

## HOUSE BILL No. 2502

By Committee on Commerce, Labor and Economic Development

1-18

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1 AN ACT concerning alcoholic beverages; relating to the Kansas cereal  
2 malt beverage act; relating to the sale of beer by cereal malt beverage  
3 licensees; amending K.S.A. 2016 Supp. 41-2702, as amended by  
4 section 8 of chapter 56 of the 2017 Session Laws of Kansas, and 41-  
5 2704, as amended by section 9 of chapter 56 of the 2017 Session Laws  
6 of Kansas, and K.S.A. 2017 Supp. 41-212 and 79-3602 and repealing  
7 the existing sections.  
8

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

10 New Section 1. (a) The director, or any properly designated agent of  
11 the director, may issue a citation for any violation of the Kansas cereal  
12 malt beverage act, or any rules and regulations promulgated thereunder,  
13 with regard to the sale, consumption or possession of beer containing not  
14 more than 6% alcohol by volume. Any such citation shall be issued in  
15 accordance with the provisions of K.S.A. 41-106, and amendments  
16 thereto.

17 (b) In addition to or in lieu of any other civil or criminal penalty  
18 provided by law, the director, upon a finding that a retailer, as defined by  
19 K.S.A. 41-2701(e), and amendments thereto, has violated a provision of  
20 the Kansas liquor control act or the Kansas cereal malt beverage act, or  
21 any rules and regulations promulgated thereunder, with regard to the sale,  
22 consumption or possession of beer containing not more than 6% alcohol  
23 by volume may impose upon such retailer a civil fine not exceeding  
24 \$1,000 for each violation.

25 (c) No fine shall be imposed pursuant to this section except upon the  
26 written order of the director to the retailer who committed the violation.  
27 Such order shall state the violation, the fine to be imposed and the right of  
28 the retailer to appeal the order. Such order shall be subject to appeal and  
29 review in accordance with the Kansas administrative procedure act.

30 (d) Any fine imposed pursuant to this section shall be remitted to the  
31 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
32 amendments thereto. Upon receipt of each such remittance, the state  
33 treasurer shall deposit the entire amount in the state treasury to the credit  
34 of the state general fund.

35 (e) This section shall be a part of and supplemental to the Kansas  
36 cereal malt beverage act.

1       Sec. 2. K.S.A. 2017 Supp. 41-212 is hereby amended to read as  
2 follows: 41-212. (a) Following the 10<sup>th</sup> anniversary of the effective date of  
3 this act, the director shall conduct, *based on information available to the*  
4 *director*; a market impact study of the sale of beer containing not more  
5 than 6% alcohol by volume by persons licensed as cereal malt beverage  
6 retailers pursuant to K.S.A. 41-2702, and amendments thereto. Such study  
7 shall include, but not be limited to, the changes subsequent to the effective  
8 date of this act, if any, in the number of retailers and the reasons for any  
9 changes; the changes subsequent to the effective date of this act, if any, in  
10 the number of persons licensed to sell cereal malt beverage in the original  
11 package for use or consumption off of and away from the licensed  
12 premises, and the reasons for any changes; the effect of this act on state  
13 and local tax revenues; the impact of this act on employment; and such  
14 other factors as the director deems pertinent. A report on the director's  
15 findings from such study shall be submitted to the legislature prior to  
16 adjournment of the 2029 session of the legislature.

17       (b) The director shall have oversight over the sale of beer containing  
18 not more than 6% alcohol by volume by persons licensed as cereal malt  
19 beverage retailers pursuant to K.S.A. 41-2702, and amendments thereto, to  
20 ensure that such sales promote an orderly market. For such purpose, the  
21 director may adopt such rules and regulations as the director deems  
22 necessary and appropriate, including rules and regulations making  
23 applicable to cereal malt beverage retailers selling beer containing not  
24 more than 6% alcohol by volume such provisions of the existing rules and  
25 regulations concerning industry trade practices as are necessary and  
26 appropriate. The rules and regulations authorized by this section shall be  
27 promulgated by the director on or before July 1, 2018.

28       Sec. 3. K.S.A. 2016 Supp. 41-2702, as amended by section 8 of  
29 chapter 56 of the 2017 Session Laws of Kansas, is hereby amended to read  
30 as follows: 41-2702. (a) No retailer shall sell any cereal malt beverage or  
31 beer containing not more than 6% alcohol by volume without having first  
32 secured a license for each place of business as herein provided. In case  
33 such place of business is located within the corporate limits of a city, the  
34 application for license shall be made to the governing body of such city. In  
35 all other cases, the application for license shall be made to the board of  
36 county commissioners in the county in which such place of business is to  
37 be located, except that the application for license to sell on railway cars  
38 shall be made to the director as hereinafter provided.

