



HANDBOOK

FOR

MICROBREWERIES

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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

"Microbrewery" means a brewery licensed by the director to manufacture, store and sell domestic beer. [Subsection (p) of K.S.A. 41-102]

"Domestic beer" is defined as:

- Containing more than 3.2% alcohol by weight but not more than 8% alcohol by weight, and all of the alcohol must be obtained from alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water. [Subsections (c) and (i) of K.S.A. 41-102]
- Having not less than 50% of the products utilized in its manufacture grown in Kansas, except when a greater proportion of products grown outside this state is authorized by the Director of ABC based upon findings that such products are not available in Kansas. [Subsection (c) of K.S.A. 41-308b]

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 process for initial licensure

The initial application for a microbrewery license shall be made upon forms prescribed and furnished by the Director of Alcoholic Beverage Control (ABC) of the Kansas Department of Revenue in Topeka. For forms and instructions for initial licensure, contact ABC Licensing Segment at 785-368-8222 or go to the ABC website at www.ksrevenue.org/abc. The applicant shall submit the following to the Director of ABC:

- An original and one copy of the application.
- A non-refundable registration fee of \$50. [Subsection (a) of K.S.A. 41-317]
- An annual license fee of \$250 in the form of a certified or cashier's check from a Kansas bank. The license fee shall be returned to the applicant if the application is denied. [Subsection (e) of K.S.A. 41-310]
- If the applicant is a corporation, a certificate of authority issued by the Kansas Secretary of State to do business in Kansas. [K.S.A. 41-313]
- If the applicant is a corporation, provide a copy of a duly executed power of attorney appointing a person who is a citizen of the United States and a resident of Kansas as its agent and authorizing that agent to accept service of process from the Director of ABC and Kansas courts and to exercise full authority of the corporation and full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to alcoholic liquor and the microbrewery business. The agent must be approved by the Director of ABC as having satisfactory character. [K.S.A. 41-313]
- If the applicant is a foreign corporation (not incorporated in Kansas), provide a copy of a duly authorized and executed power of attorney authorizing the Kansas Secretary of State to accept service of process from the Director of ABC and Kansas courts and accept service of any notice or order provided for in the Liquor Control Act. Such service shall be binding upon the corporation. [K.S.A. 41-313]

Within 30 days after the application, supporting documents and fees are submitted to ABC, the Director of ABC shall enter an order either granting or denying the license. This time period may be extended for another 30 days upon the written consent of the applicant. If the Director of ABC fails to enter an order within the 30 days or extended time, then the license shall be deemed to be denied. [K.S.A. 41-319]

If the license is issued, it shall be valid for one year from the date the license is issued. [Subsection (m) of K.S.A. 41-310]

Qualifications for licensure

To be issued a microbrewery license, the person (individual, partnership, corporation, LLC or trust) cannot hold or have a beneficial interest in any other license issued under the Kansas Liquor Control Act except another microbrewery license. [Subsection (f)(3) of K.S.A. 41-311]

The Club and Drinking Establishment Act (K.S.A. 41-2601 et seq.) prohibits any license issued under this act from being held by any person holding a beneficial interest in the manufacture, preparation or wholesaling or retail sale of alcoholic liquor. However, there is an exception for microbreweries. A person who has a beneficial interest in a microbrewery may also be issued a class B club, drinking establishment or caterer's license, assuming that the person meets all of the qualifications for such license. However, the exception does not allow them to hold a class A club license or combination drinking establishment/caterer license. [Subsection (a)(4)(E) of K.S.A. 41-2623] Subsections (a)(5) and (a)(6) of K.S.A. 41-308b also confirm that microbreweries may also hold these three types of licenses issued under the Club and Drinking Establishment Act.

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] A "beneficial interest" is defined by subsection (d) of K.A.R. 14-14-1 as any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

Corporations

At least 50% 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% 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 (04/23/01) states that the Director may determine what qualifications for licensure apply to LLC's, until such time as the legislature makes provision for LLC's in the statutes. On October 25, 2004, the Director decided that LLC's would be treated as corporations for the purpose of meeting the qualifications for licensure. **However**, only those individuals having more than a 5% interest in the LLC must meet the individual qualifications for ownership.

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

Trusts

For trusts to be licensed, each grantor, beneficiary and trustee must meet the licensing qualifications for individual ownership below. However, 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] "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 (m) of K.A.R. 14-13-1 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]

- ***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 approved by the Director on 01/19/05.]

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

- **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 approved by the Director on 01/19/05.]

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

- **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]
- **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 another license issued under the Liquor Control Act.*** The individual cannot have a beneficial interest in a manufacturer, distributor, retailer, or farm winery licensed under the Liquor Control Act. The individual may have a beneficial interest in another microbrewery. [Subsection (f)(3) of K.S.A. 41-311]

A "beneficial interest" is defined by subsection (d) of K.A.R. 14-14-1 as any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

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 license issued under the Club and Drinking Establishment Act.*** The individual may also 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]

A "beneficial interest" is defined by subsection (d) of K.A.R. 14-14-1 as any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

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 excise taxes.*** If an individual is not current in the payment of all liquor drink 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]
- ***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) of K.S.A. 41-311 is more restrictive than the requirement in subsection (a)(13) but applies only for an initial license, ABC has taken the position that the restriction in subsection (a)(13) applies to spouses at the time that an existing license is renewed, despite the language in subsection (a)(12) which states that an individual's spouse does not have to meet any qualifications of an individual when a license is renewed. Otherwise, subsection (a)(13) would serve no purpose.

