As Amended by House Committee

Session of 2018

HOUSE BILL No. 2476

By Committee on Federal and State Affairs

1-17

AN ACT concerning alcoholic beverages; relating to the definition of alcoholic liquor, including alcoholic candy and confectionary products to the definition of alcoholic liquor; relating to microbreweries; authorizing the on-premises sale of certain large containers of beer for off-premises consumption, labeling requirements thereof; amending K.S.A. 2016 Supp. 41-102, as amended by section 4 of chapter 56 of the 2017 Session Laws of Kansas and K.S.A. 2017 Supp. 41-102 and 41-308b and repealing the existing sections; also repealing K.S.A. 2017 Supp. 41-102, as amended by section 1 of this act.

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

Section 1. K.S.A. 2017 Supp. 41-102 is hereby amended to read as follows: 41-102. As used in this act, unless the context clearly requires otherwise:

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

(b) "Alcoholic candy" means any candy or other confectionary product with an alcohol content greater than 0.5% alcohol by volume.

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

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

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

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

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

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

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

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

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

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

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

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

(o) "Hard cider" means any alcoholic beverage that:

(1) Contains less than 8.5% alcohol by volume;
(2) has a carbonation level that does not exceed 6.4 grams per liter; and
(3) is obtained by the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including such beverages containing sugar added for the purpose of correcting natural deficiencies.

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

(q) (1) "Manufacturer" means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage.
(2) "Manufacturer" does not include a microbrewery, microdistillery or a farm winery.

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

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

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

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

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

(ω) (w) "Person" means any natural person, corporation, partnership, trust or association.

(ω) (x) "Powdered alcohol" means alcohol that is prepared in a powdered or crystal form for either direct use or for reconstitution in a nonalcoholic liquid.

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

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

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

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

(ε) (bb) "Salesperson" means any natural person who:

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

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

(ε) (cc) "Secretary" means the secretary of revenue.

(ε) (dd) (1) "Sell at retail" and "sale at retail" refer to and mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licensed caterers or holders of temporary permits.
(2) "Sell at retail" and "sale at retail" do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

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

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

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

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

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

(ii) (jj) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. The term "wine" shall include hard cider and any other product that is commonly known as a subset of wine.

Sec. 2. On and after April 1, 2019 K.S.A. 2016 Supp. 41-102, as amended by section 4 of chapter 56 of the 2017 Session Laws of Kansas, is hereby amended to read as follows: 41-102. As used in this act, unless the context clearly requires otherwise:

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

(b) "Alcoholic candy" means any candy or other confectionary product with an alcohol content greater than 0.5% alcohol by volume.

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

(ee) (d) "Beer" means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.
"Caterer" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

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

"Club" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

"Director" means the director of alcoholic beverage control of the department of revenue.

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

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

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

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

"Drinking establishment" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

"Farm winery" means a winery licensed by the director to manufacture, store and sell domestic table wine and domestic fortified wine.

"Hard cider" means any alcoholic beverage that:

1. Contains less than 8.5% alcohol by volume;
2. Has a carbonation level that does not exceed 6.4 grams per liter; and
3. Is obtained by the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including such beverages containing sugar added for the purpose of correcting natural deficiencies.

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

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

"Manufacturer" does not include a microbrewery, microdistillery or a farm winery.
"Microbrewery" means a brewery licensed by the director to manufacture, store and sell domestic beer and hard cider.

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

"Minor" means any person under 21 years of age.

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

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

"Person" means any natural person, corporation, partnership, trust or association.

"Powdered alcohol" means alcohol that is prepared in a powdered or crystal form for either direct use or for reconstitution in a nonalcoholic liquid.

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

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

"Retailer" does not include a microbrewery, microdistillery or a farm winery.

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

"Salesperson" means any natural person who:

1. Procures or seeks to procure an order, bargain, contract or agreement for the sale of alcoholic liquor or cereal malt beverage; or
2. is engaged in promoting the sale of alcoholic liquor or cereal malt beverage, or in promoting the business of any person, firm or corporation engaged in the manufacturing and selling of alcoholic liquor or cereal malt beverage, whether the seller resides within the state of Kansas and sells to
licensed buyers within the state of Kansas, or whether the seller resides without the state of Kansas and sells to licensed buyers within the state of Kansas.

(bb) (cc) "Secretary" means the secretary of revenue.

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

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

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

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

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

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

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

(jj) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. The term "wine" shall include hard cider and any other product that is commonly known as a subset of wine.