39       (b) A board of county commissioners shall not issue or renew a  
40 retailer's license without giving the clerk of the township where the place  
41 of business is to be located written notice by registered mail of the filing of  
42 the application for licensure or renewal. The township board may within  
43 10 days file advisory recommendations as to the granting of such license

1 or renewal and such advisory recommendations shall be considered by the  
2 board of county commissioners before such license is issued. If an original  
3 license is granted and issued, the board of county commissioners shall  
4 grant and issue renewals thereof upon application of the license holder, if  
5 the license holder is qualified to receive the same and the license has not  
6 been revoked as provided by law.

7 (c) An application for a retailer's license shall be verified and upon a  
8 form prepared by the attorney general of the state and shall contain:

9 (1) The name and residence of the applicant;

10 (2) the length of time that the applicant has resided within the state of  
11 Kansas;

12 (3) the particular place of business for which a license is desired;

13 (4) the name of the owner of the premises upon which the place of  
14 business is located; and

15 (5) a statement that the applicant is a citizen of the United States and  
16 not less than 21 years of age and that the applicant has not within two  
17 years immediately preceding the date of making application been  
18 convicted of a felony, any crime involving moral turpitude, drunkenness,  
19 driving a motor vehicle while under the influence of intoxicating liquor or  
20 violation of any other intoxicating liquor law of any state or of the United  
21 States.

22 (d) In addition to the fee provided by subsection (e), each application  
23 for a retailer's license to sell cereal malt beverages for consumption on the  
24 licensed premises shall be accompanied by a fee as follows:

25 (1) For licensure of a place of business other than a railway car, a fee  
26 of not less than \$25 nor more than \$200, as prescribed by the board of  
27 county commissioners or the governing body of the city, as the case may  
28 be; and

29 (2) for licensure to sell on railway cars, a fee of \$100.

30 (e) Each applicant for a retailer's license or renewal of such a license  
31 shall submit to the director a copy of the completed application for such  
32 license or license renewal, together with a fee of \$25. Upon receipt of such  
33 application, the director shall authorize a state stamp to be affixed to the  
34 license. No such stamp shall be affixed to any license except such stamps  
35 as provided by the director and no retailer's license shall be issued or  
36 renewed unless such stamp has first been affixed thereto. *The director may*  
37 *refuse to issue a stamp if the applicant or licensee is not current in the*  
38 *payment of any fines imposed by the director relating to such license or a*  
39 *license previously issued pursuant to this section, the Kansas liquor*  
40 *control act or the club and drinking establishment act.*

41 (f) The director shall remit all fees collected by the director to the  
42 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
43 amendments thereto. Upon receipt of each such remittance, the state

1 treasurer shall deposit the entire amount in the state treasury to the credit  
2 of the state general fund, except that the director may provide for the  
3 deposit in the cereal malt beverage tax refund fund of such amounts as  
4 necessary for the refund of any license fees collected hereunder.

5 (g) The board of county commissioners of the several counties or the  
6 governing body of a city shall issue a license upon application duly made  
7 as otherwise provided for herein, to any retailer engaged in business in  
8 such county or city and qualified to receive such license, to sell only cereal  
9 malt beverages in original and unopened containers, and not for  
10 consumption on the premises. The annual license fee for such license,  
11 which shall be in addition to the fee provided by subsection (e), shall be  
12 not less than \$25 nor more than \$50.

13 (h) No license issued under this act shall be transferable.

14 Sec. 4. K.S.A. 2016 Supp. 41-2704, as amended by section 9 of  
15 chapter 56 of the 2017 Session Laws of Kansas, is hereby amended to read  
16 as follows: 41-2704. (a) In addition to and consistent with the  
17 requirements of the *Kansas* cereal malt beverage act, the board of county  
18 commissioners of any county or the governing body of any city may  
19 prescribe hours of closing, standards of conduct and rules and regulations  
20 concerning the moral, sanitary and health conditions of places licensed  
21 pursuant to this act and may establish zones within which no such place  
22 may be located.

23 (b) Within any city where the days of sale at retail of cereal malt  
24 beverage in the original package have not been expanded as provided by  
25 K.S.A. ~~2016~~ 2017 Supp. 41-2911, and amendments thereto, or have been  
26 so expanded and subsequently restricted as provided by K.S.A. ~~2016~~ 2017  
27 Supp. 41-2911, and amendments thereto, and within any township where  
28 the hours and days of sale at retail of cereal malt beverage in the original  
29 package have not been expanded as provided by K.S.A. ~~2016~~ 2017 Supp.  
30 41-2911, and amendments thereto, or have been so expanded and  
31 subsequently restricted as provided by K.S.A. ~~2016~~ 2017 Supp. 41-2911,  
32 and amendments thereto, no cereal malt beverages or beer containing not  
33 more than 6% alcohol by volume may be sold:

34 (1) Between the hours of 12 midnight and 6 a.m.; or

35 (2) on Sunday, except in a place of business which is licensed to sell  
36 cereal malt beverage for consumption on the premises, which derives not  
37 less than 30% of its gross receipts from the sale of food for consumption  
38 on the licensed premises and which is located in a county where such sales  
39 on Sunday have been authorized by resolution of the board of county  
40 commissioners of the county or in a city where such sales on Sunday have  
41 been authorized by ordinance of the governing body of the city.

