



**HANDBOOK**  
**FOR**  
**RETAIL LIQUOR STORES**

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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 ABC legal counsel Phil Wilkes by telephone at 785-368-8388, by fax at 785-296-7185 or by email at phil\_wilkes@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] This is equivalent to 4.0% alcohol by volume.

"Director" means the Director of the Division of Alcoholic Beverage Control within the Kansas Department of Revenue. [Subsection (g) of K.S.A. 41-102]

"Distributor" means the 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 this act or cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2702, and amendments thereto. [Subsection (h) of K.S.A. 41-102]

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

"Non-alcoholic malt beverage" means a beverage containing less than 0.5% alcohol by volume obtained by alcohol fermentation of an infusion or coction 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. [K.S.A. 41-343]

"Original package" means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor. Original container does not include a sleeve. [Subsection (s) of K.S.A. 41-102]

"Retailer" means a person who sells at retail, or offers for sale at retail, alcoholic beverages. "Retailer" does not include a microbrewery or a farm winery. [Subsection (v) of K.S.A. 41-102]

"Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal, proprietor, agent, servant or employee. [Subsection (w) of K.S.A. 41-102]

"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]

"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]

## **Application for initial licensure - required forms, fees and tax bond**

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](http://www.ksrevenue.org/abc).

The annual license fee is \$250. [Subsection (k) 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. [Subsection (a) of K.S.A. 41-317]

At time of initial licensing, retail liquor stores must submit and maintain a tax bond in the amount of \$2,000. [Subsection (b)(4) of K.S.A. 41-317 and subsection (b)(6) of K.A.R. 14-13-2]

The license year 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 license year, the license is renewable for another year unless sooner 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]

In addition to the above fees, the city or township in which the licensed premises is located shall collect an annual occupation or license tax of not less than \$100 and not more than \$300. [Subsections (l)(1) and (l)(2) of K.S.A. 41-310]

Once all of the forms, fees, tax bond and other required documentation for licensure are submitted to and accepted by Director, then the Director has 30 days to either issue the license or issue an order denying the license. If no license is issued and no denial order is issued within that time, then the license is deemed to be denied. The license 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]

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

An order by the Director denying a license shall state the reason(s) therefore. The applicant may file a notice of appeal a Director's denial order with the Secretary of Revenue within 15 days after service of the order upon the applicant. [K.S.A. 41-321] Within 30 days from the filing of the appeal, the Secretary or Secretary's designee must conduct a hearing under the Kansas Administrative Procedures Act. However, the applicant may agree to extend the 30 days. [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]

## Qualifications for licensure - ownership

Subsections (a) and (b) of K.S.A. 41-311 and K.A.R. 14-13-2 list the most of 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 meet the licensing qualifications for individual ownership below, regardless of the percentage of ownership. [Subsection (b)(5) of K.S.A. 41-311]

### Corporations

Corporations are prohibited by statute from holding a retail license of any kind. [Subsection (b)(6) of K.S.A. 41-311]

### Limited Liability Companies (LLC)

LLC's are not mentioned in the statutes but Attorney General Opinion #2001-19 (04/23/01) says that the Director may determine what qualifications for licensure apply, until such time as the legislature makes provision in the statutes. The Director has determined that an LLC applying for a retail liquor store license will be treated as a partnership. Therefore, each member of the LLC must meet the licensing qualifications for individual ownership below, regardless of the percentage of ownership. [Ruling approved by the Director on 10/25/04]

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]

If an LLC elects to be treated as a Sub-S corporation for tax purposes (income passes through to the individual owners like a partnership), that will not affect our treatment of them as a partnership. [Ruling approved by the Director on 02/09/05]

### Trusts

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

### Individuals

- **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]

- **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 (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]

- **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 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 licensee.** The individual may 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]
- **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 (b)(1) and (b)(2) of K.S.A. 41-311] Because of these requirements, the provisions of K.S.A. 41-311b for the licensure of non-residents, which was enacted in 2001, does not apply to retail liquor stores. [Ruling made by legal counsel after conferring with the Attorney General's Office, and approved by the Director on 01/19/05.]

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]

- **Other liquor licenses.** The individual cannot also hold a manufacturer's license, distributor's license, microbrewery license, farm winery license, or another retailer's license. [Subsections (b)(3) and (b)(4) of K.S.A. 41-311]
- **Beneficial interest in an industry member.** The individual cannot have a beneficial interest in the manufacture, preparation or wholesaling of alcoholic beverages. This is interpreted as applying whether the activity takes place in Kansas or some other jurisdiction (another state or country). [Subsection (b)(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 another retail liquor store.** The individual cannot have a beneficial interest in another retail liquor store licensed under the Kansas Liquor Control Act. [Subsection (b)(4) of K.S.A. 41-311]

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

- **Definition and treatment of persons with a beneficial interest.** Any person who has a beneficial interest in the retail liquor store 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 retailer'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 retailer'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 (e) of K.A.R. 14-13-2]
- **Current in payment of all liquor excise taxes.** If an individual is not current in the payment of all excise or 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]
- **Conviction of violating the Liquor Control Act.** If an individual has been criminally convicted of any violation of the Kansas Liquor Control Act, the Director may deny issuance of a retail license. [Subsection (b) of K.S.A. 41-314]
- **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.

#### **Qualifications for licensure - business name (dba)**

The application for a license must include the "doing business as" name to be used for the business. [Subsection (a) of K.A.R. 14-13-15]

The "doing business as" name shall not suggest to the public that the store is part of a chain of stores or is operated by a corporation. [Subsection (b) of K.A.R. 14-13-15]

## Requirements for the licensed premises

- A retail liquor license is good for only one location. [K.S.A. 41-315]
- Applicants for initial retail liquor store licenses must furnish a diagram of the proposed licensed premises for approval. Licensees must notify ABC prior to making any changes to their licensed premises. The premises shall not have an inside entrance or opening which connects to any other place or business. [K.S.A. 41-711] However, a non-business vestibule may be constructed at the entrance to the licensed premises which also includes an entrance to another business such as a "party shop," subject to guidelines in ABC Policy Memorandum 2002-1 (02/18/02) which include:
  - (a) The vestibule must be a neutral, non-business area. No advertising, equipment or business transactions shall occur or be placed in the vestibule.
  - (b) The vestibule must provide separate lockable entrances into both the retail liquor store and the other business or businesses. Open entryways with a lockable door only into one business area are not allowed.
  - (c) The walls of the vestibule and all common walls separating the retail liquor store from other adjacent businesses must be constructed in such a manner that there are no holes or openings large enough to pass items of merchandise through. This includes items sold in either business. The walls must go from the floor to the ceiling so as not to allow items to be passed over partial walls in any manner.
- Applicants for retail liquor store licenses must furnish copies of current leases 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. [Subsection (b)(2) of K.A.R.14-13-2] If the applicant owns the premises, proof of ownership must be furnished in the form of a copy of the deed.
- In cases where ABC records show that location as being currently or recently occupied by another similar licensed business, on 10/11/04 the Director approved the following policies in the situations described:

**If** the current business has an active license; **and** the current business' lease is still in effect; **and** the current business still has liquor stock at that location (regardless of whether it is open for business); **and** ABC is unable to contact the current business owner to determine his/her intentions;  
**then** ABC will require a copy of the court order evicting the current business before ABC will issue a license for another business to occupy that location.

