



# **HANDBOOK FOR SUPPLIERS**

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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 the Division of Alcoholic Beverage Control by telephone at 785-296-7015, by fax at 785-296-7185 or by email to abc\_mail@kdor.state.ks.us.

## Definitions

"Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage. [Subsection (b) of K.S.A. 41-102]

"Beer" means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content. [Subsection (c) of K.S.A. 41-102] Note: Since 3.2% alcohol by weight is equivalent to 4% alcohol by volume, then beer must contain more than 4% alcohol by volume.

"Beer distributor" is defined as a person licensed to sell beer or CMB to any person authorized by law to sell beer or CMB at retail. [Subsection (c) of K.A.R. 14-14-1]

"Cereal malt beverage" (CMB) 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 (FMB), as defined in Section 1 of House Bill 2955 effective July 1, 2006, but does not include any such liquor which is more than 3.2% alcohol by weight. [Subsection (a) of K.S.A. 41-2701] Since 3.2% alcohol by weight is equivalent to 4% alcohol by volume, then CMB does not include any FMB which contains more than 4% alcohol by volume.

"Distributor" means a person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under the Liquor Control Act or the Cereal Malt Beverage Act. [Subsection (h) of K.S.A. 41-102]

"Domestic beer" is defined as having no more than 8% alcohol by weight and manufactured from agricultural products grown in Kansas. [Subsection (c) of K.S.A. 41-102]

"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. [Subsection (b) of K.S.A. 41-2729]

Paragraph (a) of section 7.11 of 27 CFR Part 7 deals with the use of flavorings in malt beverages. Paragraph (b) of section 25.15 of 27 CFR Part 25 deals with the use of flavorings in beer. They are essentially identical. No more than 49% of the overall alcohol content of the malt beverage or beer may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. In the case of malt beverage or beer with an alcohol content of more than 6% by volume, no more than 1.5% of the volume of the malt beverage or beer may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Industry member" means any distributor, manufacturer or supplier, or any agent, salesperson or representative thereof. [Subsection (f) of K.A.R. 14-10-5]

"Manufacturer" means a Kansas brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage. "Manufacturer" does not include a microbrewery or a farm winery. [Subsection (o) of K.S.A. 41-102]

"Person" means any natural person, corporation, partnership, trust or association. [Subsection (t) of K.S.A. 41-102]

"Product" as used in this handbook means "spirits" for spirits distributors, "wine" for wine distributors and "beer" for beer distributors.

"Retailer" means a person who sells or offers for sale at retail any alcoholic liquor or CMB, except a microbrewery or farm winery. [Subsection (v) of K.S.A. 41-102 and subsection (f) of K.A.R. 14-10-5]

"Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances. [Subsection (cc) of K.S.A. 41-102]

"Supplier" means an out-of-state manufacturer of alcoholic liquor or cereal malt beverage or an agent of such manufacturer, other than a salesperson. [Subsection (dd) of K.S.A. 41-102]

"Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. [Subsection (ff) of K.S.A. 41-102]

## **Procedure for obtaining a supplier permit**

Every supplier desiring to sell alcoholic liquor or cereal malt beverage to distributors in Kansas must first obtain an annual permit from the Director of ABC, unless the supplier is already licensed in Kansas as a manufacturer or distributor. Supplier Permits must be renewed annually and are valid from July 1<sup>st</sup> through June 30<sup>th</sup>. Any Supplier Permits applied for during the year are effective from the date approved through June 30<sup>th</sup>. The cost of the annual permit is \$25. [Subsection (a) of K.S.A. 41-331]

There are no qualifications for issuance of supplier permits listed in the Liquor Control Act or liquor regulations. An application for a supplier permit is made by requesting a "New Supplier Packet" from ABC's Marketing Section or by downloading the forms from the website: <http://www.ksrevenue.org/abcsupper.htm>

The packet includes a Supplier Permit Application and Agreement form (ABC-1000), copy of your federal Basic Permit or Brewers Notice and Salesperson Permit Application and Agreement form (ABC-142). The Supplier Permit Agreement is executed and returned to the ABC Marketing Section with the other required forms and the \$25 annual fee. The applicant keeps a copy of the executed Supplier Permit Application and Agreement for their records. No separate permit certificate is issued by ABC. Approved supplier permits are posted to the Active Liquor Licensee database (<https://www.kdor.org/abc/licensee/>).

