



HANDBOOK

FOR

DRINKING

ESTABLISHMENTS

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Changes made to this handbook since the previous revision(s) 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.email@kdor.ks.gov.

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]

"Drinking Establishment" ("DE") means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold. [Subsection (i) of K.S.A. 41-2601]

"Municipal Corporation" means the governing body of a city or county. [Subsection (o) of K.S.A. 41-2601, as amended by 2010 L. ch. 142, § 11]

Application for initial licensure

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

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

- Drinking establishment - \$2,000. [subsection (b)(1)]
- Drinking establishment/caterer - \$6,000. [subsection (b)(3)]
- Hotel with its entire premises licensed as a drinking establishment - \$6,000. [subsection (b)(2)]
- Hotel with its entire premises licensed as a drinking establishment and is also a caterer - \$7,000. [subsection (b)(4)]

Qualifications for licensure

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 percent of the common or preferred stock thereof, must meet the licensing qualifications for individual ownership below, except for citizenship and residency requirements. [K.S.A. 41-2623(a)(6)] In addition, each such person cannot have been an officer, manager, director or stockholder owning a total of more than 5 percent 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 (LLCs)

LLCs are not mentioned in the statutes but Attorney General Opinion #2001-19 (April 23, 2001) 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, Directors of ABC have ruled that LLCs will 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 percent interest in the LLC must meet the licensing qualifications 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 LLCs are K.S.A. 17-7663 et seq. An LLC is composed of one or more members. [Subsection (f) of K.S.A. 17-7663]

Municipal Corporations

Municipal corporations are not subject to most licensing qualifications. A municipal corporation shall be issued a license unless it has had a previous license revoked for cause. [K.S.A.41-2654(b)]

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. 14-21-3]

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. 14-21-3]

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. 14-21-3]

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. 14-21-3]

"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 (k) of K.A.R. 14-21-1 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 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]

- **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. 14-21-3] 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 same jurisdiction as the licensee. [Ruling by the Director on Jan. 19, 2005.]

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. 14-21-3] 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 same jurisdiction as the licensee. [Ruling by the Director on Jan. 19, 2005.]

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. 14-21-3]
- **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 the 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 drinking establishment 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 license for a drinking establishment may be issued to a person who has a beneficial interest in a caterer. [Subsection (a)(4)(C) of K.S.A. 41-2623]
 - A license for a drinking establishment may be issued to a person who has a beneficial interest in a microbrewery or farm winery licensed under the Kansas Liquor Control Act. [Subsection (a)(4)(E) 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 percent of the outstanding shares of that corporation or a similar holding in any other form of business organization. [Subsection (c) of K.A.R. 14-21-1]

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]

Business name (DBA)

A drinking establishment may use more than one business name and may have more than one business name displayed on the outside of the licensed premises. However, the DBA name under which the drinking establishment license was issued must be displayed on the outside of the licensed premises where it is visible to patrons entering the licensed premises. The DBA name under which the license was issued must also be included in all the licensee's advertising and publicity which makes reference to the selling and serving of alcoholic liquor. All of the areas where alcoholic beverages will be sold and served must be contiguous and included in a single diagram showing the licensed premises. [Approved by the Director on April 28, 2005]

Requirements for the licensed premises

"Wet" county. The licensed premises must be located in a "wet" county. A county is wet if:

- the board of county commissioners has approved a resolution permitting liquor by the drink (with or without a 30 percent food requirement), or
- the majority of the voters in that county approved the amendment to the Kansas Constitution in November 1986 to allow liquor by the drink or subsequently approved a proposition in a state general election to permit liquor by the drink (with or without a 30 percent food requirement) and which has not revoked that approval in a subsequent election. See K.S.A. 41-2646 for the requirements for the election. [Subsection (a) of K.S.A. 41-2642]
- Subsection (b) of K.S.A. 41-2646 sets forth the procedure whereby voters of the county may petition for a vote on whether the county shall become "wet" or "dry." The petition must contain at least 10 percent of the electors who voted for the office of Secretary of State at the last preceding general election at which such office was elected. When any such election takes place, the county election officer shall transmit a copy of the results to the Director. Since no time period is specified as to when such changes become effective, they should become effective as soon as the election results are received from the county election officers. [Subsection (d) of K.S.A. 41-2646]