**If** the current business no longer has an active license (expired or revoked); **and** the current business is no longer open for business at that location, as far as ABC knows; **and** regardless of whether there is still time left on the current business' lease;  
**then** ABC will issue a license for another business to occupy that location.
- Each liquor store shall post its d/b/a name within the store or on the exterior of the store. [Subsection (c) of K.A.R. 14-13-15]
- Once issued, the retail liquor store's license must be framed and hung in plain view in a conspicuous place on the licensed premises. [K.S.A. 41-325]

## **Qualifications for licensure - geographic location of the licensed premises**

- Effective on and after November 15, 2005, all incorporated cities in Kansas became "wet" and retail liquor store licenses could be issued by the Director of ABC for a properly zoned location (see below) within any incorporated city. There is no longer any distinction between first, second and third class cities. However, an incorporated city could become "dry" and prohibit such licensees by either of the following two methods:
  1. On or before February 15, 2006, the governing body of an incorporated city could have adopted an ordinance prohibiting the sale of alcoholic liquor in the original package within such city. If a city adopted such an ordinance, then any existing retail liquor store licensee has the right to continue to operate for a period of 90 days after the effective date of the ordinance or until the expiration of such license, whichever period of time is shorter. If the 90 days occurs before the expiration of the license, then the retail liquor store licensee is entitled to a refund of the fee for the unused portion of the licensed period. [Subsection (b) of K.S.A. 41-301 as amended by 2005 SB298 effective 11/15/05]
  2. After November 15, 2005, the qualified voters of an incorporated city could petition for the issue of whether to prohibit such sales (go dry) to be placed on the ballot in any regular general city election held pursuant to K.S.A. 41-302 (as amended by 2005 SB298). If qualified voters in a subsequent election vote to allow such sales, then retail liquor licenses may once again be issued for locations in that city. [Subsection (c) of K.S.A. 41-301 as amended by 2005 SB298 effective 11/15/05] A copy of the results of any such election shall be transmitted by the governing body of such city to the Director. [Subsection (c) of K.S.A. 41-302 as amended by 2005 SB298 effective 11/15/05] If a city votes to prohibit such sales, then any existing retail liquor store licensee shall have the right to continue to operate for a period of 90 days after the result of such election is canvassed or until the expiration of such license, whichever period of time is shorter. If the 90 days occurs before the expiration of the license, then the licensee is entitled to a refund of the fee for the unused portion of the licensed period in accordance with rules and regulations adopted by the Secretary of Revenue. [Subsection (d) of K.S.A. 41-302 as amended by 2005 SB298 effective 11/15/05]
- Retail liquor store licenses may be issued by the Director of ABC for a properly zoned location (see below) outside of an incorporated city but within a township with a population of more than 5,000 if the board of county commissioners passes a resolution approving the license. A certified copy of the county resolution must be provided to the Director of ABC. If the population of that township subsequently drops below 5,000, the license shall remain valid and may be renewed if the licensee is otherwise qualified. [Subsection (a) of K.S.A. 41-303 as amended by 2005 SB298 effective 11/15/05. However, this amendment made no substantive changes to K.S.A. 41-303. The changes were only refinements of the wording.]
- If a retail liquor store license has been issued by the Director of ABC to a premises located within a township of more than 5,000 population, and the premises is subsequently annexed to a city that allows retail liquor stores, then the license shall remain valid. [Subsection (b) of K.S.A. 41-303. This provision was left substantially the same by 2005 SB298.] However, no statute appears to cover the situation where a premises is annexed to a city that does not allow retail liquor stores. This situation will be treated in the same manner as when a city goes from approving retail liquor

stores to banning them. The licensee shall be allowed to continue to operate for 90 days after annexation, or until the license expires, whichever is the shorter period.

- If a retail liquor store is already licensed by the Director of ABC for a location outside an incorporated city and within a township of less than 5,000 population, then the premises may continue to be licensed if the board of county commissioners of that county adopts a resolution approving of that license and a certified copy of the resolution is provided to the Director of ABC. [Subsection (c) of K.S.A. 41-303. This provision was left unchanged by 2005 SB298.]
- Licenses for premises located in townships of 5000 or less population may continue to operate (are grandfathered in) if their license was issued prior to "the effective date of this act." [Subsection (c) of K.S.A. 41-303] "The effective date of this act" is interpreted by the Director of ABC to be the effective date of Senate Bill 197 that added subsection (c) to K.S.A. 41-303, which was July 1, 2004. By implication, no new licenses shall be issued by the Director of ABC for premises located within townships of 5000 or less population after July 1, 2004.
- If the licensed premises is to be located in an area which is zoned, then the premises must comply with all applicable zoning regulations. [Subsection (a) of K.S.A. 41-710 as amended by 2005 SB298 effective 11/15/05] The statute previously required that the location must be zoned either general commercial or business.
- No retail liquor store license shall be issued by the Director of ABC for a premises located within 200 feet of any public or parochial school or college or church at the time that the premises applies for a license. [Subsection (c) of K.S.A. 41-710] In the case of a school or college, the distance shall be the shortest distance, measured in a straight line, from the outside wall of the premises to the nearest property line of the school or college. In the case of a church, the distance shall be shortest distance, measured in a straight line from the outside wall of the premises to the actual church building. [Attorney General Opinion No. 91-29 issued March 25, 1991]
- The city or township where the license premises is to be located may request a hearing before the Director on whether the Director should approve or deny an initial retailer's license application. The hearing shall be conducted in accordance with the Kansas Administrative Procedures Act. [K.S.A. 41-318]

### **Goods sold on the licensed premises verses goods sold at party shops**

Retail liquor stores shall not sell anything on the licensed premises other than alcoholic liquor (including non-alcoholic goods packaged with the alcoholic liquor by the manufacturer and approved by the Director of ABC) and Kansas Lottery tickets/shares. [Subsection (b)(2) of K.S.A. 41-308] Other items may be sold by the owner of a retail liquor store at a location adjacent to the licensed premises, sometimes referred to as a "party shop." Typically such items include snacks, non-alcoholic mixes, ice, and party accessories. See the section entitled "Qualifications for licensure - characteristics of the licensed premises" for restrictions on the physical connections between the registered premises and a party shop.

## Restrictions on employees

The following restrictions apply to all persons employed (working, whether paid or not) by a retail liquor store, including clerks, stockers and janitors:

- Must be at least 21 years old.  
[K.S.A. 41-713, subsection (c)(3) of K.A.R. 14-13-5 and ABC Policy Memorandum 2001-3]
- Cannot have been convicted of any felony.  
[K.S.A. 41-713, subsection (c)(2) of K.A.R. 14-13-5 and ABC Policy Memorandum 2001-3]

Licensees must register each employee with ABC within five days after the employee begins work and at each license renewal, using form ABC-280 (Employee Registration Form). [Subsection (a) of K.A.R. 14-13-5]

Licensees are directly responsible for any violation of the Liquor Control Act or associated regulations by their employees. [Subsection (b) of K.A.R. 14-13-5]

Subsection (c) of K.A.R. 14-13-14 requires the owner or owners to provide additional information to the Director before allowing anyone other than the owner or owners to perform any management or operational services, including the following activities listed in subsection (a):

- Hiring, firing or supervising the licensee's employees.
- Ordering products for the store, coordinating deliveries or determining the amount or type of inventory to be maintained at the store.
- Determining the advertising, marketing and promotional programs to be used.
- Negotiating or executing any contracts on behalf of the licensee.
- Paying or authorizing payment for services or product purchased by the store.
- Performing any other task essential to the operation of the store.