## **Additional requirements for non-residents**

All non-resident applicants for a supplier permit under the Kansas Liquor Control Act "shall file with the Kansas Secretary of State its written consent, irrevocable, that any action or garnishment proceeding may be commenced against such applicant in the proper court of any county in Kansas in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the resident agent specified in subsection (a), etc. The Irrevocable Consent to Jurisdiction (ABC-160) is used for this purpose. The Secretary of State requires a \$35 filing fee for this form and charges \$1 for each additional file-stamped copy. A file-stamped copy must be provided by the permit applicant to ABC. [Subsection (b) of K.S.A. 41-313]

In addition, if the applicant is a corporation, then subsection (b) of K.S.A. 41-313 requires that the President and Secretary of the corporation must sign a Resolution stating that they have authority to sign the Irrevocable Consent to Jurisdiction. This Resolution is included on the Irrevocable Consent to Jurisdiction form (ABC-160). However, ABC will accept signatures of other corporate officers if accompanied by a letter stating (1) why the President and/or Secretary are not available to sign the form, and (2) that the officers who do sign the form have authority to do so on behalf of the corporation. [Ruling made by ABC attorney on July 6, 2005.]

## **Brand registration and label approval**

Every manufacturer and supplier desiring to sell alcoholic liquor or cereal malt beverage to distributors in Kansas must first register each brand of alcoholic liquor or cereal malt beverage with the Director prior to making shipments to distributors in Kansas. There is no fee for brand registration. [Subsection (b) of K.S.A. 41-331]

The procedure to register each brand is to submit the Application for Brand Registration and Label Approval form (ABC-1001) with the \$25 fee for each label and the following documents. The ABC documents are available on the Brand Registration and Label Approval page on our web site (<http://www.ksrevenue.org/abcbrandreg.htm>).

1. Executed franchise agreement between the supplier and the Kansas distributor. For your convenience, you may use the Supplier Franchise Agreement for Brand Distribution in Kansas form (ABC-1004).
2. State Map of Kansas illustrating the designated territory (ABC-1005).
3. Approved copy of the federal application for the Certificate of Label Approval - COLA or TTB form (TTBF 5100.31).
4. For wine or spirit products only: Approved copy of the DISCUS form showing the Unimerc for each product.
5. If the name of the importer or manufacturer is not the same as the applicant, then a letter of authority from the brand owner is required.
6. If there has been a change of brand ownership or authority to register the product and the label is not in the applicant's name, then a letter granting the authority to use up labels is required.

The Secretary of Revenue has authority to adopt rules and regulations prescribing the nature of all labels attached to containers used for alcoholic liquors. [Subsection (a)(2) of K.S.A. 41-211] The regulations are K.A.R. 14-6-3 through 14-6-6.

An annual registration fee of \$25 must be paid by the supplier for each label to be sold in Kansas. [Subsection (b) of K.S.A. 41-331]

Regulations require that each label include the quantity of liquor or beer in the container. [K.A.R. 14-6-3 for liquor and K.A.R. 14-6-4 for beer] Therefore, labels for each size of the same brand will be different. Often, labels for different sizes of the same brand also differ in wording and artwork. Therefore, the label for each size of the same brand must be registered separately and the \$25 fee paid.

If any changes are made to the approved label, the new label must be submitted for approval along with the \$25 label fee. This includes any graphic changes, vintage changes, etc.

K.A.R. 14-6-5 prohibits having any false or misleading representations on the label.

Subsection (b)(2) of K.S.A. 41-211 authorizes the Secretary of Revenue to adopt regulations establishing standards consistent with federal law for the proper labeling of containers, barrels, casks, other bulk containers, and bottles of alcoholic liquor and beer, regardless of its alcoholic content, which are manufactured or sold in Kansas. The Secretary has adopted the following Kansas Administrative Regulations to establish such standards:

#### Alcoholic liquor, except beer

K.A.R. 14-6-3 lists the information which shall appear on each label:

- quantity of liquor in the container
- class and type of liquor
- alcoholic content
- name of importer or manufacturer

### Beer and cereal malt beverage (CMB), except flavored malt beverage (FMB)

K.A.R. 14-6-4 lists the information that shall appear on each label:

- name of the product as listed in subsection (c) of K.S.A. 41-102: beer, ale, stout, lager beer, porter
- number of fluid ounces
- a statement that the CMB product contains no more than 3.2% alcohol by weight or less than 0.5% of alcohol by volume.
- name of the importer or manufacturer (see note below)
- All FMB may have the percent of alcohol by volume on the label. Any FMB containing 4% alcohol by volume or less is classified as a CMB product since 3.2% alcohol by weight is equivalent to 4% alcohol by volume. Any FMB containing more than 4% alcohol by volume is classified as beer.

