



HANDBOOK

FOR

MANUFACTURERS

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Changes made to this handbook, since the previous revision date, have been highlighted with a **gray background**. Please report errors, omissions or suggestions for improvement to this handbook to the Division of Alcoholic Beverage Control by telephone at 785-296-7015, by fax at 785-296-7185 or by email to abc_mail@kdor.state.ks.us.

Definitions

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

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

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

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

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

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

"Flavored malt beverage" means a malt beverage which meets the formula definitions as set forth in Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau regulations published January 3, 2005, at 27 CFR Parts 7 and 25. [Subsection (b) of K.S.A. 41-2729]

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

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

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

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

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

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

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

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

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

Qualifications for a Kansas manufacturer's license

Subsections (a) and (c) of K.S.A. 41-311 list the qualifications for an initial license. The same requirements must be met for renewal of an existing license except as specifically indicated. [Subsection (a)(9) of K.S.A. 41-311]

Partnerships

Each partner in a partnership must be a resident of Kansas for at least 5 years immediately preceding the date of application and must meet the licensing qualifications for individual ownership listed below. [Subsection (c)(2) of K.S.A. 41-311]

Corporations

Each officer and director of the corporation must meet all of the licensing qualifications for individual ownership below except for citizenship and residency requirements. Each stockholder owning 25% or more of the corporation's stock must meet all of the licensing qualifications for individual ownership listed below except for citizenship and residency requirements. [Subsection (c)(1) of K.S.A. 41-311]

The President and/or Secretary of a corporation organized under the law of any other state or foreign country must sign a Resolution stating that he/she has authority to sign the Irrevocable Consent to Jurisdiction form (ABC-160). [Subsection (b) of K.S.A. 41-313] This Resolution is included on form ABC-160. However, ABC will accept signatures of other corporate officers if accompanied by a letter stating (1) why the President and/or Secretary are not available to sign the form, and (2) that the officers who do sign the form have authority to do so on behalf of the corporation. [Ruling made by ABC attorney on July 6, 2005.]

Limited liability companies (LLC)

LLC's are not mentioned in the statutes. However, Attorney General Opinion #2001-19 (04/23/01) says that the ABC Director may determine what qualifications for licensure apply, until such time as the legislature makes provision for LLC's in the statutes. In response to an inquiry from an attorney/lobbyist, the ABC Director decided on 10/25/04 that LLC's would be treated as corporations for the purpose of meeting the qualifications for licensure.

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 listed below. However, a beneficiary does not have to be at least 21 years of age. [Subsection (c)(3) of K.S.A. 41-311]

Individuals

- ***U.S. Citizenship.*** The individual must be a U.S. citizen for at least 10 years. [Subsection (a)(1) of K.S.A. 41-311]

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]

- ***Kansas Resident.*** The individual must be a Kansas resident for at least 5 years immediately preceding the date of the application. [Subsection (c)(5) of K.S.A. 41-311]
- ***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]

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]

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 Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- ***Previous liquor license revocation.*** The individual cannot have had a license revoked for cause under the Kansas Liquor Control Act or the Kansas Beer and Cereal Malt Beverage Keg Registration Act or the cereal malt beverage laws of Kansas or any other state. However, a revocation will be disregarded if it occurred more than 10 years ago and was the result of a conviction of a misdemeanor. [Subsection (a)(3) of K.S.A. 41-311]

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]

- ***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]

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]

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 Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- **Conviction for owning a 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] "Pandering" is not currently used 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 (o) of K.A.R. 14-14-1 as including:

- 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]

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 Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- **Age requirement.** The individual must be at least 21 years of age. [Subsection (a)(6) of K.S.A. 41-311]

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]

- **Employee of ABC.** The individual cannot be an employee of the Division of Alcoholic Beverage Control. [Subsection (a)(7) of K.S.A. 41-311]

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]

