



HANDBOOK

FOR

CLASS A CLUBS

**Division of Alcoholic Beverage Control
Kansas Department of Revenue
Docking State Office Building
915 SW Harrison Street
Topeka, Kansas 66625-3512**

Phone: 785-296-7015 / Fax: 785-296-7185

Website: www.ksrevenue.org/abc

E-mail: abc_mail@kdor.state.ks.us

Table of Contents

Subject	Page
Definitions	3
Application for initial licensure	3
Qualifications for licensure	3
Requirements for the licensed premises	8
Notification to city or county governing body and hearing on request	9
Restrictions on officers, directors and board members	9
Restrictions on employees	10
Records to be retained and available for inspection	11
Hours and days of sales	11
Memberships and reciprocal agreements	11
Public functions on licensed premises	12
Signs, advertising and other promotional activities	12
Purchasing, transporting and paying for alcoholic beverages	14
Selling and serving of alcoholic beverages	15
Sale of business already licensed	17
Transfer of liquor stock upon closing of business or termination of license	18
Authorized activities	18
Prohibited activities	19
Administrative actions for violations of statutes and regulations	20
Excise taxes	21
Tax bond requirements and waivers	21

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 cereal malt beverage. [Subsection (a) of K.S.A. 41-2601, referring to subsection (b) of K.S.A. 41-102]

"Class A Club" means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veteran's club, as determined by the Director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them. [Subsection (e) of K.S.A. 41-2601]

"Guest of member" means an individual who is known to and personally accompanied by a member of a club while on the licensed premises of the club. "Guest of member" shall not include members of the general public admitted to licensed club premises as guests of the club's owner, manager or employee. [Subsection (h) of K.A.R. 14-19-14]

"Member" means any individual who is a corporate stockholder, partner, trust beneficiary or associate and members of the individual's family as provided in the class A club's organizing documents. [Subsection (k) of K.A.R. 14-19-14]

Application for initial licensure

For forms and instructions for initial licensure, go to the ABC website at <http://www.ksrevenue.org/abc.htm>, or contact ABC Licensing Unit at: abc_licensing@kdor.state.ks.us or 785-296-7015.

Annual license fees are listed in K.S.A. 41-2622 as follows:

- Fraternal or Veteran's club - \$250. [subsection (a)(1)]
- Social club with no more than 500 members - \$500. [subsection (a)(2)]
- Social club with more than 500 members - \$1,000. [subsection (a)(3)]

Qualifications for licensure

Regardless of the form in which the licensee is organized, the club must be operated as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the Director. [Subsection (e) of K.S.A. 41-2601]

The following officers of the organization and their spouses must be listed on the form ABC-800 and each of them must meet the qualifications listed below for individuals [Ruling by Director on 12/20/07]:

President or equivalent, such as Commander, Potentate, etc.

Vice-President or equivalent, such as Vice-Commander, Chief Rabban, etc.

Secretary or equivalent, such as Adjutant, etc.

Treasurer or equivalent, such as Finance Officer, etc.

Whenever there is a change in any of these four officers previously reported to the ABC, the licensee must notify ABC Licensing by submitting a new ABC-810 Ownership Disclosure form listing all new officers and their spouses and the information about each as indicated on the form. A copy of the minutes of the organization meeting at which the change was approved must also be provided to ABC Licensing. [Ruling by Director on 12/20/07]

Partnerships

Each partner in a partnership must meet the licensing qualifications for individual ownership below. [K.S.A. 41-2623(a)(5)]

Corporations

Corporations must be organized (incorporated) in Kansas. [K.S.A. 41-2623(a)(8)]

For corporations to be licensed, each officer, manager and director thereof, and any stockholder owning a total of more than 5% of the common or preferred stock thereof, must meet the licensing qualifications for individual ownership below, except the citizenship and residency requirements. [K.S.A. 41-2623(a)(6)] In addition, each such person cannot have been an officer, manager and director or stockholder owning a total of more than 5% of the common or preferred stock in another corporation that either had a license revoked under the Kansas Club and Drinking Establishment Act or was convicted of a violation of the Kansas Club and Drinking Establishment Act or the Kansas Cereal Malt Beverage Act. . [K.S.A. 41-2623(a)(7)]

Limited Liability Companies (LLC's)

LLC's are not mentioned in the statutes but Attorney General Opinion #2001-19 (04/23/01) states that the Director may determine what qualifications for licensure apply, until such time as the legislature makes provision in the statutes. Since that time, the various Directors of ABC have ruled that LLC's would be treated as corporations for the purpose of meeting the qualifications for licensure. Therefore, an LLC must be organized under the laws of Kansas. Only those individuals having more than a 5% interest in the LLC must meet the licensing qualification for individual ownership below, except that such individuals are exempt from the citizenship and residency requirements.

