

## SENATE BILL No. 127

By Committee on Assessment and Taxation

1-27

---

9 AN ACT concerning taxation of alcoholic liquor; relating to distribution  
10 of revenue; amending K.S.A. 19-101a and K.S.A. 2008 Supp. 79-41a03  
11 and repealing the existing sections; also repealing K.S.A. 19-101m, 79-  
12 41a04 and 79-41a05.

13

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

15 Section 1. K.S.A. 19-101a is hereby amended to read as follows: 19-  
16 101a. (a) The board of county commissioners may transact all county  
17 business and perform all powers of local legislation and administration it  
18 deems appropriate, subject only to the following limitations, restrictions  
19 or prohibitions:

20 (1) Counties shall be subject to all acts of the legislature which apply  
21 uniformly to all counties.

22 (2) Counties may not affect the courts located therein.

23 (3) Counties shall be subject to acts of the legislature prescribing  
24 limits of indebtedness.

25 (4) In the exercise of powers of local legislation and administration  
26 authorized under provisions of this section, the home rule power con-  
27 ferred on cities to determine their local affairs and government shall not  
28 be superseded or impaired without the consent of the governing body of  
29 each city within a county which may be affected.

30 (5) Counties may not legislate on social welfare administered under  
31 state law enacted pursuant to or in conformity with public law No. 271—  
32 74th congress, or amendments thereof.

33 (6) Counties shall be subject to all acts of the legislature concerning  
34 elections, election commissioners and officers and their duties as such  
35 officers and the election of county officers.

36 (7) Counties shall be subject to the limitations and prohibitions im-  
37 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,  
38 prescribing limitations upon the levy of retailers' sales taxes by counties.

39 (8) Counties may not exempt from or effect changes in statutes made  
40 nonuniform in application solely by reason of authorizing exceptions for  
41 counties having adopted a charter for county government.

42 (9) No county may levy ad valorem taxes under the authority of this  
43 section upon real property located within any redevelopment project area

1 established under the authority of K.S.A. 12-1772, and amendments  
2 thereto, unless the resolution authorizing the same specifically authorized  
3 a portion of the proceeds of such levy to be used to pay the principal of  
4 and interest upon bonds issued by a city under the authority of K.S.A.  
5 12-1774, and amendments thereto.

6 (10) Counties shall have no power under this section to exempt from  
7 any statute authorizing or requiring the levy of taxes and providing sub-  
8 stitute and additional provisions on the same subject, unless the resolution  
9 authorizing the same specifically provides for a portion of the proceeds  
10 of such levy to be used to pay a portion of the principal and interest on  
11 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-  
12 ments thereto.

13 (11) Counties may not exempt from or effect changes in the provi-  
14 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

15 (12) Except as otherwise specifically authorized by K.S.A. 12-1,101  
16 through 12-1,109, and amendments thereto, counties may not levy and  
17 collect taxes on incomes from whatever source derived.

18 (13) Counties may not exempt from or effect changes in K.S.A. 19-  
19 430, and amendments thereto.

20 (14) Counties may not exempt from or effect changes in K.S.A. 19-  
21 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

22 (15) Counties may not exempt from or effect changes in K.S.A. 19-  
23 15,139, 19-15,140 and 19-15,141, and amendments thereto.

24 (16) Counties may not exempt from or effect changes in the provi-  
25 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-  
26 1226, and amendments thereto, or the provisions of K.S.A. 12-1260  
27 through 12-1270 and 12-1276, and amendments thereto.

28 (17) Counties may not exempt from or effect changes in the provi-  
29 sions of K.S.A. 19-211, and amendments thereto.

30 (18) Counties may not exempt from or effect changes in the provi-  
31 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

32 (19) Counties may not regulate the production or drilling of any oil  
33 or gas well in any manner which would result in the duplication of reg-  
34 ulation by the state corporation commission and the Kansas department  
35 of health and environment pursuant to chapter 55 and chapter 65 of the  
36 Kansas Statutes Annotated, and amendments thereto, and any rules and  
37 regulations adopted pursuant thereto. Counties may not require any li-  
38 cense or permit for the drilling or production of oil and gas wells. Counties  
39 may not impose any fee or charge for the drilling or production of any  
40 oil or gas well.