- **Law enforcement officer.** The individual cannot be a law enforcement official. [Subsection (a)(7) of K.S.A. 41-311] "Official" is not defined in the statute but is interpreted as being any law enforcement officer or head of a law enforcement agency. Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the law enforcement official is located in the same county, city, etc. as the Manufacturer. [Ruling approved by the ABC 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]

- **Supervisor of law enforcement officers.** The individual cannot hold a position that 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] Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the individual is located in the county, city, etc. as the Manufacturer. [Ruling approved by the ABC 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]

- **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]
- **CMB license.** The individual cannot hold a CMB license issued pursuant to the CMB Act, specifically K.S.A. 41-2702. [Subsection (a)(10) of K.S.A. 41-311]
- **Other liquor licenses.** The individual cannot also have a beneficial interest in a retailer, distributor, or microbrewery license. [Subsection (c)(6) of K.S.A. 41-311, K.S.A. 41-305]
- **Definition and treatment of persons with a beneficial interest.** Any person who has a beneficial interest in the manufacturer license will be treated as partner and therefore must also meet all of the qualifications for ownership that an individual is required to meet. A lender will be considered to have a beneficial interest if the terms of repayment of the loan are conditioned upon the manufacturer's receipts or profits from the sale of alcoholic liquor. A lessor will be considered to have a beneficial interest if the amount of rent is based on whole or in part on a percentage of the manufacturer's receipts or profits from the sale of alcoholic liquor. All financing and lease agreements that exclude alcoholic beverage sales are subject to review and approval by the Director. [Subsection (d) of K.A.R. 14-14-2]
- **Current in payment of all liquor excise taxes.** If an individual is not current in the payment of all excise taxes, fees or fines to the State of Kansas, then the Director may reject the application for an initial license or license renewal. [Ruling approved by the ABC Director]

- ***Conviction of violating the intoxicating liquor laws.*** The Director may deny an initial license or deny renewal an existing license if the individual or the individual's spouse has been convicted of violating the intoxicating liquor laws of any state or the United States or has forfeited bond to appear in court on charges of any such violation, within 10 years immediately preceding the date of application for an initial license or for renewal of an existing license. [Subsection (a) of K.S.A. 41-330]
- ***Conviction of violating the Cereal Malt Beverage Act.*** The Director may deny an initial license or deny renewal an existing license if the individual or the individual's spouse has been convicted of violating the laws of any state relating to cereal malt beverages, within 10 years immediately preceding the date of application for an initial license or for renewal of an existing license. [Subsection (b) of K.S.A. 41-330]
- ***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 other words, in this case the Liquor Control Act. Because the restriction in subsection (a)(12) described above is more restrictive than this requirement but applies only for an initial license, ABC has taken the position that this restriction 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.
- ***Non-residents.*** Each officer, director or stockholder of a corporation who is a non-resident of Kansas on the date of application or has been a resident of Kansas for less than a year immediately preceding the date of submission of the application must provide fingerprints, information and documentation as required by K.S.A. 41-311b so that ABC can determine whether they meet the criminal conviction requirement above.

Additional requirements for non-residents

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

Requirements for the licensed premises

Applicants for initial manufacturer's license must furnish a diagram of the proposed licensed premises for approval. Licensees must notify ABC prior to making any changes to their licensed premises. [Subsection (c) of K.A.R. 14-14-2]

An applicant for an initial or renewal manufacturer's license must furnish a copy of their current lease if they do not own the premises. The lease must have at least nine months remaining on it as of the date the license is issued. If the applicant owns the premises, proof of ownership must be furnished in the form of a copy of the deed. [Subsection (a)(11) of K.S.A. 41-311]

Brand and label registration

This section only applies to sales made by the manufacturer to Kansas distributors.