The statutes relating to the formation and operation of LLC's are K.S.A. 17-7663 et seq. enacted in 1999 and 2000. An LLC is composed of one or more members. [Subsection (f) of K.S.A. 17-7663]

Trusts

For trusts to be licensed, each grantor, beneficiary and trustee must meet the licensing qualifications for individual ownership below. However, beneficiaries do not have to be at least 21 years of age. [K.S.A. 41-2623(a)(9)]

Individuals

K.S.A. 41-2623 lists the qualifications for an initial license. The same requirements must be met for renewal of an existing license except as specifically indicated. Subsection (a)(1) of K.S.A. 41-2623 requires that licensees meet most of the same restrictions as retailers licensed under the Liquor Control Act, specifically paragraphs (1), (2), (4), (5), (6), (7), (8), (9), (12) and (13) in subsection (a) of K.S.A. 41-311 (also listed in subsection (a) of K.A.R. 14-21-3):

- **Age requirement.** The individual must be at least 21 years of age. [Subsection (a)(6) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(4) of K.A.R. 14-20-16]

For either an initial or renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **U.S. Citizenship.** The individual must be a U.S. citizen for at least 10 years. However, the spouse of a deceased retail licensee may hold and renew a retail license if the spouse meets all of the other qualifications and is either a U.S. citizen or becomes a U.S. citizen within one year after the deceased licensee's death. (This subsection does not address the issue of what becomes of the license of a deceased licensee during the one year we are waiting to see if the spouse becomes a U.S. citizen.) [Subsection (a)(1) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

For either an initial or renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **Felony conviction.** The individual cannot have been convicted of a felony in Kansas or any other state or the United States. [Subsection (a)(2) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(1) of K.A.R. 14-20-16]

For an initial license, this requirement also applies to the individual's **spouse** regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

For a renewal license, this requirement also applies to the individual's **spouse**, but only if the conviction occurred during the time that that the individual's spouse was licensed under the Club and Drinking Establishment Act. [Subsection (a)(13) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **Conviction for keeping a house of prostitution.** The individual cannot have been convicted of being a keeper of a house of prostitution or is keeping a house of prostitution. Cannot have forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution. [Subsection (a)(4) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(2) of K.A.R. 14-20-16]

For an initial license, this requirement also applies to the individual's **spouse** regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

For a renewal license, this requirement also applies to the individual's **spouse**, but only if the conviction occurred during the time that that the individual's spouse was licensed under the Club and Drinking Establishment Act. [Subsection (a)(13) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **Conviction of owning gambling house, pandering or crime opposed to decency or morality.** The individual cannot have been convicted of being a proprietor of a gambling house, pandering or

any other crime opposed to decency and morality and cannot have forfeited bond to appear in court to answer charges for any of these crimes. This includes both felonies and misdemeanors. [Subsection (a)(5) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(3) of K.A.R. 14-20-16]

"Pandering" is not currently defined in the Kansas criminal law. Black's Law Dictionary defines a "panderer" as one who solicits for prostitution. The definition of "pander" includes being a "pimp" or procurer of persons to be prostitutes. Most of these acts are currently prohibited by K.S.A. 21-3513 (promoting prostitution).

Crimes involving morality are defined in subsection (m) of K.A.R. 14-20-14 as a charge alleging:

- prostitution
- procuring any person
- solicitation of a child under 18 years of age for any immoral act involving sex
- possession or sale of narcotics, marijuana, amphetamines or barbiturates
- rape
- incest
- gambling
- adultery
- bigamy

For an initial license, this requirement also applies to the individual's **spouse** regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

For a renewal license, this requirement also applies to the individual's **spouse**, but only if the conviction occurred during the time that the individual's spouse was licensed under the Club and Drinking Establishment. [Subsection (a)(13) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **Law enforcement officer.** The individual cannot be a law enforcement official (not defined in statute). ABC defines this as being either a police officer or head of a police agency. [Subsection (a)(7) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(5)(B) of K.A.R. 14-20-16] Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the law enforcement officer is located in the jurisdiction as the licensee. [Ruling made by legal counsel after conferring with ABC's former AAG, and approved by the Director on 01/19/05.]

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **Supervisor of law enforcement officers.** The individual cannot hold a position which appoints or supervises any law enforcement officer. However, members of the governing body of a city or county (assume this means city council members and county commissioners) are exempt from this restriction. [Subsection (a)(7) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(5)(A) of K.A.R. 14-20-16] Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the law enforcement

officer is located in the jurisdiction as the licensee. [Ruling made by legal counsel after conferring with ABC's former AAG, and approved by the Director on 01/19/05.]

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **Acting as agent of another.** The individual cannot intend to act as an agent for another in operating the licensed business. [Subsection (a)(8) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(6) of K.A.R. 14-20-16]
- **Previous liquor license revocation.** The individual cannot have had a license revoked under the provisions of the Club and Drinking Establishment Act. [Subsection (a)(2) of K.S.A. 41-2623]

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **Resident of Kansas.** The individual must be a resident of Kansas for at least one year immediately preceding the date of application. [Subsection (a)(3) of K.S.A. 41-2623]

For either an initial or renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- **Resident of county.** The individual must be a resident of the county where the licensed premises will be located. [Subsection (b)(2) of K.S.A. 41-2623]

For either an initial or renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- **Beneficial interest in certain another liquor licensee.** The individual cannot have a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquors as licensed under the Liquor Control Act. The individual cannot have a beneficial interest in any business licensed under the Club and Drinking Establishment Act, except as follows [Subsection (a)(4) of K.S.A. 41-2623]:

