a delivery permit shall be  
9 submitted in such form and manner as prescribed by the director and  
10 include a \$25 delivery permit fee. An applicant shall affirm that such  
11 applicant and, if the applicant is a third-party delivery platform, any third-  
12 party delivery platform agent who is authorized by the applicant to make  
13 deliveries under this section:

14 (1) Is at least 21 years of age;

15 (2) holds a valid Kansas driver's license;

16 (3) will maintain primary automobile insurance that meets the  
17 minimum coverage requirements in K.S.A. 40-284 and 40-3107, and  
18 amendments thereto; and

19 (4) will comply with the provisions of this section in the making of  
20 deliveries of cereal malt beverage and beer containing not more than 6%  
21 alcohol by volume.

22 (f) A retailer may use electronic means to market, receive and process  
23 orders for cereal malt beverage and beer containing not more than 6%  
24 alcohol by volume that are placed by patrons if:

25 (1) The retailer maintains control and responsibility over the sale and  
26 transfer of the physical possession of all cereal malt beverage and beer  
27 containing not more than 6% alcohol by volume from the inventory of  
28 such retailer to the licensee representative or third-party delivery platform  
29 agent conducting the delivery;

30 (2) the retailer retains sole discretion to determine whether to accept  
31 an order and complete the sale transaction;

32 (3) the sale takes place between the patron placing the order and the  
33 retailer and the retailer appears as the merchant of record at all times,  
34 including at the time of purchase and acceptance of the delivery; and

35 (4) the retailer receives full payment from the patron for all cereal  
36 malt beverage and beer containing not more than 6% alcohol by volume  
37 sold to such patron, and all funds collected from such patron are  
38 automatically directed to the retailer.

39 (g) In addition to the powers and duties provided for in K.S.A. 41-  
40 201, and amendments thereto, the director and agents and employees of  
41 the director shall, without a warrant, have the power to inspect in a lawful  
42 manner any premises of the retailer or any vehicle or means of  
43 transportation that is being used by a licensee representative or a third-

1 party delivery platform agent to make a delivery of cereal malt beverage or  
2 beer containing not more than 6% alcohol by volume to determine if any  
3 provision of this act or any rule or regulation adopted by the secretary is  
4 being violated or to secure any evidence of a violation.

5 (h) (1) A third-party delivery platform and any third-party delivery  
6 platform agent offering to arrange for the delivery of an order on behalf of  
7 a retailer shall:

8 (A) Not use a retailer's likeness to falsely suggest sponsorship or  
9 endorsement by the retailer;

10 (B) not inflate or alter a retailer's pricing, but may assess other  
11 charges to the patron if such charges are separately itemized on the receipt  
12 provided to the patron;

13 (C) not charge the retailer or expect the retailer to pay any fee,  
14 commission or charge unless such fee, commission or charge is clearly  
15 identified in a written agreement executed by both parties;

16 (D) remove a retailer from the third-party delivery platform's delivery  
17 services within 10 days of receiving such retailer's request for removal;  
18 and

19 (E) disclose to the patron that any issues with orders placed through  
20 the third-party delivery platform shall be directed to the third-party  
21 delivery platform.

22 (2) A third-party delivery platform may offer to deliver an order on  
23 behalf of a retailer if:

24 (A) The retailer expressly agrees in writing to allow the third-party  
25 delivery platform to offer the delivery of orders on behalf of such retailer;  
26 and

27 (B) the agreement does not include any provision that requires a  
28 retailer to indemnify a third-party delivery platform or third-party delivery  
29 platform agent for any damages or harm caused by the third-party delivery  
30 platform or third-party delivery platform agent.

31 (3) Any provision in an agreement between a third-party delivery  
32 platform and a retailer that is contrary to this subsection is void and  
33 unenforceable.

34 (i) Each third-party delivery platform that holds a delivery permit  
35 shall be liable for violations of the provisions of the Kansas liquor control  
36 act and the Kansas cereal malt beverage act governing the sale and  
37 consumption of cereal malt beverage and alcoholic liquor that are  
38 committed by any third-party delivery platform agent engaged in making  
39 deliveries on behalf of such third-party delivery platform pursuant to this  
40 section.