42 (c) Within any city where the days of sale at retail of cereal malt  
43 beverage in the original package have been expanded as provided by

1 K.S.A. ~~2016~~ 2017 Supp. 41-2911, and amendments thereto, and have not  
2 been subsequently restricted as provided in K.S.A. ~~2016~~ 2017 Supp. 41-  
3 2911, and amendments thereto, and within any township where the days of  
4 sale at retail of cereal malt beverage in the original package have been  
5 expanded as provided by K.S.A. ~~2016~~ 2017 Supp. 41-2911, and  
6 amendments thereto, and have not been subsequently restricted as  
7 provided by K.S.A. ~~2016~~ 2017 Supp. 41-2911, and amendments thereto,  
8 no person shall sell at retail cereal malt beverage *or beer containing not*  
9 *more than 6% alcohol by volume:*

10 (1) Between the hours of 12 midnight and 6 a.m.;

11 (2) in the original package before 12 noon or after 8 p.m. on Sunday;

12 (3) on Easter Sunday; or

13 (4) for consumption on the licensed premises on Sunday, except in a  
14 place of business which is licensed to sell cereal malt beverage for  
15 consumption on the premises, which derives not less than 30% of its gross  
16 receipts from the sale of food for consumption on the licensed premises  
17 and which is located in a county where such sales on Sunday have been  
18 authorized by resolution of the board of county commissioners of the  
19 county or in a city where such sales on Sunday have been authorized by  
20 ordinance of the governing body of the city.

21 (d) No private rooms or closed booths shall be operated in a place of  
22 business, but this provision shall not apply if the licensed premises also are  
23 licensed as a club pursuant to the club and drinking establishment act.

24 (e) Each place of business shall be open to the public and to law  
25 enforcement officers at all times during business hours, except that a  
26 premises licensed as a club pursuant to the club and drinking establishment  
27 act shall be open to law enforcement officers and not to the public.

28 (f) Except as otherwise provided by this subsection, no licensee shall  
29 permit a person under the legal age for consumption of cereal malt  
30 beverage or beer containing not more than 6% alcohol by volume to  
31 consume or purchase any cereal malt beverage in or about a place of  
32 business. A licensee's employee who is not less than 18 years of age may  
33 dispense or sell cereal malt beverage or beer containing not more than 6%  
34 alcohol by volume, if:

35 (1) The licensee's place of business is licensed only to sell at retail  
36 cereal malt beverage or beer containing not more than 6% alcohol by  
37 volume in the original package and not for consumption on the premises;  
38 or

39 (2) the licensee's place of business is a licensed food service  
40 establishment, as defined by K.S.A. 36-501, and amendments thereto, and  
41 not less than 50% of the gross receipts from the licensee's place of  
42 business is derived from the sale of food for consumption on the premises  
43 of the licensed place of business.

1 (g) No person shall have any alcoholic liquor, except beer containing  
2 not more than 6% alcohol by volume, in such person's possession while in  
3 a place of business, unless the premises are currently licensed as a club or  
4 drinking establishment pursuant to the club and drinking establishment act.

5 (h) Cereal malt beverages may be sold on premises which are  
6 licensed pursuant to both the Kansas cereal malt beverage act and the club  
7 and drinking establishment act at any time when alcoholic liquor is  
8 allowed by law to be served on the premises.

9 Sec. 5. K.S.A. 2017 Supp. 79-3602 is hereby amended to read as  
10 follows: 79-3602. Except as otherwise provided, as used in the Kansas  
11 retailers' sales tax act:

12 (a) "Agent" means a person appointed by a seller to represent the  
13 seller before the member states.

14 (b) "Agreement" means the multistate agreement entitled the  
15 streamlined sales and use tax agreement approved by the streamlined sales  
16 tax implementing states at Chicago, Illinois on November 12, 2002.

17 (c) "Alcoholic beverages" means beverages that are suitable for  
18 human consumption and contain 0.05% or more of alcohol by volume.

19 (d) "Certified automated system (CAS)" means software certified  
20 under the agreement to calculate the tax imposed by each jurisdiction on a  
21 transaction, determine the amount of tax to remit to the appropriate state  
22 and maintain a record of the transaction.

