

HOUSE BILL No. 2710

By Committee on Federal and State Affairs

2-15

1 AN ACT concerning alcoholic beverages; increasing the percentage of
2 alcohol by volume in domestic table wine and domestic fortified wine;
3 amending K.S.A. 41-102 and 41-501 and repealing the existing
4 sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 41-102 is hereby amended to read as follows: 41-
8 102. As used in this act, unless the context clearly requires otherwise:

9 (a) "Alcohol" means the product of distillation of any fermented
10 liquid, whether rectified or diluted, whatever its origin, and includes
11 synthetic ethyl alcohol but does not include denatured alcohol or wood
12 alcohol.

13 (b) "Alcoholic candy" means:

14 (1) For purposes of manufacturing, any candy or other confectionery
15 product with an alcohol content greater than 0.5% alcohol by volume; and

16 (2) for purposes of sale at retail, any candy or other confectionery
17 product with an alcohol content greater than 1% alcohol by volume.

18 (c) "Alcoholic liquor" means alcohol, spirits, wine, beer, alcoholic
19 candy and every liquid or solid, patented or not, containing alcohol, spirits,
20 wine or beer and capable of being consumed by a human being, but shall
21 not include any cereal malt beverage.

22 (d) "Beer" means a beverage, containing more than 3.2% alcohol by
23 weight, obtained by alcoholic fermentation of an infusion or concoction of
24 barley, or other grain, malt and hops in water and includes beer, ale, stout,
25 lager beer, porter and similar beverages having such alcoholic content.

26 (e) "Caterer" means the same as defined by K.S.A. 41-2601, and
27 amendments thereto.

28 (f) "Cereal malt beverage" means the same as defined by K.S.A. 41-
29 2701, and amendments thereto.

30 (g) "Club" means the same as defined by K.S.A. 41-2601, and
31 amendments thereto.

32 (h) "Director" means the director of alcoholic beverage control of the
33 department of revenue.

34 (i) "Distributor" means the person importing or causing to be
35 imported into the state, or purchasing or causing to be purchased within
36 the state, alcoholic liquor for sale or resale to retailers licensed under this

1 act or cereal malt beverage for sale or resale to retailers licensed under
2 K.S.A. 41-2702, and amendments thereto.

3 (j) "Domestic beer" means beer which contains not more than 15%
4 alcohol by weight and which is manufactured in this state.

5 (k) "Domestic fortified wine" means wine which contains more than
6 ~~14%~~ 16%, but not more than 20% alcohol by volume and which is
7 manufactured in this state.

8 (l) "Domestic table wine" means wine which contains not more than
9 ~~14%~~ 16% alcohol by volume and which is manufactured without
10 rectification or fortification in this state.

11 (m) "Drinking establishment" means the same as defined by K.S.A.
12 41-2601, and amendments thereto.

13 (n) "Farm winery" means a winery licensed by the director to
14 manufacture, store and sell domestic table wine and domestic fortified
15 wine.

16 (o) "Fulfillment house" means any location or facility for any in-state
17 or out-of-state entity that handles logistics, including warehousing,
18 packaging, order fulfillment or shipping services on behalf of the holder of
19 a special order shipping license issued pursuant to K.S.A. 41-350, and
20 amendments thereto.

21 (p) "Hard cider" means any alcoholic beverage that:

22 (1) Contains less than 8.5% alcohol by volume;

23 (2) has a carbonation level that does not exceed 6.4 grams per liter;
24 and

25 (3) is obtained by the normal alcoholic fermentation of the juice of
26 sound, ripe apples or pears, including such beverages containing sugar
27 added for the purpose of correcting natural deficiencies.

28 (q) "Manufacture" means to distill, rectify, ferment, brew, make, mix,
29 concoct, process, blend, bottle or fill an original package with any
30 alcoholic liquor, beer or cereal malt beverage.

31 (r) (1) "Manufacturer" means every brewer, fermenter, distiller,
32 rectifier, wine maker, blender, processor, bottler or person who fills or
33 refills an original package and others engaged in brewing, fermenting,
34 distilling, rectifying or bottling alcoholic liquor, beer or cereal malt
35 beverage.