- A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more other clubs or drinking establishments licensed under this Act if such other clubs or drinking establishments are also located in hotels. [Subsection (a)(4)(A) of K.S.A. 41-2623]
- A license for a club which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants. [Subsection (a)(4)(B) of K.S.A. 41-2623]

A "beneficial interest" is defined as any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which

exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization. [Subsection (c) of K.A.R. 14-20-14]

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- **Spouse of applicant.** ABC interprets "this act" in subsection (a)(13) of K.S.A. 41-311 to mean the same act under which the license is being issued, in this case the Club and Drinking Establishment Act. Because the restriction in subsection (a)(12) of K.S.A. 41-311 is more restrictive than the requirement in subsection (a)(13) but applies only for an initial license, ABC has taken the position that the restriction in subsection (a)(13) applies to spouses at the time that an existing license is renewed, despite the language in subsection (a)(12) which states that an individual's spouse does not have to meet any qualifications of an individual when a license is renewed. Otherwise, subsection (a)(13) would serve no purpose.

Requirements for the licensed premises

Zoning. The applicable city, township or county zoning must permit a class A club at that geographic location. [K.S.A. 41-2608]

Control of premises by licensee. The licensed premises must be constructed and operated in such a manner that the licensee has sufficient control to assure compliance with all applicable liquor laws and regulations. The licensed premises must include all portions of the premises where the club's patrons are permitted to possess and consume alcoholic liquor sold by the club. Applicants for an initial license must furnish a diagram of the proposed licensed premises for approval by ABC. [Subsection (a)(3) of K.A.R. 14-19-15]

Owner or lessee. The licensee must either be the legal owner of the licensed premises or be a lessee or sub-lessee of the legal owner. If the applicant does not own the premises to be licensed, then the applicant must furnish a copy of the current lease for review by ABC. The lease must be for a period of at least 9 months following the date that the license will be issued. [Subsection (a)(11) of K.S.A. 41-311 as referenced by subsection (b)(1) of K.S.A. 41-2623; Attorney General's Opinion No. 2003-26 dated October 16, 2003; subsection (a)(1) of K.A.R.14-19-15]

If the lease provides for rent to be calculated based upon a percentage of the receipts or profit from the sale of alcoholic liquor or other items to be mixed with alcoholic liquor, then the landlord is deemed to have a beneficial interest in the licensed premises. In this case, unless the lessor is a city, county or state agency, the lessor must meet all of the qualifications for licensure. [Subsection (e) of K.A.R. 14-19-16]

Premises currently or previously occupied by another club or drinking establishment. In cases where ABC's records show that location as being currently or recently occupied by another similar licensed business, the Director on 10/11/04 approved the following policies in the situations described:

If the current business' lease is still in effect and ABC is unable to contact the current business owner to determine his/her intentions; **then**, ABC will require a copy of the court order evicting the current business before ABC will issue a license for another business to occupy that location.

Extension of premises. A class A club may permanently or temporarily extend its licensed premises upon written approval by the Director. The request to extend premises must be submitted to ABC at least ten days prior to the proposed extension. The request shall include the following information:

- A diagram of the extended premises, clearly showing the boundaries of the premises, all entrances and exits, and the area in which the service of alcoholic liquor will occur;
- In the case of a temporary extension, the date(s) and time(s) that the premises will be extended;
- If the licensee does not own or lease the area into which the premises are being extended, the application shall include written permission from the governing body of the city or county, the owner, landlord, or the property manager to extend the premises.

The boundary of the extended premise shall be clearly marked by a physical barrier clearly visible to a reasonable person. The licensee shall maintain, on the licensed premises, a copy of the diagram submitted to ABC with the request for extension and a copy of the Director's approval to extend the premises. [K.A.R. 14-19-39]

Notification to city or county governing body and hearing on request

The Director shall notify the governing body of the city or county where the licensed premises is located of the application for an initial or renewal license if such notice is requested by such governing body. [Subsection (a) of K.S.A. 41-2651]

Once notified, the governing body shall have 10 days to request a hearing before the Director on whether an initial license should be issued or an existing license should be renewed. The hearing shall be conducted in accordance with the Kansas Administrative Procedures Act. [Subsection (b) of K.S.A. 41-2651] At such hearing, the governing body shall have the right to present testimony and evidence and make recommendations regarding whether the Director should issue or renew the license. [Subsection (c) of K.S.A. 41-2651] The statute gives no guidelines on what factors are relevant to the Director's decision.

Restrictions on officers, directors and board members

An officer, director or board member of the Class A club may be a licensed distributor or retailer **only** if such person sells no alcoholic liquor to the Class A club. [Subsection (a)(4)(D) of K.S.A. 41-2623 and subsection (b)(6) of K.A.R. 14-19-24] ABC licensing may require such officer, director or board member to submit a signed statement that they will not sell any alcoholic liquor to the club.

