



**KANSAS**  
**CEREAL MALT BEVERAGE ACT**  
**AND**  
**REFERENCE GUIDE**

**K.S.A. 41-2701 et seq.**

**Last Amended July 1, 2006**

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# Table of Contents

Subject	Page
Definitions .....	3
Licensing process .....	4
Qualifications for licensure .....	5
Restrictions on employees .....	6
Hours and days of operation .....	7
Authorized activities .....	8
Prohibited activities .....	8
Administrative actions for violations of statutes .....	10
Criminal prosecution .....	10
Appendix A - Cereal Malt Beverage Act - K.S.A. 41-2701 et seq. ....	11

Changes made to this handbook since the previous revision date have been highlighted with a gray background.

Please report errors, omissions or suggestions for improvement to this handbook to ABC legal counsel Phil Wilkes by telephone at 785-368-8388, by fax at 785-296-7185 or by email at phil\_wilkes@kdor.state.ks.us.

## Definitions

A "retailer" is a person who sells or offers for sale any CMB for use or consumption and not for resale in any form. [Subsection (e) of K.S.A. 41-2701]

A retailer may only sell CMB at the place of business specified on their license. They may not deliver CMB to locations outside the place of business. [A.G.'s Opinion 87-1 issued 01/09/1987]

"Cereal malt beverage" is defined in the CMB Act by subsection (a) of K.S.A. 41-2701 as having not more than 3.2% alcohol by weight produced by fermentation and not by distillation. The same definition appears in subsection (b) of K.A.R. 14-15-1. This is in contrast to the definition of beer in the Liquor Control Act, subsection (c) of K.S.A. 41-102, as having more than 3.2% alcohol by weight produced by fermentation. The same definition appears in subsection (a) of K.A.R. 14-15-1.

"Malt beverage" is defined by Federal Regulation (27 CFR Part 7) as an alcohol or alcohol-free beverage containing less than 2.5% alcohol by volume and made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, and the following:

- malted barley comprising not less than 25% by weight of the total weight of fermentable ingredients
  - hops (or their parts or products) in an amount equivalent to 7.5 pounds per 100 barrels (3100 gallons) of finished malt beverage
- and may contain:
- other malted cereals
  - unmalted or prepared cereals
  - other carbohydrates (or products prepared therefrom)
  - carbon dioxide
  - other wholesome products suitable for human food consumption

[Pages 1-7 and 4-2 of The Beverage Alcohol Manual (BAM), Volume 3 (Basic Mandatory Labeling Information for Malt Beverages), published by the U.S. Dept. of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)]

## **Licensing process**

An application for a retailer's license is submitted on a form prepared by the Attorney General's Office and must be verified. [Subsection (c) of K.S.A. 41-2702]

A retailer located within an incorporated city should submit its application to the city clerk. A retailers located outside an incorporated city should submit its application to the county clerk. A retailer operating on a railway car should submit its application to the Director of A.B.C.

See also subsection (b) of K.S.A. 41-2702 for a requirement for the Board of County Commissioners to give notice to the clerk of the township where the business will be located if outside the an incorporated city.

A premises can hold both an on-premises license and an off-premises license. [implied by subsection (f)(1) of K.S.A. 41-2704]

Licenses are not transferable from one person to another. [Subsection (h) of K.S.A. 41-2702]

### On-premises licenses

The fee for a retailer's license to sell CMB for consumption on the licensed premises is not less than \$25 nor more than \$200, as prescribed by the county commission or governing body of the city, when not located on a railway car, or \$100 for sale on a railway car. These fees go to the county or city, as the case may be.

### Off-premises licenses

The fee for a retailer's license to sell CMB in original and unopened containers and not for consumption on the licensed premises, is not less than \$25 nor more than \$50, as prescribed by the county commission or governing body of the city. These fees go to the county or city, as the case may be. In addition, each licensee must pay \$25 to the Director for a state stamp to be affixed to the license. [Subsections (e) and (g) of K.S.A. 41-2702]

### Both on-premises and off-premises licenses

In addition to payment of the fees described above, each licensee must purchase from the city or county clerk a \$25 state stamp to be affixed to the license. City and county clerks obtain these stamps from the Division of ABC Licensing Segment and remit the \$25 fees collected from the CMB licensees to the Division of ABC Licensing Segment quarterly. [Subsections (d) and (e) of K.S.A. 41-2702]

## **Qualifications for licensure**

Subsection (b) of K.S.A. 41-2703 lists the qualifications for an initial license. The same requirements must be met for renewal of an existing license except as specifically indicated.