No person employed to perform management or operational services shall receive compensation based on a percentage of the gross receipts from the sale of liquor. [Subsection (c)(1)(A) of K.A.R. 14-13-14]

Any person employed by the owner to perform management or operational services must meet the same qualifications for licensure as the owner. This would prohibit the owner of another retail liquor store from performing any management or operational services for the owner of a retail liquor store, because a person cannot own more than one retail liquor store. [Subsection (d)(1) of K.A.R. 14-13-14]

A retailer who uses an employee who is involved with making sales or soliciting orders for the sale of alcoholic liquor on behalf of the retailer and who performs such activities away from the retailer's licensed premises must obtain a salesperson permit for that employee from the Director. The employee must meet the qualifications set forth in K.S.A. 41-334. (A Handbook for Salespersons will be published by ABC at a later date.) A salesperson permit is not required for a retailer's employee who performs such activities only on the retailer's licensed premises. [K.S.A. 41-333]

## Hours and days of sales

Basic hours and days. Licensed retail liquor stores in cities or in the unincorporated areas of a county where sales times have not been expanded may be open and sell products as follows:

- Monday through Saturday, between 9 am and 11 pm
- no sales on Sundays

Retail liquor stores must be closed on the following holidays:

- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

However, the governing body of any city may pass an ordinance, or the board of county commissioners of any county may pass a resolution, making the closing time earlier, but not before 8 pm. [Subsection (a) of K.S.A. 41-712 as amended by Section 8 of 2005 SB298 effective 11/15/05]

Expanded hours and days. Licensed retail liquor stores in cities or in the unincorporated areas of a county where sales times have been expanded may be open and sell products as follows:

- Monday through Saturday, between 9 am and 11 pm
- Sunday, between noon and 8 pm

Retail liquor stores must be closed on the following holidays:

- Easter
- Thanksgiving Day
- Christmas Day

[Subsection (b) of K.S.A. 41-712 as amended by Section 8 of 2005 SB298 effective 11/15/05]

The procedures for counties to expand sales times (or go back to the basic sales times after expansion) are set forth in subsection (a) of K.S.A. 41-2911 created by new Section 9 of 2005 SB298, effective 11/15/05. (see procedure below) The procedures for incorporated cities to expand sales times (or go back to the basic sales times after expansion) are set forth in subsection (b) of K.S.A. 41-2911 created by new Section 9 of 2005 SB298, effective 11/15/05. (see procedure below)

When cities or counties expand the days of sale under K.S.A. 41-712, they must include both retail liquor stores and stores that sell CMB. They cannot expand one type of sales without the other. They must also expand to exactly those days listed in the statute. They cannot pick and chose which of those days they expand to. However, they may limit sales on Sundays to hours to less than the noon to 8 pm provided in the statute. [Attorney General Opinion No. 2006-2 issued 01/04/2006]

Although the statute does not specifically state, it has always been the policy of the Director of ABC that retail liquor stores must be closed during the times that alcoholic liquor cannot be legally sold.

### **Procedure to change hours and days of sales - within incorporated city limits [K.S.A. 79-2911]**

The procedure to change from basic days and hours to expanded days and hours or vice versa is the same. There are two methods:

- The governing body of the city can pass an ordinance expanding or reducing the days and hours. The ordinance must specify either all of the expanded days and hours or all of the basic days and hours. It cannot specify something different what is in the statute. The ordinance must then be published once a week for two consecutive weeks in the designated official city newspaper. The ordinance shall become effective either 60 days after publication or at a later date if specified in the ordinance. However, if within that 60 days, a petition meeting the requirements in subsection (b)(2) is filed requesting that the proposition be submitted to the voters, then the resolution shall not become effective and an election must be conducted in accordance with subsection (b)(3). [Subsection (b)(1) of K.S.A. 41-2911]
- The voters of the county can submit a petition meeting the requirements of subsection (b)(2) requesting that the issue of expanding or reducing the days and hours be submitted to the voters. The election must be conducted in accordance with subsection (b)(3). [Subsection (b)(2) of K.S.A. 41-2911]

### **Procedure to change hours and days of sales - in county outside incorporated city limits [K.S.A. 79-2911]**

The procedure to change from basic days and hours to expanded days and hours or vice versa is the same. The board of county commissioners must pass a resolution

- The county commission can pass a resolution expanding or reducing the days and hours. The resolution must specify either all of the expanded days and hours or all of the basic days and hours. It cannot specify something different what is in the statute. Within two weeks after passage, the resolution must then be published once in the designated official county newspaper. The resolution shall become effective either 60 days after publication or at a later date if specified in the resolution. However, if within that 60 days, a petition meeting the requirements in subsection (a)(2) is filed requesting that the proposition be submitted to the voters, then the resolution shall not become effective and an election must be conducted in accordance with subsection (a)(3). [Subsection (a)(1) of K.S.A. 41-2911]
- The voters of the county can submit a petition meeting the requirements of subsection (a)(2) requesting that the issue of expanding or reducing the days and hours be submitted to the voters. The election must be conducted in accordance with subsection (a)(3). [Subsection (a)(2) of K.S.A. 41-2911]

## Signs, advertising and other promotional activities

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

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

- pertaining to written representation
- pertaining to pictorial representation
- described in vivid detail
- pictorial device, as an illustration or chart
- display by a computer or imaging device

Signs. Signs for the retail liquor store must include the full name as it appears on the license. 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 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] *A new regulation now going through the approval process would limit the value of a sign provided by an industry member to a retailer to \$400 [Subsection (i) of new K.A.R. 14-10-17]*

Advertising on premises. A retail liquor store shall not advertise any other business on the licensed premises, by sign, brochure, business card, or any other means. This is considered offering other products for sale and is prohibited. [Subsection (b) of K.S.A. 41-308]

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]

Radio and television advertising. Retailers may purchase live radio or TV commercials to take place at the licensed premises if the retailer pays the entire cost of the commercial. An industry member may be present and hand out promotional items to consumers on the premises during the time the commercial is broadcast but shall not participate in the commercial or pay any of the cost thereof. [Ruling by the Director on 08/01/05] A retail liquor store may arrange for a radio or television station to run a remote broadcast from the store's parking lot or anywhere outside the licensed premises and

the retail liquor store or the radio or television station may give away food or promotional items at that location. Any food or other items may be given free to the public. There can be no requirement to purchase any alcoholic beverages from the store. The food cannot be paid for by an industry member (manufacturer, supplier or distributor).

False or misleading advertising. A retailer shall not make any false or misleading representations with respect to any alcoholic liquor product, any licensed premises or in connection with a sales transaction relating to brand, type, proof, or age of an alcoholic liquor or beer. [Subsection (e) of K.A.R. 14-13-13] Retailers are prohibited from making any statement representing that the use of alcoholic liquor has curative or therapeutic effects [Subsection (a)(5) of K.A.R. 14-8-2]

Retail liquor stores are also prohibited from advertising in such a way as to suggest to the public that they are part of a chain or have common ownership with another store or are owned or operated by a corporation. Such prohibited advertising includes but is not limited to:

- combining advertising materials by two or more stores
- use of the same logos, trade names or other identifying marks by two or more stores
- limiting access to the premises to or offering discounts only to persons who are members or employees of certain corporations

[Subsection (d)(3) of K.A.R. 14-13-14 and subsection (b) of K.A.R. 14-13-15]

