



HANDBOOK

FOR

MICROBREWERIES

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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

“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]

“Beneficial Interest” means 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 (d) of K.A.R. 14-14-1]

"Domestic beer" means beer containing not more than 10% alcohol by weight, and which is manufactured in this state. [Subsection (i) of K.S.A. 41-102]

"Microbrewery" means a brewery licensed by the director to manufacture, store and sell domestic beer. [Subsection (p) of K.S.A. 41-102] A microbrewery is not considered to be a retailer. [Subsection (v)(2) of K.S.A. 41-102] A microbrewery is not considered to be a manufacturer. [Subsection (o)(2) of K.S.A. 41-102]

"Non-beverage user" means any manufacturer of any of the products set forth and described in K.S.A. 41-501, and amendments thereto, when the products contain alcohol or wine, and all laboratories using alcohol for non-beverage purposes. [Subsection (r) of K.S.A. 41-102] Non-beverage users include:

- Religious organizations using wine imported solely and exclusively for sacramental purposes. [Subsection (d) of K.S.A. 41-501]
- Manufacturers of patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or experimental or mechanical purposes. [Subsection (e)(1) of K.S.A. 41-501]
- Any school or college using alcohol or wine for scientific, chemical, experimental or mechanical purposes. [Subsection (k) of K.S.A. 41-501]
- Any hospital, sanatoria or other institutions using alcohol or wine for caring for the sick. [Subsection (k) of K.S.A. 41-501]

Application for licensure - required forms, fees and licensing bond

For forms and instructions for initial licensure, contact ABC Licensing at 785-296-7015 or go to the ABC website at www.ksrevenue.org/abc.html

The biennial license fee is \$500. [Subsection (e) of K.S.A. 41-310] This fee is refundable if the applicant is denied a license.

The non-refundable registration fee for an initial license application is \$50. The non-refundable registration fee for renewal applications is \$10. [Subsection (a) of K.S.A. 41-317]

At the time of initial licensing, applicants must submit and maintain a licensing bond in the amount of \$2,000. [Subsection (g)(6) of K.S.A. 41-317]

The license term commences on the date that the license is issued by the director. [Subsection (m) of K.S.A. 41-310] At the end of the two-year license term, the license is renewable for another two-year term unless suspended or revoked, as long as the licensee and premises continue to meet the requirements of all relevant laws and regulations. [K.S.A. 41-327]

Once all of the forms, fees, licensing bond and other required documentation for licensure are submitted to and accepted by Director, the Director has 30 days to either issue the license or issue an order denying the license. If no license is issued or no denial order is issued within that time, then the license is deemed to be denied. The applicant may agree in writing to give the Director an additional 30 days to either issue or deny the license. [Subsection (a) of K.S.A. 41-319]

An order by the Director denying a license shall state the reason(s) therefore. The applicant may file a notice of appeal from a Director's denial order with the Secretary of Revenue within 15 days after service of the order. [K.S.A. 41-321]

The decision of the Secretary or Secretary's designee on an applicant's appeal of a denial of licensure may be appealed to District Court pursuant to the Kansas Act For Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et seq. [K.S.A. 41-323]

A microbrewery license is a personal privilege and is not assignable. [K.S.A. 41-326]

Qualifications for licensure

Subsections (a) and (f) 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.

Partnerships

Each partner must meet all of the qualifications for individual ownership below. [Subsection (f)(5) of K.S.A. 41-311]

The partnership cannot have a beneficial interest in any business which has a retail liquor store license issued under the Liquor Control Act or a retail license issued under the CMB act. [Subsection (f)(4) of K.S.A. 41-311]

Corporations

At least 50 percent of the stock must be owned by persons who meet all of the qualifications for individual ownership below. The owners of the remaining stock must meet all of the qualifications for individual ownership except the U.S. citizenship and Kansas and county residency requirements. [Subsection (f)(6) of K.S.A. 41-311]

Officers and directors of corporations are not required to meet any qualifications unless they are also a stockholder.

