

SENATE BILL No. 112

By Committee on Federal and State Affairs

2-4

1 AN ACT concerning alcoholic liquor; relating to the production and
2 transportation of homemade fermented beverages; amending K.S.A.
3 41-407 and K.S.A. 2012 Supp. 41-102, 41-104 and 41-501 and
4 repealing the existing sections.
5

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

7 New Section 1. (a) Any club or drinking establishment licensed under
8 this act may allow an exhibition, demonstration, class, judging, tasting,
9 sampling, contest or competition of homemade fermented beverages on
10 the licensed premises, provided, such licensee does not sell or offer for
11 sale any homemade fermented beverages and does not acquire any
12 ownership interest in homemade fermented beverages. The licensee may
13 allow the storage of homemade fermented beverages on the licensed
14 premises, provided, such homemade fermented beverages are clearly
15 identified as being owned by another person and not the licensee, and are
16 stored separately from any alcoholic liquor owned by such licensee. Such
17 licensee may charge an admission fee to any such event, but no separate or
18 additional fee shall be charged for the consumption of any homemade
19 fermented beverages.

20 (b) For purposes of this section, the term "homemade fermented
21 beverages" shall have the same meaning as that term is defined in K.S.A.
22 41-102, and amendments thereto.

23 (c) This section shall be part of and supplemental to the club and
24 drinking establishment act.

25 Sec. 2. K.S.A. 2012 Supp. 41-102 is hereby amended to read as
26 follows: 41-102. As used in this act, unless the context clearly requires
27 otherwise:

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

32 (b) "Alcoholic liquor" means alcohol, spirits, wine, beer and every
33 liquid or solid, patented or not, containing alcohol, spirits, wine or beer
34 and capable of being consumed as a beverage by a human being, but shall
35 not include any cereal malt beverage.

36 (c) "Beer" means a beverage, containing more than 3.2% alcohol by

1 weight, obtained by alcoholic fermentation of an infusion or concoction of
2 barley, or other grain, malt and hops in water and includes beer, ale, stout,
3 lager beer, porter and similar beverages having such alcoholic content.

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

6 (e) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
7 2701, and amendments thereto.

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

10 (g) "Director" means the director of alcoholic beverage control of the
11 department of revenue.

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

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

19 (j) "Domestic fortified wine" means wine which contains more than
20 14%, but not more than 20% alcohol by volume and which is
21 manufactured in this state.

22 (k) "Domestic table wine" means wine which contains not more than
23 14% alcohol by volume and which is manufactured without rectification or
24 fortification in this state.

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

27 (m) "Farm winery" means a winery licensed by the director to
28 manufacture, store and sell domestic table wine and domestic fortified
29 wine.

30 (n) *"Homemade fermented beverages" means beer or wine produced*
31 *by a person who is 21 years of age or older; through such person's own*
32 *efforts and in accordance with K.S.A. 41-104, and amendments thereto, at*
33 *a place of residence or at another location with permission from the*
34 *property owner, and not for a commercial purpose, but for consumption by*
35 *that person or such person's family or guests, or for use at an exhibition,*
36 *demonstration, judging, tasting, class or sampling, or as part of a contest*
37 *or competition.*

38 (o) "Manufacture" means to distill, rectify, ferment, brew, make,
39 mix, concoct, process, blend, bottle or fill an original package with any
40 alcoholic liquor, beer or cereal malt beverage.

41 (p) (1) "Manufacturer" means every brewer, fermenter, distiller,
42 rectifier, wine maker, blender, processor, bottler or person who fills or
43 refills an original package and others engaged in brewing, fermenting,

1 distilling, rectifying or bottling alcoholic liquor, beer or cereal malt
2 beverage.

3 (2) "Manufacturer" does not include a microbrewery, microdistillery
4 ~~or a~~, farm winery *or any person who produces homemade fermented*
5 *beverages.*

6 (⊕) (q) "Microbrewery" means a brewery licensed by the director to
7 manufacture, store and sell domestic beer.

