

As Amended by House Committee

Session of 2011

SENATE BILL No. 80

By Committee on Federal and State Affairs

1-31

1 AN ACT concerning alcoholic beverages; ~~relating to microbreweries;~~
2 amending K.S.A. 2010 Supp. 41-102 and, 41-308b and **41-2703** and
3 repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 41-102 is hereby amended to read as
7 follows: 41-102. As used in this act, unless the context clearly requires
8 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 liquor" means alcohol, spirits, wine, beer and every
14 liquid or solid, patented or not, containing alcohol, spirits, wine or beer
15 and capable of being consumed as a beverage by a human being, but shall
16 not include any cereal malt beverage.

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

21 (d) "Caterer" has the meaning provided by K.S.A. 41-2601, and
22 amendments thereto.

23 (e) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
24 2701, and amendments thereto.

25 (f) "Club" has the meaning provided by K.S.A. 41-2601, and
26 amendments thereto.

27 (g) "Director" means the director of alcoholic beverage control of the
28 department of revenue.

29 (h) "Distributor" means the person importing or causing to be
30 imported into the state, or purchasing or causing to be purchased within
31 the state, alcoholic liquor for sale or resale to retailers licensed under this
32 act or cereal malt beverage for sale or resale to retailers licensed under
33 K.S.A. 41-2702, and amendments thereto.

34 (i) "Domestic beer" means beer which contains not more than ~~8%~~
35 10% alcohol by weight and which is manufactured in this state.

36 (j) "Domestic fortified wine" means wine which contains more than

1 14%, but not more than 20% alcohol by volume and which is
2 manufactured in this state.

3 (k) "Domestic table wine" means wine which contains not more than
4 14% alcohol by volume and which is manufactured without rectification or
5 fortification in this state.

6 (l) "Drinking establishment" has the meaning provided by K.S.A. 41-
7 2601, and amendments thereto.

8 (m) "Farm winery" means a winery licensed by the director to
9 manufacture, store and sell domestic table wine and domestic fortified
10 wine.

11 (n) "Manufacture" means to distill, rectify, ferment, brew, make, mix,
12 concoct, process, blend, bottle or fill an original package with any
13 alcoholic liquor, beer or cereal malt beverage.

14 (o) (1) "Manufacturer" means every brewer, fermenter, distiller,
15 rectifier, wine maker, blender, processor, bottler or person who fills or
16 refills an original package and others engaged in brewing, fermenting,
17 distilling, rectifying or bottling alcoholic liquor, beer or cereal malt
18 beverage.

19 (2) "Manufacturer" does not include a microbrewery or a farm
20 winery.

21 (p) "Microbrewery" means a brewery licensed by the director to
22 manufacture, store and sell domestic beer.

23 (q) "Minor" means any person under 21 years of age.

24 (r) "Nonbeverage user" means any manufacturer of any of the
25 products set forth and described in K.S.A. 41-501, and amendments
26 thereto, when the products contain alcohol or wine, and all laboratories
27 using alcohol for nonbeverage purposes.

28 (s) "Original package" means any bottle, flask, jug, can, cask, barrel,
29 keg, hogshead or other receptacle or container whatsoever, used, corked or
30 capped, sealed and labeled by the manufacturer of alcoholic liquor, to
31 contain and to convey any alcoholic liquor. Original container does not
32 include a sleeve.

33 (t) "Person" means any natural person, corporation, partnership, trust
34 or association.

35 (u) "Primary American source of supply" means the manufacturer, the
36 owner of alcoholic liquor at the time it becomes a marketable product or
37 the manufacturer's or owner's exclusive agent who, if the alcoholic liquor
38 cannot be secured directly from such manufacturer or owner by American
39 wholesalers, is the source closest to such manufacturer or owner in the
40 channel of commerce from which the product can be secured by American
41 wholesalers.

42 (v) (1) "Retailer" means a person who sells at retail, or offers for sale
43 at retail, alcoholic liquors.

1 (2) "Retailer" does not include a microbrewery or a farm winery.

2 (w) "Sale" means any transfer, exchange or barter in any manner or
3 by any means whatsoever for a consideration and includes all sales made
4 by any person, whether principal, proprietor, agent, servant or employee.

5 (x) "Salesperson" means any natural person who:

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

8 (2) is engaged in promoting the sale of alcoholic liquor or cereal malt
9 beverage, or in promoting the business of any person, firm or corporation
10 engaged in the manufacturing and selling of alcoholic liquor or cereal malt
11 beverage, whether the seller resides within the state of Kansas and sells to
12 licensed buyers within the state of Kansas, or whether the seller resides
13 without the state of Kansas and sells to licensed buyers within the state of
14 Kansas.

15 (y) "Secretary" means the secretary of revenue.

16 (z) (1) "Sell at retail" and "sale at retail" refer to and mean sales for
17 use or consumption and not for resale in any form and sales to clubs,
18 licensed drinking establishments, licensed caterers or holders of temporary
19 permits.

