

September 28, 2010

## **POLICY MEMORANDUM 2003-1 (Revised)**

### **Subject: Salesperson's Permits**

1. **Purpose:** The purpose of this memorandum is to provide clarification of the statutes and regulations as they pertain to salesperson's permits. Specific statutory authorities are K.S.A. 41-333 through K.S.A. 41-341.
2. **Applicability:** All suppliers of alcoholic liquor with in-state employees, Kansas manufacturers, distributors, retailers, farm wineries and microbreweries who employ people in Kansas for the sale of, or the taking or soliciting orders for the sale of, alcoholic liquor or cereal malt beverage in this state.
3. **Discussion:** ABC frequently receives questions concerning the salesperson's permit requirements and qualifications. This policy memorandum addresses the most common questions concerning salesperson's permits.
  - a. Salesperson defined.
    - Salesperson means any person who: (1) procures or seeks to procure an order, bargain, contract or agreement for the sale of alcoholic liquor or cereal malt beverage; or (2) is engaged in promoting the sale of alcoholic liquor or cereal malt beverage, or in promoting the business of any person, firm or corporation engaged in the manufacturing and selling of alcoholic liquor or cereal malt beverage.
  - b. Salesperson's permit required for sales activities in Kansas.
    - K.S.A. 41-333 states: "any natural person may act as a salesperson for the sale of, or the taking or soliciting of orders for the sale of, alcoholic liquor or cereal malt beverage in the state of Kansas only after such person has first applied for and received a permit therefore from the director, except that no such permit shall be required of a licensed retailer or an employee of such retailer operating solely on the licensed retail premises."
    - K.S.A. 41-336 provides: "No licensee shall purchase alcoholic liquor or cereal malt beverage from, or give an order to, any person who is not the holder of a permit duly issued hereunder, except that an employee of a licensed distributor may solicit sales while on the licensed premises of such distributor without such a permit."
  - c. Persons required to hold a salesperson's permit.
    - Any employee or agent of a supplier or manufacturer who is located and working in Kansas and solicits sales or takes orders for sales of alcoholic liquor or cereal malt beverage from Kansas distributors or other licensees.
    - Any employee or agent of a Kansas distributor working off the distributor's licensed premises who solicits sales or takes orders for sales of alcoholic liquor or cereal malt beverage from Kansas licensees. This includes delivery drivers who actually solicit sales, but not drivers who only deliver product.
      - A distributor's employee who solicits orders solely on the distributor's licensed premises is not required to have a salesperson's permit.
    - Any employee or agent of a Kansas retailer holding a federal wholesale permit who solicits or takes orders for sales of alcoholic liquor off the retailer's licensed premises.
    - Any employee or agent of a farm winery or microbrewery who sells, solicits sales, or takes orders for the sale of domestic wine or domestic beer while off the licensed premises of the farm winery, farm winery outlet, or microbrewery.

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d. Qualifications and fees

- Any person may apply for and receive a salesperson's permit except a person who:
  - Is under 21 years of age;
  - Has been convicted of, or has forfeited bond to appear in court on charges of, being a keeper of a house of prostitution;
  - Has been convicted of, or has forfeited bond to appear in court on charges of, being a proprietor of a gambling house, pandering or any crime opposed to decency and morality;
    - Crimes opposed to decency and morality include: prostitution; procuring any person; solicitation of a child under 18 years of age for any immoral act involving sex; possession or sale of narcotics, marijuana, amphetamines or barbiturates; rape; incest; gambling; adultery; and bigamy.
  - Intends to act as a salesperson for more than one employer under the permit; or
  - Has a beneficial interest in any licensed retailer, club, drinking establishment, caterer or cereal malt beverage retailer.
- The Director may, at the Director's sole discretion deny any application for a salesperson's permit if the applicant has been convicted of a felony or a violation of the Kansas liquor control act or the cereal malt beverage act.
- Persons who work for more than one employer may apply for and receive salesperson's permits to solicit sales and take orders for sales of alcoholic liquor for each employer.
- A fee of \$10 per permit is required upon initial application and annual renewal.

e. Application for a salesperson's permit.