An individual stockholder owning less than 50 percent of the stock must provide fingerprints, information and documentation as required by K.S.A. 41-311b if that person is a non-resident of Kansas on the date of application or have been a resident of Kansas for less than a year immediately preceding the date of submission of the application. If such stockholder is a corporation, then the Director may require that each officer, director and major stockholder provide fingerprints, information and documentation as required by K.S.A. 41-311b. If such stockholder is a partnership, then the Director may require that each partner provide fingerprints, information and documentation as required by K.S.A. 41-311b. If such stockholder is a trust, then the Director may require that each trustee provide fingerprints, information and documentation as required by K.S.A. 41-311b.

Limited Liability Companies (LLC)

An LLC is not specifically authorized by statute to own a microbrewery. However, Attorney General Opinion #2001-19 (April 23, 2001) states the Director may determine what qualifications for licensure apply to LLCs, until such time as the legislature makes provision for LLC's in the statutes. Directors of ABC have ruled that LLCs would be treated as corporations for the purpose of meeting the qualifications for licensure. Therefore, an LLC must be organized under the laws of Kansas. Only those individuals having more than a 5 percent interest in the LLC must meet the licensing qualification for individual ownership below, except the citizenship and residency requirements.

Trusts

For trusts to be licensed, each grantor, beneficiary and trustee must meet the licensing qualifications for individual ownership below. However, a beneficiary does not have to be at least 21 years of age. [Subsection (f)(7) of K.S.A. 41-311]

Individuals

- **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]

- **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 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. [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]

- **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]

- **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]

a "Pandering" is not currently used in the Kansas criminal law. Black's Law Dictionary defines "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 include:

- 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]

- ***Conviction of 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 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]
- ***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]

- ***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]
- ***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 RLS. [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]

- ***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 RLS. [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]

- **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 holder.** The individual cannot hold a CMB license issued pursuant to the CMB Act. [Subsection (a)(10) of K.S.A. 41-311]

For either an initial or renewal license, this requirement does not apply to the individual's spouse. [Subsection (f)(4) of K.S.A. 41-311]

- **Resident of Kansas.** The individual must be a resident of Kansas for at least four years immediately preceding the date of application for licensure and must maintain Kansas residency while licensed. [Subsections (f)(1) and (f)(2) 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]

- **Beneficial interest in a manufacturer or distributor.** The individual cannot have a beneficial interest in a manufacturer or distributor licensed under the Liquor Control Act. [Subsection (f)(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]

- **Beneficial interest in a retailer.** The individual cannot have a beneficial interest in a retailer licensed under the Liquor Control Act. The individual's spouse may have a beneficial interest in a retailer if the spouse does not also hold a farm winery or microbrewery license. [Subsection (f)(4) of K.S.A. 41-311]

- **Beneficial interest in a license issued under the Club and Drinking Establishment Act.** The individual may have a beneficial interest in a class B club license, drinking establishment license or caterer's license issued pursuant to the Club and Drinking Establishment Act. The individual cannot have a beneficial interest in class A club license or a combination drinking establishment/caterer license. [Subsection (a)(4)(E) of K.S.A. 41-2623 and subsections (a)(5) and (a)(6) of K.S.A. 308b]

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]

- **Current in payment of all liquor taxes.** If an individual is not current in the payment of all gallage and enforcement 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 Director]

Requirements for the licensed premises

The location of the licensed premises must be zoned for either agricultural, commercial or business purposes. [Subsection (b) of K.S.A. 41-710]

The premises cannot be located within 200 feet of a public or parochial school, college or church unless the existence of the licensed premises predates the school, college or church. [Subsection (c)(1) of K.S.A. 41-710]

The premises must conform to the applicable building regulations. [Subsection (c)(2) of K.S.A. 41-710]

Only one location may be described in the license application and the license shall apply only to that one location. [Subsection (e) of K.S.A. 41-308b]

The individual must own the premises to be licensed or have a valid written lease thereon at the time of application. [Subsection (a)(11) of K.S.A. 41-311]