Inducements (including discounts) offered by retailers. Retail liquor stores are prohibited from offering or furnishing any of their own gifts, prizes, premiums, rebates or similar inducements conditioned upon the purchase of any alcoholic liquor. [Subsection (g)(2) of K.A.R. 14-13-13] **However**, discounts (including using coupons) on alcoholic liquor and non-alcoholic malt beverages may be offered to customers. The discounts may be offered either on particular products or to particular categories of customers (such as senior citizens), as long as the discounted price paid by the customer is no less than the retailer's cost plus state excise tax. Such practice is not considered a violation of subsection (g) of K.A.R. 14-13-13. [Ruling by the Director on 04/04/05]

Consumer advertising specialties. Retailers may offer free consumer advertising specialties to the public which contains advertising material relating to a brand name of alcoholic liquor or to the retail liquor store distributing the item. The public may not be 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] Industry members may put the name of the retailer on the label or packaging of the products sold to retailers. If the name is added to a label that has previously been registered with ABC, then the new label must be separately labeled with ABC. [Ruling by the Director on 08/20/07]

Discount cards for repeat customers. Customers may be provided with a card which is punched for each purchase and, upon reaching a specified number of punches, the customer is entitled to a discount on the next purchase, as long as the discounted price is no less than the retailer's cost plus state tax. [Ruling by the Director on 04/04/05]

Industry members giving or lending anything else of value. Industry members are prohibited from giving or lending money, equipment, supplies, services or anything of value to a retailer except as permitted by K.S.A. 41-703 and K.A.R. 14-10-8. [Subsection (b) of K.S.A. 41-702] *A new regulation, K.A.R. 14-10-18, is in the process of being approved and would replace K.A.R. 14-10-8.*

Industry members are prohibited from inducing retailers 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.

However, industry members may park a vehicle such as a race car with brand advertising on it in the parking lot of a retail liquor store, but the industry member shall not pay for any advertising which specifies the location of the vehicle. [Subsection (a) of K.A.R. 14-10-10] *A new regulation, K.A.R. 14-10-17, is currently in the process of being approved and would replace K.A.R. 14-10-10.*

Industry members shall not obtain tickets to a concert or other event and give them away to consumers either directly or through a third party if the concert or other event is being held on a 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 Director Groneman on 08/01/05]

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 Director Groneman on 08/01/05]

However, 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] *A new regulation, K.A.R. 14-10-18, is currently in the process of being approved and would replace K.A.R. 14-10-10.*

Also, industry members may furnish, give, rent, loan or sell product displays to retailers. [Subsection (a) of K.A.R. 14-10-13. *This will be replaced by subsection (b) of a new regulation, K.A.R. 14-10-18, currently in the process of being approved.*] Subsection (c) of K.A.R. 14-10-13 places limitations on the value of the product displays. *Subsection (b) of a new regulation, K.A.R. 14-10-18, is currently in the process of being approved, would place a \$300 limit on the value of such 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. *This subsection will be replaced by subsection (m) of K.A.R. 14-10-5, which is currently going through the approval process.*]

Offering coupons, premiums, rebates and refunds to customers by industry members. 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] *A new regulation, subsection (j) of K.A.R. 14-10-18, is currently in the process of being approved and would allow industry members to offer coupons to consumers (retail customers) either directly or through retailers, but these must be redeemed by the consumer mailing them to the industry member or their agent. They cannot be redeemed by the retailer.*

The Director has interpreted this regulation to also permit redemption of such coupons for free or discounted non-alcoholic items at grocery stores.

An industry member shall not distribute discount coupons for their products directly to consumers, by mail, newspaper or otherwise, which would be redeemable when purchasing the product from a licensed retailer. Since these would invariably require a reimbursement by the industry member to the retailer, such practice would be a violation of the second sentence of subsection (b) of K.A.R. 14-10-11 which prohibits retailers from seeking reimbursement from an industry member for a consumer promotion.

"Premium" is not defined in the statutes or regulations but is defined by Webster's Dictionary as "something offered free or at a reduced price as an inducement to buy." and by Black's Law Dictionary as "a reward for an act done."

Consumer advertising specialties offered by industry members. Industry members may give, furnish or sell consumer advertising specialties, such as ash trays, bottle or can openers, cork screws, matches, printed recipes, informational pamphlets, cards and leaflets, post cards, posters, printed sports schedules, pens, pencils, and other similar items as approved by the Director, and which bears advertising material, to retailers 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] 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. *However, a new regulation K.A.R. 14-10-18 is currently in the process of being approved which would remove such limitations.*

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 and awarding of the prize or prizes for a sweepstakes or raffle conducted by an industry member shall not take place on the retail liquor store's premises. Industry members conducting any 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

Retail liquor stores are not authorized by any statute or regulation to conduct their own sweepstakes, raffle, drawing or other game of chance, or to participate in any such activity sponsored by another entity except an industry member as described above. [Subsection (b) of K.S.A. 41-308 and subsection (b) of K.A.R. 14-10-11]

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 sponsorship in whole or in part by a retailer or other liquor licensee. Industry members may support these events through the donation of money and consumer advertising specialties directly to the charity, but not to the event sponsor or any other party. They may not donate product.

Industry members may participate in these events, however any contributions made or fees paid by such industry members shall be the same as that contributed or paid by any other participant.

## **Registration and sale of kegs of beer**

The registration and sale of kegs of beer is governed by the Beer and Cereal Malt Beverage Keg Registration Act, K.S.A 41-2901 through 41-2906, initially passed by the Kansas Legislature in 2002. [K.S.A. 41-2901] It applies to the retail sale of any container of beer with a capacity of four gallons or more. [Subsection (a) of K.S.A. 41-2905] It does not apply to the sale by retailers to clubs, drinking establishments, hotel drinking establishments and caterers licensed under the club and drinking establishment act. [Subsection (h) of K.S.A. 41-2905]

Prior to or at the time of the retail sale of a keg, the retail liquor store must affix to the keg a registration tag. These keg tags are available in reasonable quantities at no charge from the Division of ABC. [Subsections (a) and (f) of K.S.A. 41-2905] They may be ordered by telephone or e-mail - see cover of this handbook.

At the time of sale, the retail liquor store shall record the following information:

- the keg number
- the date of the sale
- the purchaser's name and address
- the number on the purchaser's driver's license, Kansas nondriver's identification card or other official or apparently official document containing both the purchaser's picture and the purchaser's signature, which shall be exhibited at the time of sale

Such records shall be kept on the licensed premises until the keg is returned or until the expiration of six months following the date of the sale of the keg. [Subsection (a) of K.S.A. 41-2905]

These records shall be available for inspection by any law enforcement officer during normal business hours of the retailer. These records shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or K.S.A. 21-3610 or 41-727, and amendments thereto. These records shall not be sold, distributed or otherwise released to any person other than an agent of the retailer or to a law enforcement agency. [Subsection (b) of K.S.A. 41-2905]

The loan of a tap or pump may be included with the sale of a keg of beer to customers if no additional charge is made for the tap or pump. This is permitted because taps and pumps are designed to be used in conjunction with the keg to properly control the removal of the purchased beer from the keg. The retailer may require the customer to make a reasonable deposit for the loan of the keg and tap or pump, to be refunded in full upon return of these items in usable condition. However, items which are merely for the convenience of customers but are not essential to the dispensing of the alcoholic liquor, such as cooling equipment, may not be leased or sold by the retailer to customers. [Interpretation of K.S.A. 41-308(b) by the Director on 11/28/05]

## **Shipments of wine to Kansas consumers from Kansas farm wineries or from out-of-state wineries pursuant to winery shipping permits issued pursuant to K.S.A. 41-348 or 41-349.**

### Overview

Kansas consumers may purchase wine via the phone, internet or mail from Kansas Farm Wineries or from out-of-state wineries if the winery first obtains a Kansas Winery Shipping Permit. The consumer must be at least 21 years of age and the wine must be for his or her personal use and not for resale.