Zoning. The applicable city, township or county zoning must permit a DE 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 DE's customers are permitted to possess and consume alcoholic liquor sold by the DE. Applicants for an initial license must furnish a diagram of the proposed licensed premises for approval by ABC. [Subsection (c) of K.S.A. 41-2642 and subsection (a)(2) of K.A.R. 14-21-2]

For DE's located within a hotel or motel, the licensed premises may include the guest rooms, banquet rooms and common areas. Any guest room equipped with a "mini-bar" where guests are permitted to remove and consume alcoholic liquor must be included in the licensed premises. [Subsection (d) of K.S.A. 41-2642 and subsection (a)(2) of K.A.R. 14-21-2]

Owner or lessee. **In most cases,** 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. [Subsection (a)(11) of K.S.A. 41-311 as referenced by subsection (b)(1) of K.S.A. 41-2623, as amended by 2010 L. ch. 142, §16]

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. 14-21-3]

Beverage service agreement. **If the premises to be licensed is owned by the city or county, or is a stadium, arena, convention center, theater, museum, amphitheater or other similar premises, the**

applicant may submit an executed agreement to provide alcoholic beverage services at the premises in lieu of a lease.

Premises currently or previously occupied by another DE or club. In cases where ABC's records show the location is currently or was recently occupied by another similar licensed business, the Director approved the following policy:

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 drinking establishment 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. [Subsection (b) of K.A.R. 14-21-21] The request shall be made on a form (ABC-806) approved by the Director and 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 [Subsection (c) of K.A.R. 14-21-21];
- In the case of a temporary extension, the date(s) and time(s) that the premises will be extended [Subsection (d) of K.A.R. 14-21-21];
- 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, and the owner, landlord, or the property manager to extend the premises. [Subsection (e) of K.A.R. 14-21-21]

The boundary of the extended premise shall be clearly marked by a three-dimensional obstacle. [Subsection (g) of K.A.R. 14-21-21] 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. [Subsection (i) of K.A.R. 14-21-21]

Right of governing body to request a hearing on whether a license should be issued, denied, revoked or suspended

The governing body of any city or county may request notification when an application is filed for a new or renewed license in such city or county. [Subsection (a) of K.S.A. 41-2651] If the governing body makes such a request, the Director shall notify the governing body when an application is received. [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. [Subsection (b) of K.S.A. 41-2651]

The governing body of any city or county may, at any time, request a hearing to determine whether a license issued under the Club and Drinking Establishment Act should be revoked or suspended. [Subsection (c) of K.S.A. 41-2651]

The hearing shall be conducted in accordance with the Kansas Administrative Procedures Act. [Subsection (d) 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 (e) of K.S.A. 41-2651] K.A.R. 14-21-22 provides factors for the Director to consider in making such determination.

Restrictions on employees

Each employee who will mix, sell, serve or dispense alcoholic liquor must be registered with ABC on form (ABC-805), provided by ABC, within five days of beginning employment and at the renewal of the license. [Subsection (a) of K.A.R. 14-21-9]

All persons who are serving alcoholic beverages or CMB must be at least 18 years old. However, any server who is under the age of 21 must be supervised by a person who is at least 21 years old. [Subsections (a) and (f) of K.S.A. 41-2610 and Subsections (b)(1) and (b)(3) of K.A.R. 14-21-9]

All persons who are mixing or dispensing alcoholic beverages or CMB must be at least 21 years old. [Subsection (g) of K.S.A. 41-2610 and Subsection (b)(2) of K.A.R. 14-21-9]