Microbrewery packaging and warehousing facility

Each microbrewery licensee may have one facility separate from their manufacturing facility for packaging and warehousing their products. The microbrewery must obtain a separate Microbrewery Packaging and Warehousing Facilities License. [Subsection (b) of K.S.A. 41-308b] The license fee is \$200. [Subsection (e)(3) of K.S.A. 41-310]

This license allows the microbrewery to perform the following activities only:

- The transfer of beer manufactured at the microbrewery's licensed premises to the packaging and warehousing facility for the purpose of packaging and/or storage. [Subsection (b)(1) of K.S.A. 41-308b] On April 25, 2006, the Director approved the following activities that may be conducted at the packaging and warehousing facility as part of the packaging process:
 - ◆ dilution of concentrated beer to its final product
 - ◆ filtration of otherwise finished beer
- The transfer of beer manufactured by the licensee from the packaging and warehousing premises back to the main manufacturing premises. [Subsection (b)(2) of K.S.A. 41-308b]
- The removal of beer manufactured by the licensee for the purpose of delivery to a licensed beer wholesaler. [Subsection (b)(3) of K.S.A. 41-308b]

Days and hours of operation

A microbrewery may sell domestic beer in the original unopened containers to consumers for consumption off-premises at any time between 6 a.m. and 12 a.m. on any day except Sunday and on Sunday from 11 a.m. to 7 p.m.. [Subsection (c) of K.S.A. 41-308b]

Employees

Employees of microbreweries and microbrewery packaging and warehousing facilities are subject to the following restrictions pursuant to Subsection (f) of K.S.A. 41-308b:

- Any employees involved with the manufacture, sale or serving of any alcoholic liquor must be at least 18 years old.
- Any employee who is under the age of 21 years must at all times be under the supervision of an on-premises employee of the licensee who is 21 years of age or over.
- Any employee who is mixing or dispensing alcoholic liquor on the licensed premises must be at least 21 years old.
- No person shall be employed in the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

Label requirements and approval

Each label of domestic beer must comply with the labeling requirements of federal regulations adopted by the United States Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau. The regulations may be found at 27 CFR Part 7.

Each microbrewery shall submit for the Director's approval a sample of each label used before the beer is offered for sale. The \$25 registration fee provided in subsection (b) of K.S.A. 41-331 does not apply to microbreweries.

Distribution of products and franchise agreements

A microbrewery may distribute its products through licensed distributors. [Subsection (a)(2) of K.S.A. 41-308b] If a microbrewery chooses to distribute a particular product through a licensed distributor, then it must enter into an exclusive franchise agreement with that distributor for a specified geographic area, which may be the whole state or part of the state.

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 (ABC-1007). 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]

Director's permit for the importation of small quantities of beer

The Director may issue a permit to the Kansas State Fair or to any bona fide group of brewers for the import into Kansas of small quantities of beer to be used for bona fide educational and scientific testing tasting programs. Such beer may only be given as free samples and shall not be sold. Such beer shall not be subject to the gallonage tax imposed by K.S.A. 41-501 et seq.

Application for the permit must be made to the Director by letter at least 30 days in advance of the tasting program. The letter shall include the following information:

- name and address of the sponsoring group
- name of the person in charge of the tasting program and how to contact that person
- the educational and/or scientific purposes of the tasting program
- time and location of the tasting program
- who will participate in the tasting program
- description of how the tasting program will be conducted
- quantities of each brand and type of beer to be imported

The Director will then respond with either an approval or denial. If approved, the approval and the letter of application will serve as the permit. If denied, the Director will state the basis for the denial. [Subsection (d) of K.S.A 41-308b]

Authorized activities

Manufacturing. A microbrewery may manufacture not less than 100 and not more than 15,000 barrels of domestic beer during the license year. [Subsection (a)(1) of K.S.A. 41-308b]

Sales to distributors. A microbrewery may sell its beer to licensed beer distributors. [Subsection (a)(2) of K.S.A. 41-308b]

Sales to consumers for off-premises consumption. A microbrewery may sell its beer in the original, unopened container to consumers for consumption off the licensed premises. [Subsection (a)(3) of K.S.A. 41-308b] There is no restriction on the price charged.