23 (e) "Certified service provider (CSP)" means an agent certified under  
24 the agreement to perform all the seller's sales and use tax functions, other  
25 than the seller's obligation to remit tax on its own purchases.

26 (f) "Computer" means an electronic device that accepts information  
27 in digital or similar form and manipulates it for a result based on a  
28 sequence of instructions.

29 (g) "Computer software" means a set of coded instructions designed  
30 to cause a computer or automatic data processing equipment to perform a  
31 task.

32 (h) "Delivered electronically" means delivered to the purchaser by  
33 means other than tangible storage media.

34 (i) "Delivery charges" means charges by the seller of personal  
35 property or services for preparation and delivery to a location designated  
36 by the purchaser of personal property or services including, but not limited  
37 to, transportation, shipping, postage, handling, crating and packing.  
38 Delivery charges shall not include charges for delivery of direct mail if the  
39 charges are separately stated on an invoice or similar billing document  
40 given to the purchaser.

41 (j) "Direct mail" means printed material delivered or distributed by  
42 United States mail or other delivery services to a mass audience or to  
43 addressees on a mailing list provided by the purchaser or at the direction of

1 the purchaser when the cost of the items are not billed directly to the  
2 recipients. Direct mail includes tangible personal property supplied  
3 directly or indirectly by the purchaser to the direct mail seller for inclusion  
4 in the package containing the printed material. Direct mail does not  
5 include multiple items of printed material delivered to a single address.

6 (k) "Director" means the state director of taxation.

7 (l) "Educational institution" means any nonprofit school, college and  
8 university that offers education at a level above the 12<sup>th</sup> grade, and  
9 conducts regular classes and courses of study required for accreditation by,  
10 or membership in, the higher learning commission, the state board of  
11 education, or that otherwise qualify as an "educational institution," as  
12 defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall  
13 include: (1) A group of educational institutions that operates exclusively  
14 for an educational purpose; (2) nonprofit endowment associations and  
15 foundations organized and operated exclusively to receive, hold, invest  
16 and administer moneys and property as a permanent fund for the support  
17 and sole benefit of an educational institution; (3) nonprofit trusts,  
18 foundations and other entities organized and operated principally to hold  
19 and own receipts from intercollegiate sporting events and to disburse such  
20 receipts, as well as grants and gifts, in the interest of collegiate and  
21 intercollegiate athletic programs for the support and sole benefit of an  
22 educational institution; and (4) nonprofit trusts, foundations and other  
23 entities organized and operated for the primary purpose of encouraging,  
24 fostering and conducting scholarly investigations and industrial and other  
25 types of research for the support and sole benefit of an educational  
26 institution.

27 (m) "Electronic" means relating to technology having electrical,  
28 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

29 (n) "Food and food ingredients" means substances, whether in liquid,  
30 concentrated, solid, frozen, dried or dehydrated form, that are sold for  
31 ingestion or chewing by humans and are consumed for their taste or  
32 nutritional value. "Food and food ingredients" does not include alcoholic  
33 beverages or tobacco.

34 (o) "Gross receipts" means the total selling price or the amount  
35 received as defined in this act, in money, credits, property or other  
36 consideration valued in money from sales at retail within this state; and  
37 embraced within the provisions of this act. The taxpayer, may take credit  
38 in the report of gross receipts for: (1) An amount equal to the selling price  
39 of property returned by the purchaser when the full sale price thereof,  
40 including the tax collected, is refunded in cash or by credit; and (2) an  
41 amount equal to the allowance given for the trade-in of property.

42 (p) "Ingredient or component part" means tangible personal property  
43 which is necessary or essential to, and which is actually used in and

1 becomes an integral and material part of tangible personal property or  
2 services produced, manufactured or compounded for sale by the producer,  
3 manufacturer or compounder in its regular course of business. The  
4 following items of tangible personal property are hereby declared to be  
5 ingredients or component parts, but the listing of such property shall not be  
6 deemed to be exclusive nor shall such listing be construed to be a  
7 restriction upon, or an indication of, the type or types of property to be  
8 included within the definition of "ingredient or component part" as herein  
9 set forth:

10 (1) Containers, labels and shipping cases used in the distribution of  
11 property produced, manufactured or compounded for sale which are not to  
12 be returned to the producer, manufacturer or compounder for reuse.

13 (2) Containers, labels, shipping cases, paper bags, drinking straws,  
14 paper plates, paper cups, twine and wrapping paper used in the distribution  
15 and sale of property taxable under the provisions of this act by wholesalers  
16 and retailers and which is not to be returned to such wholesaler or retailer  
17 for reuse.

18 (3) Seeds and seedlings for the production of plants and plant  
19 products produced for resale.

20 (4) Paper and ink used in the publication of newspapers.