### Corporations

Each manager, officer and director of the corporation must meet all of the licensing qualifications for individual ownership below except for citizenship and residency requirements. Each stockholder owning 25% or more of the corporation's stock must meet all of the licensing qualifications for individual ownership listed below except for citizenship and residency requirements. [Subsection (b)(7) of K.S.A. 41-2703]

No manager, officer and director of the corporation, and no stockholder owning 25% or more of the corporation's stock, can have been a manager, officer and director of a corporation, or a stockholder owning 25% or more of a corporation's stock, which has had its retailer's license revoked under the CMB act or has been convicted of a violation of the Club and Drinking Establishment Act or the CMB Act in Kansas. [Subsection (b)(8) of K.S.A. 41-2703]

### Partnerships

Each partner in a partnership must meet the licensing qualifications for individual ownership listed below. [Subsection (b)(6) of K.S.A. 41-2703]

### Limited Liability Company (LLC)

LLC's are not mentioned in the statutes. However, Attorney General Opinion #2001-19 (04/23/01) says that the Director may determine what qualifications for licensure apply, until such time as the legislature makes provision for LLC's in the statutes. In response to an inquiry from an attorney/lobbyist, Director Tom Groneman decided on 10/25/04 that LLC's would be treated as corporations for the purpose of meeting the qualifications for licensure. **However**, only those individuals having more than a 5% interest in the LLC must meet the individual qualifications for ownership. The most recent AAG confirmed that this is how ABC had been treating LLC's previously.

### Individuals

**Age requirement.** The individual must be at least 21 years of age. [Subsection (c)(5) of K.S.A. 41-2702]

**Resident of county.** The individual must be a resident of the county where the licensed premises is located for at least 6 months. [Subsection (b)(1) of K.S.A. 41-2703]

**Resident of Kansas.** The individual must be a resident of Kansas for at least one year immediately preceding application for licensure. [Subsection (b)(2) of K.S.A. 41-2703]

**Character and reputation.** The individual must be of good character and reputation in the community in which he or she resides. [Subsection (b)(3) of K.S.A. 41-2703]

**U.S. Citizenship.** The individual must be a citizen of the United States. [Subsection (b)(4) of K.S.A. 41-2703]

**Criminal convictions.** The individual must not have a conviction of a felony or any other crime involving moral turpitude, drunkenness, DUI, or violation of the liquor laws of Kansas, any other state, or the United States, within two years immediately preceding the date of application. [Subsection (b)(5) of K.S.A. 41-2703]

**Manager or agent.** If the individual's place of business is conducted (managed) by a manager or agent, then the manager or agent must meet all of the qualifications for a license. [Subsection (b)(9) of K.S.A. 41-2703]

**Spouse.** The individual's **spouse** must meet all of the qualifications for ownership except for citizenship, residency or age. **However**, this requirement applies only to an initial license and not to a renewal of an existing license. [Subsection (b)(10) of K.S.A. 41-2703]

If the individual's **spouse** was ever licensed under the CMB Act, that spouse must not have had a conviction of a felony or any other crime involving moral turpitude, drunkenness, DUI, or violation of the liquor laws of Kansas, any other state, or the United States, during the time that the spouse held such license. [Subsection (b)(11) of K.S.A. 41-2703]

## **Restrictions on employees**

Employees involved with the sale, serving or dispensing of CMB must have no convictions of a felony or an intoxicating liquor law of Kansas, any other state or of the United States. [Subsection (a)(10) of K.S.A. 41-2708]

Subsection (f)(1) of K.S.A. 41-2704 provides that a licensee's employee must be at least 18 years of age to dispense and sell CMB if the place of business holds a CMB license only for sale of CMB for off-premises consumption.

Subsection (f)(2) of K.S.A. 41-2704 provides that a licensee's employee must be at least 18 years of age to dispense and sell CMB if:

- the licensee is also a licensed food service establishment as defined by K.S.A. 36-501 (regulating food service and lodging establishments) and
- at least 50% of the licensee's gross receipts are derived from the sale of food for consumption on the licensed premises.

No statute in the CMB Act tells us what age the employee must be to dispense and sell CMB when these two requirements are not met. However, we can infer that employees must be at least 21 years of age to dispense and sell CMB if neither exception applies to the business.

The CMB act has no age restrictions on employees such as stock clerks who are not dispensing or selling CMB.

## **Hours and days of operation**

The following applies to the sale of CMB for both on-premises and off-premises licensees. The CMB Act does not regulate the hours for consumption of CMB at businesses licensed for on-premises consumption.

### Businesses licensed for on-premises consumption of CMB

Sales are permitted between 6 a.m. and midnight on the days indicated below. However, the hours are extended to 2 am if the business also has a drinking establishment or club license. They are not required to be closed on any holiday.

- Every Monday through Saturday
- Every Sunday if the business:
  1. derives at least 30% of its gross receipts from the sale of food to be consumed on the licensed premises, and
  2. is located in a county where Sunday sales have been authorized by city ordinance (for premises in cities) or by county resolution (for premises in townships but not in a city).

[Subsections (b), (c) and (h) of K.S.A. 41-2704]

### Businesses licensed for off-premises consumption of CMB

Sales are permitted between 6 a.m. and midnight on the days indicated below. They are not required to be closed on any holiday except Easter Sunday where Sunday sales have been approved.

