



KANSAS ADMINISTRATIVE REGULATIONS

Agency 14 - Division of Alcoholic Beverage Control

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Article 10 - TRADE PRACTICES

(Last amended in 1992)

14-10-1. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-211, 41-703, 41-714; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; amended May 1, 1985; amended May 1, 1986; revoked May 1, 1988.)

14-10-1a and 14-10-1b. Not in active use.

Editor's Note: Proposed regulations were rejected by the legislature, see, 1938 C.S.R. 1613.

14-10-2. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1979 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1988.)

14-10-3. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1980 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; amended, E-81-36, Dec. 10, 1980; amended May 1, 1981; revoked May 1, 1988.)

14-10-4. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1980 Supp. 41-211; effective, E-81-36, Dec. 10, 1980; effective May 1, 1981; revoked May 1, 1988.)

14-10-5. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) "Caterer" means a person licensed pursuant to Article 22 of these regulations.

(b) "Club" means the premises or person licensed pursuant to Articles 19 or 20 of these regulations.

(c) "Director" means the director of the division of alcoholic beverage control of the department of revenue.

(d) "Distributor" means those persons licensed by the director, pursuant to K.S.A. 1991 Supp. 41-306, 41-306a, and 41-307, to sell or offer for sale alcoholic liquor, spirits, wine, beer or cereal malt beverage to any person authorized by law to sell alcoholic liquor, spirits, wine, beer or cereal malt beverage at retail.

(e) "Drinking establishment" means the premises or person licensed pursuant to Article 21 of these regulations.

(f) "Industry member" means any distributor, manufacturer or supplier, or any agent, salesperson or representative thereof.

(g) "Manufacturer" means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler, person or other entity who fills or refills an original package or is engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage. A "manufacturer" shall also mean:

(1) A corporate subsidiary of any manufacturer which markets alcoholic liquor through a subsidiary; and

(2) an American distributor of alcoholic liquor manufactured, produced or bottled in a foreign country. A "manufacturer" shall not include a farm winery or a microbrewery.

(h) "Person" means any natural person, corporation, association, trust or partnership.

(i) "Retailer" means a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto.

(j) "Supplier" means a manufacturer of alcoholic liquor or cereal malt beverage or an agent of such a manufacturer, other than a salesperson.

(Authorized by and implementing K.S.A. 1991 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-10-6. General. (a) The use of interpretive memorandums issued by the bureau of alcohol, tobacco and firearms of the United States treasury shall be considered good faith compliance with this article of these regulations unless the director has communicated a contrary interpretation pertaining to the subject of the memorandums.

(b) Subject to the exceptions provided in this article, industry members are prohibited from inducing the purchases of a retailer, club, drinking establishment or caterer by furnishing, giving, renting, lending or selling to the retailer, club, drinking establishment or caterer any equipment, fixtures, signs, supplies, money, services or any other things of value.

(c) This regulation shall take effect on or after October 1, 1988.

(Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-10-7. Indirect inducement through third party arrangements. Indirect furnishing of things of value, as used in this article, shall include furnishing, giving, renting, lending or selling of equipment, fixtures, signs, supplies, money, services, or other things of value by an industry member to a third party, including a retailer association or a display company, where the benefits resulting from the things of value flow to individual retailers. Third parties may furnish, give, rent, lend, or sell equipment, fixtures, signs, supplies, money, services, or things of value to retailers, clubs, drinking establishments or caterers which industry members may lawfully provide to retailers, clubs, drinking establishments or caterers under the provisions of this article. This regulation shall take effect on or after October 1, 1988.

(Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-10-8. Sale of equipment, supplies or services. (a) Selling of equipment, as used in this article, means a transaction in which equipment is sold to a club, drinking establishment or caterer by an industry member, regardless of how sold. An industry member shall not negotiate a special price for a club, drinking establishment or caterer for equipment from an equipment company.

(b) Any industry member may sell glassware to a club, drinking establishment or caterer if the glassware is sold at a price not less than the cost to the industry member who initially purchased it, and if the price is collected upon the date of sale.

(c) Tapping accessories, such as standards, faucets, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves, may be sold to a club, drinking establishment or caterer and installed in those places of business if the tapping accessories are sold at a price not less than the cost to the industry member who initially purchased them, and if the price is collected upon the date of sale.

(d) Carbon dioxide gas or ice may be sold to a club, drinking establishment or caterer, if sold in accordance with the reasonable open market price in the locality where sold, and if the price is collected upon the date of sale.

(e) Coil cleaning service may be furnished, given or sold to a club, drinking establishment or caterer.

(f) Any industry member may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or beer which the member sells, if products purchased from other industry members are not altered or disturbed.

(g) This regulation shall take effect on or after October 1, 1988.

(Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-10-9. Assistance in acquiring a license. An industry member shall not provide any assistance, including financial, legal, administrative or influential, to a retailer, club, drinking establishment or caterer in acquiring a license issued by the director. This regulation shall take effect on or after October 1, 1988.

(Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-10-10. Advertising signs, cooperative advertising, trade journals. (a) An industry member shall not induce a retailer, club, drinking establishment or caterer to make purchases by paying or crediting the retailer, club, drinking establishment or caterer for any advertising, display or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retailer, club, drinking establishment, or caterer.

(1) Any arrangement in which an industry member participates with a retailer, club, drinking establishment or caterer in paying for an advertisement placed by the retailer, club, drinking establishment or caterer shall constitute paying the retailer, club, drinking establishment or caterer for advertising.

(2) The purchase by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire shall constitute paying the retailer, club, drinking establishment or caterer for an advertising service.

(3) The purchase, by an industry member, of advertising in a retailer, club, drinking establishment or caterer publication for distribution to consumers or the general public shall constitute paying the retailer, club, drinking establishment or caterer for advertising.

(4) Industry member reimbursements to retailers, clubs, drinking establishments or caterers for setting up product or other displays shall constitute paying the retailer, club, drinking establishment or caterer for rendering a display service.

(5) A promotion whereby an industry member rents display space at a retail establishment shall constitute paying the retailer, club, drinking establishment, or caterer for rendering a display service.

(b) Industry members may furnish signs to retailers, clubs, drinking establishments and caterers under the following limitations:

(1) The sign shall have no secondary value and be of value only as product advertising to the retailer, club, drinking establishment or caterer.

(2) An industry member shall not directly or indirectly pay or credit the retailer, club, drinking establishment or caterer for displaying the sign or for any expense incidental to its installation, removal or operation.

(c) Consumer advertising specialties, including ash trays, bottle or can openers, cork screws, matches, printed recipes, informational pamphlets, cards and leaflets, blotters, post cards, posters, printed sports schedules, pens, pencils and other similar items as approved by the director, which bear advertising matter may be furnished, given or sold to a retailer, club, drinking establishment or caterer for unconditional distribution by the retailer, club, drinking establishment or caterer to the general public. The retailer, club, drinking establishment or caterer shall not be paid or credited in any manner, directly or indirectly, for this distribution service.

(d) Any industry member may furnish, give, rent, loan, or sell wine lists or wine menus to clubs, drinking establishments or caterers.

(e) Newspaper cuts, mats, or engraved blocks for use in retailer, club, drinking establishment or caterer advertisements may be furnished, given, rented, loaned, or sold by an industry member to a retailer, club, drinking establishment or caterer selling the industry members' products.

(Authorized by K.S.A. 1991 Supp. 41-703; implementing K.S.A. 1991 Supp. 41-703; 41-308 as amended by 1992 HB 2840; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-10-11. Item intended for consumers and promotions. (a) A manufacturer may include in packaging with alcoholic liquor other goods intended to be offered directly to the consumer. All costs directly related to the assembly of packages containing alcoholic liquor and other goods shall be borne solely by the manufacturer. A manufacturer shall not include any goods in packaging with alcoholic liquor prior to obtaining written approval from the director and furnishing the distributor with a copy of the approved request. A manufacturer shall request approval by submitting the following information to the director no less than 30 days in advance of the intended shipping date:

- (1) a color photograph, not less than 5 inches by 7 inches in size, of the complete package;
- (2) the cost to the manufacturer of each item to be packaged with the alcoholic liquor;
- (3) the total cost of the complete package, including alcoholic liquor, to be charged to the distributor by the manufacturer;
- (4) a description of each item's intended use or value to the consumer, including a statement identifying the expiration date of any item intended for human consumption; and
- (5) the unimeric code number assigned to the package.

(b) Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Retailers, clubs, drinking establishments or caterers shall not seek reimbursement from any industry member for any consumer promotion. Retailers, clubs, drinking establishments or caterers may distribute coupons and other consumer premiums to consumers for redemption by the industry member. The retailer, club, drinking establishment or caterer shall not accept or receive any payment or credit for this distribution service. Officers, employees and representatives of distributors, retailers, clubs, drinking establishments or caterers shall be excluded from participation.

(Authorized by K.S.A. 1991 Supp. 41-703; implementing K.S.A. 1991 Supp. 41-703 and K.S.A. 1991 Supp. 41-308 as amended by 1992 HB 2840; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-10-12. Recordkeeping requirements. Each industry member shall maintain for three years, on the industry member's premises, records of all equipment, supplies, services, and retailer advertising specialty and product display items furnished to retailers, clubs, drinking establishments or caterers. Each industry member shall make these records available for inspection by the director or any agent or employee of the director or secretary upon request. Commercial records or invoices may be used to satisfy this recordkeeping provision if all required information is shown. These records shall show:

- (a) The name and address of the retailer, club, drinking establishment or caterer receiving the item;
- (b) the date furnished;
- (c) the item furnished;
- (d) the industry member's cost of the item furnished as determined by the manufacturer's invoice price; and
- (e) charges to the retailer, club, drinking establishment and caterer for any item.