### Shipping and deliver process

The permit holder must ship the wine in its original unopened container to a licensed retail liquor store in Kansas which has been designated by the consumer ordering the wine. [Subsection (e) of K.S.A. 41-348 or 41-349] If the winery produces at least 100,000 gallons of wine per year, then it must ship the wine to the retail liquor store through a Kansas distributor. [Subsection (e) of K.S.A. 41-349]

Upon receipt of the shipment, the retailer may open and inspect the contents to verify their completeness and condition. The retailer may refuse delivery of the shipment if the contents have been damaged as evidenced by product leaking from the shipping container. The retailer shall notify the purchaser to pick up the wine. The purchaser must pick up the wine within 30 days of when the retailer received it unless the parties agree otherwise. [Subsection (e) of K.S.A. 41-348 or 41-349]

When the purchaser picks up the wine, the retailer shall require the purchaser to provide photo identification to verify that the person picking up the wine is the same person who purchased it and is at least 21 years of age. One copy of the shipping record shall be given to the purchaser. The retailer shall retain two copies of the shipping record. The retailer may charge the purchaser up to a \$5 handling charge for each shipment and shall collect from the purchaser the 8% enforcement tax pursuant to KSA 41-4101. [Subsection (e) of K.S.A. 41-348 or 41-349]

### Calculation of the liquor enforcement tax

The retail liquor store shall collect the liquor enforcement tax calculated upon the total price paid by the purchaser, which includes the following [K.A.R. 14-24-5]:

- the purchase price and handling and shipping charges paid by the purchaser to the permit holder, as shown on the shipping record.
- the handling charge paid by the purchaser to the retailer.

### Monthly reports and remittance of tax and forms to the Kansas Dept. of Revenue

Kansas retailers shall report the transactions and remit the 8% enforcement tax collected to the Kansas Dept. of Revenue using the Kansas Direct Wine Shipment Enforcement Tax Return - Retail Liquor Store (form ABC-185). This form is available on the ABC website at <http://www.ksrevenue.org/abclireg.htm>. The retailer will attach one copy of each shipping record to the form ABC-185. The other copy of each shipping record will be retained by the retailer for three years and shall be subject to audit by the Department.

### Disposition of wine shipment if damaged or purchaser fails or refuses to accept delivery

If the purchaser fails to pick up the shipment after notification by the retailer, then the retailer must notify the Director in writing. The retailer will document in writing what efforts the retailer made to contact the purchaser. The Director or the Director's designee will pick up the wine shipment and the purchaser's copy of the shipping record and the wine shall become the property of the Director. In such

case, the retailer will not receive a handling fee and no direct wine shipment enforcement tax shall be calculated or reported by the retailer. [Subsection (a) of K.A.R. 14-24-3]

Wine which becomes the property of the Director will either be destroyed or be sold by the Director at public auction. Only licensed retail liquor stores may bid. [Subsection (b) of K.A.R. 14-24-3] The net proceeds from the auction will be deposited as liquor enforcement tax revenue as provided by K.S.A. 79-4108.

### **Shipments of wine received from a winery that has no Kansas winery shipping permit**

If a wine shipment is received from a winery that does not have a Kansas winery shipping permit, then the licensee should follow these procedures [approved by the Director on 12/06/06]:

1. If a retail liquor store (RLS) receives a wine shipment for pickup by the person who purchased it, and the RLS has reason to suspect that the shipper does not have a Kansas winery shipping permit (such as no shipping document or no permit number given), then the RLS should call ABC Licensing (785-368-8222) or check the ABC website to determine whether the shipper has a permit number. If none, then:
2. ABC Licensing will tell the RLS to hold the shipment and check back in 30 days to see if the shipper has obtained a winery shipping permit. Licensing will tell the RLS to notify the purchaser that ABC has placed a hold on the shipment and it cannot be released until the RLS verifies through ABC that the shipper has obtained a Kansas winery shipping permit. It will be up to the purchaser to contact the shipper to tell them to obtain the permit.
3. After 30 days, the RLS shall contact ABC Licensing or check the ABC website again to see if the shipper has obtained a permit. If they have, then the RLS may release the shipment to the purchaser. If not, then the RLS should contact the ABC agent for that geographic area and ask the agent to pick up the shipment.
4. The ABC agent will pick up the shipment from the RLS and follow the same procedure established for damaged shipments which are turned over to ABC because the purchaser refuses to pick up the shipment from the RLS and pay for it.
5. The ABC agent should notify the purchaser that the shipment has been confiscated by ABC as illegal contraband.

## **Finality of sales of alcoholic liquor by distributors**

Sales to a retail liquor store of alcoholic liquor under the Liquor Control Act are final, except that distributors may:

- Buy back any alcoholic liquor product which the retail liquor store is closing out. The retail liquor store must submit form ABC-152 to the Director for prior approval. [Subsection (d)(1) of K.S.A. 41-728]
- Buy back any item of alcoholic liquor when required by the supplier who sells that item to the distributor. Approval of the director is not required. [Subsection (d)(2) of K.S.A. 41-728]
- Buy back or exchange, within 24 hours after delivery to the retail liquor store, any item of alcoholic liquor which is damaged or deteriorated in quality. Approval of the director is not required. [Subsection (d)(3) of K.S.A. 41-728]

## **Records to be retained and available for inspection**

Retailers shall retain the following records of purchases and sales:

- invoices, purchase orders and sales tickets for all alcoholic liquor purchased. [Subsection (a) of K.A.R. 14-13-10]
- invoices, purchase orders and sales tickets for all alcoholic liquor sold to class A and class B clubs, drinking establishments, caterers and temporary permit holders. [Subsection (b) of K.A.R. 14-13-10]
- invoices and other records of sales of alcoholic liquor to all other customers. [Subsection (a) of K.S.A. 79-3609 as referenced in subsection (a) of K.S.A. 79-4105 of the Liquor Enforcement Tax Act]

Retailers shall retain these records for a period of three years. They are subject to inspection by the Director or any agent or employee of the Director. [Subsection (d) of K.A.R. 14-13-10] Although the regulation specifies that the records must be kept on the licensed premises, this regulation is in the process of being amended to be the same as K.A.R. 92-24-15 for licensees selling liquor by the drink, which requires only that the most recent 90 days of records be kept on the licensed premises and subject to immediate inspection and the older records to be kept at another location selected by the retailer. These older records must be available for inspection within a reasonable time after notice by the Director or any agent or employee of the Director.