Requirements for the licensed premises

- 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 (f) of K.S.A. 41-308b]
- The individual must own the premises to be licensed or have a written lease thereon for at least three-quarters of the period of time for which the license is to be issued. (This is 9 months since all licenses are issued for one year.) [Subsection (a)(11) of K.S.A. 41-311]

Microbrewery packaging and warehousing facilities

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. The license fee is \$100. [Subsection (b) of K.S.A. 41-308b]

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 to its final concentration of concentrated beer
 - ◆ 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 am and 12 midnight any day except Sunday and on Sunday from 11 am to 7 pm. [Subsection (d) of K.S.A. 41-308b as amended by 2005 Senate Substitute for HB2501 effective 07/01/05]

Employees

Employees of microbreweries and microbrewery packaging and warehousing facilities are subject to the following restrictions pursuant to Subsection (g) 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

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 bottles and bulk containers such as barrels and casks for alcoholic liquor manufactured or sold in Kansas. The following information must appear on each label:

- a word describing the product as either "beer", "ale", "stout", "lager", "porter", etc. [Subsection (a)(1) of K.A.R. 14-6-4 and subsection (c) of K.S.A. 41-102]
- number of fluid ounces [Subsection (a)(2) of K.A.R. 14-6-4]
- name of the microbrewery [Subsection (a)(3) of K.A.R. 14-6-4]
- percentage of alcoholic content by either weight or volume [Subsection (a)(4) of K.A.R. 14-6-4]
- the proportion of products utilized in the manufacture which are from agricultural products grown in Kansas [Subsection (c) of K.S.A. 41-308b]

However, if any of these requirements are contrary to TTB rules, then the label may comply with TTB requirements instead. [Subsection (a) of K.A.R. 14-6-4]

In order to assure compliance with this regulation, each microbrewery shall submit for the Director's approval a sample of each label used on the wine it produces 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. ABC's policy is to permit a termination of the franchise agreement if the distributor agrees to it. This policy was originally stated in Director John Lamb's memo dated May 4, 1987, as follows:

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

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

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

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

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

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

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

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

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

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. (The term "bona fide" is not defined in either case.) 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 (e) of K.S.A 41-308b]

Authorized activities

Manufacturing. A microbrewery shall not manufacture less than 100 nor more than 15,000 barrels of domestic beer during the license year. [Subsection (a)(1) of K.S.A. 41-308b] Domestic beer is defined as containing more than 3.2% alcohol by weight but no more than 8% alcohol by weight, and all of the alcohol must be obtained from alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water. [Subsections (c) and (i) of K.S.A. 41-102]

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. A microbrewery may serve free samples of beer it has manufactured to consumers if the premises is located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments. [Subsection (a)(4) of K.S.A. 41-308b] The statute does not state that the samples must be "free," but microbreweries are only authorized to sell beer for on-premises consumption if the microbrewery also holds a club or drinking establishment license. [Subsection (a)(5) of K.S.A. 41-308b] The free samples may be served only during times when clubs and drinking establishments are authorized to serve and sell alcoholic liquor in the city or county where the microbrewery is located. [Subsection (d) of K.S.A. 41-308b] If the microbrewery also holds a club or drinking establishment license, then free samples may be served only on that part of the microbrewery licensed premises that is not included as part of the club or drinking establishment licensed premises, because it is unlawful for clubs and drinking establishments to serve free alcoholic liquor. [Subsection (a)(1) of K.S.A. 41-2640]

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. 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

Whenever a microbrewery or microbrewery packaging and warehousing facility is convicted of a violation of the Liquor Control Act, the Director may conduct an administrative hearing under K.A.P.A. to determine whether the license should be revoked and whether all licensee fees paid should be forfeited. [Subsection (h) of K.S.A. 41-308b]

Taxes and sales reporting requirements

All beer manufactured by the microbrewery is subject to the gallonage tax at the rate of 18 cents per gallon. [Subsection (b) of K.S.A. 41-501] However, the following sales are exempt from the tax:

- beer shipped out-of-state for sale and consumption out of Kansas [Subsection (c) of K.S.A. 41-501]
- beer sold to a "nonbeverage user" licensed in Kansas [Subsection (e)(1) of K.S.A. 41-501] See the definition section for more information on what constitutes a "nonbeverage user."

The tax rate on beer and CMB is \$0.18 per gallon.

Sales to consumers of beer in the unopened original container for consumption off the licensed premises are subject to the liquor enforcement tax. [Subsection (a) of K.S.A. 79-4101]

If the microbrewery also has a drinking establishment license, then sales of beer to consumers for on-premises consumption are subject to the liquor drink tax. [K.S.A. 79-41a02]

Sales of beer to consumers are exempt from sales tax. [Subsection (g) of K.S.A. 41-501]

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 on the premises 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) Not less than 50% of the products utilized in the manufacture of domestic beer by a microbrewery shall be grown in Kansas except when a greater proportion of products grown outside this state is authorized by the director based upon findings that such products are not available in this state. The label of each container of domestic beer shall clearly set forth the proportion of the products utilized in the manufacture of the beer which was from agricultural products grown in Kansas.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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; July 1.

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.