8 (⊕) (r) "Microdistillery" means a facility which produces spirits from
9 any source or substance that is licensed by the director to manufacture,
10 store and sell spirits.

11 (⊕) (s) "Minor" means any person under 21 years of age.

12 (⊕) (t) "Nonbeverage user" means any manufacturer of any of the
13 products set forth and described in K.S.A. 41-501, and amendments
14 thereto, when the products contain alcohol or wine, and all laboratories
15 using alcohol for nonbeverage purposes.

16 (⊕) (u) "Original package" means any bottle, flask, jug, can, cask,
17 barrel, keg, hogshead or other receptacle or container whatsoever, used,
18 corked or capped, sealed and labeled by the manufacturer of alcoholic
19 liquor, to contain and to convey any alcoholic liquor. Original container
20 does not include a sleeve.

21 (⊕) (v) "Person" means any natural person, corporation, partnership,
22 trust or association.

23 (⊕) (w) "Primary American source of supply" means the
24 manufacturer, the owner of alcoholic liquor at the time it becomes a
25 marketable product or the manufacturer's or owner's exclusive agent who,
26 if the alcoholic liquor cannot be secured directly from such manufacturer
27 or owner by American wholesalers, is the source closest to such
28 manufacturer or owner in the channel of commerce from which the
29 product can be secured by American wholesalers.

30 (⊕) (x) (1) "Retailer" means a person who sells at retail, or offers for
31 sale at retail, alcoholic liquors.

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

34 (⊕) (y) "Sale" means any transfer, exchange or barter in any manner
35 or by any means whatsoever for a consideration and includes all sales
36 made by any person, whether principal, proprietor, agent, servant or
37 employee.

38 (⊕) (z) "Salesperson" means any natural person who:

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

41 (2) is engaged in promoting the sale of alcoholic liquor or cereal malt
42 beverage, or in promoting the business of any person, firm or corporation
43 engaged in the manufacturing and selling of alcoholic liquor or cereal malt

1 beverage, whether the seller resides within the state of Kansas and sells to
2 licensed buyers within the state of Kansas, or whether the seller resides
3 without the state of Kansas and sells to licensed buyers within the state of
4 Kansas.

5 ~~(z)~~ (aa) "Secretary" means the secretary of revenue.

6 ~~(aa)~~ (bb) (1) "Sell at retail" and "sale at retail" refer to and mean sales
7 for use or consumption and not for resale in any form and sales to clubs,
8 licensed drinking establishments, licensed caterers or holders of temporary
9 permits.

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

14 ~~(bb)~~ (cc) "To sell" includes to solicit or receive an order for, to keep
15 or expose for sale and to keep with intent to sell.

16 ~~(ee)~~ (dd) "Sleeve" means a package of two or more 50-milliliter (3.2-
17 fluid-ounce) containers of spirits.

18 ~~(dd)~~ (ee) "Spirits" means any beverage which contains alcohol
19 obtained by distillation, mixed with water or other substance in solution,
20 and includes brandy, rum, whiskey, gin or other spirituous liquors, and
21 such liquors when rectified, blended or otherwise mixed with alcohol or
22 other substances.

23 ~~(ee)~~ (ff) "Supplier" means a manufacturer of alcoholic liquor or cereal
24 malt beverage or an agent of such manufacturer, other than a salesperson.

25 ~~(ff)~~ (gg) "Temporary permit" has the meaning provided by K.S.A. 41-
26 2601, and amendments thereto.

27 ~~(gg)~~ (hh) "Wine" means any alcoholic beverage obtained by the
28 normal alcoholic fermentation of the juice of sound, ripe grapes, fruits,
29 berries or other agricultural products, including such beverages containing
30 added alcohol or spirits or containing sugar added for the purpose of
31 correcting natural deficiencies.