36 (2) "Manufacturer" does not include a microbrewery, microdistillery
37 or a farm winery.

38 (s) "Microbrewery" means a brewery licensed by the director to
39 manufacture, store and sell domestic beer and hard cider.

40 (t) "Microdistillery" means a facility which produces spirits from any
41 source or substance that is licensed by the director to manufacture, store
42 and sell spirits.

43 (u) "Minor" means any person under 21 years of age.

1 (v) "Nonbeverage user" means any manufacturer of any of the
2 products set forth and described in K.S.A. 41-501, and amendments
3 thereto, when the products contain alcohol or wine, and all laboratories
4 using alcohol for nonbeverage purposes.

5 (w) "Original package" means any bottle, flask, jug, can, cask, barrel,
6 keg, hogshead or other receptacle or container whatsoever, used, corked or
7 capped, sealed and labeled by the manufacturer of alcoholic liquor, to
8 contain and to convey any alcoholic liquor. Original container does not
9 include a sleeve.

10 (x) "Person" means any natural person, corporation, partnership, trust
11 or association.

12 (y) "Powdered alcohol" means alcohol that is prepared in a powdered
13 or crystal form for either direct use or for reconstitution in a nonalcoholic
14 liquid.

15 (z) "Primary American source of supply" means the manufacturer, the
16 owner of alcoholic liquor at the time it becomes a marketable product or
17 the manufacturer's or owner's exclusive agent who, if the alcoholic liquor
18 cannot be secured directly from such manufacturer or owner by American
19 wholesalers, is the source closest to such manufacturer or owner in the
20 channel of commerce from which the product can be secured by American
21 wholesalers.

22 (aa) (1) "Retailer" means a person who is licensed under the Kansas
23 liquor control act and sells at retail, or offers for sale at retail, alcoholic
24 liquors or cereal malt beverages.

25 (2) "Retailer" does not include a microbrewery, microdistillery or a
26 farm winery.

27 (bb) "Sale" means any transfer, exchange or barter in any manner or
28 by any means whatsoever for a consideration and includes all sales made
29 by any person, whether principal, proprietor, agent, servant or employee.

30 (cc) "Salesperson" means any natural person who:

31 (1) Procures or seeks to procure an order, bargain, contract or
32 agreement for the sale of alcoholic liquor or cereal malt beverage; or

33 (2) is engaged in promoting the sale of alcoholic liquor or cereal malt
34 beverage, or in promoting the business of any person, firm or corporation
35 engaged in the manufacturing and selling of alcoholic liquor or cereal malt
36 beverage, whether the seller resides within the state of Kansas and sells to
37 licensed buyers within the state of Kansas, or whether the seller resides
38 without the state of Kansas and sells to licensed buyers within the state of
39 Kansas.

40 (dd) "Sample" means a serving of alcoholic liquor that contains not
41 more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or
42 (3) two ounces of beer or cereal malt beverage. A "sample" of a mixed
43 alcoholic beverage shall contain not more than ½ ounce of distilled spirits.

1 (ee) "Secretary" means the secretary of revenue.

2 (ff) (1) "Sell at retail" and "sale at retail" refer to and mean sales for
3 use or consumption and not for resale in any form and sales to clubs,
4 licensed drinking establishments, licensed caterers or holders of temporary
5 permits.

6 (2) "Sell at retail" and "sale at retail" do not refer to or mean sales by
7 a distributor, a microbrewery, a farm winery, a licensed club, a licensed
8 drinking establishment, a licensed caterer or a holder of a temporary
9 permit.

10 (gg) "To sell" includes to solicit or receive an order for, to keep or
11 expose for sale and to keep with intent to sell.

12 (hh) "Sleeve" means a package of two or more 50-milliliter or 3.2-
13 fluid-ounce containers of spirits.