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

Every manufacturer desiring to sell alcoholic liquor or cereal malt beverage to distributors in Kansas must first register each brand of alcoholic liquor or cereal malt beverage with the Director prior to making shipments to distributors in Kansas. There is no fee for brand registration. However, an annual registration fee of \$25 must be paid by the supplier for each label to be sold in Kansas. [Subsection (b) of K.S.A. 41-331]

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

The procedure to register each brand is to submit the Application for Brand Registration and Label Approval form (ABC-1030) with the \$25 fee for each label and copies of the following documents:

- Franchise agreement between the manufacturer and the Kansas distributor
- DISCUS form showing the UNIMERC Code for the product
- Certificate of Label Approval (BATF form TTBF 5100.31).

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

Whenever an approved label is revised, it must go through the same approval process as a new label.

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

Alcoholic liquor, except beer

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

- quantity of liquor in the container
- class and type of liquor

- alcoholic content
- name of manufacturer

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

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

- name of the product as listed in subsection (c) of K.S.A. 41-102: beer, ale, stout, lager beer, porter
- number of fluid ounces
- a statement that the CMB product contains no more than 3.2% alcohol by weight or less than 0.5% of alcohol by volume. Beer above 3.2% alcohol by weight may have the percent of alcohol by volume on the label. [Decision by the ABC Director on 02/08/06. This was done to conform to labeling required by other states.]
- name of the manufacturer

Flavored malt beverage (FMB)

K.S.A. 41-2729 (effective July 1, 2006) is designated as the Flavored Malt Beverage Act. Subsection (b) defines “flavored malt beverage” as a malt beverage which meets the formula definitions as set forth in department of the treasury, alcohol and tobacco tax and trade bureau regulations published January 3, 2005, at 27 CFR Parts 7 and 25. Subsection (d) states:

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

Approval of containers

This section only applies to sales made by the manufacturer to Kansas distributors.

The Secretary of Revenue has authority to adopt rules and regulations prescribing the nature, form and capacity of all containers used for alcoholic liquors. [Subsection (a)(1) of K.S.A. 41-211] The regulations are K.A.R. 14-6-1 and 14-6-2a.

K.A.R. 14-6-1 prescribes the nature and form of the containers and the procedure for significant package changes.

The nature and form of all original packages of alcoholic liquor must be approved by the ABC Director before being offered for sale or sold in Kansas. [Subsection (a)(2) of K.A.R. 14-6-1] Containers sizes for beer, wines, and other alcoholic liquor set forth in subsections (a) through (c) of K.A.R. 14-6-2a have already been approved. Other container sizes and forms must be submitted by the manufacturer for approval by the Director using form ABC-214 as follows [subsection (e) of K.A.R. 14-6-2a]:

- Submit a copy of the federal label approval form. [Subsection (a)(5) of K.A.R. 14-6-1]
- The container shall not incorporate any obscene material into its design, composition or form. [Subsection (a)(7) of K.A.R. 14-6-1]

- The Director shall notify licensees and other interested parties that a request has been received and will be acted upon within 30 days after the date that public notice is given. The notice shall state that any licensee or other interested party may submit written comments in favor of or opposed to approval of the proposed size during the 30 day period. [Subsection (e)(1) of K.A.R. 14-6-2a] On 03/15/06, the Director determined that licensees and interested parties would be notified by placing a notice on the ABC website for 30 days and by placing a notice in the trade publication, Beverage News - Kansas Edition.

All comments received within 30 days following publication of the notice will be reviewed and submitted to the Director for a decision. Once the decision is made, it will be communicated by letter to any party who made a comment contrary to the decision. The letter will include instructions on how to appeal the Director's decision. The procedure for appealing is the same procedure proscribed for appealing a fine or suspension or revocation of a license. [Subsection (e)(1) of K.A.R. 14-6-2a] Appeals must be filed in writing with the Director within 15 days after receipt of the letter setting forth the decision of the Director. [K.S.A. 41-321] The Director will then set the matter for a formal hearing in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq.

Franchise agreements for specific products and geographic distribution rights

This section only applies to sales made by the manufacturer to Kansas distributors.

K.S.A. 41-410 requires that all distributors licensed in Kansas must provide to ABC a copy of the franchise agreement between the distributor and their supplier, manufacturer, farm winery or microbrewery.