### Flavored malt beverage (FMB)

K.S.A. 41-2729 (from section 1 of House Bill 2955, effective July 1, 2006) is designated as the Flavored Malt Beverage Act. Subsection (b) defines "flavored malt beverage" as 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. Subsection (d) states:

"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."

### Value added packs

Suppliers are authorized to include goods packaged with the alcoholic liquor for sale in retail liquor stores as long as they are approved by the Director at least 30 days prior to the intended shipping date. [Subsection (a) of K.A.R. 14-10-11]

The procedure to register a value added pack is to submit the following:

1. Application for Brand Registration and Label Approval form (ABC-1001)
2. a color photo, not less than 5" by 7", of the complete package
3. For wine or spirit products only: Approved copy of the DISCUS form showing the Unimerc for each product.
4. \$25 label fee, if applicable\*\*

\*\*If the exact product within the value added pack is **not** currently registered and **will not** be sold individually, the **registration fee will apply** to register this value added pack. You are required to submit the TTB form, original labels, letter of authority, franchise agreement and Kansas map to register this value added package.

### Combo pack

The procedure to register a combo pack is to submit the following:

1. Application for Brand Registration and Label Approval form (ABC-1001)

2. Alcohol and Spirits combo packs must obtain a new UNIMERC from DISCUS. All products within the combo pack must be registered for individual sale in Kansas.
3. There is no label fee to register a combo pack.

### **Franchise agreements for specific products and geographic distribution rights**

K.S.A. 41-410 requires that all distributors licensed in Kansas must provide to ABC a copy of the franchise agreement between the distributor and their supplier, manufacturer, farm winery or microbrewery. ABC's policy is to permit a termination of the franchise agreement if the distributor agrees to it. This policy was originally stated in ABC Director John Lamb's memo dated May 4, 1987, as follows:

"A franchise granted by a brand owner is considered to be in perpetuity except for a reasonable cause or a voluntary surrender by the distributor."

This policy was sustained by Attorney General Opinion No. 88-41 dated March 24, 1988, to ABC Director Tom Hanna, which stated in part:

"Change of ownership of a brand at the supplier's level does not, in and of itself, constitute "reasonable cause" for a supplier to terminate a franchise agreement pursuant to K.S.A. 41-410 of the Liquor Control Act."

Termination of an existing franchise agreement does not require ABC approval. However, the manufacturer, supplier, farm winery or microbrewery must give ABC at least 30 days advance notice before the termination becomes effective. The notice to ABC must be accompanied by an affidavit stating that the termination, modification or alteration is not caused by the failure of the distributor to comply with any provision of the Liquor Control Act or any rules and regulations adopted pursuant thereto. The manufacturer, supplier, farm winery or microbrewery is encouraged to use ABC's affidavit form - Form ABC-161. Upon receipt of the notice of termination and affidavit, the Director is required to "immediately" send notice by certified mail to all affected parties of the impending termination, modification or alteration of the franchise agreement. [Subsections (c) and (d) of K.S.A. 41-410]

The ABC Marketing Unit will then perform the following actions with regard to a termination of a distributor by a manufacturer, supplier, farm winery or microbrewery:

- Mail a letter by certified mail to all affected parties notifying them of the pending termination. This would include the distributor being terminated and the proposed new distributor, if any. A copy of the notice of termination and the required affidavit from the manufacturer, supplier, farm winery or microbrewery will be enclosed. The letter will state the effective date of the termination, which will be 30 days after ABC received the notice of termination from the manufacturer, supplier, farm winery or microbrewery. A copy of this letter will also be sent to the manufacturer, supplier, farm winery or microbrewery so that they are made aware of the effective date of the termination on ABC's records.
- Unless prohibited by court order, on the next business day following the 30 day waiting period ABC will update the brand registration and label approval database on ABC's website to reflect the termination and, if applicable, the transfer of products to the new distributor.