No person connected* with the dispensing, mixing and serving of alcoholic liquor or CMB can:

- have a conviction of a felony or of any crime involving a morals charge in Kansas, any other state, or the United States at any time. [Subsection (b) of K.S.A. 41-2610] "Morals charge" is defined in subsection (k) of K.A.R.14-21-1 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
- have a conviction of a violation of any intoxicating liquor law of Kansas, any other state, or the United States within the past two years. This includes DWI, DUI and "sale to minor" convictions. [Subsection (c) of K.S.A. 41-2610]

* "Person connected" is defined by subsection (j) of K.A.R. 14-21-1 as being any manager or assistant manager in charge of the daily operations of the DE. The Director has ruled that "person connected" also includes any person who manages or supervises any person actually doing the dispensing, mixing and serving of alcoholic liquor or CMB, regardless of their title. [Policy Memorandum 2001-4]

No person employed in the dispensing, mixing and serving of alcoholic liquor or CMB can:

- be a manufacturer, distributor or retailer. [Subsection (b)(6) of K.A.R. 14-21-9]
- be an officer, agent or employee of a manufacturer, distributor or retailer. [Subsection (b)(6) of K.A.R. 14-21-9]

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 April 30, 2007]

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 on Feb. 1, 2005]

Records to be retained and available for inspection

Each DE 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. 14-21-10]
- 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. 14-21-10]. Records must be retained on the licensed premises for a period of three months after the purchase or sale. After three months, the records may be stored off the licensed premises. Electronic records may be maintained off the licensed premises, but must be immediately accessible for inspection upon request at the licensed premises. [Ruling by the Director on June 18, 2010]

Holders of a combination DE/caterer license must keep the records of their DE separate from the records of their catering business. [K.A.R. 14-22-8]

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 a.m. and 9 a.m. on any day. [Subsection (a) of K.S.A. 41-2614]

If a drinking establishment also has a caterer's license, then the hours for caterers applies to the portion of the premises where the catered event is held. These hours are from 6 a.m. of any day to 2 a.m. of the following day.

Concealed carry of weapons by patrons on the licensed premises

The Personal and Family Protection Act (K.S.A. 75-7c01 et seq.), commonly known as the concealed carry law, prohibits persons who have been issued a license under this act from carrying a concealed weapon into any portion of the licensed premises of a drinking establishment. However, this prohibition does not automatically apply to a drinking establishment which is also defined by K.S.A. 41-2601 as a restaurant. [Subsection (a)(12) of K.S.A. 75-7c10]

A "restaurant" is defined as a business which has both a drinking establishment license and a food service establishment license, and meets the 30 percent food sales requirement if located in a county subject to that requirement. [Subsection (p) of K.S.A. 41-2601]

A drinking establishment which also meets the definition of a restaurant may elect to prohibit concealed carry on its premises. If it does so, then it must post at the public entrances to the premises

signs of a design approved by the Kansas Attorney General indicating that concealed carry is prohibited. [Subsection (a)(2) of K.S.A. 75-7c11]

Signs, advertising, trade practices, and promotional activities

Outside signs. Industry members may give, lend or sell 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]

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
- pictorial device, as an illustration or chart
- display by a computer or imaging device

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 Aug. 1, 2005] 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).

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 the Director on Aug. 1, 2005]

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 the Director on Aug. 1, 2005]

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]

Industry members may put the name of the retailer on the label or packaging of the products sold to retailers. If the name is added to a label that has previously been registered with ABC, the new label must be separately registered with ABC. [Ruling by the Director on Aug. 20, 2007]

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]

Point of Sale ("POS") Advertising Materials. Industry members may provide to licensees items intended to be used within the retail establishment (on or off-premise) to attract customers' attention to the products of the industry member. [K.A.R. 14-10-14] Such advertising materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, menu cards, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, banners, display cards, ceiling danglers, table tents and alcoholic beverage lists or menus dealing with alcoholic beverages. All POS must bear conspicuous and substantial, permanently affixed, advertising material about the product or the industry member. The POS may also include the name and address of the retailer.

