

SENATE BILL No. 312

By Committee on Federal and State Affairs

2-12

AN ACT relating to school finance; providing revenue therefor by increasing tax rates imposed upon alcoholic liquor and cereal malt beverages; amending K.S.A. 41-501, 79-4101, 79-4108, 79-41a02 and 79-41a03 and repealing the existing sections.

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

Section 1. On and after June 1, 2001, K.S.A. 41-501 is hereby amended to read as follows: 41-501. (a) As used in this section and K.S.A. 41-501a and amendments thereto:

(1) "Gallon" means wine gallon.

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

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

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquor, cereal malt beverage or malt products in this state or a federal area at a rate of ~~\$.18~~ \$.98 per gallon on beer and cereal malt beverage; ~~\$.20~~ \$1.09 per gallon on all wort or liquid malt; ~~\$.10~~ \$.55 per pound on all malt syrup or malt extract; ~~\$.30~~ \$.36 per gallon on wine containing 14% or less alcohol by volume; ~~\$.75~~ \$.90 per gallon on wine containing more than 14% alcohol by volume; and ~~\$2.50~~ \$3.00 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt beverage. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor or cereal malt beverage is manufactured and sold in this state or a federal area, the tax shall be paid by the manufacturer, microbrewery or farm winery producing it. If the alcoholic liquor or cereal malt beverage is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor or cereal malt beverage is

1 manufactured in this state. If not to exceed one gallon, or metric equiv-
2 alent, per person of alcoholic liquor has been purchased by a private
3 citizen outside the borders of the United States and is brought into this
4 state by the private citizen in such person's personal possession for such
5 person's own personal use and not for sale or resale, such import is lawful
6 and no tax payment shall be due thereon.

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

14 (d) Wines manufactured or imported solely and exclusively for sac-
15 ramental purposes and uses shall not be subject to the tax provided for
16 by this section.

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

18 (1) Any alcohol or wine, whether manufactured in or imported into
19 this state, when sold to a nonbeverage user licensed by the state, for use
20 in the manufacture of any of the following when they are unfit for bev-
21 erage purposes: Patent and proprietary medicines and medicinal, anti-
22 septic and toilet preparations; flavoring extracts and syrups and food prod-
23 ucts; scientific, industrial and chemical products; or scientific, chemical,
24 experimental or mechanical purposes; or

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

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

31 (g) Retail sales of alcoholic liquor, sales of beer to consumers by mi-
32 crobreweries and sales of wine to consumers by farm wineries shall not
33 be subject to the tax imposed by the Kansas retailers' sales tax act but
34 shall be subject to the enforcement tax provided for in this act.

35 (h) Notwithstanding any ordinance to the contrary, no city shall im-
36 pose an occupation or privilege tax on the business of any person, firm
37 or corporation licensed as a manufacturer, distributor, microbrewery,
38 farm winery, retailer or nonbeverage user under this act and doing busi-
39 ness within the boundaries of the city except as specifically authorized by
40 K.S.A. 41-310 and amendments thereto.

41 (i) The director shall collect the taxes imposed by this section and
42 shall account for and turn over to the state treasurer at least once each
43 week all moneys collected from the tax. The state treasurer shall credit

1 ~~1/10~~ 8.33% of the moneys collected from taxes imposed upon alcohol and
2 spirits under subsection (b)(1) to the community alcoholism and intoxi-
3 cation programs fund created by K.S.A. 41-1126 and amendments
4 thereto, *16.67% thereof to the state school district finance fund and shall*
5 ~~credit~~ the balance of the moneys collected to the state general fund. *The*
6 *state treasurer shall credit 81.63% of the moneys collected from taxes*
7 *imposed upon beer, cereal malt beverages, wort, liquid malt, malt syrup*
8 *and malt extract under subsection (b)(1) to the state school district finance*
9 *fund and the remaining balance thereof to the state general fund. The*
10 *state treasurer shall credit 16.67% of the moneys collected from taxes*
11 *imposed upon all wines under subsection (b)(1) to the state school district*
12 *finance fund and the remaining balance to the state general fund.*

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

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

1 manufacturer or distributor.