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

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

- Mail a letter by certified mail to all affected parties notifying them of the pending termination. This would include the distributor being terminated and the proposed new distributor, if any. A copy of the notice of termination and the required affidavit from the manufacturer, supplier, farm winery or microbrewery will be enclosed. The letter will state the effective date of the termination, which will be 30 days after ABC received the notice of termination from the manufacturer, supplier, farm winery or microbrewery. A copy of this letter will also be sent to the manufacturer, supplier, farm

winery or microbrewery so that they are made aware of the effective date of the termination on ABC's records.

- Unless prohibited by court order, on the next business day following the 30 day waiting period ABC will update the brand registration and label approval database on ABC's website to reflect the termination and, if applicable, the transfer of products to the new distributor.

Termination of a franchise agreement, other than by mutual agreement of the parties, must be for "reasonable cause." [Subsection (f) of K.S.A. 41-410] In any situation where termination is disputed, the aggrieved party may file an action in state district court to determine whether there is "reasonable cause." [Subsection (e) of K.S.A. 41-410]

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

Pricing restrictions

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

Salespersons

Persons employed by a manufacturer to procure orders or promote the manufacturer's business and are physically present in Kansas while doing so must obtain a Salesperson Permit. [K.S.A. 41-333] See ABC publication "Handbook for Salespersons."

Advertising and promotions

This section supersedes the following ABC Policy Memorandums:

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

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

- pertaining to written representation
- pertaining to pictorial representation
- described in vivid detail
- pictorial device, as an illustration or chart

- display by a computer or imaging device

Advertising in general

- K.S.A. 41-714 was amended in 2005 by Subsection 10 of Senate Bill No. 298, which removed all of the restrictions on advertising and delegated to the Secretary of Revenue the regulation of liquor advertising. Subsection (a) states that all farm winery and microbrewery advertising must be approved in advance by the Director. Subsection (b) delegates to the Secretary the regulation of advertising by regulation.
- Industry members are prohibited from including in any advertising:
 - Any statement, design, device or representation that is obscene, false or likely to mislead to the consumer. [Subsections (a)(1) and (a)(2) of K.A.R. 14-8-2]
 - Any statement concerning a brand that is inconsistent with any statement on the labeling. [Subsection (a)(3) of K.A.R. 14-18-2]
- Industry members shall not arrange for a radio station to have its mobile unit park at a retailer (retail liquor store, club, drinking establishment and caterer) and offer something of value to the public for finding the mobile unit and broadcast clues to find the mobile unit. This is interpreted as furnishing something of value to the retailer (inducing consumers to visit the licensed premises) in violation of subsection (a) of K.S.A. 41-703. [Ruling by the ABC Director on 08/01/05]
- An industry member may be present and hand out promotional items to consumers on a retailer's licensed premises during the time that a radio or TV commercial is being broadcast but shall not participate in the commercial or pay any of the cost thereof. [Ruling by the ABC Director on 08/01/05]
- Industry members may furnish, give, rent, loan or sell newspaper cuts, mats or engraved blocks to a retailer for use in their advertising of the industry member's products. [Subsection (e) of K.A.R. 14-10-10]
- Industry members are prohibited from inducing retailers (retail liquor store, drinking establishment, club, or caterer) to purchase product from them by paying or crediting the retailer for any advertising, display or distribution service. The following practices are specifically prohibited:
 - Participating in paying for an advertisement placed by the retailer.
 - The purchase of advertising on signs, scoreboards, programs, scorecards, and similar items from the retail concessionaire at ballparks, racetracks or stadiums.
 - The purchase of advertising in a publication of the retailer which is distributed to consumers or the general public.
 - Reimbursements to retailers for setting up product or other displays.
 - Rental of display space in the retailer's licensed premises.
 [Subsection (a) of K.A.R. 14-10-10]

Advertising on vehicles

- Alcoholic beverage advertising is prohibited on any vehicle, except that the company name, brand name and logo may appear on vehicles owned or leased by industry members, non-beverage users,

microbreweries and farm wineries which are authorized to transport liquor pursuant to K.A.R. 14-5-2. [K.A.R. 14-8-6]

Consumer coupons, premiums, rebates and refunds

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

Gift packs

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

- Color photo, not less than 5" by 7", of the complete package.
- Completed discus form (unimeric number).
- Unimeric number of the liquor items in each package.
- \$25 fee applies only if the product is not currently registered for individual sale.