- Each permit allows the salesperson to act as a salesperson for only one employer, whose name must appear on the permit. If a person acts as a salesperson for more than one employer, additional permits may be acquired by the salesperson for each employer.
- Each permit is valid for a period of one year from the date of issuance.
- For application information and forms, visit our website at: [www.ksrevenue.org/abcsalesper.htm](http://www.ksrevenue.org/abcsalesper.htm)
- All applications for a salesperson's permit and the appropriate permit fee must be mailed to:

Kansas Alcoholic Beverage Control  
Attn: Marketing Unit  
915 SW Harrison, Room 214  
Topeka, KS 66625-3512

- Questions concerning the application form or the application process may be directed to the ABC Marketing Unit at (785) 296-7015.

f. Exhibition of Permit.

- Each salesperson must exhibit his or her salesperson's permit at any time while engaged in soliciting, taking orders for, or promoting the sale of alcoholic liquor or cereal malt beverage upon the demand of any agent or employee of the Director, or upon request of a licensee.

g. Termination of employment and surrender of the salesperson's permit.

- A salesperson must immediately notify the Director and surrender his or her salesperson's permit within 5 days after leaving the employ of the employer stated on the permit.
- Failure to notify the Director or to surrender the permit within 5 days of the termination of the salesperson's employment makes the salesperson ineligible to receive another permit for a period prescribed by the Director.
- The employer named on the permit must notify the Director within 5 days after the salesperson's employment is terminated.

h. Change of address.

- A salesperson must notify the Director within 5 days of any change in the salesperson's address.
- Failure to notify the Director of a change in the salesperson's address within 5 days may result in the revocation of all salesperson's permits held by that salesperson.

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i. Authorized activities of a salesperson.

- Salespersons may sell, take orders for sales, solicit sales, and arrange sales of alcoholic liquor or cereal malt beverage on behalf of the employer named on the salesperson's permit.
- A salesperson working for a supplier or manufacturer may provide samples of alcoholic liquor or cereal malt beverage to Kansas distributors if the supplier or manufacturer obtains a temporary permit, pursuant to K.S.A. 41-332, to import the alcoholic liquor or cereal malt beverage into Kansas.
  - The alcoholic liquor or cereal malt beverage may be shipped directly from the supplier or manufacturer to the Kansas distributor or may be delivered in person by the salesperson.

j. Prohibited activities of a salesperson.

- A salesperson shall not, directly or indirectly:
  - Sell, supply, furnish, give, pay for, loan or lease any furnishing, fixture or equipment to any licensee;
  - Pay for, or advance, furnish, lend or give money for the payment of any license for any person licensed to sell alcoholic liquor or cereal malt beverage;
  - Purchase or become the owner of any note, mortgage or other evidence of indebtedness, or provide any form of security for any licensee;
  - Have any interest in the ownership, conduct or operation of the business of any licensee authorized to sell alcoholic liquor at retail (Retailer, club, drinking establishment, caterer) or own or lease the premises of any such retailer;
  - Accept any rebate from any manufacturer of alcoholic liquor or cereal malt beverage that is sold or distributed in Kansas; or
  - Do any act on behalf of the employer which that employer is prohibited from doing by law.

k. Administrative actions for violations of statutes and regulations.

- The Director may suspend or revoke any salesperson's permit if the salesperson has:
  - Become ineligible to hold the permit;
  - Been convicted of a felony; or
  - Has violated any provision of the Liquor Control Act or the Cereal Malt Beverage Act, or any rules and regulations adopted thereunder.
- Any action to suspend or revoke a salesperson's permit shall be conducted in accordance with the Kansas Administrative Procedures Act.

**4. Additional Comments:**

- a. Failure to comply with the applicable statutes, regulations and/or this policy memorandum, may result in administrative action for violation of the liquor laws.
- b. Alcoholic Beverage Control Enforcement Agents will verify compliance with the provisions of the applicable statutes, regulations and this policy memorandum.

**5. Clarification of Policy:** All clarification requests to this policy should be directed in writing to this office via mail, fax, or submitted to the agency's email at [abc\\_mail@kdor.state.ks.us](mailto:abc_mail@kdor.state.ks.us)

**6. Effective Date of this policy:** This policy is effective from the date of signature until further notice.

***Original Signed and On File***

Thomas W. Groneman

cc: Assistant Attorney General  
Chief of Enforcement  
Licensing Supervisor  
Compliance Supervisor  
Administration Supervisor  
Enforcement Agents