

Substitute for HOUSE BILL No. 2223

By Committee on Federal and State Affairs

3-20

1 AN ACT concerning alcoholic beverages; relating to homemade fermented
2 beverages; amending K.S.A. 2012 Supp. 41-102 and 41-104 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. 2012 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 10%
35 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) *"Guest" means a natural person who is known to the host and*
12 *receives a personal invitation to an event conducted by the host. The term*
13 *"guest" shall not mean a natural person who receives an invitation to an*
14 *event conducted by the host when such invitation has been made available*
15 *to the general public.*

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

19 (p) (1) "Manufacturer" means every brewer, fermenter, distiller,
20 rectifier, wine maker, blender, processor, bottler or person who fills or
21 refills an original package and others engaged in brewing, fermenting,
22 distilling, rectifying or bottling alcoholic liquor, beer or cereal malt
23 beverage.

24 (2) "Manufacturer" does not include a microbrewery, microdistillery
25 or a farm winery.

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

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

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

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

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

41 (v) "Person" means any natural person, corporation, partnership,
42 trust or association.

43 (w) "Primary American source of supply" means the

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

7 ~~(w)~~ (x) (1) "Retailer" means a person who sells at retail, or offers for
8 sale at retail, alcoholic liquors.

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

11 ~~(x)~~ (y) "Sale" means any transfer, exchange or barter in any manner
12 or by any means whatsoever for a consideration and includes all sales
13 made by any person, whether principal, proprietor, agent, servant or
14 employee.

15 ~~(y)~~ (z) "Salesperson" means any natural person who:

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

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

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

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

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

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

36 ~~(cc)~~ (dd) "Sleeve" means a package of two or more 50-milliliter (3.2-
37 fluid-ounce) containers of spirits.

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

43 ~~(ee)~~ (ff) "Supplier" means a manufacturer of alcoholic liquor or cereal

1 malt beverage or an agent of such manufacturer, other than a salesperson.

2 ~~(ff)~~ (gg) "Temporary permit" has the meaning provided by K.S.A. 41-
3 2601, and amendments thereto.

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

9 Sec. 2. K.S.A. 2012 Supp. 41-104 is hereby amended to read as
10 follows: 41-104. No person shall manufacture, bottle, blend, sell, barter,
11 transport, deliver, furnish or possess any alcoholic liquor for beverage
12 purposes, except as specifically provided in this act, the club and drinking
13 establishment act or article 27 of chapter 41 of the Kansas Statutes
14 Annotated, *and amendments thereto*, except that nothing contained in this
15 act shall prevent:

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

20 (b) the making of wine, cider or beer by a person from fruits,
21 vegetables or grains, or the product thereof, by simple fermentation and
22 without distillation, if it is made solely for the use of the maker ~~and~~, the
23 maker's family, *guests and judges at a contest or competition of such*
24 *beverages, provided, the maker receives no compensation for producing*
25 *such beverages or for allowing the consumption thereof;*

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

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

32 (e) any drugstore employing a licensed pharmacist from possessing
33 and using alcoholic liquor in the compounding of prescriptions of duly
34 licensed physicians;

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

38 (g) the sale of wine to a consumer in this state by a person which
39 holds a valid license authorizing the manufacture of wine in this or another
40 state and the shipment of such wine directly to such consumer, subject to
41 the following: (1) The consumer must be at least 21 years of age; (2) the
42 consumer must purchase the wine while physically present on the premises
43 of the wine manufacturer; (3) the wine must be for the consumer's personal

1 consumption and not for resale; and (4) the consumer shall comply with
2 the provisions of K.S.A. 41-407, and amendments thereto, by payment of
3 all applicable taxes within such time after purchase of the wine as
4 prescribed by rules and regulations adopted by the secretary.

5 (h) The serving of complimentary alcoholic liquor or cereal malt
6 beverages at fund raising activities of charitable organizations as defined
7 by K.S.A. 17-1760, and amendments thereto, and as qualified pursuant to
8 26 U.S.C.A. § 501(c) and by committees formed pursuant to K.S.A. 25-
9 4142 et seq., and amendments thereto. The serving of such alcoholic liquor
10 at such fund raising activities shall not constitute a sale pursuant to this
11 act, the club and drinking establishment act or article 27 of chapter 41 of
12 the Kansas Statutes Annotated, and amendments thereto. Any such fund
13 raising activity shall not be required to obtain a license or a temporary
14 permit pursuant to this act, the club and drinking establishment act or
15 article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments
16 thereto.

17 Sec. 3. K.S.A. 2012 Supp. 41-102 and 41-104 are hereby repealed.

18 Sec. 4. This act shall take effect and be in force from and after its
19 publication in the statute book.