- Every Monday through Saturday, between 6 a.m. and midnight.
- Every Sunday except Easter, between noon and 8 p.m., if located in a city or township where the days of sale of CMB in the original package has been expanded pursuant to K.S.A. 41-2911 (passed as Section 9 of SB298 effective 11/15/05)

[Subsections (b) and (c) of K.S.A. 41-2704]

When cities or counties expand the days pursuant to K.S.A. 41-2911, they must include both retail liquor stores and stores that sell CMB. They cannot expand one type of sales without the other. They must also expand to exactly those days listed in the statute. They cannot pick and chose which of those days they expand to. However, they may limit sales on Sundays to hours to less than the noon to 8 pm provided in the statute. [Attorney General Opinion No. 2006-2 issued 01/04/2006]

## **Authorized activities**

Businesses also licensed under the Club and Drinking Establishment Act. CMB may be sold on premises which are licensed pursuant to both the CMB Act and Club and Drinking Establishment Act at any time when alcoholic liquor is allowed by law to be served on the premises. [Subsection (h) of K.S.A. 41-2704]

Access to law enforcement officers. Every licensed premises shall be open to law enforcement officers at all times during business hours. [Subsection (e) of K.S.A. 41-2704]

Open to the public. Every licensed premises except clubs licensed under the Club and Drinking Establishment Act shall be open to the public at all times during business hours. [Subsection (e) of K.S.A. 41-2704]

Free food and/or entertainment. Every licensed premises may offer free food (but not free CMB) and entertainment to its customers. [Subsection (b) of K.S.A. 41-2722]

## **Prohibited activities**

(Applies to both on-premises and off-premises licensees unless otherwise noted.)

Private rooms or booths. Licensees shall not allow any private rooms or booths on the licensed premises unless the business is also licensed as club or drinking establishment pursuant to the Club and Drinking Establishment Act. [Subsection (d) of K.S.A. 41-2704]

Alcoholic liquor. Licensees shall not sell to any person or allow any person to possess any alcoholic liquor on the licensed premises unless the business is also licensed as club or drinking establishment pursuant to the Club and Drinking Establishment Act. [Subsection (g) of K.S.A. 41-2704 and subsection (a)(11) of K.S.A. 41-2708]

Sales on credit, tab or barter. Licensees shall not sell CMB on credit, passbook (tab), or barter for goods or services. Payment must be made by cash, check or credit card. Any credit card used must be good for purchasing goods or services from at least 100 persons (or businesses) not related to the issuer of the credit card. [K.S.A. 41-2706]

Purchases from distributors. Licensees shall not purchase CMB from a distributor on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise, in payment for services rendered; or by extension of credit of any kind, type or class. [K.S.A. 41-2707]

Intoxicated persons. Licensees shall not permit any intoxicated or drunk persons (owner, employees, patrons, etc.) to remain on the licensed premises. [Subsection (a)(4) of K.S.A. 41-2708]

Sales to minors. Licensees shall not sell CMB to anyone under the age of 21 years. [Subsection (a)(5) of K.S.A. 41-2708]

Gambling. Licensees shall not permit any gambling on the licensed premises. [Subsection (a)(7) of K.S.A. 41-2708]

Mixing of drinks. Licensees shall not permit anyone to mix drinks of CMB on the licensed premises using materials purchased on the license premises or brought into the licensed premises for that purpose. [Subsection (a)(8) of K.S.A. 41-2708]

Keg registration act. Licensees shall not violate any provision of the Beer and Cereal Malt Beverage Keg Registration Act. [Subsection (a)(12) of K.S.A. 41-2708]

Free CMB. Licensees shall not offer or serve free CMB to any person. [Subsection (a)(1) of K.S.A. 41-2722]

Minimum price. Licensees shall not offer or serve to any person CMB at a price less than the acquisition cost of the CMB to the licensee. [Subsection (a)(2) of K.S.A. 41-2722]

Unlimited number of drinks. Licensees shall not sell, offer or serve to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public. [Subsection (a)(3) of K.S.A. 41-2722]

Charging different prices for a drink on the same day. Licensees shall not sell, offer or serve any drink to any person at a price less than that charged to the general public on that day, except at private functions not open to the general public. [Subsection (a)(4) of K.S.A. 41-2722]

Drinks priced proportionally. Licensees shall not increase the size of a drink of CMB without proportionally increasing the price regularly charged for the drink on that day. [Subsection (a)(5) of K.S.A. 41-2722]

Drinking games or contests. Licensees shall not encourage or permit any game or contest on the licensed premises which involved drinking CMB or the awarding of drinks as prized. [Subsection (a)(6) of K.S.A. 41-2722]

Advertising or promotion of prohibited activities. Licensees shall not advertise or promote, either on or off the licensed premises, any of the activities prohibited by subsection (a)(1) through (a)(6) above. [Subsection (a)(7) of K.S.A. 41-2722]

Providing price list upon request. Licensees shall not refuse to make available upon request a price list showing the licensee's current prices for all CMB beverages it sells. [Subsection (e) of K.S.A. 41-2722]

The CMB Act does not address the legality of patrons of an on-premises licensee taking their CMB drink off of the licensed premises. This practice should be controlled by county or city ordinance. The prohibition on alcoholic liquor (spirits, wine and "strong" beer) being taken off of the licensed premises which are also licensed for such beverages under the Club and Drinking Establishment Act are included in subsection (b) of K.A.R. 14-21-12. Also, K.S.A. 41-719 prohibits the consumption of alcoholic liquor (not including CMB) on public and private property except in a few specific situations specified in the statute.