Serving of samples on the licensed premises. Microbreweries may serve on the licensed premises free samples of domestic beer manufactured by the licensee if the premises is located in a county where the sale of alcoholic liquor is legally permitted in licensed drinking establishments. [Subsection (a)(4) of K.S.A. 41-308b] Samples may be served only during those days and times that clubs and drinking establishments are authorized to serve and sell alcoholic liquor. [Subsection (c) of K.S.A. 41-308b]

Serving of samples at special events off-premises. Microbreweries may serve, at special events monitored and regulated by ABC and held off the licensed premises, free samples of domestic beer manufactured by the licensee if the location is in a county where the sale of alcoholic liquor is legally permitted in licensed drinking establishments and is held at a location allowed by K.S.A. 41-719. [Subsection (a)(4) of K.S.A. 41-308b, as amended by 2011 SB 80] Samples may be served only during those days and times that clubs and drinking establishments are authorized to serve and sell alcoholic liquor. [Subsection (c) of K.S.A. 41-308b]

On Nov. 7, 2005, the Director ruled that "monitored and regulated by the division of ABC" may consist of reviewing the proposed activities and conditions for compliance with all applicable statutes and regulations. Microbreweries must request approval for such an activity by letter sent to the Director.

Sales to consumers for on-premises consumption. If the microbrewery is also licensed as a club or drinking establishment, it may sell domestic beer and other alcoholic liquor for consumption on the licensed premises as authorized by the Club and Drinking Establishment Act. [Subsection (a)(5) of K.S.A. 41-308b] Such sales shall only take place during times when clubs and drinking establishments are authorized to serve and sell alcoholic liquor. There is no statutory prohibition on a microbrewery owning more than one DE and selling its beer to consumers at each. [Subsection (d) of K.S.A. 41-308b]

Sales as a caterer. If a microbrewery is also licensed as a caterer, the sale of domestic beer and other alcoholic liquor for consumption on unlicensed premises as authorized by the Kansas Club and Drinking Establishment Act. [Subsection (a)(6) of K.S.A. 41-308b]

Sales of kegs. A microbrewery may sell kegs of beer to consumers for consumption off the licensed premises in the same manner as they sell other containers of beer. [Subsection (a)(3) of K.S.A. 41-308b] However, kegs of four gallons or more must be registered and tagged pursuant to the Beer and Cereal Malt Beverage Keg Registration Act (K.S.A. 41-2901 *et seq.*).

K.S.A. 41-308b does not specifically mention that a microbrewery can or cannot sell kegs of beer at retail. The Beer and Cereal Malt Beverage Keg Registration Act (K.S.A. 41-2901 *et seq.*) only refers to kegs being sold by a "retailer." "Retailers" are specifically defined in the Liquor Control Act as not including microbreweries. However, the ABC regulations for keg registration, specifically K.A.R. 14-15-1, defines "licensee" as including microbreweries. K.A.R. 14-15-2 requires that all kegs sold by licensees to consumers (and not for resale by another retailer) must be tagged and registered.

Prohibited activities

Sales to retail liquor stores. A microbrewery shall not sell beer to retail liquor stores. [Prohibited by implication because it is not authorized by subsection (a) of K.S.A. 41-308b]

Sales to clubs and drinking establishments. A microbrewery shall not sell beer to clubs and drinking establishments other than to itself if so licensed. [Subsection (a)(5) of K.S.A. 41-308b]

Sales to caterers. A microbrewery shall not sell beer to caterers other than to itself if so licensed. [Subsection (a)(6) of K.S.A. 41-308b]

Administrative actions for violations of statutes and regulations

K.A.R. 14-16-15 provides for revocation or suspension of a microbrewery license for any violation of the Liquor Control Act or its regulations, after the issuance of a citation to the licensee and a hearing. [K.S.A. 41-320] K.S.A. 41-328 also authorizes the imposition of a civil fine of not more than \$1,000 per violation for any violation of the Liquor Control Act or the regulations adopted thereunder.