## **Transfer of a retail liquor store's stock upon the closing of the business**

When a licensed retailer liquor store closes for any reason, including when the license has expired or has been revoked, the retailer shall apply to the Director of ABC for permission to sell the retailer's stock of alcoholic liquor to another existing or newly licensed retail liquor store or to the distributor from which the alcoholic liquor was originally purchased. The seller and buyer must complete form ABC-152 (Request Permission to Sell Inventory of Alcoholic Beverages). If the sale is to another retail liquor store, an inventory of the alcoholic liquor to be transferred using form ABC-178B (Physical Inventory of Retailer's Stock) must be attached to the form ABC-152. If the sale is to a distributor, the distributor shall provide to the Director a copy of its invoice setting forth a detailed list of the alcoholic liquor rather than using form ABC-178B. The alcoholic liquor shall not be sold or purchased by another retail liquor store or distributor until written permission is granted by the Director. [K.S.A. 41-1102 and subsection (a) of K.A.R. 14-13-8]

If the retailer fails to timely sell its stock of alcoholic liquor, the Director may take possession of the liquor until such time as the retailer has found a purchaser and the sale has been approved by the Director. [Subsection (b) of K.A.R. 14-13-8]

## **Seizure and sale of licensee's liquor stock by a judgment creditor or bankruptcy creditor**

If a creditor of the licensee seizes the liquor stock through execution on a judgment rendered by a Kansas district court, or has authority from a bankruptcy judge or trustee to take possession of a licensee's liquor stock, then ABC considers the creditor to be subject to the requirements of K.A.R. 14-13-8 with regard to disposing of the liquor stock. Director has authority to require the safe storage of the liquor by the creditor and to approve any subsequent sale to a qualified licensee. The creditor should provide ABC with a copy of the inventory at time of seizure and the Director may arrange for an agent to spot-check the accuracy of the inventory. At the time of sale, the creditor must provide a completed form ABC 152 to the Director and attach a copy of the inventory so that ABC can assure that all of the liquor is accounted for. [Approved by the Director on 04/17/06]

## **Loss of liquor stock through theft, disaster or deterioration**

If alcoholic liquor is lost through theft or through fire, flood or other disaster, or must be destroyed due to becoming unsellable from damage or deterioration, the licensee shall prepare a written report of the circumstances to the Director of ABC and attach a list of the number and size of containers and the brand, proof, age and category of alcoholic liquor which have been damaged, lost or destroyed. Cases of theft shall be reported by the licensee to the proper police or sheriff's department. The licensee shall submit a copy of the report produced by the police or sheriff's department to the licensee's report sent to the Director of ABC.

When alcoholic liquor is destroyed or made unsellable by fire, flood or other disaster, the situation shall be investigated by an ABC agent, who shall submit a report verifying the circumstances to the Director of ABC.

[Approved by the Director on 09/10/07 following the same procedures set forth in K.A.R. 92-24-21 for the liquor drink tax]

## **Authorized activities**

Retail sales to individuals. Alcoholic liquor and non-alcoholic malt beverages may be sold in the original package to customers for use and consumption off of and away from the licensed premises. Sale and delivery of the alcoholic liquor must take place on the licensed premises. See definition section at the front of this handbook. [Subsection (a) of K.S.A. 41-308 and K.S.A. 41-344]

Sales to class A clubs. Alcoholic liquor and non-alcoholic malt beverages may be sold to the holder of a class A club license issued pursuant to the Club and Drinking Establishment Act for resale by such licensee, if the licensed premises is located within the same county or a county adjacent to the county where the retail liquor store is located. [Subsection (a)(2) of K.S.A. 41-308 and K.S.A. 41-344] The retail liquor store must have a federal wholesaler's basic permit obtained from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury and display a sign on its premises stating that the retail liquor store is a "Wholesale Liquor Dealer Under Federal Law." [Subsection (a)(6) of K.A.R. 14-13-9]

Sales to class B clubs. Alcoholic liquor and non-alcoholic malt beverages may be sold to the holder of a class B club license issued pursuant to the Club and Drinking Establishment Act for resale by such licensee, if the licensed premises is located within the same county or a county adjacent to the county where the retail liquor store is located. [Subsection (a)(2) of K.S.A. 41-308 and K.S.A. 41-344] The retail liquor store must have a federal wholesaler's basic permit obtained from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury and display a sign on its premises stating that the retail liquor store is a "Wholesale Liquor Dealer Under Federal Law." [Subsection (a)(6) of K.A.R. 14-13-9]

Sales to drinking establishments. Alcoholic liquor and non-alcoholic malt beverages may be sold to the holder of a drinking establishment license issued pursuant to the Club and Drinking Establishment Act for resale by such licensee, if the licensed premises is located within the same county or a county adjacent to the county where the retail liquor store is located. [Subsection (a)(2) of K.S.A. 41-308 and K.S.A. 41-344] The retail liquor store must have a federal wholesaler's basic permit obtained from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury and display a sign on its premises stating that the retail liquor store is a "Wholesale Liquor Dealer Under Federal Law." [Subsection (a)(6) of K.A.R. 14-13-9]

Sales to licensed caterers. Alcoholic liquor may be sold to the holder of a caterer license issued pursuant to the Club and Drinking Establishment Act for resale by such licensee. [Subsection (a)(2) of K.S.A. 41-308] The retail liquor store must have a federal wholesaler's basic permit obtained from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury and display a sign on its premises stating that the retail liquor store is a "Wholesale Liquor Dealer Under Federal Law." [Subsection (a)(6) of K.A.R. 14-13-9]

Delivery of alcoholic liquor and non-alcoholic malt beverages sold to clubs, drinking establishments and caterers. A retail liquor store may deliver alcoholic liquor and non-alcoholic malt beverages to a club, drinking establishment or caterer, but only to the licensed premises of a club or drinking establishment or to the principle place of business of a caterer. [Subsection (a)(2) of K.S.A. 41-308, K.S.A. 41-344 and subsection (b) of K.A.R. 14-22-10] The alcoholic liquor or non-alcoholic malt beverages may be removed from the retail liquor store's premises only during the hours and days in which the retail liquor store may be legally open. [Subsection (f) of K.A.R. 14-13-13] However, there are no restrictions on the days and times when the alcoholic liquor or non-alcoholic malt beverages

may actually be delivered to the club, drinking establishment or caterer. Deliveries must be made using employees and vehicles registered with ABC by that retail liquor store. [Subsection (a)(2), (a)(3) and (b) of K.A.R. 14-13-9] Registration of vehicles shall be made on form ABC-103R. A delivery fee may be charged by the retail liquor store. [Subsection (b)(1) of K.S.A. 41-308]

Sales to temporary permit holders. Alcoholic liquor may be sold to the holder of a temporary permit issued pursuant to the Club and Drinking Establishment Act for resale by such permit holder. [Subsection (a)(1) of K.S.A. 41-308] The retail liquor store must have a federal wholesaler's basic permit obtained from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury and display a sign on its premises stating that the retail liquor store is a "Wholesale Liquor Dealer Under Federal Law." [Subsection (c) of K.A.R. 14-23-8] A retail liquor store shall not deliver alcoholic liquor to a temporary permit holder. [Subsection (b) of K.A.R. 14-23-8]

Purchases from distributors. Alcoholic liquor and non-alcoholic malt beverages shall be purchased only from a Kansas licensed distributor which has on file with ABC a franchise agreement with a supplier authorizing that distributor to sell that brand and label of alcoholic liquor within the geographic area where the retail liquor store is located. [Subsection (b)(2) of K.S.A. 41-306 for spirits; subsection (b)(2) of K.S.A. 41-306a for wine; subsection (b)(3) of K.S.A. 41-307 for beer; subsection (a) of K.S.A. 41-345 for non-alcoholic malt beverage; subsection (b) of K.S.A. 41-1101 for all alcoholic liquor] However, if a distributor who is authorized to sell a particular brand and label alcoholic liquor or non-alcoholic malt beverage to a retailer refuses to do so, then the retailer may purchase the brand and label from any other licensed distributor. [Subsection (d) of K.S.A. 41-701]

Deliveries from distributors. Deliveries from distributors may be accepted only at the licensed premises of the retail liquor store. [K.A.R. 14-14-14] The restrictions on the time that distributors may make deliveries to retail liquor stores have been removed effective with the revocation of K.A.R. 14-14-12 on May 27, 2005.