21 (5) Fertilizer used in the production of plants and plant products  
22 produced for resale.

23 (6) Feed for animals, fowl and aquatic plants and animals, the  
24 primary purpose of which is use in agriculture or aquaculture, as defined in  
25 K.S.A. 47-1901, and amendments thereto, the production of food for  
26 human consumption, the production of animal, dairy, poultry or aquatic  
27 plant and animal products, fiber, fur, or the production of offspring for use  
28 for any such purpose or purposes.

29 (q) "Isolated or occasional sale" means the nonrecurring sale of  
30 tangible personal property, or services taxable hereunder by a person not  
31 engaged at the time of such sale in the business of selling such property or  
32 services. Any religious organization which makes a nonrecurring sale of  
33 tangible personal property acquired for the purpose of resale shall be  
34 deemed to be not engaged at the time of such sale in the business of selling  
35 such property. Such term shall include: (1) Any sale by a bank, savings and  
36 loan institution, credit union or any finance company licensed under the  
37 provisions of the Kansas uniform consumer credit code of tangible  
38 personal property which has been repossessed by any such entity; and (2)  
39 any sale of tangible personal property made by an auctioneer or agent on  
40 behalf of not more than two principals or households if such sale is  
41 nonrecurring and any such principal or household is not engaged at the  
42 time of such sale in the business of selling tangible personal property.

43 (r) "Lease or rental" means any transfer of possession or control of



1 tangible personal property for a fixed or indeterminate term for  
2 consideration. A lease or rental may include future options to purchase or  
3 extend.

4 (1) Lease or rental does not include: (A) A transfer of possession or  
5 control of property under a security agreement or deferred payment plan  
6 that requires the transfer of title upon completion of the required  
7 payments;

8 (B) a transfer or possession or control of property under an agreement  
9 that requires the transfer of title upon completion of required payments and  
10 payment of an option price does not exceed the greater of \$100 or 1% of  
11 the total required payments; or

12 (C) providing tangible personal property along with an operator for a  
13 fixed or indeterminate period of time. A condition of this exclusion is that  
14 the operator is necessary for the equipment to perform as designed. For the  
15 purpose of this subsection, an operator must do more than maintain,  
16 inspect or set-up the tangible personal property.

17 (2) Lease or rental does include agreements covering motor vehicles  
18 and trailers where the amount of consideration may be increased or  
19 decreased by reference to the amount realized upon sale or disposition of  
20 the property as defined in 26 U.S.C. § 7701(h)(1).

21 (3) This definition shall be used for sales and use tax purposes  
22 regardless if a transaction is characterized as a lease or rental under  
23 generally accepted accounting principles, the internal revenue code, the  
24 uniform commercial code, K.S.A. 84-1-101 et seq., and amendments  
25 thereto, or other provisions of federal, state or local law.

26 (4) This definition will be applied only prospectively from the  
27 effective date of this act and will have no retroactive impact on existing  
28 leases or rentals.

29 (s) "Load and leave" means delivery to the purchaser by use of a  
30 tangible storage media where the tangible storage media is not physically  
31 transferred to the purchaser.

32 (t) "Member state" means a state that has entered in the agreement,  
33 pursuant to provisions of article VIII of the agreement.

34 (u) "Model 1 seller" means a seller that has selected a CSP as its  
35 agent to perform all the seller's sales and use tax functions, other than the  
36 seller's obligation to remit tax on its own purchases.

37 (v) "Model 2 seller" means a seller that has selected a CAS to  
38 perform part of its sales and use tax functions, but retains responsibility for  
39 remitting the tax.

40 (w) "Model 3 seller" means a seller that has sales in at least five  
41 member states, has total annual sales revenue of at least \$500,000,000, has  
42 a proprietary system that calculates the amount of tax due each jurisdiction  
43 and has entered into a performance agreement with the member states that

1 establishes a tax performance standard for the seller. As used in this  
2 subsection a seller includes an affiliated group of sellers using the same  
3 proprietary system.

4 (x) "Municipal corporation" means any city incorporated under the  
5 laws of Kansas.

6 (y) "Nonprofit blood bank" means any nonprofit place, organization,  
7 institution or establishment that is operated wholly or in part for the  
8 purpose of obtaining, storing, processing, preparing for transfusing,  
9 furnishing, donating or distributing human blood or parts or fractions of  
10 single blood units or products derived from single blood units, whether or  
11 not any remuneration is paid therefor, or whether such procedures are done  
12 for direct therapeutic use or for storage for future use of such products.

13 (z) "Persons" means any individual, firm, copartnership, joint  
14 adventure, association, corporation, estate or trust, receiver or trustee, or  
15 any group or combination acting as a unit, and the plural as well as the  
16 singular number; and shall specifically mean any city or other political  
17 subdivision of the state of Kansas engaging in a business or providing a  
18 service specifically taxable under the provisions of this act.