41 ~~(20) Counties may not exempt from or effect changes in K.S.A. 79-~~  
42 ~~41a04, and amendments thereto.~~

43 ~~(21) Counties may not exempt from or effect changes in K.S.A. 79-~~

- 1 1611, and amendments thereto.
- 2 ~~(22)~~ (21) Counties may not exempt from or effect changes in K.S.A.
- 3 79-1494, and amendments thereto.
- 4 ~~(23)~~ (22) Counties may not exempt from or effect changes in subsec-
- 5 tion (b) of K.S.A. 19-202, and amendments thereto.
- 6 ~~(24)~~ (23) Counties may not exempt from or effect changes in subsec-
- 7 tion (b) of K.S.A. 19-204, and amendments thereto.
- 8 ~~(25)~~ (24) Counties may not levy or impose an excise, severance or
- 9 any other tax in the nature of an excise tax upon the physical severance
- 10 and production of any mineral or other material from the earth or water.
- 11 ~~(26)~~ (25) Counties may not exempt from or effect changes in K.S.A.
- 12 79-2017 or 79-2101, and amendments thereto.
- 13 ~~(27)~~ (26) Counties may not exempt from or effect changes in K.S.A.
- 14 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-
- 15 1,178 through 65-1,199, and amendments thereto.
- 16 ~~(28)~~ (27) Counties may not exempt from or effect changes in K.S.A.
- 17 2007 Supp. 80-121, and amendments thereto.
- 18 ~~(29)~~ (28) Counties may not exempt from or effect changes in K.S.A.
- 19 19-228, and amendments thereto.
- 20 ~~(30)~~ (29) Counties may not exempt from or effect changes in the
- 21 wireless enhanced 911 act, in the VoIP enhanced 911 act or in the pro-
- 22 visions of K.S.A. 12-5301 through 12-5308, and amendments thereto.
- 23 ~~(31)~~ (30) Counties may not exempt from or effect changes in K.S.A.
- 24 2007 Supp. 26-601, and amendments thereto.
- 25 ~~(32)~~ (31) (A) Counties may not exempt from or effect changes in the
- 26 Kansas liquor control act except as provided by paragraph (B).
- 27 (B) Counties may adopt resolutions which are not in conflict with the
- 28 Kansas liquor control act.
- 29 ~~(33)~~ (32) (A) Counties may not exempt from or effect changes in the
- 30 Kansas cereal malt beverage act except as provided by paragraph (B).
- 31 (B) Counties may adopt resolutions which are not in conflict with the
- 32 Kansas cereal malt beverage act.
- 33 ~~(34)~~ (33) Counties may not exempt from or effect changes in the
- 34 Kansas lottery act.
- 35 ~~(35)~~ (34) Counties may not exempt from or effect changes in the
- 36 Kansas expanded lottery act.
- 37 (35) *Counties may neither exempt from nor effect changes to the em-*
- 38 *inent domain procedure act.*
- 39 (36) *Any county granted authority pursuant to the provisions of*
- 40 *K.S.A. 19-5001 through 19-5005, and amendments thereto, shall be sub-*
- 41 *ject to the limitations and prohibitions imposed under K.S.A. 19-5001*
- 42 *through 19-5005, and amendments thereto.*
- 43 (37) *Except as otherwise specifically authorized by K.S.A. 19-5001*

1 *through 19-5005, and amendments thereto, counties may not exercise any*  
2 *authority granted pursuant to K.S.A. 19-5001 through 19-5005, and*  
3 *amendments thereto, including the imposition or levy of any retailers'*  
4 *sales tax.*

5 (b) Counties shall apply the powers of local legislation granted in  
6 subsection (a) by resolution of the board of county commissioners. If no  
7 statutory authority exists for such local legislation other than that set forth  
8 in subsection (a) and the local legislation proposed under the authority  
9 of such subsection is not contrary to any act of the legislature, such local  
10 legislation shall become effective upon passage of a resolution of the  
11 board and publication in the official county newspaper. If the legislation  
12 proposed by the board under authority of subsection (a) is contrary to an  
13 act of the legislature which is applicable to the particular county but not  
14 uniformly applicable to all counties, such legislation shall become effective  
15 by passage of a charter resolution in the manner provided in K.S.A.  
16 19-101b, and amendments thereto.