Purchases from farm wineries. Domestic table wine and domestic fortified wine may be purchased from a Kansas licensed farm winery which manufactured that wine. [Subsection (a)(2) of K.S.A. 41-308a]

Storage of alcoholic liquor. All alcoholic liquor owned by a retail liquor store must be stored on the licensed premises. Once any alcoholic liquor is sold, it shall no longer be stored on the licensed premises. [Subsection (e) of K.A.R. 14-13-9] **However**, with the approval of the Director, a retail liquor store may use a detached storage area exclusively for the storage of alcoholic liquor if located within 100 meters of the licensed premises. [Subsection (b)(8)(A)(ii) of K.A.R. 14-13-2] Alcoholic liquor and non-alcoholic malt beverages may be stored in refrigerators, cold storage units, iceboxes and other cooling devices, and sold to consumers in a chilled condition. [Subsection (d) of K.S.A. 41-308 and subsection (b) of K.S.A. 41-345]

Gift packs. Gift packs (non-alcoholic items included with alcoholic liquor in the same package) may be sold to customers if the gift packs are packaged by a manufacturer or supplier and approved by Director in advance. [Subsection (b)(3) of K.S.A. 41-308 and subsection (a) of K.A.R. 14-10-11]

Buy-backs from individual customers mandated by distributor. Alcoholic liquor and non-alcoholic malt beverages may be bought back from a customer (meaning unlicensed person) when the retail liquor store is required to do so by the distributor of that product. [Subsection (b)(1) of K.A.R. 14-13-12 and subsection (b) of K.S.A. 41-345]

Buy-backs from other licensees. Alcoholic liquor and non-alcoholic malt beverage may be bought back from a club, DE or caterer that is going out of business, with the advance approval of the Director. [Subsection (b)(2) of K.A.R. 14-13-12 and subsection (b) of K.S.A. 41-345] Use form ABC-152.

Buy-back of defective products. Any item of alcoholic liquor and non-alcoholic malt beverages may be exchanged or bought back from a customer, within 24 hours of delivery, if the item is damaged as described in subsection (a) of K.A.R. 14-13-12, which includes "leaking, containing foreign matter, short-filled, having broken federal seals, having badly soiled or stained labels, or otherwise unfit for sale to the general public. [Subsection (b)(3) of K.A.R. 14-13-12]

Handling of shipments from out of state winery shipping permit holders. Shipments of wine may be received from out-of-state wine manufacturers holding Kansas winery shipping permits and delivered to purchasers on the licensed premises. See details in the Handbook for Winery Shipping Permits published by ABC. [Subsections (b)(3) and (e) of K.S.A. 41-348 and subsections (b)(2) and (e) of K.S.A. 41-349]

Payment by credit card. A customer may pay for alcoholic liquor or nonalcoholic malt beverage using a credit card, if the credit card can be used to purchase goods or services from at least 100 persons not related to the issuer of the credit card. [Subsection (a) of K.S.A. 41-717]

Gift certificates and cards. A retail liquor store may sell gift certificates or gift cards to the public which are redeemable for alcoholic liquor at that same store. [Interpretation of subsection (b) of K.S.A. 41-308 by the Director on 11/14/05] The liquor enforcement tax is not charged until the gift certificate or gift card is used to purchase alcoholic products from the store.

## **Prohibited activities**

Sale or giving of other goods and services. A retail liquor store shall not sell, offer for sale, give away or permit to be sold, offered for sale or given away in or from the licensed premises any service or thing of value whatsoever except alcoholic liquor in the original package (as received from the distributor) except for lottery tickets and shares sold by the Kansas Lottery and the free distribution of advertising matter as authorized by regulations. [Subsection (b) of K.S.A. 41-308]

Sale to and possession by minors. A retail liquor store shall not sell alcoholic liquor to a minor (person under 21 years of age) or allow a minor to possess alcoholic liquor upon the licensed premises. [Subsection (a) of K.S.A. 41-727]

Sales at below cost. A retail liquor store shall not sell any alcoholic liquor at less than the acquisition cost to the retailer without first obtaining a permit to do so pursuant to K.S.A. 41-729 from the Director. [Subsection (b) of K.S.A. 41-308 and subsection (a) of K.S.A. 41-729] This restriction also prevents a retail liquor store from giving away or donating alcoholic liquor to any person or entity. [Ruling by the Director on 10/18/07]

Giving free samples of liquor. A retail liquor store shall not give away free samples of alcoholic liquor on the licensed premises. [Subsection (b) of K.S.A. 41-30 as interpreted by Attorney General Opinion No. 2006-7 dated 03/02/06] **However**, free samples of alcoholic liquor may be given to a "guest" on adjacent unlicensed premises. A "guest" is a person known by the licensee and personally invited to partake of the sample by the licensee. Any liquor used for these samples must be purchased from the retail liquor store at no less than acquisition cost and the liquor enforcement tax paid. [Interpretation of subsection (a) of K.S.A. 41-104 by the Director on 02/07/05]

Entertainment and games on licensed premises. A retail liquor store shall not furnish any entertainment or permit any game of skill or chance on the licensed premises. [Subsection (c) of K.S.A. 41-308]

Taking post-dated or insufficient funds checks. A retail liquor store shall not accept of a post-dated funds check or knowingly take an insufficient funds check for payment for alcoholic liquor. [Subsections (p)(1) and (p)(3) of K.A.R. 14-13-13]

Insufficient funds checks to distributors. A retail liquor store shall not pay a distributor for alcoholic liquor with an insufficient funds check. [Subsection (p)(2) of K.A.R. 14-13-13]

Buying from distributor on credit. A retail liquor store shall not accept delivery from a distributor without making payment for the alcoholic liquor when delivered or prior to delivery. [Subsection (p)(4) of K.A.R. 14-13-13]

Selling to other licensees on credit. A retail liquor store shall not deliver alcoholic liquor to a club, drinking establishment or caterer without receiving payment prior to or at the time of such delivery. [Subsection (p)(5) of K.A.R. 14-13-13]

Consumption on licensed premises. A retail liquor store shall not allow alcoholic liquor to be consumed on the licensed premises. [Subsection (b) of K.S.A. 41-719]

Removal of liquor without payment. A retail liquor store shall not allow alcoholic liquor to be removed from the licensed premises without receiving payment for the same. [Subsection (p)(6) of K.A.R. 14-13-13]

Third-party checks. A retail liquor store shall not accept a check in payment of alcoholic liquor except a personal check from the purchaser. [Subsection (b) of K.S.A. 41-717]

Receiving or possessing untaxed liquor. A retail liquor store shall not receive or possess any alcoholic liquor upon which the gallonage tax has not been paid. Violators may be criminally charged with a misdemeanor and if convicted, subject to a fine not exceeding \$500 and imprisonment not to exceed 12 months. [K.S.A. 41-508]

Purchase of liquor from unlicensed source. A retail liquor store shall not purchase alcoholic liquor from any source other than from a distributor licensed and located in Kansas. However, a retailer may also purchase confiscated alcoholic liquor at a sheriff's sale. [K.S.A. 41-708]

Sales to incapacitated persons. A retail liquor store shall not knowingly sell, give away, dispose of, exchange, deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person or any person who is physically or mentally incapacitated by the consumption of alcoholic liquor. Violation is a misdemeanor with a fine of \$100 to \$250 and/or imprisonment for up to 30 days. [K.S.A. 41-715] An incapacitated person is defined in subsection 31 of K.S.A. 77-201 as "an individual whose ability to receive and evaluate relevant information, or to effectively communicate decisions, or both, even with the use of assistive technologies or other supports, is impaired to the degree that the person lacks the capacity to manage the person's estate, or to meet essential needs for the person's physical health, safety or welfare, as defined in K.S.A. 59-3051, and amendments thereto, whether or not a guardian or a conservator has been appointed for that person."