### **Administrative actions for violations of statutes**

CMB licenses for premises located within city may be revoked by the governing body of such city with 5 days advance notice to the licensee for reasons set forth in K.S.A. 41-2708. CMB licenses for premises located outside of a city may be revoked by the county commission with 5 days advance notice to the licensee for reasons set forth in K.S.A. 41-2708. [Subsection (a) of K.S.A. 41-2708]

A licensee shall have 20 days after the order of the governing body of a city or the county commission suspending or revoking any CMB license to appeal to the district court in the county where the licensed premises is located. The license shall stay suspended or revoked during the appeal is pending. The district court shall have original jurisdiction over the matter. [Subsection (c) of K.S.A. 41-2708]

### **Criminal prosecution**

The county attorney or city attorney may prosecute any person for violation of the CMB Act within their jurisdiction. If found guilty, the person may be fined up to \$500 and/or be sentenced to a maximum of up to one year in prison. [K.S.A. 41-2711]

## Appendix A - Kansas Cereal Malt Beverage Act

**41-2701. Definitions.** As used in this act unless the context otherwise requires:

- (a) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in section 1, and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.
- (b) "Director" means the director of alcoholic beverage control of the department of revenue.
- (c) "Manufacturer" means a manufacturer as defined by K.S.A. 41-102 and amendments thereto.
- (d) "Person" means any individual, firm, partnership, corporation or association.
- (e) "Retailer" means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.
- (f) "Place of business" means any place at which cereal malt beverages are sold.
- (g) "Distributor" means a beer distributor licensed pursuant to the Kansas liquor control act.
- (h) "Legal age for consumption of cereal malt beverage" means 21 years of age, except that "legal age for consumption of cereal malt beverage" shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

**History:** L. 1937, ch. 214, § 1; L. 1949, ch. 243, § 1; L. 1978, ch. 189, § 1; L. 1985, ch. 171, § 5; L. 1985, ch. 168, § 7; L. 1987, ch. 182, § 97; L. 2006, ch. 160, § 2; July 1, 2006.

**41-2702. Retailer's license; application; notice; fee; state stamp; license nontransferable.** (a) No retailer shall sell any cereal malt beverage without having first secured a license for each place of business as herein provided. In case such place of business is located within the corporate limits of a city, the application for license shall be made to the governing body of such city. In all other cases, the application for license shall be made to the board of county commissioners in the county in which such place of business is to be located, except that the application for license to sell on railway cars shall be made to the director as hereinafter provided.

(b) A board of county commissioners shall not issue or renew a retailer's license without giving the clerk of the township where the place of business is to be located written notice by registered mail of the filing of the application for licensure or renewal. The township board may within 10 days file advisory recommendations as to the granting of such license or renewal and such advisory recommendations shall be considered by the board of county commissioners before such license is issued. If an original license is granted and issued, the board of county commissioners shall grant and issue renewals thereof upon application of the license holder, if the license holder is qualified to receive the same and the license has not been revoked as provided by law.

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

- (1) The name and residence of the applicant;
- (2) the length of time that the applicant has resided within the state of Kansas;
- (3) the particular place of business for which a license is desired;
- (4) the name of the owner of the premises upon which the place of business is located; and
- (5) a statement that the applicant is a citizen of the United States and not less than 21 years of age and that the applicant has not within two years immediately preceding the date of making application been convicted of a felony, any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

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

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

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

(e) Each applicant for a retailer's license or renewal of such a license shall submit to the director a copy of the completed application for such license or license renewal, together with a fee of \$25. Upon receipt of such application, the director shall authorize a state stamp to be affixed to the license. No such stamp shall be affixed to any license except such stamps as provided by the director and no retailer's license shall be issued or renewed unless such stamp has first been affixed thereto.

(f) The director shall remit all fees collected by the director to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, except that the director may provide for the deposit in the cereal malt beverage tax refund fund of such amounts as necessary for the refund of any license fees collected hereunder.

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

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

**History:** L. 1937, ch. 214, § 2; L. 1949, ch. 244, § 4; L. 1953, ch. 240, § 1; L. 1970, ch. 188, § 1; L. 1978, ch. 189, § 2; L. 1987, ch. 182, § 98; L. 1988, ch. 165, § 6; L. 2001, ch. 5, § 133; July 1.

**41-2703. Same; qualifications; term of license; notice to distributors of nonrenewal, when.** (a) After examination of an application for a retailer's license, the board of county commissioners or the director shall, if they approve the same, issue a license to the applicant. The governing body of the city shall, if the applicant is qualified as provided by law, issue a license to such applicant.

(b) No retailer's license shall be issued to:

(1) A person who is not a resident of the county in which the place of business covered by the license is located, has not been a resident of such county for at least six months or has not been a resident in good faith of the state of Kansas.