19 (aa) "Political subdivision" means any municipality, agency or  
20 subdivision of the state which is, or shall hereafter be, authorized to levy  
21 taxes upon tangible property within the state or which certifies a levy to a  
22 municipality, agency or subdivision of the state which is, or shall hereafter  
23 be, authorized to levy taxes upon tangible property within the state. Such  
24 term also shall include any public building commission, housing, airport,  
25 port, metropolitan transit or similar authority established pursuant to law  
26 and the horsethief reservoir benefit district established pursuant to K.S.A.  
27 82a-2201, and amendments thereto.

28 (bb) "Prescription" means an order, formula or recipe issued in any  
29 form of oral, written, electronic or other means of transmission by a duly  
30 licensed practitioner authorized by the laws of this state.

31 (cc) "Prewritten computer software" means computer software,  
32 including prewritten upgrades, which is not designed and developed by the  
33 author or other creator to the specifications of a specific purchaser. The  
34 combining of two or more prewritten computer software programs or  
35 prewritten portions thereof does not cause the combination to be other than  
36 prewritten computer software. Prewritten computer software includes  
37 software designed and developed by the author or other creator to the  
38 specifications of a specific purchaser when it is sold to a person other than  
39 the purchaser. Where a person modifies or enhances computer software of  
40 which the person is not the author or creator, the person shall be deemed to  
41 be the author or creator only of such person's modifications or  
42 enhancements. Prewritten computer software or a prewritten portion  
43 thereof that is modified or enhanced to any degree, where such

1 modification or enhancement is designed and developed to the  
2 specifications of a specific purchaser, remains prewritten computer  
3 software, except that where there is a reasonable, separately stated charge  
4 or an invoice or other statement of the price given to the purchaser for  
5 such modification or enhancement, such modification or enhancement  
6 shall not constitute prewritten computer software.

7 (dd) "Property which is consumed" means tangible personal property  
8 which is essential or necessary to and which is used in the actual process  
9 of and consumed, depleted or dissipated within one year in: (1) The  
10 production, manufacture, processing, mining, drilling, refining or  
11 compounding of tangible personal property; (2) the providing of services;  
12 (3) the irrigation of crops, for sale in the regular course of business; or (4)  
13 the storage or processing of grain by a public grain warehouse or other  
14 grain storage facility, and which is not reusable for such purpose. The  
15 following is a listing of tangible personal property, included by way of  
16 illustration but not of limitation, which qualifies as property which is  
17 consumed:

18 (A) Insecticides, herbicides, germicides, pesticides, fungicides,  
19 fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and  
20 chemicals for use in commercial or agricultural production, processing or  
21 storage of fruit, vegetables, feeds, seeds, grains, animals or animal  
22 products whether fed, injected, applied, combined with or otherwise used;

23 (B) electricity, gas and water; and

24 (C) petroleum products, lubricants, chemicals, solvents, reagents and  
25 catalysts.

26 (ee) "Purchase price" applies to the measure subject to use tax and  
27 has the same meaning as sales price.

28 (ff) "Purchaser" means a person to whom a sale of personal property  
29 is made or to whom a service is furnished.

30 (gg) "Quasi-municipal corporation" means any county, township,  
31 school district, drainage district or any other governmental subdivision in  
32 the state of Kansas having authority to receive or hold moneys or funds.

33 (hh) "Registered under this agreement" means registration by a seller  
34 with the member states under the central registration system provided in  
35 article IV of the agreement.

36 (ii) "Retailer" means a seller regularly engaged in the business of  
37 selling, leasing or renting tangible personal property at retail or furnishing  
38 electrical energy, gas, water, services or entertainment, and selling only to  
39 the user or consumer and not for resale.

40 (jj) "Retail sale" or "sale at retail" means any sale, lease or rental for  
41 any purpose other than for resale, sublease or subrent.

42 (kk) "Sale" or "sales" means the exchange of tangible personal  
43 property, as well as the sale thereof for money, and every transaction,

1 conditional or otherwise, for a consideration, constituting a sale, including  
2 the sale or furnishing of electrical energy, gas, water, services or  
3 entertainment taxable under the terms of this act and including, except as  
4 provided in the following provision, the sale of the use of tangible personal  
5 property by way of a lease, license to use or the rental thereof regardless of  
6 the method by which the title, possession or right to use the tangible  
7 personal property is transferred. The term "sale" or "sales" shall not mean  
8 the sale of the use of any tangible personal property used as a dwelling by  
9 way of a lease or rental thereof for a term of more than 28 consecutive  
10 days.

