

## HOUSE BILL No. 2710

By Committee on Federal and State Affairs

2-15

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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.

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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.