(2) A person who has not been a resident of this state for at least one year immediately preceding application for a retailer's license.

(3) A person who is not of good character and reputation in the community in which the person resides.

(4) A person who is not a citizen of the United States.

(5) A person who, within two years immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

(6) A partnership, unless all the members of the partnership are otherwise qualified to obtain a license.

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than the citizenship and residency requirements.

(8) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708, and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.

(9) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications of a licensee.

(10) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection (b)(10) shall not apply in determining eligibility for a renewal license.

(11) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this act.

(c) Retailers' licenses shall be issued either on an annual basis or for the calendar year. If such licenses are issued on an annual basis, the board of county commissioners or the governing body of the city shall notify the distributors supplying the county or city on or before April 1 of the year if a retailer's license is not renewed.

**History:** L. 1937, ch. 214, § 3; L. 1949, ch. 244, § 5; L. 1973, ch. 201, § 1; L. 1973, ch. 202, § 1; L. 1978, ch. 189, § 3; L. 1987, ch. 182, § 99; L. 2001, ch. 189, § 5; May 24.

**41-2704. Hours and days of sale; standards; prohibited acts.** (a) In addition to and consistent with the requirements of the cereal malt beverage act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) Within any city where the days of sale at retail of cereal malt beverage in the original package have not been expanded as provided in K.S.A. 41-2911, and amendments thereto, or have been so expanded and subsequently restricted as provided by K.S.A. 41-2911, and amendments thereto, and within any township where the hours and days of sale at retail of cereal malt beverage in the original package have not been expanded as provided in K.S.A. 41-2911, and amendments thereto, or have been so expanded and subsequently restricted as provided in K.S.A. 41-2911, and amendments thereto, no cereal malt beverages may be sold:

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

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

(c) Within any city where the days of sale at retail of cereal malt beverage in the original package have been expanded as provided in K.S.A. 41-2911, and amendments thereto, and have not been subsequently restricted as provided by K.S.A. 41-2911, and amendments thereto, and within any township where the days of sale at retail of cereal malt beverage in the original package have been expanded as provided in K.S.A. 41-2911, and amendments thereto, or have not been subsequently restricted as provided in K.S.A. 41-2911, and amendments thereto, no person shall sell at retail cereal malt beverage:

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

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

(3) on Easter Sunday; or

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

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

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

(f) Except as otherwise provided by this subsection, no licensee shall permit a person under the legal age for consumption of cereal malt beverage to consume or purchase any cereal malt beverage in or about a place of business. A licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage, if:

(1) The licensee's place of business is licensed only to sell at retail cereal malt beverage in the original package and not for consumption on the premises; or

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

(g) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

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

**History:** L. 1937, ch. 214, § 4; L. 1951, ch. 302, § 1; L. 1963, ch. 268, § 1; L. 1965, ch. 316, § 35; L. 1981, ch. 201, § 3; L. 1982, ch. 211, § 2; L. 1985, ch. 171, § 6; L. 1987, ch. 182, § 100; L. 1987, ch. 183, § 4; L. 1994, ch. 166, § 2; L. 2005, ch. 201, § 13; November 15.

[ABC Attorney's Note: In subsection (c)(2), the word "or" was apparently omitted when this subsection was added by SB298 in 2005.]

**41-2705. Loans or gifts from manufacturer or distributor prohibited.** (a) Except to the extent permitted pursuant to K.S.A. 41-703 and amendments thereto, no retailer, or any officer, associate, member, representative or agent thereof, shall accept, receive or borrow money or anything else of value, or accept or receive credit, directly or indirectly, from: (1) Any manufacturer or distributor; (2) any person connected with, in any way representing or a member of the family of a manufacturer or distributor; (3) any stockholders in a manufacturer or distributor; or (4) any officer, manager, agent or representative of a manufacturer or distributor.

(b) Any licensee who shall permit or assent, or be a party in any way, to any violation or infringement of the provisions of this section or of K.S.A. 41-702 or 41-703, and amendments thereto, shall be deemed guilty of a violation of this act, and any money loaned contrary to a provision of this section shall not be recovered, or any note, mortgage or other evidence of indebtedness, or security, or any lease or contract obtained or made contrary to this act shall be unenforceable and void.

**History:** L. 1937, ch. 214, § 5; L. 1947, ch. 238, § 1; L. 1965, ch. 316, § 36; L. 1974, ch. 195, § 4; L. 1975, ch. 253, § 1; L. 1977, ch. 170, § 1; L. 1982, ch. 210, § 3; L. 1987, ch. 182, § 101; Jan. 1, 1988.

**41-2706. Certain sales on credit or in trade prohibited.** (a) Except as provided by subsection (b), no person shall sell or furnish cereal malt beverages at retail to any person on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise; or in payment for any services rendered. If any person extends credit for such purpose, the debt attempted to be created shall not be recoverable at law and, in addition, such person shall be subject to the penalties provided in K.S.A. 41-2707 and amendments thereto.

(b) A licensed retailer may sell cereal malt beverages to a consumer on credit pursuant to a credit card which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the credit card.