Termination of a franchise agreement, other than by mutual agreement of the parties, must be for "reasonable cause." [Subsection (f) of K.S.A. 41-410] In any situation where termination is disputed, the aggrieved party may file an action in state district court to determine whether there is "reasonable cause." [Subsection (e) of K.S.A. 41-410] See *House of Schwan v. Norwood*, 25 KanApp2nd 539, 966 P.2d 89. There is no statutory definition or clear legislative intent as to what constitutes "reasonable cause." If the district court finds that "reasonable cause" did not exist, then the Director may take administrative action against the licensee that initiated the termination.

The statutes do not address the situation where a supplier goes out of business with one or more franchise agreements still running with Kansas distributors. If approval is requested from ABC for a new franchise agreement on a product currently covered by a franchise agreement, and there is an assertion that the supplier under the existing franchise agreement has gone out of business, then ABC will ask for proof. ABC will also try to contact the supplier before moving their permit to inactive status.

### **Pricing restrictions**

Kansas does not regulate the pricing of products sold by suppliers to distributors in Kansas.

### **Salespersons**

Any person(s) working for suppliers as sales representatives, who work with Kansas liquor licensees and actually solicit or take orders, either in person, over the phone or electronically, for alcoholic liquor or cereal malt beverage from licensees, are required to obtain a salesperson permit prior to conducting any sales. [K.S.A. 41-333] See ABC publication "Handbook for Salespersons."

### **Advertising and promotions**

This section supersedes the following ABC Policy Memorandums:

- Number 2003-5 issued August 22, 2003, entitled "Guidelines on the Use and Distribution of Point of Sale (POS) Advertising Materials and Consumer Advertising Specialties (CAS)"
- Number 2003-6 issued August 27, 2003, entitled "Guidelines on Industry Member Support of Golf Tournaments and Other Fund Raising Events"

"Advertising" means the medium of radio, television, newspapers, periodicals, circulars, pamphlets, or other publications or any sign or outdoor advertising or any other printed or graphic matter. [K.A.R. 14-8-1] Webster's Dictionary (New Riverside University Edition published in 1984) defines "graphic" as:

- pertaining to written representation
- pertaining to pictorial representation
- described in vivid detail
- pictorial device, as an illustration or chart
- display by a computer or imaging device

### **Advertising in general**

- K.S.A. 41-714 was amended in 2005 by Subsection 10 of Senate Bill No. 298, which removed all of the restrictions on advertising and delegated to the Secretary of Revenue the regulation of liquor advertising. Subsection (a) states that all farm winery and microbrewery advertising

must be approved in advance by the Director. Subsection (b) delegates to the Secretary the regulation of advertising by regulation.

- Industry members are prohibited from including in any advertising:
  - any statement, design, device or representation that is obscene, false or likely to mislead to the consumer. [Subsections (a)(1) and (a)(2) of K.A.R. 14-8-2]
  - any statement concerning a brand that is inconsistent with any statement on the labeling. [Subsection (a)(3) of K.A.R. 14-18-2]
- Industry members shall not arrange for a radio station to have its mobile unit park at a retailer (retail liquor store, club, drinking establishment and caterer) and offer something of value to the public for finding the mobile unit and broadcast clues to find the mobile unit. This is interpreted as furnishing something of value to the retailer (inducing consumers to visit the licensed premises) in violation of subsection (a) of K.S.A. 41-703. [Ruling by Director Groneman on 08/01/05]
- An industry member may be present and hand out promotional items to consumers on a retailer's licensed premises during the time that a radio or TV commercial is being broadcast but shall not participate in the commercial or pay any of the cost thereof. [Ruling by the ABC Director on 08/01/05]
- Industry members may furnish, give, rent, loan or sell newspaper cuts, mats or engraved blocks to a retailer for use in their advertising of the industry member's products. [Subsection (e) of K.A.R. 14-10-10]
- Industry members are prohibited from inducing retailers (retail liquor store, drinking establishment, club, or caterer) to purchase product from them by paying or crediting the retailer for any advertising, display or distribution service. The following practices are specifically prohibited:
  - participating in paying for an advertisement placed by the retailer.
  - the purchase of advertising on signs, scoreboards, programs, scorecards, and similar items from the retail concessionaire at ballparks, racetracks or stadiums.
  - the purchase of advertising in a publication of the retailer which is distributed to consumers or the general public.
  - reimbursements to retailers for setting up product or other displays.
  - rental of display space in the retailer's licensed premises.[Subsection (a) of K.A.R. 14-10-10]