Restrictions on employees

- Each club shall register with ABC on forms provided by ABC all employees who will mix, serve or dispense alcoholic liquor. Registration of all such employees shall take place at the time of

initial licensing and each renewal of the license. Registration with ABC of each new employee who will mix, serve or dispense alcoholic liquor shall take place within 5 days after employment begins. [Subsection (a) of K.A.R. 14-19-24]

- No club shall employ any person under the age of 18 years in connection with the serving of alcoholic liquor. [Subsection (a) of K.S.A. 41-2610] The serving of CMB is also prohibited. [Subsection (b)(1) of K.A.R. 14-19-24]
- No club shall knowingly employ or continue in employment any person in connection with the dispensing or serving of alcoholic liquor the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States. [Subsection (b) of K.S.A. 41-2610 and subsection (b)(4) of K.A.R. 14-19-24] Food servers who have a disqualifying conviction may take orders for alcoholic liquor from customers as long as another, qualified person mixes or dispenses and serves the alcoholic liquor to the customers. [Interpretation made by AAG BB on 02/01/05]
- No club shall knowingly employ or continuing in employment any person in connection with the dispensing or serving of alcoholic liquor the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a violation of any intoxicating liquor law of this or any other state, or of the United States, during the two-year period immediately following such adjudging. [Subsection (c) of K.S.A. 41-2610 and subsection (b)(5) of K.A.R. 14-19-24]
- No club shall permit any employee who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee at any time when not under the on-premises supervision of either the licensee, or an employee who is 21 years of age or over. [Subsection (f) of K.S.A. 41-2610 and subsection (b)(3) of K.A.R. 14-19-24]
- No club shall employ any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor. [Subsection (g) of K.S.A. 41-2610]] The mixing and dispensing of drinks containing CMB is also prohibited. [Subsection (b)(2) of K.A.R. 14-19-24]
- Persons who dispense beer from carts on golf courses must be at least 21 years old because there is no 21 year old supervisor who can see what they are doing, as there would be inside a building where 18-year olds are allowed to carry alcoholic products to the tables. [Ruling made by the Director on 04/30/07]
- No club shall employ any person in connection with mixing, serving, selling or dispensing alcoholic liquor if such person is also an owner, officer, agent or employee of the holder of a Kansas manufacturer, distributor or retailer licensee. [Subsection (b)(6) of K.A.R. 14-19-24] ABC licensing may require such persons employed **in another capacity** by the club to sign a statement that they will not mix, serve, sell or dispense alcoholic liquor for the club.

Records to be retained and available for inspection

Class A clubs shall retain the following records of purchases and sales for a period of three years:

- sales slips and other purchase documents for all alcoholic liquor purchased from retailers or distributors. [Subsection (e) of K.A.R. 14-19-25]
- invoices and other records of sales of alcoholic liquor to all customers. [Subsection (a) of K.S.A. 79-3609 as referenced in subsection (a) of K.S.A. 79-4105 of the Liquor Enforcement Tax Act]

These records are subject to inspection by the Director or any agent or employee of the Director. [Subsection (g) of K.A.R. 14-19-25]

Hours and days of sales

There shall be no serving, mixing or consumption of alcoholic liquor on the licensed premises between the hours of 2:00 a.m. and 9:00 a.m. on any day. There are no restrictions on the days that a Class A Club may be open. [Subsection (a) of K.S.A. 41-2614]

Memberships and reciprocal agreements

Each customer at a Class A club must be a member of the club or must be a family member or a guest invited by and accompanied by a member of the club. [Subsection (a) of K.S.A. 41-2637]

Class A clubs may enter into a reciprocal agreement with one or more other class A clubs for the members of each such club to have access to all other clubs which are parties to such agreement. The agreement shall be filed with and approved by the director in advance. The privileges extended to the visiting members of other clubs under such an agreement shall be determined by the agreement and, if the agreement so provides, any club which is a party to such agreement may sell, offer for sale and serve, to any person who is a member of another club which is a party to such agreement, alcoholic liquor for consumption on the licensed premises by such person and such person's family, and guests accompanying them. [Subsection (b) of K.S.A. 41-2637]

A class A club may enter into a reciprocal agreement with one or more class B clubs which are restaurants, as defined by K.S.A. 41-2601, for the members of each such club to have access to the class A club. The agreement shall be filed with and approved by the director in advance. The privileges extended to the visiting members of other clubs under such an agreement shall be determined by the agreement and, if the agreement so provides, any club which is a party to such agreement may sell, offer for sale and serve, to any person who is a member of another club which is a party to such agreement, alcoholic liquor for consumption on the licensed premises by such person and such person's family, and guests accompanying them. [Subsection (c) of K.S.A. 41-2637]

Public functions on licensed premises

A class A club wanting to use part of the licensed premises for a public event must first get approval from the Director of ABC. No alcoholic liquor or CMB may be sold, dispensed or consumed by anyone in the area designated for the public event. [Subsection (a) of K.A.R. 14-19-36] Clubs should submit a completed Form ABC-12 to the Director. This form is available on the ABC website or by calling ABC to request that a form be mailed or faxed to the club.