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

Consumer advertising specialties

- Industry members may give, furnish or sell consumer advertising specialties, such as ash trays, bottle or can openers, cork screws, matches, printed recipes, informational pamphlets, cards and leaflets, post cards, posters, printed sports schedules, pens, pencils, and other similar items as approved by the Director, and which bears advertising material, to retailers (RLS's, clubs, DE's, and caterers) for unconditional distribution to the general public. The retailer shall not be paid or credited in any manner, directly or indirectly, for this distribution service. [Subsection (c) of K.A.R. 14-10-10]
- Consumer advertising specialties distributed by retail liquor to the public shall contain advertising material relating to a brand name of alcoholic liquor or to the operation of the retail liquor store

distributing the item. The public may not be charged for the item or required to purchase anything to receive the item. [Subsection (b)(4) of K.S.A. 41-308 and subsection (g)(2) of K.A.R. 14-13-13]

- There are limitations on the total value of all retail advertising specialties provided by an industry member to a particular retailer during any one calendar year as set forth in subsection (b) of K.A.R. 14-10-14.

Industry members giving or lending anything else of value to retailers

- Industry members are prohibited from giving or lending money, equipment, supplies, services or anything of value to a retailer (see definition below) except as permitted by K.S.A. 41-703 and K.A.R. 14-10-8. [Subsection (b) of K.S.A. 41-702] Except as permitted by K.A.R. 14-10-8 and 14-10-10, industry members are prohibited from directly or indirectly selling, supplying, furnishing, giving, paying for, loaning or leasing any furnishing, fixture or equipment on the premises of a place of business of a retailer. Retailers are defined as:
 - a drinking establishment, club or caterer licensed under the Club and Drinking Establishment Act.
 - a retail liquor store licensed under the Liquor Control Act
 - a retailer of CMB licensed under the Cereal Malt Beverage Act (K.S.A. 41-2701 et seq.)
- K.A.R. 14-10-8 allows industry members to provide the following equipment, supplies and services to a retailer as defined above:
 - Glassware may be sold to a club, drinking establishment or caterer if the price is not below that paid by the industry member and if the price is collected by the industry member at the time of the sale. [Subsection (b) of K.A.R. 14-10-8]
 - Tapping accessories, including installation, may be sold to a club, drinking establishment or caterer if the price is not below that paid by the industry member and if the price is collected by the industry member at the time of the sale. [Subsection (c) of K.A.R. 14-10-8]
 - Carbon dioxide or ice may be sold to a club, drinking establishment or caterer at the reasonable open market price in the locality where sold if the price is collected by the industry member at the time of the sale. [Subsection (d) of K.A.R. 14-10-8]
 - Coil cleaning service may be furnished, given or sold to a club, drinking establishment or caterer. [Subsection (e) of K.A.R. 14-10-8]
 - Stocking, rotating stock and affixing prices to alcoholic liquor sold by the industry member to a retail liquor store, as long as the alcoholic liquor from other industry members are not altered or disturbed. [Subsection (f) of K.A.R. 14-10-8]
- K.A.R. 14-10-8 allows industry members to provide furnish signs to retail liquor stores, clubs, drinking establishments and caterers if:
 - The sign has no secondary value and is of value only as product advertising to the retail liquor store, club, drinking establishment or caterer. [Subsection (b)(1) of K.A.R. 14-10-8]
 - The industry member does not directly or indirectly pay or credit the retail liquor store, club, drinking establishment or caterer for displaying the sign or for any expense incidental to the sign's installation, removal or operation. [Subsection (b)(2) of K.A.R. 14-10-8]