#### Advertising on vehicles

- Alcoholic beverage advertising is prohibited on any vehicle, except that the company name, brand name and logo may appear on vehicles owned or leased by industry members, non-beverage users, microbreweries and farm wineries which are authorized to transport liquor pursuant to K.A.R. 14-5-2. [K.A.R. 14-8-6]

#### Consumer coupons, premiums, rebates and refunds

- "Premium" is not defined in the statutes or regulations but is defined by Webster's Dictionary as "something offered free or at a reduced price as an inducement to buy." and by Black's Law Dictionary as "a reward for an act done."

- Industry members may offer coupons, premiums, rebates and refunds through retailers to consumers (retail customers) if they are to be redeemed by the industry member or their agents. A premium may or may not be conditioned upon the purchase of an alcoholic beverage. The retailer shall not accept any reimbursement, payment or credit for providing this service to the industry member. Officers, employees and representatives of distributors and retailers shall be excluded from participation. [Subsection (b) of K.A.R. 14-10-11] The Director has interpreted this regulation to also permit redemption of such coupons for free or discounted non-alcoholic items at grocery stores.
- An industry member shall not distribute discount coupons for their products directly to consumers, by mail, newspaper or otherwise, which would be redeemable when purchasing the product from a licensed retailer. Since these would invariably require a reimbursement by the industry member to the retailer, such practice would be a violation of the second sentence of subsection (b) of K.A.R. 14-10-11 which prohibits retailers from seeking reimbursement from an industry member for a consumer promotion.

The price charged by the retailer for the package shall not exceed the price charged for the same container(s) of alcoholic beverage(s) by itself or themselves. [Subsection (b)(3) of K.S.A. 41-308 and subsection (g)(1) of K.A.R. 14-13-13]

#### Consumer advertising specialties

- Industry members may give, furnish or sell consumer advertising specialties, such as ash trays, bottle or can openers, cork screws, matches, printed recipes, informational pamphlets, cards and leaflets, post cards, posters, printed sports schedules, pens, pencils, and other similar items as approved by the Director, and which bears advertising material, to retailers (RLS's, clubs, DE's, and caterers) for unconditional distribution to the general public. The retailer shall not be paid or credited in any manner, directly or indirectly, for this distribution service. [Subsection (c) of K.A.R. 14-10-10]
- Consumer advertising specialties distributed by retail liquor to the public shall contain advertising material relating to a brand name of alcoholic liquor or to the operation of the retail liquor store distributing the item. The public may not be charged for the item or required to purchase anything to receive the item. [Subsection (b)(4) of K.S.A. 41-308 and subsection (g)(2) of K.A.R. 14-13-13]
- There are limitations on the total value of all retail advertising specialties provided by an industry member to a particular retailer during any one calendar year as set forth in subsection (b) of K.A.R. 14-10-14.

#### Industry members giving or lending anything else of value to retailers

- Industry members are prohibited from giving or lending money, equipment, supplies, services or anything of value to a retailer (see definition below) except as permitted by K.S.A. 41-703 and K.A.R. 14-10-8. [Subsection (b) of K.S.A. 41-702] Except as permitted by K.A.R. 14-10-8 and 14-10-10, industry members are prohibited from directly or indirectly selling, supplying, furnishing, giving, paying for, loaning or leasing any furnishing, fixture or equipment on the premises of a place of business of a retailer. Retailers are defined as:
  - a drinking establishment, club or caterer licensed under the Club and Drinking Establishment Act.
  - a retail liquor store licensed under the Liquor Control Act
  - a retailer of CMB licensed under the Cereal Malt Beverage Act (K.S.A. 41-2701 et seq.)