(Authorized by and implementing K.S.A. 1991 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-10-13. Product displays. (a) An industry member may furnish, give, rent, loan, or sell product displays to a retailer, club, drinking establishment or caterer, subject to the limitations prescribed in subsection (c), below.

(b) Product display means any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine, or malt beverages are displayed and sold.

(c) Product displays shall be provided under the following limitations:

(1) The total value of all product displays furnished by an industry member under subsection (a), above, shall not exceed the value authorized by the bureau of alcohol, tobacco and firearms of the United States treasury, per brand in use at any time on the licensed premises of a retailer, club, drinking establishment or caterer. The value of a product display shall be the actual cost to the industry member who initially purchased it. Transportation and installation costs shall be excluded.

(2) Industry members shall not pool or combine their dollar limitations to provide a retailer, club, drinking establishment or caterer with a product display valued in excess of the value, as authorized by the bureau of alcohol, tobacco, and firearms of the United States treasury, per brand.

(3) Product displays shall bear conspicuous and substantial advertising matter.

(d) This regulation shall take effect on or after October 1, 1988.

(Authorized by and implementing K.S.A. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-10-14. Retail advertising specialties. (a) Any industry member may furnish, give, rent, loan, or sell retail advertising specialties to a retailer, club, drinking establishment or caterer if these items bear advertising matter and are primarily valuable to the retailer, club, drinking establishment or caterer as point of sale advertising. These items include trays, coasters, mats, thermometers, clocks and calendars. Any industry member may add the name or name and address of the retailer, club, drinking establishment or caterer **to the** advertising specialty.

(b) Advertising specialties may be provided under the following limitations:

(1) The total value of all retailer, club, drinking establishment or caterer advertising specialties furnished by an industry member to a retailer, club, drinking establishment or caterer shall not exceed the value authorized by the bureau of alcohol, tobacco, and firearms of the United States treasury, per brand in any one calendar year for each retailer, club, drinking establishment or caterer. The value of a retailer, club, drinking establishment or caterer advertising specialty shall be the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs shall be excluded.

(2) Industry members shall not pool or combine their dollar limitations to provide a retailer, club, drinking establishment or caterer with retail advertising specialties valued in excess of the value authorized by the bureau of alcohol, tobacco and firearms of the United States treasury, per brand.

(c) This regulation shall take effect on or after October 1, 1988.

(Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

[ABC Attorney's Note: The words "to the" were apparently omitted from subsection (a) above when this regulation was approved. Correction was submitted Dec 2005.]

14-10-15. Participation in retailer association activities. Any industry member may participate in retailer, club, drinking establishment or caterer association activities. Any industry member may:

- (a) Display its products at a convention or trade show;
- (b) rent display booth space if the rental fee is not excessive and is the same as paid by all exhibitors;
- (c) provide its own hospitality which is independent from association-sponsored activities;
- (d) purchase tickets to functions and pay registration fees if the payments or fees are not excessive and are the same as paid by all exhibitors; and
- (e) make payments for advertisements in programs or brochures issued by retailer, club, drinking establishment or caterer associations at a convention or trade show if the total payments made by an industry member for all such advertisements do not exceed the value authorized by the bureau of alcohol, tobacco, and firearms of the United States treasury, per year for any retailer, club, drinking establishment or caterer association.

(f) This regulation shall take effect on or after October 1, 1988.

(Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-10-16. Defective liquor containers; repurchase by distributor; when allowed. (a) Liquor containers, except beer containers, that leak, contain foreign matter in the bottle, are short-filled, have broken federal seals, have badly soiled or stained labels, or are not otherwise fit for resale to the general public, shall not be knowingly sold by distributors. Suppliers' representatives shall not arrange to have retailers accept such merchandise.

(b) Any distributor may:

- (1) Buy back any item of alcoholic liquor or cereal malt beverage when required by the supplier;
- (2) buy back any item alcoholic liquor or cereal malt beverage from a club, drinking establishment, caterer or retailer that has obtained the approval of the director to close out; and
- (3) buy back or exchange any item of alcoholic liquor or cereal malt beverage which is damaged, as described in subsection (a), above.

(c) Any alcoholic liquor or cereal malt beverage that is damaged as described in subsection (a), above shall not be knowingly sold by suppliers to distributors and any such damaged merchandise sold by a supplier to a distributor shall be retrieved by the supplier and exchanged for merchandise fit for sale or the supplier may authorize its destruction and refund to the distributor the purchase price thereof.

(d) A product shall not be returned or exchanged because it is overstocked or slow-moving.

(e) Products for which there is only a limited or seasonal demand, including holiday decanters and certain distinctive bottles, shall not be returned or exchanged.

(f) This regulation shall take effect on or after October 1, 1988.

(Authorized by K.S.A. 1987 Supp. 41-703; implementing K.S.A. 1987 Supp. 41-703, 41-728; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)