Signs, advertising and other promotional activities

Background. K.S.A. 41-714 was amended by the Legislature in 2005 to remove all of the statutory restrictions on advertising and other promotional activities. Instead, the Legislature delegated to the Secretary of Revenue the power to regulate liquor advertising and other promotion activities by administrative regulation. [Subsection (b) of K.S.A. 41-714]

Definition of advertising. "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

Signs. Industry members may provide to licensees 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 licensee 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 licensee 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]

Radio and television advertising. Licensees may purchase live radio or TV commercials to take place at the licensed premises if the licensee pays the entire cost of the commercial. An industry member may be present and hand out promotional items to consumers on the premises during the time the commercial is broadcast but shall not participate in the commercial or pay any of the cost thereof. [Ruling by the Director on 08/01/05] A licensee may arrange for a radio or television station to run a remote broadcast from the licensee's parking lot or anywhere outside the licensed premises and the licensee or the radio or television station may give away food or promotional items at that location. Any food or other items may be given free to the public. The food cannot be paid for by an industry member (manufacturer, supplier or distributor).

Gift certificates and cards. Gift certificates and cards may be sold to the public which are redeemable for products which include alcoholic liquor. Gift cards provided free by the club are not redeemable for alcoholic liquor.

Discount cards for repeat customers. Customers may be provided with a card which is punched for each purchase and, upon reaching a specified number of punches, the customer is entitled to a discount on the next purchase of food or non-alcoholic beverages. [Ruling by the Director on 04/04/05]

Industry members selling, giving or lending equipment or supplies. Industry members are prohibited from giving or lending money, equipment, supplies, services or anything of value to a licensee except as permitted by K.A.R. 14-10-8. The following are allowed:

- Glassware, as long as the price is not less than what the industry member paid for it.
- Tapping and dispensing equipment, as long as the price is not less than what the industry member paid for it.
- Carbon dioxide gas and ice, as long as the price is not less than the local market price.
- Coil cleaning service.

Industry members selling or giving services. Industry members are prohibited from inducing licensees to purchase product from them by paying or crediting the licensee 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 licensed premises.

[Subsection (a) of K.A.R. 14-10-10]

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 licensee's premises. This is interpreted as furnishing something of value to the licensee (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]

Industry members shall not arrange for a radio station to have its mobile unit park at a licensee's location 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 licensee (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]

However, industry members may furnish, give, rent, loan or sell newspaper cuts, mats or engraved blocks to a licensee for use in their advertising of the industry member's products. [Subsection (e) of K.A.R. 14-10-10]

Also, industry members may furnish, give, rent, loan or sell product displays to licensees. [Subsection (a) of K.A.R. 14-10-13. Subsection (c) of K.A.R. 14-10-13 places limitations on the value of the 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]

Consumer advertising specialties offered by industry members. 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 licensees for unconditional distribution to the general public. The licensee 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] There is no longer any limitation placed on the total value of the retail advertising specialties by federal regulation. K.A.R. 14-10-10 is currently being revised or replaced to remove the limits on the value of consumer advertising specialties provided to retailers, clubs, drinking establishments and caterers.

Industry member support of events sponsored by licensees. 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 licensee 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 sponsorship in whole or in part by a liquor licensee. 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 contributions made or fees paid by such industry members shall be the same as that contributed or paid by any other participant.

Individualized labeling on containers of alcoholic liquor. Manufacturers or suppliers may add the name of a club or drinking establishment on the labels placed on containers of alcoholic liquor sold to clubs and drinking establishments. However, each such individualized label must be registered with the Director and the annual fee paid. [Ruling by the Director on 08/20/07]

Purchasing, transporting and paying for alcoholic beverages

A class A club may only obtain its alcoholic liquor as follows:

- Purchase alcoholic liquor from a licensed retail liquor store. [Subsection (a) of K.A.R. 14-19-25]
The retail liquor store must have a federal wholesaler's basic permit. The club shall not warehouse

any liquor on the premises of the retail liquor store. [Subsection (c) of K.A.R. 14-19-25] The retail liquor store may deliver the alcoholic liquor to the club's premises. [Subsection (b) of K.A.R. 14-19-25] The club must pay the retailer for the alcoholic liquor delivered before or at the time of delivery. [Subsection (a)(5) of K.A.R. 14-13-9] Payment to the retail liquor store shall not be made by electronic funds transfer. [Payment by electronics funds transfer is only authorized by ABC Policy Memorandum 2001-2 for purchases from distributors.]

- Purchase wine in barrels, casks and other bulk containers from wine distributors which are authorized by franchise agreements on file with the Director to sell wine within the geographic area where the club is located. [Subsection (c)(2) of K.S.A. 41-306a and subsection (a) of K.A.R. 14-19-25] The distributor may deliver the wine to the club's premises. [Subsection (b) of K.A.R. 14-19-25] If both the club and the distributor agree, then payment may be made by electronic funds transfer. Payment must be made no later than the next banking business day after the date of delivery of the product to the drinking establishment. [Paragraph 3.c. of ABC Policy Memorandum 2001-2] The wine distributor must have a federal wholesaler's basic permit. The club shall not warehouse any wine on the premises of the distributor. [Subsection (d) of K.A.R. 14-19-25]
- Purchase beer and cereal malt beverages from beer distributors which are authorized by franchise agreements on file with the Director to sell beer within the geographic area where the club is located. [Subsections (b)(3) and (c)(2) of K.S.A. 41-307 and subsection (a) of K.A.R. 14-19-25] The distributor may deliver the beer and cereal malt beverage to the club's premises. [Subsection (b) of K.A.R. 14-19-25] If both the club and the distributor agree, then payment may be made by electronic funds transfer. Payment must be made no later than the next banking business day after the date of delivery of the product to the club. [Paragraph 3.c. of ABC Policy Memorandum 2001-2] The beer distributor must have a federal wholesaler's basic permit. The club shall not warehouse any beer on the premises of the distributor. [Subsection (d) of K.A.R. 14-20-27]
- Purchase domestic wine from a Kansas farm winery. [Subsection (a)(2) of K.S.A. 41-308a] The farm winery may deliver the domestic wine to the club's premises. [Subsection (b) of K.A.R. 14-11-7]