2 New Sec. 2. On June 1, 2001, a tax at the rate of \$.80 per gallon on
3 all beer and cereal malt beverage, \$.06 per gallon for wine containing
4 14% or less of alcohol by volume, \$.15 per gallon for wine containing
5 more than 14% of alcohol by volume, \$.50 per gallon on alcohol and
6 spirits, \$.89 per gallon on wort and liquid malt, and \$.45 per pound of
7 malt syrup and malt extract, is hereby imposed on the manufacture, use,
8 sale, storage or purchase of such alcoholic liquors owned at 12:01 a.m. on
9 June 1, 2001, by a licensed distributor or retail dealer as to which the tax
10 has been imposed as provided in K.S.A. 41-501, and amendments thereto.
11 Such tax shall be paid by the licensed distributor or retail dealer owning
12 such alcoholic liquors, cereal malt beverage or beer at such time and date.
13 On or before June 25, 2001, every such distributor and retail dealer shall
14 make a report to the director on a form prescribed and furnished by the
15 director showing the total number of gallons of such alcoholic liquors,
16 cereal malt beverage or beer so owned at 12:01 a.m. on June 2, 2001, and
17 such report shall be accompanied by a remittance of the tax due.

18 The license of any licensed distributor or retail dealer who shall fail to
19 make such report or pay such tax, within the time hereinbefore pre-
20 scribed, shall be subject to suspension or revocation as provided by K.S.A.
21 41-320 and amendments thereto. All taxes collected by the director under
22 this section shall be paid into the state treasury and the state treasurer
23 shall credit the same to the state school district finance fund.

24 Sec. 3. On and after June 1, 2001, K.S.A. 79-4101 is hereby amended
25 to read as follows: 79-4101. (a) For the purpose of providing revenue
26 which may be used by the state, counties and cities in the enforcement
27 of the provisions of this act, from and after the effective date of this act,
28 for the privilege of engaging in the business of selling alcoholic liquor by
29 retailers or farm wineries to consumers in this state or selling alcoholic
30 liquor or cereal malt beverage by distributors to clubs, drinking estab-
31 lishments or caterers in this state, there is hereby levied and there shall
32 be collected and paid a tax at the rate of ~~8%~~ 10% upon the gross receipts
33 received from: (1) The sale of alcoholic liquor by retailers, microbreweries
34 or farm wineries to consumers within this state; and (2) the sale of alco-
35 holic liquor or cereal malt beverage by distributors to clubs, drinking
36 establishments or caterers in this state.

37 (b) The tax imposed by this section shall be in addition to the license
38 fee imposed on distributors, retailers, microbreweries and farm wineries
39 by K.S.A. 41-310 and amendments thereto.

40 Sec. 4. On and after June 1, 2001 K.S.A. 79-4108 is hereby amended
41 to read as follows: 79-4108. All revenue collected or received by the di-
42 rector of taxation from taxes imposed by K.S.A. 79-4101 ~~to~~ through 79-
43 4105, and amendments thereto, shall be deposited daily with the state

1 treasurer who shall credit ~~the same~~ *20% thereof to the state school district*
2 *finance fund and the remaining balance* to the state general fund. ~~The~~
3 ~~state treasurer shall transfer any moneys remaining in the county and city~~
4 ~~alcoholic liquor control enforcement fund on the effective date of this act~~
5 ~~to the state general fund.~~

6 Sec. 5. On and after June 1, 2001, K.S.A. 79-41a02 is hereby
7 amended to read as follows: 79-41a02. (a) There is hereby imposed, for
8 the privilege of selling alcoholic liquor, a tax at the rate of ~~10%~~ *12%* upon
9 the gross receipts derived from the sale of alcoholic liquor by any club,
10 caterer, drinking establishment or temporary permit holder.

11 (b) The tax imposed by this section shall be paid by the consumer to
12 the club, caterer, drinking establishment or temporary permit holder and
13 it shall be the duty of each and every club, caterer, drinking establishment
14 or temporary permit holder subject to this section to collect from the
15 consumer the full amount of such tax, or an amount equal as nearly as
16 possible or practicable to the average equivalent thereto. Each club, ca-
17 terer, drinking establishment or temporary permit holder collecting the
18 tax imposed hereunder shall be responsible for paying over the same to
19 the state department of revenue in the manner prescribed by K.S.A. 79-
20 41a03 and amendments thereto and the state department of revenue shall
21 administer and enforce the collection of such tax.