11 (l) (1) "Sales or selling price" applies to the measure subject to sales  
12 tax and means the total amount of consideration, including cash, credit,  
13 property and services, for which personal property or services are sold,  
14 leased or rented, valued in money, whether received in money or  
15 otherwise, without any deduction for the following:

- 16 (A) The seller's cost of the property sold;
- 17 (B) the cost of materials used, labor or service cost, interest, losses,  
18 all costs of transportation to the seller, all taxes imposed on the seller and  
19 any other expense of the seller;
- 20 (C) charges by the seller for any services necessary to complete the  
21 sale, other than delivery and installation charges;
- 22 (D) delivery charges; and
- 23 (E) installation charges.

24 (2) "Sales or selling price" includes consideration received by the  
25 seller from third parties if:

26 (A) The seller actually receives consideration from a party other than  
27 the purchaser and the consideration is directly related to a price reduction  
28 or discount on the sale;

29 (B) the seller has an obligation to pass the price reduction or discount  
30 through to the purchaser;

31 (C) the amount of the consideration attributable to the sale is fixed  
32 and determinable by the seller at the time of the sale of the item to the  
33 purchaser; and

34 (D) one of the following criteria is met:

35 (i) The purchaser presents a coupon, certificate or other  
36 documentation to the seller to claim a price reduction or discount where  
37 the coupon, certificate or documentation is authorized, distributed or  
38 granted by a third party with the understanding that the third party will  
39 reimburse any seller to whom the coupon, certificate or documentation is  
40 presented;

41 (ii) the purchaser identifies to the seller that the purchaser is a  
42 member of a group or organization entitled to a price reduction or  
43 discount. A preferred customer card that is available to any patron does not

1 constitute membership in such a group; or

2 (iii) the price reduction or discount is identified as a third party price  
3 reduction or discount on the invoice received by the purchaser or on a  
4 coupon, certificate or other documentation presented by the purchaser.

5 (3) "Sales or selling price" shall not include:

6 (A) Discounts, including cash, term or coupons that are not  
7 reimbursed by a third party that are allowed by a seller and taken by a  
8 purchaser on a sale;

9 (B) interest, financing and carrying charges from credit extended on  
10 the sale of personal property or services, if the amount is separately stated  
11 on the invoice, bill of sale or similar document given to the purchaser;

12 (C) any taxes legally imposed directly on the consumer that are  
13 separately stated on the invoice, bill of sale or similar document given to  
14 the purchaser;

15 (D) the amount equal to the allowance given for the trade-in of  
16 property, if separately stated on the invoice, billing or similar document  
17 given to the purchaser; and

18 (E) commencing on July 1, 2006, and ending on June 30, 2009, cash  
19 rebates granted by a manufacturer to a purchaser or lessee of a new motor  
20 vehicle if paid directly to the retailer as a result of the original sale.

21 (mm) "Seller" means a person making sales, leases or rentals of  
22 personal property or services.

23 (nn) "Service" means those services described in and taxed under the  
24 provisions of K.S.A. 79-3603, and amendments thereto.

25 (oo) "Sourcing rules" means the rules set forth in K.S.A. 2017 Supp.  
26 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments  
27 thereto, which shall apply to identify and determine the state and local  
28 taxing jurisdiction sales or use taxes to pay, or collect and remit on a  
29 particular retail sale.

30 (pp) "Tangible personal property" means personal property that can  
31 be seen, weighed, measured, felt or touched, or that is in any other manner  
32 perceptible to the senses. Tangible personal property includes electricity,  
33 water, gas, steam and prewritten computer software.

34 (qq) "Taxpayer" means any person obligated to account to the  
35 director for taxes collected under the terms of this act.

36 (rr) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or  
37 any other item that contains tobacco.

38 (ss) "Entity-based exemption" means an exemption based on who  
39 purchases the product or who sells the product. An exemption that is  
40 available to all individuals shall not be considered an entity-based  
41 exemption.

42 (tt) "Over-the-counter drug" means a drug that contains a label that  
43 identifies the product as a drug as required by 21 C.F.R. § 201.66. The

1 over-the-counter drug label includes: (1) A drug facts panel; or (2) a  
2 statement of the active ingredients with a list of those ingredients  
3 contained in the compound, substance or preparation. Over-the-counter  
4 drugs do not include grooming and hygiene products such as soaps,  
5 cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan  
6 lotions and screens.

7 (uu) "Ancillary services" means services that are associated with or  
8 incidental to the provision of telecommunications services, including, but  
9 not limited to, detailed telecommunications billing, directory assistance,  
10 vertical service and voice mail services.

11 (vv) "Conference bridging service" means an ancillary service that  
12 links two or more participants of an audio or video conference call and  
13 may include the provision of a telephone number. Conference bridging  
14 service does not include the telecommunications services used to reach the  
15 conference bridge.