Product displays

- "Product display" means any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine or malt beverages are displayed and sold. [Subsection (b) of K.A.R. 14-10-13]

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

Promotions involving giving away tickets to concerts or other events

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

Sweepstakes and raffles

- Industry members may conduct sweepstakes (raffles) for the public to participate in, as long as there is no charge for participation or purchase of an alcoholic beverage required, and no alcoholic beverage is awarded as a prize. [Subsection (g) of K.A.R. 14-13-13 and Kansas criminal gambling laws]
- Entry forms for a sweepstakes conducted by an industry member may be placed in retailer premises or made available on the internet website of the industry member or their agent. For raffles conducted by an industry member offered to consumers at a retail liquor store, the consumers may pick up the raffle entry forms at the store but must mail them to the manufacturer or distributor or agent thereof. Entry forms may be in the form of a tearpad but not in the form of neckhangers on bottles or tearpads which look like neckhangers. The selection of the winner shall not take place on the retail liquor store's premises. For raffles offered by industry members to consumers at a grocery or convenience store with a CMB license, the consumers may pick up the raffle entry forms at the store and the drawing may be conducted at the store. The prize provided by the industry member may be displayed in the store. Industry members conducting either type of raffle may not include in any radio or other media advertising the name or location of the licensed retailer where the raffle is being conducted. This is considered as furnishing something of value (advertising) to the licensee in violation of subsection (a) of K.S.A. 41-703. If a grocery or convenience store with a CMB license conducts its own raffle, the prize may not be furnished by an industry member. This is interpreted as furnishing something of value to the licensee in violation of subsection (a) of K.S.A. 41-703. [Ruling by the ABC Director on 08/01/05]

Wine lists and menus

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

Signs

- Regulation K.A.R. 14-8-8, which prohibits signs advertising alcoholic liquor which are painted or in any manner exhibited on the exterior or interior of any building, is no longer being enforced by ABC since the ruling on billboard advertising by the Kansas Attorney General in Opinion No. 92-14 dated 02/03/92.
- Industry members may provide to retailers with basic signs advertising the industry member's products. The sign cannot have any secondary value. In other words, the industry member cannot

give a scoreboard or other equipment to a retailer under the theory that it is just a sign advertising their product. In addition, the industry member cannot make payments or give credits to the retailer for displaying their sign and cannot pay for the installation, removal or operation of the sign. This would prohibit the industry member from supplying the structure to mount the sign on, such as a billboard, marquee with space to post additional information, a semi-trailer truck, etc. [Subsection (b) of K.A.R. 14-10-10]

Industry member support of events sponsored by retailers

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

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

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

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

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

Industry member support of events sponsored by liquor associations

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

Gallonge Tax

Kansas manufacturers must pay the gallonage tax on all alcoholic liquor and cereal malt beverages manufactured for human consumption in Kansas. [Subsection (a) and (b) of K.S.A. 41-501]

Manufacturers must report and remit their gallonage tax to the ABC Marketing Unit each month using the Kansas Manufacturer Monthly Gallonge Tax Return and Report form (ABC-273). This form must be filed each month even if there is not any alcoholic liquor manufactured. [K.S.A. 41-502]

The Kansas gallonage tax rates are listed below. [Subsection (b)(1) of K.S.A. 41-501]

- \$0.18 per gallon on beer and cereal malt beverage
- \$0.20 per gallon on all wort or liquor malt
- \$0.10 per pound on all malt syrup or malt extract
- \$0.30 per gallon on wine containing 14% or less alcohol by volume
- \$0.75 per gallon on wine containing more than 14% alcohol by volume
- \$2.50 per gallon on alcohol and spirits

Gallonage tax applies when:

- Alcoholic liquor or cereal malt beverage is manufactured in Kansas. [Subsection (b)(2) of K.S.A. 41-501]
- Alcohol is imported into Kansas to be used as an ingredient in manufacturing alcoholic liquor for beverage purposes. [Subsection (b)(2) of K.S.A. 41-501]
- Kansas manufacturers purchase alcohol as an ingredient to be used in manufacturing alcoholic liquor for beverage purposes from another Kansas manufacturer. However, the manufacturer purchasing the alcoholic liquor reduces their gallonage tax by the amount the selling manufacturer previously paid. As a result, the purchasing manufacturer is actually only paying gallonage tax on the increase in the volume of the alcoholic liquor or that occurred during its manufacturing process. [Subsection (j) of K.S.A. 41-501]

Gallonage tax is not imposed when:

- Alcoholic liquor and cereal malt beverages are manufactured and shipped to a location outside of Kansas. [Subsection (c) of K.S.A. 41-501]
- Wines are manufactured solely and exclusively for sacramental purposes (religious ceremonies conducted by authorized representatives of churches or other religious groups). [Subsection (d) of K.S.A. 41-501]
- Alcohol or wine is manufactured for non-beverage purposes and sold to a non-beverage user licensed as such in Kansas. [Subsection (e)(1) of K.S.A. 41-501]
- Kansas manufacturers sell alcoholic liquor or cereal malt beverages to Kansas distributors. [Subsection (b)(2) of K.S.A. 41-501]

Reporting

A monthly report of products manufactured must be filed with the ABC Marketing Unit each month using the Kansas Manufacturer Monthly Gallonage Tax Return and Report form (ABC-273). This report must be filed each month even if there is not any alcoholic liquor manufactured. [K.S.A. 41-601]

Record keeping

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

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

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

Authorized activities

Distribution of manufactured products to Kansas distributors. Manufacturers may only distribute their alcoholic liquor and cereal malt beverage intended for human consumption in Kansas through a distributor licensed in Kansas. [K.S.A. 41-305]

Distribution of manufactured products outside of Kansas. Manufacturers may only distribute their alcoholic liquor and cereal malt beverage intended for human consumption to businesses outside of Kansas if legal in the jurisdiction where the business is located. [K.S.A. 41-305]

Wines manufactured solely and exclusively for sacramental purposes. Wines manufactured solely and exclusively for sacramental purposes (religious ceremonies) may be sold to bonafide churches and religious organizations for use in religious ceremonies. [K.S.A. 41-105]

Sale of alcohol and wine intended for nonbeverage use. Manufacturers may sell alcohol and wine to a nonbeverage user licensed in Kansas. [K.S.A. 41-305]

Server training. Manufacturers may provide free server training to clubs or drinking establishments either directly or indirectly through a group of manufacturers or a third party contractor. [Ruling by the

ABC Director on 01/24/05 that this service is not authorized by the trade practices described in K.A.R. 14-10-8 through 14-10-16]

Prohibited activities

Sales in federal areas. Manufacturers shall not directly sell any alcoholic liquor in a federal area. The penalty for violation is revocation of the manufacturer's license. [Subsection (a) of K.S.A. 41-329] A "federal area" means any lands or premises which are located within the exterior boundaries of Kansas and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States. [Subsection (a)(2) of K.S.A. 41-501]

Interest in licensed distributor. Manufacturers shall not directly or indirectly own or have any interest in a distributor licensed in Kansas. [K.S.A. 41-704]

Giving free samples. Manufacturers are not authorized to give free samples of alcoholic liquor or CMB to any licensee or person.

Administrative actions for violations of statutes and regulations

The Director may, in accordance with the Kansas Administrative Procedures Act, suspend or revoke a manufacturer's license for violation of any provision of the Liquor Control Act or Cereal Malt Beverage Act any regulations adopted thereunder. [K.A.R. 14-16-15]

In addition to or in lieu of any other civil or criminal penalty provided by law, the Director may impose a civil fine not exceeding \$1,000 for each violation of the Kansas Liquor Control Act. [Subsection (a) of K.S.A. 41-328]