**History:** L. 1949, ch. 244, § 1; L. 1987, ch. 182, § 102; L. 1995, ch. 266, § 5; July 1.

**41-2707. Same; penalties.** No distributor shall sell or furnish cereal malt beverages to a retailer on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise; in payment for any service rendered or to be rendered; or by any extension of credit of any kind, type or class. Any distributor or retailer who violates any of the terms of this section or K.S.A. 41-2706 and amendments thereto shall be subject to all penalties and forfeitures provided by K.S.A. 41-2705 and 41-2708, and amendments thereto, and any debt attempted to be created in violation hereof shall not be recoverable at law.

**History:** L. 1949, ch. 244, § 2; L. 1987, ch. 182, § 103; Jan. 1, 1988.

**41-2708. Revocation or suspension of license; grounds; appeal; effect of suspension or revocation order.** (a) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application therefor;

(2) the licensee has violated any of the provisions of K.S.A. 41-2701 et seq., and amendments thereto, or any rules or regulations made by the board or the city, as the case may be;

(3) the licensee has become ineligible to obtain a license under this act;

(4) drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee's place of business;

(5) the sale of cereal malt beverages to any person under the legal age for consumption of cereal malt beverage;

(6) the nonpayment of any license fees;

(7) permitting any gambling in or upon the licensee's place of business;

(8) permitting any person to mix drinks with materials purchased in the place of business or brought in for that purpose;

(9) the employment of persons under 18 years of age in dispensing or selling cereal malt beverages;

(10) the employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States;

(11) the sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor as defined by K.S.A. 41-102, and amendments thereto;

(12) the licensee has been convicted of a violation of the beer and cereal malt beverage keg registration act; or

(13) there has been a violation of K.S.A. 21-4106 or 21-4107 and amendments thereto, in or upon the licensee's place of business.

(b) The provisions of subsections (a)(8) and (11) shall not apply if the place of business or premises also are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(c) Within 20 days after the order of the board revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal. In case of the revocation of the license of any licensee, no new license shall be issued to the former licensee, or to any person acting for or on the former licensee's behalf, for a period of six months thereafter.

**History:** L. 1937, ch. 214, § 6; L. 1949, ch. 245, § 1; L. 1951, ch. 302, § 2; L. 1965, ch. 316, § 37; L. 1973, ch. 202, § 2; L. 1976, ch. 145, § 195; L. 1985, ch. 171, § 7; L. 1987, ch. 182, § 104; L. 1995, ch. 258, § 5; L. 2002, ch. 44, § 8; L. 2004, ch. 1, § 1; March 4.

**41-2709. Injunction proceedings.** The attorney general, or any county attorney of the state within his county or any city attorney within his city shall at all times have the power to enjoin any party from selling cereal malt beverages within the county or city notwithstanding said party has a license and permit if it shall appear that the licensee has violated any provision or regulation of this act or any of the rules or regulations prescribed under this act. Injunction proceedings shall be the same as is now prescribed for the enjoining of intoxicating liquor nuisances.

**History:** L. 1937, ch. 214, § 7; May 1.

**41-2710. [Repealed 1951]**

**41-2711. Penalties for violation of act.** Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

**History:** L. 1937, ch. 214, § 8; May 1.

**41-2712. Invalidity of part.** Should any court declare any section, clause or provision of this act to be unconstitutional such decision shall affect only such section, clause or provision so declared unconstitutional and shall not affect any other section, clause or provision of this act.

**History:** L. 1937, ch. 214, § 9; May 1.

**41-2713. [Repealed 1987]**

**41-2714 through 2717 [Repealed 1990]**

**41-2718. [Repealed 1987]**

**History:** L. 1978, ch. 189, § 12; L. 1985, ch. 168, § 12; Repealed, L. 1987, ch. 182, § 146; Jan. 1, 1988.

**41-2719. [Repealed - Amended into 41-804 and transferred to 8-1599]**

**41-2720. [Repealed 1994]**

**41-2721. [Repealed 1988]**

**41-2722. Certain sales practices prohibited; penalties; drink defined.** (a) No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverage for consumption on the licensed premises shall:

(1) Offer or serve any free cereal malt beverage to any person;

(2) offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee;

(3) sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;

(4) sell, offer to sell or serve any drink to any person at any time at a price less than that charged the general public on that day, except at private functions not open to the general public;

(5) increase the size of a drink of cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;

(6) encourage or permit, on the licensed premises, any game or contest which involves drinking cereal malt beverage or the awarding of drinks as prizes; or

(7) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (6).

(b) Nothing in subsection (a) shall be construed to prohibit a retailer from offering free food or entertainment at any time.

(c) Violation of any provisions of this section is a misdemeanor punishable as provided by K.S.A. 41-2711 and amendments thereto.

(d) Violation of any provision of this act shall be grounds for suspension or revocation of the retailer's license as provided by K.S.A. 41-2708 and amendments thereto.

(e) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages.

(f) As used in this section, "drink" means an individual serving of cereal malt beverage.