Industry members may give, lend or sell POS to retailers. However, they must give, lend or sell POS to all retailers equally. Industry members may not give POS to some retailers and require other to purchase the POS.

Consumer advertising specialties (“CAS”) offered by industry members. Industry members may give, furnish or sell to retailers (on or off-premise licensees) 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, koozies, t-shirts, ball caps and other similar items as approved by the Director for unconditional distribution to the general public. The CAS must bear conspicuous and substantial advertising material about the product or the industry member. The retailer’s name and address may not appear on any CAS provided by an industry member. 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]

Industry members may give or sell CAS to retailers. However, they must give or sell CAS to all retailers equally. Industry members may not give CAS to some retailers and require other to purchase the CAS.

Retailer-Generated Consumer Advertising Specialties (“CAS”). A retailer (on or off-premise licensee) may generate and distribute unconditionally and free of charge to the general public CAS intended to be carried away by the consumer. Such items include ash trays, bottle or can openers, cork screws, matches, printed recipes, informational pamphlets, cards and leaflets, post cards, posters, printed sports schedules, pens, pencils, koozies, t-shirts, ball caps and other similar items as approved by the Director. Each CAS must bear conspicuous and substantial advertising material relating to the operation of the retail establishment.

There can be no requirement to purchase anything in order to receive the retailer-generated CAS. Industry members are prohibited from providing or paying for retailer-generate CAS.

Table 1: Point of Sale (POS) and Consumer Advertising Specialties (CAS) Quick Reference Table

Type of Materials	Purpose	For consumers	Advertising about	Costs paid by	Keep Records	Notify ABC of New Items
Industry Member POS	Materials provided by industry member for use within a retailer’s premises to attract customer attention	No	Industry member or product May include retailer’s	Industry member or retailer	No	No

	to the products		information			
Industry Member CAS	Materials provided by industry member designed to be carried away by consumers	Yes	Industry member or product May <u>not</u> include retailer's information	Industry member or retailer	No	Yes
*Retailer-generated CAS	Materials generated by retailers that are designed to be carried away by consumers	Yes	Retailer. Can include name, logo, address, phone, website, etc.	Retailer	No	Yes

* Retailer means any on or off-premise establishment and includes retail liquor dealers, clubs, drinking establishments, and caterers.

Offering coupons, premiums, rebates and refunds to customers by industry members. Industry members may offer coupons, premiums, rebates and refunds through retailers (on and off-premise licensees) to consumers 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.

"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 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.

Industry member support of fundraising events sponsored by Charities, Not-for-profit Organizations with no Retailer Involvement. Industry members may support these events through the donation of money and consumer advertising specialties directly to the charity. 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.

Industry member support to Liquor Association Sponsored Events. Industry members may provide monetary donations to these events, provided none of the benefits of the donations flow directly to retailers. Retailer participation fees or other costs cannot be subsidized by industry member donations. Industry members may provide consumer advertising specialties and conduct industry seminars in accordance with applicable statutes and regulations. Industry members may participate in these events, however any participation fees paid by such industry members shall be the same as that paid by any other participant.

Table 2: Industry member support to fundraising and other events

Type of Event	Retailer Sponsored Event	Charity sponsored events with retailer involvement	Charity sponsored events with NO retailer involvement	Liquor association sponsored events
Type of Support				
Monetary Donations	No	Conditional (2)	Yes	Conditional (3)
Product Donations	No	No	No	Conditional (4)
CAS Donations	No	Conditional (2)	Yes	Yes
Participation Fees	Conditional (1)	Conditional (1)	Yes	Conditional (1)

Conditions

- (1) Participation fees not in excess to those paid by all other participants.
- (2) May only be provided to the charity. Donations may not go through retailer or any other party.
- (3) None of the benefits may flow to individual retailers.
- (4) May be provided via authorized industry seminars scheduled in conjunction with the event.