The Director may revoke the license of any microbrewery licensee who is convicted of a violation of the Liquor Control Act. [Subsection (g) of K.S.A. 41-308b]

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>

Gallonage tax

Kansas microbreweries must pay the gallonage tax on all beer, wort, liquid malt, malt syrup and malt extract manufactured. [Subsection (b) of K.S.A. 41-501]

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

- 18 cents per gallon on beer
- 20 cents per gallon on wort and liquid malt
- 10 cents per pound on malt syrup and malt extract

Domestic beer sold to out-of-state wholesalers is exempt from the gallonage tax. The microbrewery must provide an affidavit with its monthly report to the Director for such exempt sales. Bills of lading are subject to review by the Director. [Subsection (c) of K.S.A. 41-501]

Domestic beer sold to a nonbeverage user is exempt from the gallonage tax if it is sold for use in the manufacture of any of the following products:

- Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations
- Flavoring extracts and syrups and food products
- Scientific, industrial and chemical products
- Scientific, chemical, experimental or mechanical purposes

Reporting

Kansas microbreweries must report and remit their gallonage tax to the ABC Marketing Unit each month using the Kansas Microbrewery Gallonage Tax Return and Report (ABC-272). This form must be filed each month even if no domestic beer is manufactured. [K.S.A. 41-502]

Liquor enforcement tax

Kansas imposes a liquor enforcement tax on all domestic beer sold by a microbrewery to Kansas consumers for off-premise consumption. The tax is 8 percent of the retail sale price of the beer and is collected by the microbrewery from the consumer at the time of sale. [K.S.A. 79-4101] The tax return and payment must be received by the department by the 25th day of the month following the month that the sales were made. [K.S.A. 79-4103]

Liquor enforcement tax may be filed and paid electronically at <http://www.ksrevenue.org/kswebtax.html>

This tax is a substitute for the Kansas retail sales tax. Therefore, alcoholic liquor sold to consumers is exempt from the retail sales tax. [Subsection (g) of K.S.A. 41-501 and subsection (a) of K.S.A. 79-3606]

A microbrewery which also holds a club, drinking establishment or caterer's license must remit liquor enforcement tax on all beer transferred from the microbrewery for sale by the club, drinking establishment or caterer.

Record keeping

All records of all domestic beer sold must be maintained on the licensed premises for at least three years and are subject to inspection and audit by ABC or Department of Revenue employees authorized by the ABC Director.

Tax bond

Microbreweries may be required by the Kansas Department of Revenue to post a bond to assure payment of taxes.

Appendix A

41-308b. Microbrewery license; rights of licensee. (a) A microbrewery license shall allow:

(1) The manufacture of not less than 100 nor more than 15,000 barrels of domestic beer during the license year and the storage thereof;

(2) the sale to beer distributors of beer, manufactured by the licensee;

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of beer manufactured by the licensee;

(4) the serving free of charge on the licensed premises and at special events monitored and regulated by the division of alcoholic beverage control, of samples of beer manufactured by the licensee, if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

(5) if the licensee is also licensed as a club or drinking establishment, the sale of domestic beer and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act; and

(6) if the licensee is also licensed as a caterer, the sale of domestic beer and other alcoholic liquor for consumption on unlicensed premises as authorized by the club and drinking establishment act.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a microbrewery licensee, the director may issue not to exceed one microbrewery packaging and warehousing facility license to the microbrewery licensee. A microbrewery packaging and warehousing facility license shall allow:

(1) The transfer, from the licensed premises of the microbrewery to the licensed premises of the microbrewery packaging and warehousing facility, of beer manufactured by the licensee, for the purpose of packaging or storage, or both; and

(2) the transfer, from the licensed premises of the microbrewery packaging and warehousing facility to the licensed premises of the microbrewery, of beer manufactured by the licensee; or

(3) the removal from the licensed premises of the microbrewery packaging and warehousing facility of beer manufactured by the licensee for the purpose of delivery to a licensed beer wholesaler.