- K.A.R. 14-10-8 allows industry members to provide the following equipment, supplies and services to a retailer as defined above:
  - glassware may be sold to a club, drinking establishment or caterer if the price is not below that paid by the industry member and if the price is collected by the industry member at the time of the sale. [Subsection (b) of K.A.R. 14-10-8]
  - tapping accessories, including installation, may be sold to a club, drinking establishment or caterer if the price is not below that paid by the industry member and if the price is collected by the industry member at the time of the sale. [Subsection (c) of K.A.R. 14-10-8]
  - carbon dioxide or ice may be sold to a club, drinking establishment or caterer at the reasonable open market price in the locality where sold if the price is collected by the industry member at the time of the sale. [Subsection (d) of K.A.R. 14-10-8]
  - coil cleaning service may be furnished, given or sold to a club, drinking establishment or caterer. [Subsection (e) of K.A.R. 14-10-8]
  - stocking, rotating stock and affixing prices to alcoholic liquor sold by the industry member to a retail liquor store, as long as the alcoholic liquor from other industry members are not altered or disturbed. [Subsection (f) of K.A.R. 14-10-8]
- K.A.R. 14-10-8 allows industry members to provide furnish signs to retail liquor stores, clubs, drinking establishments and caterers if:
  - the sign has no secondary value and is of value only as product advertising to the retail liquor store, club, drinking establishment or caterer. [Subsection (b)(1) of K.A.R. 14-10-8]
  - the industry member does not directly or indirectly pay or credit the retail liquor store, club, drinking establishment or caterer for displaying the sign or for any expense incidental to the sign's installation, removal or operation. [Subsection (b)(2) of K.A.R. 14-10-8]

#### Product displays

- "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. [Subsection (b) of K.A.R. 14-10-13]
- Industry members may furnish, give, rent, loan or sell product displays to a retailer. [Subsection (a) of K.A.R. 14-10-13]
- The total value of all product displays furnished by an industry member to a retailer shall not exceed the value authorized by the U.S. Department of the Treasury - Alcohol and Tobacco Tax and Trade Bureau. [Subsection (c) of K.A.R. 14-10-13]

#### Promotions involving giving away tickets to concerts or other events

- Industry members shall not obtain tickets to a concert or other event and give them away to consumers either directly or through a third party if the concert or other event is being held on a retailer's premises. This is interpreted as furnishing something of value to the retailer (inducing consumers to visit the licensed premises) in violation of subsection (a) of K.S.A. 41-703. [Ruling by Director Groneman on 08/01/05]

#### Sweepstakes and raffles

- Industry members may conduct sweepstakes (raffles) for the public to participate in, as long as there is no charge for participation or purchase of an alcoholic beverage required, and no alcoholic beverage is awarded as a prize. [Subsection (g) of K.A.R. 14-13-13 and Kansas criminal gambling laws]

- Entry forms for a sweepstakes conducted by an industry member may be placed in retailer premises or made available on the internet website of the industry member or their agent. For raffles conducted by an industry member offered to consumers at a retail liquor store, the consumers may pick up the raffle entry forms at the store but must mail them to the manufacturer or distributor or agent thereof. Entry forms may be in the form of a tearpad but not in the form of neckhangers on bottles or tearpads which look like neckhangers. The selection of the winner shall not take place on the retail liquor store's premises. For raffles offered by industry members to consumers at a grocery or convenience store with a CMB license, the consumers may pick up the raffle entry forms at the store and the drawing may be conducted at the store. The prize provided by the industry member may be displayed in the store. Industry members conducting either type of raffle may not include in any radio or other media advertising the name or location of the licensed retailer where the raffle is being conducted. This is considered as furnishing something of value (advertising) to the licensee in violation of subsection (a) of K.S.A. 41-703. If a grocery or convenience store with a CMB license conducts its own raffle, the prize may not be furnished by an industry member. This is interpreted as furnishing something of value to the licensee in violation of subsection (a) of K.S.A. 41-703. [Ruling by Director Groneman on 08/01/05]

#### Wine lists and menus

- Industry members may furnish, give, rent, loan or sell wine lists or wine menus to clubs, DE's and caterers. [Subsection (d) of K.A.R. 14-10-10]