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

24 (aa) "To sell" includes to solicit or receive an order for, to keep or
25 expose for sale and to keep with intent to sell.

26 (bb) "Sleeve" means a package of two or more 50-milliliter (3.2-
27 fluid-ounce) containers of spirits.

28 (cc) "Spirits" means any beverage which contains alcohol obtained by
29 distillation, mixed with water or other substance in solution, and includes
30 brandy, rum, whiskey, gin or other spirituous liquors, and such liquors
31 when rectified, blended or otherwise mixed with alcohol or other
32 substances.

33 (dd) "Supplier" means a manufacturer of alcoholic liquor or cereal
34 malt beverage or an agent of such manufacturer, other than a salesperson.

35 (ee) "Temporary permit" has the meaning provided by K.S.A. 41-
36 2601, and amendments thereto.

37 (ff) "Wine" means any alcoholic beverage obtained by the normal
38 alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or
39 other agricultural products, including such beverages containing added
40 alcohol or spirits or containing sugar added for the purpose of correcting
41 natural deficiencies.

42 Sec. 2. K.S.A. 2010 Supp. 41-308b is hereby amended to read as
43 follows: 41-308b. (a) A microbrewery license shall allow:

- 1 (1) The manufacture of not less than 100 nor more than 15,000
2 barrels of domestic beer during the license year and the storage thereof;
- 3 (2) the sale to beer distributors of beer, manufactured by the licensee;
- 4 (3) the sale, on the licensed premises in the original unopened
5 container to consumers for consumption off the licensed premises, of beer
6 manufactured by the licensee;
- 7 (4) the serving free of charge on the licensed premises *and at special*
8 *events, monitored and regulated by the division of alcoholic beverage*
9 *control*, of samples of beer manufactured by the licensee, if the premises
10 are located in a county where the sale of alcoholic liquor is permitted by
11 law in licensed drinking establishments;
- 12 (5) if the licensee is also licensed as a club or drinking establishment,
13 the sale of domestic beer and other alcoholic liquor for consumption on the
14 licensed premises as authorized by the club and drinking establishment
15 act; and
- 16 (6) if the licensee is also licensed as a caterer, the sale of domestic
17 beer and other alcoholic liquor for consumption on unlicensed premises as
18 authorized by the club and drinking establishment act.
- 19 (b) Upon application and payment of the fee prescribed by K.S.A. 41-
20 310, and amendments thereto, by a microbrewery licensee, the director
21 may issue not to exceed one microbrewery packaging and warehousing
22 facility license to the microbrewery licensee. A microbrewery packaging
23 and warehousing facility license shall allow:
- 24 (1) The transfer, from the licensed premises of the microbrewery to
25 the licensed premises of the microbrewery packaging and warehousing
26 facility, of beer manufactured by the licensee, for the purpose of packaging
27 or storage, or both; and
- 28 (2) the transfer, from the licensed premises of the microbrewery
29 packaging and warehousing facility to the licensed premises of the
30 microbrewery, of beer manufactured by the licensee; or
- 31 (3) the removal from the licensed premises of the microbrewery
32 packaging and warehousing facility of beer manufactured by the licensee
33 for the purpose of delivery to a licensed beer wholesaler.
- 34 (c) A microbrewery may sell domestic beer in the original unopened
35 container to consumers for consumption off the licensed premises at any
36 time between 6 a.m. and 12 midnight on any day except Sunday and
37 between 11 a.m. and 7 p.m. on Sunday. If authorized by subsection (a), a
38 microbrewery may serve samples of domestic beer and serve and sell
39 domestic beer and other alcoholic liquor for consumption on the licensed
40 premises at any time when a club or drinking establishment is authorized
41 to serve and sell alcoholic liquor.
- 42 (d) The director may issue to the Kansas state fair or any bona fide
43 group of brewers a permit to import into this state small quantities of beer.

1 Such beer shall be used only for bona fide educational and scientific
2 tasting programs and shall not be resold. Such beer shall not be subject to
3 the tax imposed by K.S.A. 41-501, and amendments thereto. The permit
4 shall identify specifically the brand and type of beer to be imported, the
5 quantity to be imported, the tasting programs for which the beer is to be
6 used and the times and locations of such programs. The secretary shall
7 adopt rules and regulations governing the importation of beer pursuant to
8 this subsection and the conduct of tasting programs for which such beer is
9 imported.

10 (e) A microbrewery license or microbrewery packaging and
11 warehousing facility license shall apply only to the premises described in
12 the application and in the license issued and only one location shall be
13 described in the license.

14 (f) No microbrewery shall:

15 (1) Employ any person under the age of 18 years in connection with
16 the manufacture, sale or serving of any alcoholic liquor;

17 (2) permit any employee of the licensee who is under the age of 21
18 years to work on the licensed premises at any time when not under the on-
19 premises supervision of either the licensee or an employee of the licensee
20 who is 21 years of age or over;

21 (3) employ any person under 21 years of age in connection with
22 mixing or dispensing alcoholic liquor; or

23 (4) employ any person in connection with the manufacture or sale of
24 alcoholic liquor if the person has been convicted of a felony.