Selling and serving of alcoholic beverages

A "drink" means an individual serving of any beverage containing alcoholic liquor or an individual serving of cereal malt beverage (CMB). [Subsection (f) of K.S.A. 41-2640] Alcoholic liquor includes spirits, wine and beer. [Subsection (a) of K.S.A. 41-2601 referencing K.S.A. 41-102]

Subsections (c) and (i) of K.S.A 41-2601 define drinking establishments and caterers as selling and serving alcoholic liquor by the individual drink. Class A clubs, class B clubs and temporary permit holders are not specifically limited by statute or regulation to selling and serving individual drinks only. Subsection (b)(2) of K.S.A. 41-2640 specifically exempts bottles and carafes of wine from the individual drink restrictions. The selling of beer and CMB by the pitcher or "beer tower" is not specifically authorized by statute for clubs, drinking establishments and caterers but has historically been permitted by ABC. [The Director ruled on 02/28/06 that we will continue to allow this practice.]

A class A club may sell CMB if it has a current CMB retailer's license issued by a city or county pursuant to the CMB Act. [Subsection (a) of K.S.A. 41-2702]

Multiple cans or bottles of beer or CMB may be sold to a customer at the same time. The bottles or cans may be served unopened. However it is the licensee's responsibility to be sure that no unopened can or bottle of beer or CMB is removed from the licensed premises by any customer. [Approved by the Director 12/28/05]

Most of the restrictions on the pricing of drinks dispensed at clubs, drinking establishments, caterers and temporary permit holders by their employees or agents are set forth in subsection (a) of K.S.A. 41-2640, which prohibits:

- Offering or serving free alcoholic liquor or CMB to any person. [Subsection (a)(1)] This is interpreted as also prohibiting employees or agents of the licensee from "buying" drinks for anyone on the licensed premises.
- Selling, offering or serving any drink at a price below acquisition cost of the drink. [Subsection (a)(2)] The acquisition cost shall include the cost of both the alcoholic liquor and non-alcoholic liquor contained in the drink, but not the cost of water, ice, labor, overhead and any other items of clearly negligible value. [K.A.R. 14-21-15]
- Selling, offering or serving an unlimited number of drinks to any person for a set period of time at a fixed price, except at private functions not open to the general public or to the general membership of a club. [Subsection (a)(3)]
- Selling, offering or serving any drink at a price below that charged to all other persons for the same drink on that same day. [Subsection (a)(4)]
- Increasing the volume of alcoholic liquor contained in a drink or the size of a drink of CMB without increasing proportionately the price regularly charged for the drink on that day. [Subsection (a)(5)]

Pitchers of beer and bottles or carafes of wine are not individual servings and consequently are not "drinks" according to the statutory definition in subsection (f) of K.S.A. 41-2640. Therefore, they are not subject to this rule. [Ruling by Director on 12/28/05]

Draws of beer and CMB are subject to the rule, because the customer is paying only for the beer or CMB, not the container. Beer and CMB served in bottles or cans are not subject to the rule, because the price charged also includes the cost of the disposable container it is served in. [Ruling by Director on 12/28/05]

Drinks which are 100% spirits, wine, beer or CMB are easy to apply the rule to. For example, a two ounce shot of alcoholic liquor must sell for twice what a one ounce shot of the same alcoholic liquor sells for.

The rule is a little more complicated to apply to mixed drinks. However, the general rule is that a mixed drink containing one ounce of alcoholic liquor shall not sell for less than a one ounce shot of the same alcoholic liquor. A mixed drink containing two ounces of alcoholic liquor shall not sell for less than a two ounce shot of the same alcoholic liquor. And so on. [Ruling by Director on 12/28/05]

- Encouraging or permitting any game or contest which involves drinking alcoholic liquor or CMB or the awarding of drinks as prizes on the licensed premises. [Subsection (a)(6)]
- Advertising or promoting in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (6). [Subsection (a)(7)]

Sale of business already licensed

Individuals and partnerships

If an individual (sole proprietor) or partnership which owns a currently licensed class A club sells the business to another individual or business entity, then the license will be terminated effective no later than the date of transfer of ownership and the new owner will be required to apply for a new license and meet the licensing requirements for an initial license.

Corporations

If a corporation which owns a currently licensed class A club is sold intact (the corporation continues to exist, but one or more of the stockholders changes), then the business may continue to operate the class A club under the existing license if the corporation retains the same FEIN. The corporation must submit a copy of the corporation meeting minutes documenting the sale and a new Ownership Disclosure (form ABC-810) to ABC Licensing.