Obtaining, transporting and paying for alcoholic liquor

A DE may only obtain its alcoholic liquor as follows:

- Purchase alcoholic liquor from a licensed retail liquor store. [Subsection (a) of K.A.R. 14-21-10] The retail liquor store must have a federal wholesaler's basic permit. The DE shall not warehouse any liquor on the premises of the retail liquor store. [Subsection (c) of K.A.R. 14-21-10] The retail liquor store may deliver the alcoholic liquor to the DE's premises. [Subsection (b) of K.A.R. 14-21-10] The DE 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 DE is located. [Subsection (c)(2) of K.S.A. 41-306a and subsection (a) of K.A.R. 14-21-10] The wine distributor may deliver the alcoholic liquor to the DE's premises. [Subsection (b) of K.A.R. 14-21-10] If both the DE and the wine distributor agree, 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 DE. [Paragraph 3.c. of ABC Policy Memorandum 2001-2] The wine distributor must have a federal wholesaler's basic permit. The DE shall not warehouse any wine on the premises of the wine distributor. [Subsection (d) of K.A.R. 14-21-10]
- 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 DE is located. [Subsections (b)(3) and (c)(2) of K.S.A. 41-307 and subsection (a) of K.A.R. 14-21-10] The beer distributor may deliver the alcoholic liquor to the DE's premises. [Subsection (b) of K.A.R. 14-21-10] If both the DE and the beer distributor agree, 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 DE. [Paragraph 3.c. of ABC Policy Memorandum 2001-2] The beer distributor must have a federal wholesaler's basic permit. The DE shall not warehouse any beer on the premises of the wine distributor. [Subsection (d) of K.A.R. 14-21-10]
- Transfer or purchase domestic beer from a microbrewery if the microbrewery is owned by the same entity as the DE. [Subsection (a)(5) of K.S.A. 41-308b]
- Transfer or purchase domestic wine from a Kansas farm winery if the farm winery is owned by the same entity as the DE. [Subsection (a)(5) of K.S.A. 41-308a]
- Purchase alcoholic liquor from a sheriff's sale, a sale authorized by the Director, or from a licensee who is quitting business. [K.S.A. 41-1102, K.S.A. 41-1122, K.S.A. 41-1123, K.S.A. 41-1125, and Policy Memorandum 2010-1]

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. [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 DEs 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 DEs and caterers but has historically been permitted by ABC. [The Director ruled on Feb. 28, 2006 that we will continue to allow this practice.]

A DE 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 opened prior to service.** [Approved by the Director June 18, 2010]

Most of the restrictions on the pricing of drinks dispensed at clubs, DEs, 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)]
- 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 DE sells the business to another individual or business entity, **or the partnership interests change**, 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 DE is sold intact (the corporation continues to exist, but one or more of the stockholders changes), then the business may continue to operate the DE 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 Notice of Ownership Change form (ABC-809) to ABC Licensing.

Limited Liability Companies (LLCs)

If an LLC which owns a currently licensed DE is sold intact (the LLC continues to exist, but one or more of the members changes), then the business may continue to operate the DE 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 Notice of Ownership Change form (ABC-809) to ABC Licensing.

Transfer of a drinking establishment's stock upon the closing of the business

When a licensed DE 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 DE and distributor must complete and submit form ABC-812 (Request Permission to Sell Inventory of Alcoholic Beverages).
- Alcoholic liquor in unopened original containers may be sold to any licensed retailer, DE, class A or B club or caterer. The DE and purchasing licensee must complete and submit form ABC-812 (Request Permission to Sell Inventory of Alcoholic Beverages). [Policy Memorandum 2010-1]

Any liquor left on the premises after the DE closes shall be deemed abandoned and shall be seized and sold by the Director. [Policy Memorandum 2010-1]

Redeeming drink coupons for hotel or motel guests

A DE or class B club (DE/club) may contract with a hotel or motel (hereinafter referred to as "hotel") to redeem drink coupons issued by the hotel to its guests. It does not matter whether the DE/club is located upon the same premises as the hotel. The DE/club shall not characterize the drinks as "free" because that would be a violation of subsections (a)(1) and (a)(2) of K.S.A. 41-2640.