(c) A microbrewery may sell domestic beer in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 11 a.m. and 7 p.m. on Sunday. If authorized by subsection (a), a microbrewery may serve samples of domestic beer and serve and sell domestic beer and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor.

(d) The director may issue to the Kansas state fair or any bona fide group of brewers a permit to import into this state small quantities of beer. Such beer shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such beer shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of beer to be imported, the quantity to be imported, the tasting programs for which the beer is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of beer pursuant to this subsection and the conduct of tasting programs for which such beer is imported.

(e) A microbrewery license or microbrewery packaging and warehousing facility license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(f) No microbrewery shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premises supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

(g) Whenever a microbrewery licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and all fees paid for the license in accordance with the Kansas administrative procedure act.

History: L. 1987, ch. 182, § 138; L. 1990, ch. 179, § 1; L. 1992, ch. 201, § 3; L. 1995, ch. 258, § 1; L. 2005, ch. 135, § 1; L. 2008, ch. 126 § 6; L. 2010, ch. 142 § 18; L. 2011 ch. _____ § 2; April 28.

Legislative History

- K.S.A. 41-308b was passed in 1987 as section 138 of House Substitute for Substitute for Senate Bill No. 141 (see 1987 Session Laws, Chapter 182) effective January 1, 1988.
- K.S.A. 41-308b was amended in 1990 by section 1 of Senate Bill No. 516 (see 1990 Session Laws, Chapter 179) effective July 1, 1990. Specific days and hours for sales on the license premises was inserted into subsection (c) of the statute.
- K.S.A. 41-308b was amended in 1992 by section 3 of House Bill No. 2719 (see 1992 Session Laws, Chapter 201) effective May 7, 1992. It added subsection (a)(6) allowing a microbrewery to also have a caterer's license issued pursuant to the Club and Drinking Establishment Act.
- K.S.A. 41-308b was amended in 1995 by section 1 of Senate Bill No. 256 (see 1995 Session Laws, Chapter 258) effective July 1, 1995. It increased from 5,000 to 15,000 the maximum number of barrels of domestic beer that a microbrewery can produce in any one license year.
- K.S.A. 41-308b was amended in 2005 by section 1 of Senate Substitute for House Bill No. 2501 (see 2005 Session Laws, Chapter 135) effective July 1, 2005, as follows:
 - added a new subsection (b) allowing each microbrewery to have one licensed packaging and warehousing facility. The annual license fee of \$100 was also added to subsection (e) of K.S.A. 41-310.
 - added a new subsection (e) authorizing the Kansas State Fair or any group of brewers to obtain a permit from the Director to import into Kansas small quantities of beer for educational and scientific tasting programs.
 - increased the hours permitted for sales on Sundays from 12 noon - 6 pm to 11 am - 7 pm.
 - added the requirement that applicants for a packaging and warehousing facility license submit to the Director a description of the premises to be licensed.
- K.S.A. 41-308b was amended in 2008 by section 6 of House Bill 2908 (see 2008 Session Laws, Chapter 126) effective July 1, 2008. The bill removed the requirement that beer manufactured by a microbrewery must contain at least 50% Kansas agricultural products.

- K.S.A. 41-308b was amended in 2010 by section 18 of Senate Bill 452 (see 2010 Session Laws, Chapter 142) effective July 1, 2010. The bill authorized the serving of free samples on the microbrewery premises of domestic beer manufactured by the microbrewery.
- K.S.A. 41-308b was amended in 2011 by section 2 of Senate Bill 80, effective April 28, 2011. The definition of domestic beer was changed to allow the manufacture of beer containing not more than 10% alcohol by weight. Also, the bill authorized the serving, free of charge, of beer manufactured by the microbrewery, off the licensed premises at special events monitored and regulated by the ABC.