17 (c) Any resolution adopted by a county which conflicts with the restrictions  
18 in subsection (a) is null and void.

19 Sec. 2. K.S.A. 2008 Supp. 79-41a03 is hereby amended to read as  
20 follows: 79-41a03. (a) The tax levied and collected pursuant to K.S.A. 79-  
21 41a02, and amendments thereto, shall become due and payable by the  
22 club, caterer, drinking establishment or temporary permit holder  
23 monthly, or on or before the 25th day of the month immediately succeeding  
24 the month in which it is collected, but any club, caterer, drinking  
25 establishment or temporary permit holder filing an annual or quarterly  
26 return under the Kansas retailers' sales tax act, as prescribed in K.S.A.  
27 79-3607, and amendments thereto, shall, upon such conditions as the  
28 secretary of revenue may prescribe, pay the tax required by this act on  
29 the same basis and at the same time the club, caterer, drinking establishment  
30 or temporary permit holder pays such retailers' sales tax. Each club,  
31 caterer, drinking establishment or temporary permit holder shall make a  
32 true report to the department of revenue, on a form prescribed by the  
33 secretary of revenue, providing such information as may be necessary to  
34 determine the amounts to which any such tax shall apply for all gross  
35 receipts derived from the sale of alcoholic liquor by the club, caterer,  
36 drinking establishment or temporary permit holder for the applicable  
37 month or months, which report shall be accompanied by the tax disclosed  
38 thereby. Records of gross receipts derived from the sale of alcoholic liquor  
39 shall be kept separate and apart from the records of other retail sales  
40 made by a club, caterer, drinking establishment or temporary permit  
41 holder in order to facilitate the examination of books and records as provided  
42 herein.

43 (b) The secretary of revenue or the secretary's authorized represen-

1 tative shall have the right at all reasonable times during business hours  
2 to make such examination and inspection of the books and records of a  
3 club, caterer, drinking establishment or temporary permit holder as may  
4 be necessary to determine the accuracy of such reports required  
5 hereunder.

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

15 (d) The secretary of revenue shall remit all revenue collected under  
16 the provisions of this act to the state treasurer in accordance with the  
17 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
18 each such remittance, the state treasurer shall deposit the entire amount  
19 in the state treasury. ~~Subject to the maintenance requirements of the~~  
20 ~~local alcoholic liquor refund fund created under K.S.A. 79-41a09, and~~  
21 ~~amendments thereto, 25% upon which 95% of the remittance shall be~~  
22 ~~credited to the state general fund; and 5% shall be credited to the com-~~  
23 ~~munity alcoholism and intoxication programs fund created by K.S.A. 41-~~  
24 ~~1126, and amendments thereto, and the balance shall be credited to the~~  
25 ~~local alcoholic liquor fund created by K.S.A. 79-41a04, and amendments~~  
26 ~~thereto.~~

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

33 (f) The amount of tax imposed by this act shall be assessed within  
34 three years after the return is filed, and no proceedings in court for the  
35 collection of such taxes shall be begun after the expiration of such period  
36 except in the cases of fraud. In the case of a false or fraudulent return  
37 with intent to evade tax, the tax may be assessed or a proceeding in court  
38 for collection of such tax may be begun at any time, within two years from  
39 the discovery of such fraud. No refund or credit shall be allowed by the  
40 director after three years from the date of payment of the tax as provided  
41 in this act unless before the expiration of such period a claim therefor is  
42 filed by the taxpayer, and no suit or action to recover on any claim for  
43 refund shall be commenced until after the expiration of six months from

1 the date of filing a claim therefor with the director. Before the expiration  
2 of time prescribed in this section for the assessment of additional tax or  
3 the filing of a claim for refund, the director is hereby authorized to enter  
4 into an agreement in writing with the taxpayer consenting to the extension  
5 of the periods of limitations for the assessment of tax or for the filing of  
6 a claim for refund, at any time prior to the expiration of the periods of  
7 limitations. The period so agreed upon may be extended by subsequent  
8 agreements in writing made before the expiration of the period previously  
9 agreed upon.

10 Sec. 3. K.S.A. 19-101a, 19-101m, 79-41a04 and 79-41a05 and K.S.A.  
11 2008 Supp. 79-41a03 are hereby repealed.

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