Limited Liability Companies (LLC's)

If an LLC which owns a currently licensed class A club is sold intact (the LLC continues to exist, but one or more of the members changes), then the business may continue to operate the class A club under the existing license if the LLC retains the same FEIN. The sale agreement must include language which explicitly makes the new members of the LLC liable for any state taxes which are due at the time of sale or may be found later to be due for any time period prior to the date of sale. The LLC must submit a copy of the sale agreement and a new Ownership Disclosure (form ABC-810) to ABC Licensing.

Transfer of a club's stock upon the closing of the business

When a licensed club closes for any reason, including when the license has expired or has been revoked, the licensee shall apply to the Director of ABC for permission to sell the licensee's stock of alcoholic liquor to another licensee, as follows:

- Bulk wine, beer and cereal malt beverages in the unopened original containers may be sold back to the distributor from which it was originally purchased. [Subsection (d)(1) of K.S.A. 41-728] The

drinking establishment and distributor must complete form ABC-809 (Request Permission to Sell Inventory of Alcoholic Beverages).

- Alcoholic liquor in unopened original containers may be sold to any licensed drinking establishment, class A or B club or caterer. The club and purchasing licensee must complete form ABC-809 (Request Permission to Sell Inventory of Alcoholic Beverages).

Any liquor left on the premises after the club closes shall be deemed abandoned and shall be seized and sold by the Director.

Authorized activities

Selling and serving alcoholic beverages. A class A club may offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members and their families and guests accompanying them. [Subsection (a) of K.S.A. 41-2637]

Poker tournaments and other card games. A class A club may allow persons on the licensed premises to participate in poker tournaments or other card games where something of value is awarded as a prize as long as there is no charge to participate and no requirement to purchase anything. No cover charge may be charged to any customer to enter the licensed premises on the day that the tournament or games are conducted until after the tournament or games are concluded. [Ruling by the Director on 01/06/05. This ruling was subsequently supported by Attorney General Opinion No. 2005-4 dated 01/27/05.]

Guests of members. A class A club may allow members to bring one or more guests onto the premises and purchase alcoholic liquor for them if they are at least 21 years of age. A guest is defined as an individual who is known to and personally accompanied by a member of a club while on the licensed premises of the club. There is no limit on the number of guests that a member may bring onto the premises at one time. A guest shall not include members of the general public admitted to licensed club premises as guests of the club's owner, manager or employee. [Subsection (h) of K.A.R. 14-19-14]

Gift certificates and cards. A class A club may **sell** gift certificates or gift cards that can be subsequently used to purchase drinks. [Ruling approved by the Director on 01/25/05]

Customers providing their own alcoholic liquor. A class A club may allow a customer to bring into the licensed premises bottles of their own alcoholic liquor to be consumed by the customer and the customer's invited guests. The club may also prohibit such practice. [K.S.A. 41-2647] The club may not warehouse the customer's bottles of alcoholic liquor and the customer must remove all such bottles when departing the licensed premises. [Subsection (b) of K.A.R. 14-19-28] If a club allows this practice, it may charge the customer a "corkage fee" for mixing/dispensing and/or serving drinks from the customer's bottles of alcoholic liquor. The corkage fee is subject to the 10% retail liquor drink tax imposed by K.S.A. 79-41a01 et seq. [Subsection (a)(1) of K.A.R. 92-24-11] The "doggie bag law" does not apply in this situation because it states that it only applies to bottles purchased from the licensee. Therefore, the club may allow a customer to remove a bottle of alcoholic liquor that the customer brought into the licensed premises without requiring the customer to purchase a "doggie bag." However, the club may sell doggie bags to these customers if the club chooses to.

Wine storage areas. A class A club may allow patrons to store wine purchased from the licensee in the original, unopened containers on the licensed premises for later consumption. The wine shall be kept separate from all other alcohol stock in a secure, locked area, separated by customer. The licensee shall at all times have the means to enter each customer's wine storage area and the wine storage area is subject to the requirement for immediate access and inspection.

A receipt showing the quantity of each brand of wine purchased by the customer shall be maintained in each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee shall mark the receipt showing the date of removal and the quantity of each brand removed. [subsection (e) of K.S.A. 41-2637 and K.A.R. 14-19-27]

Removal of opened wine and beer from licensed premises. The "doggie bag law," effective July 1, 2006, authorizes clubs and drinking establishments to permit patrons to remove opened containers of wine and beer from the licensed premises using "doggie bags." It is the licensee's choice as to whether to provide this service to patrons. However, if they do offer this service, they need to make sure that the previously opened container is resealed and placed in a tamper-proof, transparent bag. The patron must be provided with a dated sales receipt for the product. Only bottles of wine and bottles and cans of beer in their original containers which have been purchased by patrons from the club or drinking establishment and opened and partially consumed qualify for this procedure. [K.S.A. 41-2653]

Wine kept in customer's wine storage area may be removed subject to the doggie bag law if all other requirements for removal are met. The licensee shall provide a copy of the original receipt from the sale with a notation that the wine was removed from the customer's wine storage area on the date the customer partially consumed it. [Subsection (h) of K.A.R. 14-19-27]

Prohibited Activities (also see section on "Selling and serving of alcoholic beverages")

Membership list out of date or inaccessible. A class A club shall not fail to maintain at the licensed premises a current list of all members and their residence addresses or refuse to allow the director, any of the director's authorized agents or any law enforcement officer to inspect such list. [Subsection (d) of K.S.A. 41-2610]

Removal of alcoholic liquor from club premises by customers. A class A club shall not allow patrons to remove alcoholic beverages purchased from the club from the licensed premises. [Subsection (g) of K.A.R. 14-19-27] However, K.S.A. 41-2653 (the "doggie bag" law) provides an exception. See list of authorized activities above for details.