25 (g) Whenever a microbrewery licensee is convicted of a violation of
26 the Kansas liquor control act, the director may revoke the licensee's license
27 and all fees paid for the license in accordance with the Kansas
28 administrative procedure act.

29 **Sec. 3. K.S.A. 2010 Supp. 41-2703 is hereby amended to read as**
30 **follows: 41-2703. (a) After examination of an application for a**
31 **retailer's license, the board of county commissioners or the director**
32 **shall, if they approve the same, issue a license to the applicant. The**
33 **governing body of the city shall, if the applicant is qualified as**
34 **provided by law, issue a license to such applicant.**

35 (b) No retailer's license shall be issued to:

36 (1) A person who is not a resident of the county in which the place
37 of business covered by the license is located, has not been a resident of
38 such county for at least six months or has not been a resident in good
39 faith of the state of Kansas.

40 (2) A person who has not been a resident of this state for at least
41 one year immediately preceding application for a retailer's license.

42 (3) A person who is not of good character and reputation in the
43 community in which the person resides.

1 **(4) A person who is not a citizen of the United States.**

2 **(5) A person who, within two years immediately preceding the**
3 **date of application approval, has been convicted of, released from**
4 **incarceration for or released from probation or parole for a felony or**
5 **any crime involving moral turpitude, drunkenness, driving a motor**
6 **vehicle while under the influence of intoxicating liquor or violation of**
7 **any other intoxicating liquor law of any state or of the United States.**

8 **(6) A partnership, unless all the members of the partnership are**
9 **otherwise qualified to obtain a license.**

10 **(7) A corporation, if any manager, officer or director thereof, or**
11 **any stockholder owning in the aggregate more than 25% of the stock**
12 **of such corporation, would be ineligible to receive a license hereunder**
13 **for any reason other than the citizenship and residency requirements.**

14 **(8) A person whose place of business is conducted by a manager**
15 **or agent unless the manager or agent possesses all the qualifications of**
16 **a licensee.**

17 **(9) A person whose spouse would be ineligible to receive a**
18 **retailer's license for any reason other than citizenship, residence**
19 **requirements or age, except that this subsection (b)(9) shall not apply**
20 **in determining eligibility for a renewal license.**

21 **(10) A person whose spouse has been convicted of a felony or**
22 **other crime which would disqualify a person from licensure under this**
23 **section and such felony or other crime was committed during the time**
24 **that the spouse held a license under this act.**

25 **(c) After examination of an application for a retailer's license, the**
26 **board of county commissioners or the governing body of a city may**
27 **deny a license to a person, partnership or corporation if any manager,**
28 **officer or director thereof, or any stockholder owning in the aggregate**
29 **more than 25% of the stock of such corporation, has been an officer,**
30 **manager, director or a stockholder owning in the aggregate more than**
31 **25% of the stock, of a corporation which has:**

32 **(1) Had a retailer's license revoked under K.S.A. 41-2708, and**
33 **amendments thereto; or**

34 **(2) been convicted of a violation of the club and drinking**
35 **establishment act or the cereal malt beverage laws of this state.**

36 **(d) Retailers' licenses shall be issued either on an annual basis or**
37 **for the calendar year. If such licenses are issued on an annual basis,**
38 **the board of county commissioners or the governing body of the city**
39 **shall notify the distributors supplying the county or city on or before**
40 **April 1 of the year if a retailer's license is not renewed.**

41 *(e) In addition to, and consistent with the requirements of K.S.A.*
42 *41-2701 et seq., and amendments thereto, the board of county*
43 *commissioners of any county or the governing body of any city may*

1 *provide by resolution or ordinance for the issuance of a special event*
2 *retailers' permit which shall allow the permit holder to offer for sale, sell*
3 *and serve cereal malt beverage for consumption on unpermitted premises,*
4 *which may be open to the public, subject to the following:*

5 *(1) A special event retailers' permit shall specify the premises for which*
6 *the permit is issued;*

7 *(2) a special event retailers' permit shall be issued for the duration of*
8 *the special event, the dates and hours of which shall be specified in the*
9 *permit;*

10 *(3) no more than four special event retailers' permits may be issued to*
11 *any one applicant in a calendar year; and*

12 *(4) a special event retailers' permit shall not be transferable or*
13 *assignable.*

14 *(f) A special event retailers' permit holder shall not be subject to the*
15 *provisions of the beer and cereal malt beverage keg registration act,*
16 *K.S.A. 41-2901 et seq., and amendments thereto.*

17 ~~Sec. 3.~~ **4.** K.S.A. 2010 Supp. 41-102~~and~~, 41-308b **and 41-2703** are
18 hereby repealed.

19 ~~Sec. 4.~~ **5.** This act shall take effect and be in force from and after its
20 publication in the ~~statute book~~ **Kansas register**.

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