Sales of liquor not in original container. A retail liquor store shall not stock or sell any bottle, cask or other container of alcoholic liquor, except in the original package which was lawfully manufactured and distributed. [K.S.A. 41-718]

Mixing of alcoholic beverages. A retail liquor store shall not allow anyone to mix alcoholic drinks on the licensed premises. [K.S.A. 41-713]

## **Administrative actions for violations of statutes and regulations**

K.S.A. 41-106 provides that any citation issued for a violation of the Liquor Control Act or the Club and Drinking Establishment Act shall be delivered to the persons allegedly committing the violation at the time of the alleged violation. In addition, a copy of the citation shall also be delivered by U.S. mail to the licensee within 30 days after the alleged violation. If these time constraints are not met, then the citation shall be void and unenforceable.

The Director may impose a fine or suspend or revoke any license issued by the Division of Alcoholic Beverage Control for violation of any relevant provisions of the Liquor Control Act or any administrative regulations adopted pursuant thereto after the issuance of a citation to the licensee and a hearing. [K.S.A. 41-106, subsection (a) of K.S.A. 41-320, K.S.A. 41-328 and K.A.R. 14-16-15]

The Director may revoke any license of any retailer who has been convicted by any court of a violation of the provisions of the Liquor Control Act. [Subsection (b) of K.S.A. 41-314]

Suspension, revocation and involuntary termination are defined in K.A.R. 14-16-14. No license shall be suspended or revoked by the Director of Alcoholic Beverage Control except after a hearing by the Director. [Subsection (a) of K.S.A. 41-320]

The procedures for hearings are set forth in K.A.R. 14-16-16 through 14-16-21. Included is a provision that service of citations, orders, etc., may be made upon the licensee or applicant by either certified mail or personally. No licensee may refuse to accept and sign for service citations, orders, etc., by certified mail. [K.A.R. 14-16-21] The provisions of the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq., also apply to these hearing. [Subsection (a) of K.S.A. 41-320] Suspension and revocation orders issued by the Director shall state the reason for such action. [K.S.A. 41-321] Appeals of orders of suspension or revocation may be made by licensees as set forth in the Liquor Control Act, specifically K.S.A. 41-321 through 41-324.

The Director may also impose a fine not to exceed \$1,000 on a licensee for each violation of the Liquor Control Act. [K.S.A. 41-328] The fine shall be imposed by written order of the Director and state the nature of the violation, amount of fine, and the right of the licensee to appeal the order. To assure compliance with the Kansas Administrative Procedures Act, the Director may impose fines under K.S.A. 77-537. A licensee may appeal any fine within 15 days after service of the citation or summary order. [K.S.A. 41-321 and 77-542] Upon the appeal, a licensee will be granted a formal hearing under K.S.A. 77-513 through 77-532. Fines are to be remitted to the State Treasurer for deposit into the state general fund. [K.S.A. 41-328] Fines may also be imposed as a result of a formal hearing in lieu of suspension or revocation. [K.A.R. 14-16-15] K.A.R. 14-16-23 sets forth the schedule of fines for various violations of the Liquor Control Act, the Club and Drinking Establishment Act, and the Cereal Malt Beverage Act.

## **Sale of alcoholic liquor seized as evidence**

The Director is authorized to sell at public or private auction any alcoholic liquor that was seized by ABC agents or other law enforcement officers as evidence for use in any investigation, proceeding or trial, once such liquor is not longer needed for that purpose. [K.S.A. 41-1122]

The proceeds from such sales shall be deposited to the State General Fund. [K.S.A. 41-1124]

## **Criminal prosecution**

The following may be criminally prosecuted for the activities described below:

- A person who obtains a license by fraud or by making a false statement or acting as an undisclosed agent of another. [Subsection (a) of K.S.A. 41-901]
- A licensee who violates any provision of the Liquor Control Act. [Subsection (a) of K.S.A. 41-901]
- The owner of the licensed premises or an agent thereof who knowingly allows the premises to be used in violation of the Liquor Control Act. [K.S.A. 41-903]
- A licensee who allows, authorizes or approves of any officer, director, manager, agent or employee of the licensee violating any provision of the Liquor Control Act. [K.S.A. 41-904]

A fine not exceeding \$500 may be imposed upon the first conviction and a fine not exceeding \$1,000 and/or imprisonment not exceeding six months may be imposed for the second or subsequent conviction. [Subsections (b) of K.S.A. 41-901]

A conviction for violation of any provision of the Liquor Control Act shall be classified as a misdemeanor. [K.S.A. 41-1121]

The following provisions of the Liquor Control Act apply to criminal prosecutions for violations of the act: K.S.A. 41-1001, 41-1002, 41-1003, 41-1004

Any Kansas court may revoke a retailer's license upon the criminal conviction of the licensee for violation of any provision of the Liquor Control Act. [Subsection (a) of K.S.A. 41-314]

## **Liquor enforcement tax**

Alcoholic liquor and non-alcoholic malt beverages sold by retail liquor stores to individual customers for their own consumption or to clubs, drinking establishments and caterers for resale by the drink are subject to the 8% liquor enforcement. [K.S.A. 79-4101 and subsection (b) of 41-345] The retailer collects the tax from the purchaser at time of sale. [K.S.A. 79-4102] The retailer then files a monthly return and remits the tax due to KDOR. [K.S.A. 79-4103] The tax return and payment must be received by KDOR by the 25th day of the month following the month that the sales were made. [K.S.A. 79-4103]

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]

An application for an initial or renewal retail liquor license may be rejected by the Director if the applicant or any individual, grantor, beneficiary, trustee or partner is currently delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas. [Subsection (d) of K.A.R. 14-13-2]

It is unlawful for any person to evade, or attempt to evade, the payment of tax or duty on any alcoholic liquor. [Subsection (a) of K.S.A. 41-407] Failure of a licensee to file returns or pay the liquor enforcement tax is treated as an evasion or an attempt to evade. Although this statute provides for misdemeanor criminal penalties for violation, current ABC policy holds that criminal conviction is not necessary for a licensee to be found in violation of the Liquor Control Act and therefore administrative action may be taken instead of or in addition to criminal prosecution. In support of this interpretation, K.S.A. 41-328 provides that the Director may impose a fine on licensees for violation of the Liquor Control Act in addition to or in lieu of criminal penalties. K.A.R. 14-16-15 also authorizes the Director to suspend or revoke a license for violations of the Liquor Control Act.

K.S.A. 79-4107 of the Liquor Enforcement Tax Act also establishes misdemeanor criminal penalties for failure to file tax returns or pay the 8% liquor enforcement taxes as provided by the act.

## **Tax bond**

Retail liquor stores must submit and maintain a tax bond in the amount of \$2,000. [Subsection (b)(4) of K.S.A. 41-317]

Bonds shall be made payable to the Kansas Director of Alcoholic Beverage Control for and in behalf of the State of Kansas. Bonds shall be countersigned by a Kansas resident agent whose authority to sign the bond on behalf of the bonding company shall be evidenced by a duly executed power of attorney, of copy of which shall be attached to the bond at the time it is filed with the Director. [K.A.R. 14-17-1]