16 (ww) "Detailed telecommunications billing service" means an  
17 ancillary service of separately stating information pertaining to individual  
18 calls on a customer's billing statement.

19 (xx) "Directory assistance" means an ancillary service of providing  
20 telephone number information or address information, or both.

21 (yy) "Vertical service" means an ancillary service that is offered in  
22 connection with one or more telecommunications services, which offers  
23 advanced calling features that allow customers to identify callers and to  
24 manage multiple calls and call connections, including conference bridging  
25 services.

26 (zz) "Voice mail service" means an ancillary service that enables the  
27 customer to store, send or receive recorded messages. Voice mail service  
28 does not include any vertical services that the customer may be required to  
29 have in order to utilize the voice mail service.

30 (aaa) "Telecommunications service" means the electronic  
31 transmission, conveyance or routing of voice, data, audio, video or any  
32 other information or signals to a point, or between or among points. The  
33 term telecommunications service includes such transmission, conveyance  
34 or routing in which computer processing applications are used to act on the  
35 form, code or protocol of the content for purposes of transmissions,  
36 conveyance or routing without regard to whether such service is referred to  
37 as voice over internet protocol services or is classified by the federal  
38 communications commission as enhanced or value added.  
39 Telecommunications service does not include:

40 (1) Data processing and information services that allow data to be  
41 generated, acquired, stored, processed or retrieved and delivered by an  
42 electronic transmission to a purchaser where such purchaser's primary  
43 purpose for the underlying transaction is the processed data or

1 information;

2 (2) installation or maintenance of wiring or equipment on a  
3 customer's premises;

4 (3) tangible personal property;

5 (4) advertising, including, but not limited to, directory advertising;

6 (5) billing and collection services provided to third parties;

7 (6) internet access service;

8 (7) radio and television audio and video programming services,  
9 regardless of the medium, including the furnishing of transmission,  
10 conveyance and routing of such services by the programming service  
11 provider. Radio and television audio and video programming services shall  
12 include, but not be limited to, cable service as defined in 47 U.S.C. §  
13 522(6) and audio and video programming services delivered by  
14 commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

15 (8) ancillary services; or

16 (9) digital products delivered electronically, including, but not limited  
17 to, software, music, video, reading materials or ring tones.

18 (bbb) "800 service" means a telecommunications service that allows a  
19 caller to dial a toll-free number without incurring a charge for the call. The  
20 service is typically marketed under the name 800, 855, 866, 877 and 888  
21 toll-free calling, and any subsequent numbers designated by the federal  
22 communications commission.

23 (ccc) "900 service" means an inbound toll telecommunications  
24 service purchased by a subscriber that allows the subscriber's customers to  
25 call in to the subscriber's prerecorded announcement or live service. 900  
26 service does not include the charge for collection services provided by the  
27 seller of the telecommunications services to the subscriber, or service or  
28 product sold by the subscriber to the subscriber's customer. The service is  
29 typically marketed under the name 900 service, and any subsequent  
30 numbers designated by the federal communications commission.

31 (ddd) "Value-added non-voice data service" means a service that  
32 otherwise meets the definition of telecommunications services in which  
33 computer processing applications are used to act on the form, content,  
34 code or protocol of the information or data primarily for a purpose other  
35 than transmission, conveyance or routing.

36 (eee) "International" means a telecommunications service that  
37 originates or terminates in the United States and terminates or originates  
38 outside the United States, respectively. United States includes the District  
39 of Columbia or a U.S. territory or possession.

40 (fff) "Interstate" means a telecommunications service that originates  
41 in one United States state, or a United States territory or possession, and  
42 terminates in a different United States state or a United States territory or  
43 possession.

1 (ggg) "Intrastate" means a telecommunications service that originates  
2 in one United States state or a United States territory or possession, and  
3 terminates in the same United States state or a United States territory or  
4 possession.

5 (hhh) *"Cereal malt beverage" shall have the same meaning as such*  
6 *term is defined in K.S.A. 41-2701, and amendments thereto, except that for*  
7 *the purposes of the Kansas retailers sales tax act and for no other*  
8 *purpose, such term shall include beer containing not more than 6%*  
9 *alcohol by volume when such beer is sold by a retailer licensed under the*  
10 *Kansas cereal malt beverage act.*

11 Sec. 6. K.S.A. 2016 Supp. 41-2702, as amended by section 8 of  
12 chapter 56 of the 2017 Session Laws of Kansas, and 41-2704, as amended  
13 by section 9 of chapter 56 of the 2017 Session Laws of Kansas, and K.S.A.  
14 2017 Supp. 41-212 and 79-3602 are hereby repealed.

15 Sec. 7. This act shall take effect and be in force from and after April  
16 1, 2019, and its publication in the statute book.