Unqualified employees. A class A club shall not knowingly employ any person who does not meet the qualifications set forth in K.S.A. 41-2610 and K.A. R. 14-19-24.

Purchases of liquor stock. A class A club shall not purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee. [Subsection (e) of K.S.A. 41-2610] See section entitled "Purchasing, transporting and paying for alcoholic beverages."

Illegal consumption of alcoholic liquor. Allowing any person to consume alcoholic liquor on the licensed premises contrary to the provisions of the Club and Drinking Establishment Act is a criminal

offense, subject to fine and imprisonment, in addition to possible administrative action by the Director. [K.S.A. 41-2604]

Illegal possession or consumption of alcoholic liquor or cereal malt beverage by a minor. Knowingly or unknowingly permitting any minor to possess or consume alcoholic liquor or cereal malt beverage on the licensed premises is a criminal offense, subject to fine and imprisonment, in addition to possible administrative action by the Director. [K.S.A. 41-2615] Exceptions or defenses:

- An exception is made for a minor that is an employee of the licensee and is serving alcoholic liquor or cereal malt beverage under the supervision of another employee of the licensee who is at least 21 years of age. [Subsection (a) of K.S.A. 41-2615]
- It is a defense to criminal prosecution if the minor exhibited a driver's license, Kansas non-driver's ID card, or other official or apparently official document, containing a photograph that reasonably appears to be the minor and purporting to establish that such minor was 21 years of age or more, and the licensee had reasonable cause to believe that the minor was 21 years of age or older. [Subsection (c) of K.S.A. 41-2615]

Administrative Actions for Violations of Statutes and Regulations

K.S.A. 41-2611, K.A.R. 14-16-15 and subsection (d) of K.A.R. 14-19-35 provide for revocation or suspension of a class A club license for any violation of the Club and Drinking Establishment Act. K.S.A. 41-2633a also authorizes the imposition of a civil fine of no more than \$1,000 per violation for any violation of the Club and Drinking Establishment.

Grounds for administrative action (see K.S.A. 41-2611 and K.A.R. 14-19-35)

- The license was fraudulently obtained by giving false information in the application or any hearing thereon. [Subsection (a) of K.S.A. 41-2611]
- The licensee omitted or misstated a material fact in its application. [Subsection (a) of K.A.R. 14-19-35]
- The licensee has operated in a manner materially different from that represented in its application. [Subsection (b) of K.A.R. 14-19-35]
- The licensee violated any provision of the Club and Drinking Establishment Act or any rules or regulations adopted thereunder. [Subsection (b) of K.S.A. 41-2611]
- The licensee violated any provision of the Liquor Drink Tax, K.S.A. 79-41a01 et seq. [Subsection (b) of K.S.A. 79-41a07]
- The licensee failed to obtain an excise tax registration number or becomes delinquent in the payment of liquor excises. [K.A.R. 14-19-34]

Procedures

K.S.A. 41-2609 provides that the following statutes within the Liquor Control Act shall also apply to licensees issued under the Club and Drinking Establishment Act:

- K.S.A. 41-320 - Suspension or revocation of license; hearings.
- K.S.A. 41-321 - Refusal, suspension or revocation of license; appeal to Secretary
- K.S.A. 41-322 - Powers of Secretary; subpoenas
- K.S.A. 41-323 - Judicial review of Secretary's decision

Liquor Drink Tax

Sales of alcoholic liquor made by class A clubs are subject to the 10% liquor drink tax pursuant to K.S.A. 79-41a01 et seq. The tax is paid by the consumer and computed on the full purchase price of the drink, including any mandatory gratuity charged by the club. The club files a return and remits the tax due to KDOR.

The liquor drink tax is imposed as an alternative to the Kansas retail sales tax. Therefore, alcoholic drinks subject to the liquor drink tax are exempt from the Kansas retail sales tax. [Subsection (a) of K.S.A. 79-3606]

Any class A club that becomes delinquent in the filing of returns and/or payment of its liquor drink taxes is subject to being fined or having its license suspended or revoked by the Director. [Subsection (b) of K.S.A. 79-41a07]

Tax bond requirements and waivers

No license will be issued or renewed without the proper tax bond having been provided. The bond must be equal to 25% of the actual or estimated annual tax liability, or \$1,000, whichever is greater. The bond may be a cash bond, escrow bond, or corporate surety bond. [K.A.R. 92-24-23 as authorized by subsection (e) of K.S.A. 79-41a03]

Licensees will not be registered for the liquor drink tax until the bond requirement is satisfied. [Subsection (a) of K.A.R. 92-24-23]