#### Signs

- Regulation K.A.R. 14-8-8, which prohibits signs advertising alcoholic liquor which are painted or in any manner exhibited on the exterior or interior of any building, is no longer being enforced by ABC since the ruling on billboard advertising by the Kansas Attorney General in Opinion No. 92-14 dated 02/03/92.
- Industry members may provide to retailers with basic signs advertising the industry member's products. The sign cannot have any secondary value. In other words, the industry member cannot give a scoreboard or other equipment to a retailer under the theory that it is just a sign advertising their product. In addition, the industry member cannot make payments or give credits to the retailer for displaying their sign and cannot pay for the installation, removal or operation of the sign. This would prohibit the industry member from supplying the structure to mount the sign on, such as a billboard, marquee with space to post additional information, a semi-trailer truck, etc. [Subsection (b) of K.A.R. 14-10-10]

#### Industry member support of events sponsored by retailers

- Industry members may not support these events through the donation of money, advertising, consumer advertising specialties or product to retailers' golf tournaments or other fundraising events. [Subsection (a) of K.S.A. 41-702 and subsection (a) of K.A.R. 14-14-11] Subsection (e) of K.S.A. 41-703 authorizes the Secretary of Revenue to adopt rules and regulations authorizing exceptions to the general prohibition in K.S.A. 41-702. K.A.R. 14-10-1 et seq. dictates exceptions to the prohibition on industry members giving anything of value to retailers and it does not provide for any assistance with retailer sponsored events, whether they be fundraising or otherwise.
- Industry members may participate in these events but any fees paid by such industry members shall be the same as paid by any other participant.

Industry member support of fundraising events sponsored by charitable organizations with retailer involvement

- Industry members may support these events through the donation of money and consumer advertising specialties directly to the charity, but not to the event sponsor or any other party. They may not donate product.
- Industry members may participate in these events, however any fees paid by such industry members shall be the same as paid by any other participant.

Industry member support of fundraising events sponsored by charitable organizations with no retailer involvement

- Industry members may support these events through the donation of money, advertising, consumer advertising specialties and participation fees. However, industry members shall not donate product.

Industry member support of events sponsored by liquor associations

- Industry members may support these events through the donation of money and consumer advertising specialties as long as none of the benefits of the donation flow directly to individual retailers.
- Industry members may provide consumer advertising specialties and pay participation fees as approved by the ABC Director.
- Industry members may conduct industry seminars, including providing product samples, as approved by the ABC Director. K.A.R. 14-10-15 provides for the following industry participation in association sponsored events:
  - Display of the industry member's products.
  - Rental of display booth space.
  - Provide hospitality independent of the association sponsored activities.
  - Purchase tickets to functions and pay registration fees if not excessive and are the same as paid by all exhibitors.
  - Purchase advertising in programs and brochures issued by the association if within the limits authorized by the U.S. Department of the Treasury - Alcohol and Tobacco Tax and Trade Bureau.

**Temporary permits to import alcoholic liquor or cereal malt beverage**

K.S.A. 41-332 provides for the ABC Director to issue temporary permits to suppliers to import into Kansas to a licensed distributor either alcoholic liquor or cereal malt beverage (CMB) for which such distributor does not have a franchise to sell. Typically this alcoholic liquor or CMB is used for sampling by the distributor for deciding whether to distribute the product. The permit shall specify the brand and quantity to be imported. Such alcoholic liquor or CMB cannot be resold by the distributor and is not subject to the taxes imposed by K.S.A. 41-501 (gallonage tax) or K.S.A. 79-3818 (tax on CMB that was repealed in 1993). Suppliers apply for the temporary permit by sending a letter addressed to the Director which includes the following information:

- name of distributor
- description and quantity of alcoholic liquor or CMB
- date and means of delivery to the distributor

The Director will review the letter and have the ABC attorney send a response by letter. If approved, the letter will serve as the permit. The supplier may deliver the alcoholic liquor through its own salesperson or other employee or by common carrier.

### **Gallona ge tax paid on products imported into Kansas**

Kansas distributors must pay the gallona ge tax on all alcoholic liquor and cereal malt beverages received from suppliers. [Subsection (a) and (b) of K.S.A. 41-501]

Gallona ge tax is not imposed upon:

- Wines manufactured solely and exclusively for sacramental purposes (religious ceremonies conducted by authorized representatives of churches or other religious groups). [Subsection (d) of K.S.A. 41-501]
- Alcohol or wine manufactured and sold to a nonbeverage user licensed as such in Kansas. [Subsection (e)(1) of K.S.A. 41-501]