32 Sec. 3. K.S.A. 2012 Supp. 41-104 is hereby amended to read as
33 follows: 41-104. No person shall manufacture, bottle, blend, sell, barter,
34 transport, deliver, furnish or possess any alcoholic liquor for beverage
35 purposes, except as specifically provided in this act, the club and drinking
36 establishment act or article 27 of chapter 41 of the Kansas Statutes
37 Annotated, *and amendments thereto*, except that nothing contained in this
38 act shall prevent:

39 (a) The possession and transportation of alcoholic liquor for the
40 personal use of the possessor, the possessor's family and guests except that
41 the provisions of K.S.A. 41-407, and amendments thereto, shall be
42 applicable to all persons;

43 (b) the making of wine, cider or beer by a person from fruits,

1 vegetables or grains, or the product thereof, by simple fermentation and
2 without distillation, if it is made solely for the use of the maker and the
3 maker's family;

4 (c) any duly licensed practicing physician or dentist from possessing
5 or using alcoholic liquor in the strict practice of the medical or dental
6 profession;

7 (d) any hospital or other institution caring for sick and diseased
8 persons, from possessing and using alcoholic liquor for the treatment of
9 bona fide patients of such hospital or institution;

10 (e) any drugstore employing a licensed pharmacist from possessing
11 and using alcoholic liquor in the compounding of prescriptions of duly
12 licensed physicians;

13 (f) the possession and dispensation of wine by an authorized
14 representative of any church for the purpose of conducting any bona fide
15 rite or religious ceremony conducted by such church; or

16 (g) the sale of wine to a consumer in this state by a person which
17 holds a valid license authorizing the manufacture of wine in this or another
18 state and the shipment of such wine directly to such consumer, subject to
19 the following: (1) The consumer must be at least 21 years of age; (2) the
20 consumer must purchase the wine while physically present on the premises
21 of the wine manufacturer; (3) the wine must be for the consumer's personal
22 consumption and not for resale; and (4) the consumer shall comply with
23 the provisions of K.S.A. 41-407, and amendments thereto, by payment of
24 all applicable taxes within such time after purchase of the wine as
25 prescribed by rules and regulations adopted by the secretary; ;

26 (h) the serving of complimentary alcoholic liquor or cereal malt
27 beverages at fund raising activities of charitable organizations as defined
28 by K.S.A. 17-1760, and amendments thereto, and as qualified pursuant to
29 26 U.S.C.A. § 501(c) and by committees formed pursuant to K.S.A. 25-
30 4142 et seq., and amendments thereto. The serving of such alcoholic liquor
31 at such fund raising activities shall not constitute a sale pursuant to this
32 act, the club and drinking establishment act or article 27 of chapter 41 of
33 the Kansas Statutes Annotated, and amendments thereto. Any such fund
34 raising activity shall not be required to obtain a license or a temporary
35 permit pursuant to this act, the club and drinking establishment act or
36 article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments
37 thereto; or

38 (i) *(1) the production of homemade fermented beverages or the*
39 *possession, transportation or storage of homemade fermented beverages*
40 *by any person 21 years of age or older, provided:*

41 *(A) The person producing the homemade fermented beverages*
42 *receives no compensation or other remuneration for producing such*
43 *homemade fermented beverages;*

1 (B) *the homemade fermented beverages are not sold or offered for*
2 *sale; and*

3 (C) *the total quantity of homemade fermented beverages produced in*
4 *a calendar year by such person does not exceed:*

5 (i) *One hundred gallons, if such person's household consists of only*
6 *one person who is 21 years of age or older; or*

7 (ii) *two hundred gallons, if such person's household consists of two*
8 *or more persons who are 21 years of age or older.*

9 (2) *A person who produces, possesses, transports or stores*
10 *homemade fermented beverages shall not be deemed a manufacturer,*
11 *microbrewery, microdistillery, farm winery, wholesaler, distributor,*
12 *supplier or retailer for purposes of this act, and a club of such persons*
13 *shall not be deemed a club under the club and drinking establishment act.*

14 (3) *Homemade fermented beverages may be consumed by the person*
15 *producing such homemade fermented beverages and by such person's*
16 *family and guests who are 21 years of age or older, and may be consumed*
17 *at any private residence or other location where the possession and*
18 *consumption of alcoholic liquor is permitted under this act or under the*
19 *club and drinking establishment act.*