41 (j) In addition to or in lieu of any other civil or criminal penalty  
42 provided by law, the director, upon a finding that a retailer or delivery  
43 permit holder has violated any provision of this section, may impose a

1 civil fine not exceeding \$500 for each violation and may, for up to 30 days  
2 for each violation, suspend the retailer's or delivery permit holder's  
3 authority to deliver cereal malt beverage and beer containing not more  
4 than 6% alcohol by volume. Any violation committed by an employee, a  
5 third-party delivery platform or a third-party delivery platform agent shall  
6 be attributed to the retailer for purposes of this section and a retailer,  
7 employee and third-party delivery platform agent may each be fined for  
8 the same violation. Nothing in this subsection shall be construed to allow  
9 the director to suspend or revoke the license of a retailer to sell cereal malt  
10 beverage and beer containing not more than 6% alcohol by volume on the  
11 licensed premises as a result of a violation of this section by a third-party  
12 delivery platform agent.

13 (k) A retailer aggrieved by another person's alleged violation of this  
14 section may bring an action to enjoin such violation and may seek  
15 damages resulting from such violation, including all profits derived from  
16 such violation. If the offense was knowingly committed or was committed  
17 in bad faith, the retailer may seek punitive damages in an amount not to  
18 exceed three times the amount of profits and damages. The prevailing  
19 party in any such action may recover reasonable attorney fees and court  
20 costs.

21 (l) For the purposes of this section:

22 (1) "Employee" means an individual who is a full-time or part-time  
23 employee of a retailer;

24 (2) "licensee representative" means a retailer or an employee or third-  
25 party agent of such retailer;

26 (3) "proper identification" means a driver's license, a nondriver's  
27 identification card or other government-issued document that contains a  
28 photograph of the individual and reasonably purports to establish that such  
29 person is at least 21 years of age;

30 (4) "third-party agent" means any person, or a full-time or part-time  
31 employee or independent contractor of a person, that:

32 (A) Is registered to do business in this state;

33 (B) has a contractual relationship with a retailer;

34 (C) is authorized to act as an agent of such retailer;

35 (D) does not hold a license issued under the Kansas liquor control act,  
36 and is not an affiliate of any manufacturer of alcoholic liquor licensed  
37 under the Kansas liquor control act; and

38 (E) holds a valid delivery permit issued pursuant to subsection (e);

39 (5) "third-party delivery platform" means an integrated system of  
40 hardware, software and applications that connects patrons of a retailer with  
41 a network of persons for the delivery of cereal malt beverage and beer  
42 containing not more than 6% alcohol by volume purchased from a retailer;  
43 and

- 1 (6) "third-party delivery platform agent" means a person who:
- 2 (A) Is operating on behalf of a third-party delivery platform; and
- 3 (B) is not directly compensated by and does not have a delivery
- 4 agreement with any retailer on behalf of whom such person is delivering
- 5 any cereal malt beverage or beer containing not more than 6% alcohol by
- 6 volume.

7 (m) This section shall be a part of and supplemental to the cereal malt  
8 beverage act.

9 Sec. 2. K.S.A. 2020 Supp. 41-2728 is hereby amended to read as  
10 follows: 41-2728. ~~From and after November 15, 2005:~~

11 (a) K.S.A. 41-2701 through 41-2727 and section ~~441~~, and amendments  
12 thereto, shall be known and may be cited as the Kansas cereal malt  
13 beverage act.

14 (b) Except as specifically provided in the Kansas cereal malt  
15 beverage act, the power to regulate all phases of the manufacture,  
16 distribution, sale, possession, transportation and traffic in cereal malt  
17 beverages is vested exclusively in the state and shall be exercised as  
18 provided in the Kansas cereal malt beverage act. No city or county shall  
19 enact any ordinance or resolution ~~which~~ *that* is in conflict with the  
20 provisions of the Kansas cereal malt beverage act and any such ordinance  
21 or resolution shall be null and void.

22 (c) The provisions of this act are severable. If any provision of this  
23 act is held to be invalid or unconstitutional, it shall be presumed  
24 conclusively that the legislature would have enacted the remainder of this  
25 act without such invalid or unconstitutional provision.

26 Sec. 3. K.S.A. 2020 Supp. 41-2728 is hereby repealed.

27 Sec. 4. This act shall take effect and be in force from and after its  
28 publication in the statute book.