14 (ii) "Spirits" means any beverage which contains alcohol obtained by
15 distillation, mixed with water or other substance in solution, and includes
16 brandy, rum, whiskey, gin or other spirituous liquors, and such liquors
17 when rectified, blended or otherwise mixed with alcohol or other
18 substances.

19 (jj) "Supplier" means a manufacturer of alcoholic liquor or cereal
20 malt beverage or an agent of such manufacturer, other than a salesperson.

21 (kk) "Temporary permit" means the same as defined by K.S.A. 41-
22 2601, and amendments thereto.

23 (ll) "Wine" means any alcoholic beverage obtained by the normal
24 alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or
25 other agricultural products, including such beverages containing added
26 alcohol or spirits or containing sugar added for the purpose of correcting
27 natural deficiencies. "Wine" includes hard cider and any other product that
28 is commonly known as a subset of wine.

29 Sec. 2. K.S.A. 41-501 is hereby amended to read as follows: 41-501.

30 (a) As used in this section and K.S.A. 41-501a, and amendments thereto:

31 (1) "Gallon" means wine gallon.

32 (2) "Federal area" means any lands or premises which are located
33 within the exterior boundaries of this state and which are held or acquired
34 by or for the use of the United States or any department, establishment or
35 agency of the United States.

36 (3) "Malt product" means malt syrup, malt extract, liquid malt or
37 wort.

38 (b) (1) For the purpose of raising revenue a tax is imposed upon the
39 manufacturing, using, selling, storing or purchasing of alcoholic liquor,
40 cereal malt beverage or malt products in this state or a federal area at a rate
41 of \$.18 per gallon on beer and cereal malt beverage; \$.20 per gallon on all
42 wort or liquid malt; \$.10 per pound on all malt syrup or malt extract; \$.30
43 per gallon on wine containing ~~14%~~ 16% or less alcohol by volume; \$.75

1 per gallon on wine containing more than ~~14%~~ 16% alcohol by volume; and
2 \$2.50 per gallon on alcohol and spirits.

3 (2) The tax imposed by this section shall be paid only once and shall
4 be paid by the person in this state or federal area who first manufactures,
5 uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt
6 beverage. The tax shall be collected and paid to the director as provided in
7 this act. If the alcoholic liquor or cereal malt beverage is manufactured and
8 sold in this state or a federal area, the tax shall be paid by the
9 manufacturer, microbrewery, microdistillery or farm winery producing it.
10 If the alcoholic liquor or cereal malt beverage is imported into this state by
11 a distributor for the purpose of sale at wholesale in this state or a federal
12 area, the tax shall be paid by the distributor, and in no event shall such tax
13 be paid by the manufacturer unless the alcoholic liquor or cereal malt
14 beverage is manufactured in this state. If not to exceed one gallon, or
15 metric equivalent, per person of alcoholic liquor has been purchased by a
16 private citizen outside the borders of the United States and is brought into
17 this state by the private citizen in such person's personal possession for
18 such person's own personal use and not for sale or resale, such import is
19 lawful and no tax payment shall be due thereon.

20 (c) Manufacturers, microbreweries, microdistilleries, farm wineries or
21 distributors at wholesale of alcoholic liquor or cereal malt beverage shall
22 be exempt from the payment of the gallonage tax imposed on alcoholic
23 liquor and cereal malt beverage, upon satisfactory proof, including bills of
24 lading furnished to the director by affidavit or otherwise as the director
25 requires, that the liquor or cereal malt beverage was manufactured in this
26 state but was shipped out of the state for sale and consumption outside the
27 state.

28 (d) Wines manufactured or imported solely and exclusively for
29 sacramental purposes and uses shall not be subject to the tax provided for
30 by this section.

31 (e) The tax provided for by this section is not imposed upon:

32 (1) Any alcohol or wine, whether manufactured in or imported into
33 this state, when sold to a nonbeverage user licensed by the state, for use in
34 the manufacture of any of the following when they are unfit for beverage
35 purposes: Patent and proprietary medicines and medicinal, antiseptic and
36 toilet preparations; flavoring extracts and syrups and food products;
37 scientific, industrial and chemical products; or scientific, chemical,
38 experimental or mechanical purposes; or

39 (2) the privilege of engaging in any business of interstate commerce
40 or otherwise, which business may not be made the subject of taxation by
41 this state under the constitution and statutes of the United States.