Sec. 3. K.S.A. 2017 Supp. 41-308b is hereby amended to read as follows: 41-308b. (a) A microbrewery license shall allow:

(1) The manufacture of not less than 100 nor more than 60,000 barrels of domestic beer during the calendar year and the storage thereof, if, however, the licensee holds a 10% or greater ownership interest in one or more entities that also hold a microbrewery license, then the aggregate number of barrels of domestic beer manufactured by all such licensees with such common ownership shall not exceed the 60,000 barrel limit;

(2) the manufacture in the aggregate of not more than 100,000 gallons of hard cider during the calendar year and the storage thereof;
(3) the sale to beer distributors of beer and the sale to wine distributors of hard cider, manufactured by the licensee;

(4) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of beer and hard cider manufactured by the licensee;

(5) the sale, on the licensed premises in refillable and sealable containers to consumers for consumption off the licensed premises, of beer manufactured by the licensee, subject to the following conditions:
   (A) Containers described in this paragraph shall contain not less than 32 fluid ounces and not more than 64 fluid ounces of beer; and
   (B) the licensee shall affix a label to all containers sold pursuant to this paragraph clearly indicating the licensee's name and the name and type of beer contained in such container;

(6) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of beer and hard cider manufactured by the licensee, if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

(6)/(7) if the premises is also licensed as a club or drinking establishment, the sale and transfer of domestic beer to such club or drinking establishment and the sale of domestic beer and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act;

(7)/(8) if the premises is also licensed as a caterer, the sale of domestic beer and other alcoholic liquor for consumption on unlicensed premises as authorized by the club and drinking establishment act; and

(8)/(9) if the licensee holds a 10% or greater ownership interest in one or more entities that also hold a microbrewery license, the domestic beer may be manufactured and transferred for sale or storage among such microbrewery licensees with such common ownership.

(b) Not less than 30% of the products utilized in the manufacture of hard cider by a microbrewery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director's findings and judgment. The production requirement of this subsection shall be determined based on the annual production of domestic hard cider.

(c) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a microbrewery licensee, the director may issue not to exceed one microbrewery packaging and warehousing facility license to the microbrewery licensee. A
microbrewery packaging and warehousing facility license shall allow:

(1) The transfer, from the licensed premises of the microbrewery to the licensed premises of the microbrewery packaging and warehousing facility, of beer and hard cider manufactured by the licensee, for the purpose of packaging or storage, or both;

(2) the transfer, from the licensed premises of the microbrewery packaging and warehousing facility to the licensed premises of any microbrewery of such licensee, of beer manufactured by the licensee;

(3) the removal from the licensed premises of the microbrewery packaging and warehousing facility of beer manufactured by the licensee for the purpose of delivery to a licensed beer wholesaler; and

(4) the removal from the licensed premises of the microbrewery packaging and warehousing facility of hard cider manufactured by the licensee for the purpose of delivery to a licensed wine distributor.

(d) A microbrewery may sell domestic beer in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 11 a.m. and 7 p.m. on Sunday. If authorized by subsection (a), a microbrewery may serve samples of domestic beer and serve and sell domestic beer and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor.

(e) The director may issue to the Kansas state fair or any bona fide group of brewers a permit to import into this state small quantities of beer. Such beer shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such beer shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of beer to be imported, the quantity to be imported, the tasting programs for which the beer is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of beer pursuant to this subsection and the conduct of tasting programs for which such beer is imported.

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

(g) No microbrewery shall:

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

(2) permit any employee of the licensee who is under the age of 21
years to work on the licensed premises at any time when not under the
on-premises supervision of either the licensee or an employee of the
licensee who is 21 years of age or over;
(3) employ any person under 21 years of age in connection with
mixing or dispensing alcoholic liquor; or
(4) employ any person in connection with the manufacture or sale
of alcoholic liquor if the person has been convicted of a felony.
(h) Whenever a microbrewery licensee is convicted of a violation
of the Kansas liquor control act, the director may revoke the licensee's
license and all fees paid for the license in accordance with the Kansas
administrative procedure act.
Sec. 3. K.S.A. 2017 Supp. 41-102—is and 41-308b are hereby
repealed.
Sec. 4. On and after April 1, 2019, K.S.A. 2016 Supp. 41-102, as
amended by section 4 of chapter 56 of the 2017 Session Laws of Kansas,
and K.S.A. 2017 Supp. 41-102, as amended by section 1 of this act are
hereby repealed.
Sec. 5. This act shall take effect and be in force from and after its
publication in the statute book.