The following procedures were approved by the Director on Nov. 14, 2005:

- A hotel may advertise that it will provide each registered guest with one or more coupons which are each redeemable for one drink of choice from those drinks being offered by the DE/club. Alternatively, the hotel/motel may specify that each coupon entitles its guest to receive a specified dollar amount toward the purchase of a drink from the DE/club. The drink may be alcoholic or non-alcoholic.
- It makes no difference whether the coupons are redeemed at a DE/club operated by the hotel or at a DE/club that is a separate entity.
- The point of sale of the drink is the place and time when the coupon is actually redeemed for the drink at the DE/club.
- Sales and transient guest taxes must be paid by the hotel on the full amount of the room charge. There shall be no deduction for the value of the drink coupons when computing the sales and transient guest tax on the revenue received by the hotel from room charges.
- The DE/club must pay the liquor drink tax based upon the price it is charging for cash sales of identical drinks. This price shall not be less than the cost of the ingredients and liquor drink tax.
- The hotel shall pay the DE/club the value of each coupon redeemed by DE/club. If the DE/club is a separate entity from the hotel, then the hotel shall maintain funds on deposit with the DE/club from which the DE/club will deduct the value of each coupon redeemed, including the liquor drink tax, at least daily.
- For a DE/club located upon the hotel premises, the DE/club is responsible for control of the liquor and must store and serve it only within the area that ABC has approved as the licensed premises. The DE/club shall monitor its patrons to assure that they do not take the alcoholic beverages outside the licensed premises. The DE/club must maintain control over all personnel dispensing/serving the alcoholic beverages.
- If the DE/club is located in a city or county that has a 30 percent food requirement, then the DE/club must meet this requirement itself. It cannot count food sold by the hotel or a restaurant located on the hotel premises.

Authorized activities

Selling and serving alcoholic beverages. A DE may offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises which may be open to the public, if the premises is located within a "wet county." [Subsection (a) of K.S.A. 41-2642]

Selling and serving cereal malt beverage. A DE may offer for sale, sell and serve CMB for consumption on the licensed premises if the DE obtains an on-premises license under the CMB Act. [Subsection (h) of K.S.A. 41-2704]

Minibars in hotels. If located in a hotel of which the entire premises are licensed as a DE or as a DE/caterer, a DE may sell alcoholic liquor or cereal malt beverage by means of minibars located in guest rooms of such hotel. There are no restrictions on the hours that a hotel guest may purchase products from the minibar in the guest's room. Minibars are subject to the following restrictions:

- The key, magnetic card or other device required to attain access to a minibar in a guest room shall be provided only to guests who are registered to stay in such room and who are 21 or more years of age.
- Containers or packages of spirits or wine sold by means of a minibar shall hold not less than 50 nor more than 200 milliliters.
- A minibar shall be restocked with alcoholic liquor or cereal malt beverage only during hours when the hotel is permitted to sell alcoholic liquor and cereal malt beverage as a drinking establishment.

[Subsection (d) of K.S.A. 41-2642]

Free food or entertainment. A DE may offer free food or entertainment at any time. [Subsection (b) of K.S.A. 41-2640]

Tournaments involving poker or other card games. A DE 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 games are conducted until after the games are concluded. [Ruling by the Director on Jan. 6, 2005. This ruling was subsequently supported by Attorney General Opinion No. 2005-4 dated Jan. 25, 2005.]