42 (f) The tax imposed by this section shall be in addition to all other
43 taxes imposed by the state of Kansas or by any municipal corporation or

1 political subdivision thereof.

2 (g) Retail sales of alcoholic liquor, sales of beer to consumers by
3 microbreweries and sales of wine to consumers by farm wineries shall not
4 be subject to the tax imposed by the Kansas retailers' sales tax act but shall
5 be subject to the enforcement tax provided for in this act.

6 (h) Notwithstanding any ordinance to the contrary, no city shall
7 impose an occupation or privilege tax on the business of any person, firm
8 or corporation licensed as a manufacturer, distributor, microbrewery,
9 microdistillery, farm winery, retailer or nonbeverage user under this act
10 and doing business within the boundaries of the city except as specifically
11 authorized by K.S.A. 41-310, and amendments thereto.

12 (i) The director shall collect the taxes imposed by this section and
13 shall account for and remit all moneys collected from the tax to the state
14 treasurer in accordance with the provisions of K.S.A. 75-4215, and
15 amendments thereto. Upon receipt of each such remittance, the state
16 treasurer shall deposit the entire amount in the state treasury and the state
17 treasurer shall credit $\frac{1}{10}$ of the moneys collected from taxes imposed upon
18 alcohol and spirits under subsection (b)(1) to the community alcoholism
19 and intoxication programs fund created by K.S.A. 41-1126, and
20 amendments thereto, and shall credit the balance of the moneys collected
21 to the state general fund.

22 (j) If any alcoholic liquor manufactured in or imported into this state
23 is sold to a licensed manufacturer or distributor of this state to be used
24 solely as an ingredient in the manufacture of any beverage for human
25 consumption, the tax imposed upon the manufacturer or distributor shall
26 be reduced by the amount of the taxes which have been paid under this
27 section as to the alcoholic liquor so used.

28 (k) The tax provided for by this section is not imposed upon alcohol
29 or wine used by any school or college for scientific, chemical,
30 experimental or mechanical purposes or by hospitals, sanatoria or other
31 institutions caring for the sick. Any school, college, hospital, sanatorium or
32 other institution caring for the sick may import alcohol or wine for
33 scientific, chemical, experimental, mechanical or medicinal purposes by
34 making application to the director for a permit to import it and receiving
35 such a permit. Application for the permit shall be on a form prescribed and
36 furnished by the director, and a separate permit shall be required for each
37 purchase of alcohol or wine. A fee of \$2 shall accompany each application.
38 All permits shall be issued in triplicate to the applicant and shall be under
39 the seal of the office of the director. Two copies of the permit shall be
40 forwarded by the applicant to the microbrewery, microdistillery, farm
41 winery, manufacturer or distributor from which the alcohol or wine is
42 purchased, and the microbrewery, microdistillery, farm winery,
43 manufacturer or distributor shall return to the office of the director one

1 copy of the permit with its shipping affidavit and invoice. Within 10 days
2 after receipt of any alcohol or wine, the school, college, hospital or
3 sanatorium ordering it shall file a report in the office of the director upon
4 forms furnished by the director, showing the amount of alcohol or wine
5 received, the place where it is to be stored, from whom it was received, the
6 purpose for which it is to be used and such other information as required
7 by the director. Any school, college, hospital, sanatorium or institution
8 caring for the sick, which complies with the provisions of this subsection,
9 shall not be required to have any other license to purchase alcohol or wine
10 from a microbrewery, microdistillery, farm winery, manufacturer or
11 distributor.

12 Sec. 3. K.S.A. 41-102 and 41-501 are hereby repealed.

13 Sec. 4. This act shall take effect and be in force from and after its
14 publication in the ~~statute book~~ ***Kansas register***.