20 (4) *Homemade fermented beverages may be used for purposes of*
21 *exhibiting, demonstrating, educating, judging, tasting or sampling, or for*
22 *club meetings or festivals, or as part of a contest or competition.*
23 *Homemade fermented beverages used for such purposes, including the*
24 *submission or consumption of such homemade fermented beverages, shall*
25 *not be considered sold or offered for sale under this act and any prize*
26 *awarded at a contest or competition or as a result of an exhibition, class,*
27 *demonstration, judging, tasting or sampling shall not be considered*
28 *payment for such homemade fermented beverages under this act. A person*
29 *holding any event described in this paragraph may require an admission*
30 *charge to the event, but no separate or additional fee shall be charged for*
31 *the consumption of any homemade fermented beverages. Event admission*
32 *charges that are collected may be partially used to provide prizes to*
33 *producers of homemade fermented beverages, but the aggregate*
34 *admission charges may not be divided in any fashion among the producers*
35 *of the homemade fermented beverages who participate in the event. A*
36 *producer of homemade beverages who receives free event admission or*
37 *discounted event admission in return for the producer's donation of the*
38 *homemade fermented beverages to such event shall not be deemed to have*
39 *sold or offered such homemade fermented beverages for sale, and receipt*
40 *of free or discounted admission to such event shall not be deemed payment*
41 *for such homemade fermented beverages under this act.*

42 Sec. 4. K.S.A. 41-407 is hereby amended to read as follows: 41-407.

43 (a) It shall be unlawful for any person to:

1 (1) Evade, or attempt to evade, the payment of tax or duty on any
2 alcoholic liquor, in any manner whatever. Upon conviction of violation of
3 this subsection, in addition to the penalty prescribed for the violation of
4 this act, the violator shall forfeit and pay, as a part of costs in the action,
5 double the amount of the tax or duty so evaded or attempted to be evaded.

6 (2) Have in such person's possession any cask or package of alcoholic
7 liquor, without having thereon each mark required therefor by law, and any
8 such cask or package not having thereon each such mark shall be forfeited
9 to the state of Kansas.

10 (b) Nothing contained in this section shall make unlawful:

11 (1) The possession and transportation of wine imported solely for use
12 by a church or religious organization for sacramental purposes and uses;
13 *or*

14 (2) *the production, transportation or storage of homemade fermented*
15 *beverages in accordance with K.S.A. 41-104, and amendments thereto.*

16 (c) Violation of any provision of this section is a misdemeanor
17 punishable by a fine not exceeding \$500 or imprisonment not exceeding
18 six months, or both, and in proper cases the trial court may order and
19 direct the confiscation of the liquor involved in the violation as part of the
20 judgment of conviction.

21 Sec. 5. K.S.A. 2012 Supp. 41-501 is hereby amended to read as
22 follows: 41-501. (a) As used in this section and K.S.A. 41-501a, and
23 amendments thereto:

24 (1) "Gallon" means wine gallon.

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

29 (3) "Malt product" means malt syrup, malt extract, liquid malt or
30 wort.

31 (b) (1) For the purpose of raising revenue a tax is imposed upon the
32 manufacturing, using, selling, storing or purchasing of alcoholic liquor,
33 cereal malt beverage or malt products in this state or a federal area at a rate
34 of \$.18 per gallon on beer and cereal malt beverage; \$.20 per gallon on all
35 wort or liquid malt; \$.10 per pound on all malt syrup or malt extract; \$.30
36 per gallon on wine containing 14% or less alcohol by volume; \$.75 per
37 gallon on wine containing more than 14% alcohol by volume; and \$2.50
38 per gallon on alcohol and spirits.