(g) This section shall be part of and supplemental to K.S.A. 41-2701 through 41-2721, and amendments thereto.

**History:** L. 1985, ch. 173, § 5; L. 1986, ch. 185, § 8; July 1.

**41-2723, 41-2724. [Repealed 1987]**

**41-2725. Cereal malt beverage prohibited at state capitol.** (a) No person shall drink or consume cereal malt beverage in the state capitol building or on the grounds of the state capitol building.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both.

(c) As used in this section, terms have the meanings provided by K.S.A. 41-2701 and amendments thereto.

**History:** L. 1995, ch. 59, § 2; July 1.

**41-2726. Sales below cost prohibited.** (a) No retailer licensed under K.S.A. 41-2701 *et seq.* and amendments thereto to sell cereal malt beverage in original and unopened containers and not for consumption on the licensed premises shall sell or offer for sale any cereal malt beverage at a price that is less than the acquisition cost of such cereal malt beverage to the licensee.

(b) Violation of this section is a misdemeanor punishable as provided by K.S.A. 41-2711 and amendments thereto.

(c) Violation of this section shall be grounds for suspension or revocation of the retailer's license as provided by K.S.A. 41-2708 and amendments thereto.

**History:** L. 1996, ch. 154, § 8; July 1.

**41-2727. Use of minors to determine compliance with law, exceptions.** (a) Any person listed in subsections (b)(1), (b)(2) or (b)(3) may engage or direct a person under the legal age for consumption of cereal malt beverage to violate the provisions of K.S.A. 41-2701, *et seq.*, and amendments thereto, in order to develop a program or system which determines and encourages compliance with the provisions thereof prohibiting the furnishing or sale of cereal malt beverages to a person under the legal age for consumption of cereal malt beverage or the consumption of cereal malt beverages by such persons.

(b) No person shall engage or direct a person under the legal age for consumption of cereal malt beverage to violate any provision of K.S.A. 41-2701 *et seq.*, and amendments thereto, for purposes of determining compliance therewith unless such person is:

(1) An officer having authority to enforce the provisions of K.S.A. 41-2701 *et seq.*, and amendments thereto;

(2) an authorized representative of the attorney general, a county attorney or a district attorney; or

(3) a licensee under the provisions of K.S.A. 41-2701, *et seq.*, and amendments thereto, or such licensee's designee pursuant to a self-compliance program designed to increase compliance with the provisions of K.S.A. 41-2701 *et seq.*, and amendments thereto if such program has been approved by the director.

**History:** L. 2000, ch. 166, § 7; July 1.

**K.S.A. 41-2728.** (a) K.S.A. 41-2701 through 41-2727 and section 14, and amendments thereto, shall be known and may be cited as the Kansas cereal malt beverage act.

(b) Except as specifically provided in the Kansas cereal malt beverage act, the power to regulate all phases of the manufacture, distribution, sale, possession, transportation and traffic in cereal malt beverages is vested exclusively in the state and shall be exercised as provided in the Kansas cereal malt beverage act. No city or county shall enact any ordinance or resolution which is in conflict with the provisions of the Kansas cereal malt beverage act and any such ordinance or resolution shall be null and void.

(c) The provisions of this act are severable. If any provision of this act is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would have enacted the remainder **if** this act without such invalid or unconstitutional provision.

**History:** L. 2005, ch. 201, § 12; November 15.

[ABC Attorney's Note: The words "and section 14" in subsection (a) were inadvertently left in SB298. They should have been removed prior to passage. The word "if" in subsection (c) appears to be a drafting error. It should be "of."]

**K.S.A. 41-2729.** (a) This act shall be known as the flavored malt beverage act.

(b) “Flavored malt beverage” means a malt beverage which meets the formula definitions as set forth in department of the treasury, alcohol and tobacco tax and trade bureau regulations published January 3, 2005, at 27 CFR Parts 7 and 25.

(c) Notwithstanding any other provision of law, any malt product which meets the formula definitions of 27 CFR Parts 7 and 25 published January 3, 2005, regarding flavored malt beverages shall have imposed upon it the tax rate for malt beverages as set forth in K.S.A. 41-501, and amendments thereto, for beer and cereal malt beverage.

(d) Notwithstanding any other provision of law, any malt product which meets the definitions of 27 CFR Parts 7 and 25 published January 3, 2005, regarding flavored malt beverages shall be deemed in compliance with the labeling requirements of this state when its labeling meets the requirements of 27 CFR Parts 7 and 25 published January 3, 2005.

(e) Any manufacturer or brewer who intends that its products be classified as a flavored malt beverage under this act shall file with the secretary of revenue its registration of such products on a form prescribed by the secretary for such purpose, along with such other documentation as the secretary may require by rules and regulations.

**History:** L. 2006, ch. 160, § 1; July 1, 2006

[ABC Attorney's Note: The following statute passed in 2005 as Section 9 of SB298 has been placed by the Revisor's Office in Article 29 of Chapter 41 following the Beer and Cereal Malt Beverage Keg Registration Act. A copy is included here because it is referenced in K.S.A. 41-2704.]