22 Sec. 6. On and after June 1, 2001, K.S.A. 79-41a03 is hereby
23 amended to read as follows: 79-41a03. (a) The tax levied and collected
24 pursuant to K.S.A. 79-41a02 and amendments thereto shall become due
25 and payable by the club, caterer, drinking establishment or temporary
26 permit holder monthly, or on or before the 25th day of the month im-
27 mediately succeeding the month in which it is collected, but any club,
28 caterer, drinking establishment or temporary permit holder filing an an-
29 nual or quarterly return under the Kansas retailers' sales tax act, as pre-
30 scribed in K.S.A. 79-3607 and amendments thereto, shall, upon such con-
31 ditions as the secretary of revenue may prescribe, pay the tax required
32 by this act on the same basis and at the same time the club, caterer,
33 drinking establishment or temporary permit holder pays such retailers'
34 sales tax. Each club, caterer, drinking establishment or temporary permit
35 holder shall make a true report to the department of revenue, on a form
36 prescribed by the secretary of revenue, providing such information as may
37 be necessary to determine the amounts to which any such tax shall apply
38 for all gross receipts derived from the sale of alcoholic liquor by the club,
39 caterer, drinking establishment or temporary permit holder for the ap-
40 plicable month or months, which report shall be accompanied by the tax
41 disclosed thereby. Records of gross receipts derived from the sale of al-
42 coholic liquor shall be kept separate and apart from the records of other
43 retail sales made by a club, caterer, drinking establishment or temporary

1 permit holder in order to facilitate the examination of books and records
2 as provided herein.

3 (b) The secretary of revenue or the secretary's authorized represen-
4 tative shall have the right at all reasonable times during business hours
5 to make such examination and inspection of the books and records of a
6 club, caterer, drinking establishment or temporary permit holder as may
7 be necessary to determine the accuracy of such reports required
8 hereunder.

9 (c) The secretary of revenue is hereby authorized to administer and
10 collect the tax imposed hereunder and to adopt such rules and regulations
11 as may be necessary for the efficient and effective administration and
12 enforcement of the collection thereof. Whenever any club, caterer, drink-
13 ing establishment or temporary permit holder liable to pay the tax im-
14 posed hereunder refuses or neglects to pay the same, the amount, in-
15 cluding any penalty, shall be collected in the manner prescribed for the
16 collection of the retailers' sales tax by K.S.A. 79-3617 and amendments
17 thereto.

18 (d) The secretary of revenue shall remit daily to the state treasurer
19 all revenue collected under the provisions of this act. The state treasurer
20 shall deposit the entire amount of each remittance in the state treasury.
21 Subject to the maintenance requirements of the local alcoholic liquor
22 refund fund created under K.S.A. 79-41a09 and amendments thereto,
23 ~~25%~~ 20.83% of the remittance shall be credited to the state general fund,
24 ~~5%~~ 4.17% shall be credited to the community alcoholism and intoxication
25 programs fund created by K.S.A. 41-1126 and amendments thereto ~~and~~
26 ~~the balance~~, 58.33% shall be credited to the local alcoholic liquor fund
27 created by K.S.A. 79-41a04 and amendments thereto *and the balance*
28 *shall be credited to the state school district finance fund.*

29 (e) Whenever, in the judgment of the secretary of revenue, it is nec-
30 essary, in order to secure the collection of any tax, penalties or interest
31 due, or to become due, under the provisions of this act, the secretary may
32 require any person subject to such tax to file a bond with the director of
33 taxation under conditions established by and in such form and amount as
34 prescribed by rules and regulations adopted by the secretary.

35 Sec. 7. On and after June 1, 2001, K.S.A. 41-501, 79-4101, 79-4108,
36 79-41a02 and 79-41a03 are hereby repealed.

37 Sec. 8. This act shall take effect and be in force from and after its
38 publication in the Kansas register.

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