### **Reporting**

Each Supplier is required to file a monthly report of shipments to Kansas Distributors. The report is due on or before the 15<sup>th</sup> day of the following month. [K.S.A. 41-601]

**Effective January 1, 2009**, the Kansas Suppliers Monthly Report of Shipments to Kansas Distributors (ABC-1003) will replace the following forms:

- Monthly Report by Distiller or Importer of Shipments of Liquor Made to Distributors in the State of Kansas (ABC-71),
- Beer Suppliers Monthly Report for CMB 3.2% or Less (ABC-83),
- Beer Suppliers Monthly Report for Strong Beer Over 3.2% (ABC-84); and,
- Brewer's Report of Shipments to Kansas Distributors (ABC-85).

**All** suppliers will be required to file the Kansas Suppliers Monthly Report of Shipments to Kansas Distributors (ABC-1003). Previous forms will be obsolete and will not be accepted after that date. Obsolete forms will be returned for submission on the Kansas Suppliers Monthly Report of Shipments to Kansas Distributors (ABC-1003). Suppliers are no longer required to submit invoices to the ABC.

### **Record keeping**

All records must be maintained for at least three years (unless otherwise specified) on the licensed premises and are subject to inspection and audit by ABC or Department of Revenue employees authorized by the Director. These include:

- Records of all equipment, supplies, services, and retailer advertising specialty and product display items furnished to retailers, clubs, drinking establishments or caterers, including the following information regarding each item [K.A.R. 14-10-12]:
  - name and address of the retailer, club, drinking establishment or caterer receiving the item
  - date furnished
  - description
  - cost of the item furnished as determined by the invoice price
  - any charges to the retailer, club, drinking establishment and caterer

- Records of all alcoholic liquor or wine sold to a nonbeverage user. The records shall show the quantities of alcoholic liquor and wine sold to any nonbeverage user, the name, address, and license number of the nonbeverage user and any other information the director may require. [Subsection (b) of K.A.R. 14-14-10]

### **Authorized sales activities**

Suppliers may only distribute:

- Their alcoholic liquor and cereal malt beverage intended for human consumption in Kansas through a distributor licensed in Kansas.
- Wines manufactured solely and exclusively for sacramental purposes (religious ceremonies) to bonafide churches and religious organizations. [K.A.R. 14-17-2]
- Alcohol and wine to a nonbeverage user licensed in Kansas. [Subsection (e)(1) of K.S.A. 41-501]

Importing beer for educational and scientific tasting programs. Any bona fide group of brewers may apply to the Director for a permit to import into this state small quantities of beer. "Brewer" is not defined. However, if a "group of brewers" is importing the beer into Kansas, the group would by necessity be composed of beer manufacturers which are located outside of Kansas, whether or not they are licensed in Kansas as suppliers. The beer shall be used only for bona fide educational and scientific tasting programs and shall not be resold. The beer shall not be subject to the tax imposed by K.S.A. 41-501 and amendments thereto. The permit shall identify specifically the brand and type of beer to be imported, the quantity to be imported, the tasting programs for which the beer is to be used and the times and locations of such programs. The Secretary of Revenue is authorized to adopt rules and regulations governing the importation of beer pursuant to this subsection and the conduct of tasting programs for which such beer is imported. However, no regulations have been adopted yet. [Subsection (e) of K.S.A. 41-308b]

### **Prohibited activities**

Sales in federal areas. Suppliers shall not directly sell any alcoholic liquor in a federal area. The penalty for violation is revocation of the manufacturer's license or supplier's permit. [Subsection (a) of K.S.A. 41-329] A "federal area" means any lands or premises which are located within the exterior boundaries of Kansas and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States. [Subsection (a)(1) of K.S.A. 41-501]

Suppliers who manufacturer alcoholic liquor or cereal malt beverage inside or outside of Kansas shall not directly or indirectly own or have any interest in a distributor licensed in Kansas [K.S.A.41-704]

For a comprehensive list of prohibited activities, refer to K.A.R. 14-14-11.

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

The Director may, in accordance with the Kansas Administrative Procedures Act, suspend or revoke a supplier's permit for violation of any provision of the Liquor Control Act or the CMB Act or any regulations adopted thereunder. [Subsection (c) of K.S.A. 41-331]

**SUPPLIER  
ACTIVITIES and APPLICABLE  
TAXES  
3/16/09**