**K.S.A. 41-2911.** (a) (1) The board of county commissioners of any county may, by resolution:

(A) Expand the days of sale at retail of cereal malt beverage in the original package to allow such sale within the unincorporated area of the county on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and expand the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the unincorporated area of the county, to allow such sale within the unincorporated area of the county on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day; or

(B) restrict the days of sale at retail of cereal malt beverage in the original package to prohibit such sale within the unincorporated area of the county on Sunday and restrict the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the unincorporated area of the county, to prohibit such sale within the unincorporated area of the county on Sunday, Memorial Day, Independence Day and Labor Day.

Such resolution shall be published once, within two weeks after its adoption, in the official county newspaper. Such resolution shall not become effective earlier than 60 days following the date of its publication or November 15, 2005, whichever is later. If, within 60 days following publication of the resolution, a petition requesting that a proposition be submitted for approval by the voters is filed in accordance with subsection (a)(2), such resolution shall not become effective until a proposition is submitted to and approved at an election as provided by this subsection (a).

(2) A petition to submit a proposition to the qualified voters of a county pursuant to this subsection (a) shall be filed with the county election officer. The petition shall be signed by qualified voters of the county who reside within the unincorporated area of the county equal in number to not less than 5% of the voters of the county residing within the unincorporated area of the county who voted for the office of president of the United States at the last preceding general election at which such office was elected. The appropriate version of the following shall appear on the petition:

(A) If licensing of sale at retail of alcoholic liquor in the original package is not authorized within the unincorporated area of the county, the petition shall read: “We request an election to determine

whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the unincorporated area of \_\_\_\_\_ county.”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the unincorporated area of the county, the petition shall read: “We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the unincorporated area of \_\_\_\_\_ county and whether sale at retail of alcoholic liquor in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day) within the unincorporated area of \_\_\_\_\_ county.”

(3) Upon submission of a valid petition calling for an election pursuant to this subsection (a), the county commission shall call a special election to be held not later than 45 days after submission of the petition unless a countywide primary or general election is to be held within 90 days after submission of the petition, in which case the proposition shall be submitted at such countywide election. Thereupon, the county election officer shall cause the appropriate version of the following proposition to be placed on the ballot in the unincorporated area of the county at such election:

(A) If licensing of sale at retail of alcoholic liquor is not authorized within the unincorporated area of the county, the following proposition shall be placed on the ballot: “Within the unincorporated area of \_\_\_\_\_ county shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday)?”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the unincorporated area of the county, the following proposition shall be placed on the ballot: “Within the unincorporated area of \_\_\_\_\_ county shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) and shall the sale at retail of alcoholic liquor in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day)?”

(b) (1) The governing body of any city may, by ordinance:

(A) Expand the days of sale at retail of cereal malt beverage in the original package to allow such sale within the city on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and expand the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the city, to allow such sale within the city on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day; or

(B) restrict the days of sale at retail of cereal malt beverage in the original package to prohibit such sale within the city on Sunday and restrict the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the city, to prohibit such sale within the city on Sunday, Memorial Day, Independence Day and Labor Day.

Such ordinance shall be published at least once each week for two consecutive weeks in the official city newspaper. Such ordinance shall not become effective earlier than 60 days following the date of its publication or November 15, 2005, whichever is later. If, within 60 days following publication of the ordinance, a petition requesting that a proposition be submitted for approval by the voters is filed in accordance with subsection (b)(2), such ordinance shall not become effective until a proposition is submitted to and approved at an election as provided by this subsection (b).

(2) A petition to submit a proposition to the qualified voters of a city pursuant to this subsection (b) shall be filed with the county election officer. The petition shall be signed by qualified voters of the city equal in number to not less than 5% of the voters of the city who voted for the office of president

of the United States at the last preceding general election at which such office was elected. The appropriate version of the following shall appear on the petition:

(A) If licensing of sale at retail of alcoholic liquor in the original package is not authorized within the city, the petition shall read: “We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the city of \_\_\_\_\_.”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the city, the petition shall read: “We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the city of \_\_\_\_\_ and whether sale at retail of alcoholic liquor in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day) within the city of \_\_\_\_\_.”

(3) Upon submission of a valid petition calling for an election pursuant to this subsection (b), the city governing body shall call a special election to be held not later than 45 days after submission of the petition unless a citywide primary or general election is to be held within 90 days after submission of the petition, in which case the proposition shall be submitted at such citywide election. Thereupon, the county election officer shall cause the appropriate version of the following proposition to be placed on the ballot in the city at such election:

(A) If licensing of sale at retail of alcoholic liquor is not authorized within the city, the following proposition shall be placed on the ballot: “Within the city of \_\_\_\_\_ shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday)?”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the city, the following proposition shall be placed on the ballot: “Within the city of \_\_\_\_\_ shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) and shall the sale at retail of alcoholic liquor in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day)?”

(c) The county election officer shall transmit to the director a copy of the results of an election pursuant to this section.

(d) An election provided for by this section shall be called and held in the manner provided by the general bond law.

**History:** L. 2005, ch. 201, § 9; November 15.