Gift certificates and cards. A DE may **sell** gift certificates or gift cards that can be subsequently used to purchase drinks. [Ruling approved by the Director on Jan. 25, 2005]

Customers providing their own alcoholic liquor. A DE 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 DE may also prohibit such practice. [K.S.A. 41-2647] The DE 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. 14-21-13] If a DE 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 percent 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 only applies to bottles *purchased* from the licensee. Therefore, the DE 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 DE may sell doggie bags to these customers if the DE chooses to.

Catered events on licensed premises. If the DE has a DE/caterer's license, then it may cater events on its own premises if a sponsor contracts with them to do so. [K.S.A. 41-2644 and the last sentence of K.A.R. 14-22-13] A caterer may be its own sponsor for a catered event. [Ruling by the Director on May 16, 2011]

Wine storage areas. A DE 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. [Subsections (b) and (c) of K.A.R. 14-21-12 and subsection (e) of K.S.A. 41-2642]

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 (d)(2) of K.A.R. 14-21-12]

Removal of opened wine and beer from licensed premises. The "doggie bag law," authorizes clubs and DEs 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 DE 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 (f)(2) of K.A.R. 14-21-12]

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

Unqualified employees. A DE shall not knowingly employ any person who does not meet the qualifications set forth in K.S.A. 41-2610 and K.A. R. 14-21-9.

Purchases of liquor stock. A DE 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 "Obtaining, transporting and paying for alcoholic beverages."

Removal of alcoholic liquor or beer from premises. A DE shall not allow a customer to remove from the licensed premises alcoholic liquor or beer purchased from the licensee. [Subsection (e) of K.A.R. 14-21-12]

Exceptions:

- A DE may allow its patrons to removed partially consumed bottles of wine and beer under the "doggie bag law". See authorized activities above for details. [K.S.A. 41-2653 and subsection (f)(1) of K.A.R. 14-21-12]

- A DE that has extended its licensed premises into a special event area, as defined by K.S.A. 41-719, for which a temporary permit has been issued may allow alcoholic liquor purchased in the licensed premises to be removed from the licensed premises into the special event area. [Subsection (e)(2) of K.S.A. 41-2645 and subsection (g) of K.A.R. 14-21-12].

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 person under 21 years of age 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 an employee of the licensee who 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 prosecution if the licensee had reasonable cause to believe that the minor was 21 years of age or older **and** 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. [Subsection (c) of K.S.A. 41-2615]

Refusing immediate entry and inspection of the premises to law enforcement officers. The right to immediate entry and inspection of the licensed premises by law enforcement officers is a condition of the license. The right to immediate entry is not limited to regular business hours, but exists whenever the premises is occupied. Denial of this right to immediate entry is grounds for revocation of the license. [K.S.A. 41-2613]

Administrative actions for violations of statutes and regulations

The Director may suspend or revoke any license issued by the Division of Alcoholic Beverage Control for a violation of any relevant provisions of the Club and Drinking Establishment Act or any administrative regulations adopted pursuant thereto after the issuance of a citation to the licensee and a hearing. [K.S.A. 41-106 and K.S.A. 41-2611, K.A.R. 14-16-15 and K.A.R. 14-21-20] The Director may also impose a fine not to exceed \$1,000 on a licensee for each violation of the Club and Drinking Establishment Act. [K.S.A. 41-2633a]

The Director may determine a penalty based on the ABC's fine and penalty schedule, dated July 1, 2009. Penalties may vary from the schedule based on the presence of mitigating or aggravating circumstances. The liquor penalty grid is available for download from our website at <http://www.ksrevenue.org/abclawsnotices.html>

Liquor Drink Tax

Sales of alcoholic liquor and cereal malt beverage made by DEs are subject to the 10 percent 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 DE. The DE must file a monthly return of taxes collected and submit the return and the taxes to the department by the 25th day of the month subsequent to the month in which the taxes were collected.

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 DE 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

No license will be issued or renewed without the proper tax bond having been provided. The bond must be equal to 25 percent 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]

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