39 (2) The tax imposed by this section shall be paid only once and shall
40 be paid by the person in this state or federal area who first manufactures,
41 uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt
42 beverage. The tax shall be collected and paid to the director as provided in
43 this act. If the alcoholic liquor or cereal malt beverage is manufactured and

1 sold in this state or a federal area, the tax shall be paid by the
2 manufacturer, microbrewery, microdistillery or farm winery producing it.
3 If the alcoholic liquor or cereal malt beverage is imported into this state by
4 a distributor for the purpose of sale at wholesale in this state or a federal
5 area, the tax shall be paid by the distributor, and in no event shall such tax
6 be paid by the manufacturer unless the alcoholic liquor or cereal malt
7 beverage is manufactured in this state. If not to exceed one gallon, or
8 metric equivalent, per person of alcoholic liquor has been purchased by a
9 private citizen outside the borders of the United States and is brought into
10 this state by the private citizen in such person's personal possession for
11 such person's own personal use and not for sale or resale, such import is
12 lawful and no tax payment shall be due thereon.

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

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

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

25 (1) Any alcohol or wine, whether manufactured in or imported into
26 this state, when sold to a nonbeverage user licensed by the state, for use in
27 the manufacture of any of the following when they are unfit for beverage
28 purposes: Patent and proprietary medicines and medicinal, antiseptic and
29 toilet preparations; flavoring extracts and syrups and food products;
30 scientific, industrial and chemical products; or scientific, chemical,
31 experimental or mechanical purposes; or

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

35 (f) The tax imposed by this section shall be in addition to all other
36 taxes imposed by the state of Kansas or by any municipal corporation or
37 political subdivision thereof.

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

42 (h) Notwithstanding any ordinance to the contrary, no city shall
43 impose an occupation or privilege tax on the business of any person, firm

1 or corporation licensed as a manufacturer, distributor, microbrewery,
2 microdistillery, farm winery, retailer or nonbeverage user under this act
3 and doing business within the boundaries of the city except as specifically
4 authorized by K.S.A. 41-310, and amendments thereto.

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

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

21 (k) The tax provided for by this section is not imposed upon alcohol
22 or wine used by any school or college for scientific, chemical,
23 experimental or mechanical purposes or by hospitals, sanatoria or other
24 institutions caring for the sick. Any school, college, hospital, sanatorium or
25 other institution caring for the sick may import alcohol or wine for
26 scientific, chemical, experimental, mechanical or medicinal purposes by
27 making application to the director for a permit to import it and receiving
28 such a permit. Application for the permit shall be on a form prescribed and
29 furnished by the director, and a separate permit shall be required for each
30 purchase of alcohol or wine. A fee of \$2 shall accompany each application.
31 All permits shall be issued in triplicate to the applicant and shall be under
32 the seal of the office of the director. Two copies of the permit shall be
33 forwarded by the applicant to the microbrewery, microdistillery, farm
34 winery, manufacturer or distributor from which the alcohol or wine is
35 purchased, and the microbrewery, microdistillery, farm winery,
36 manufacturer or distributor shall return to the office of the director one
37 copy of the permit with its shipping affidavit and invoice. Within 10 days
38 after receipt of any alcohol or wine, the school, college, hospital or
39 sanatorium ordering it shall file a report in the office of the director upon
40 forms furnished by the director, showing the amount of alcohol or wine
41 received, the place where it is to be stored, from whom it was received, the
42 purpose for which it is to be used and such other information as required
43 by the director. Any school, college, hospital, sanatorium or institution

1 caring for the sick, which complies with the provisions of this subsection,
2 shall not be required to have any other license to purchase alcohol or wine
3 from a microbrewery, microdistillery, farm winery, manufacturer or
4 distributor.

5 *(l) The tax provided for by this section is not imposed upon alcoholic*
6 *liquor produced as homemade fermented beverages in accordance with*
7 *K.S.A. 41-104, and amendments thereto.*

8 Sec. 6. K.S.A. 41-407 and K.S.A. 2012 Supp. 41-102, 41-104 and 41-
9 501 are hereby repealed.

10 Sec. 7. This act shall take effect and be in force from and after its
11 publication in the statute book.