



HANDBOOK

FOR

RETAIL LIQUOR STORES

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

Definitions

"Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include 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] 3.2% alcohol by weight 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 licensure - required forms, fees and licensing bond

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

The license fee is \$500. [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. The non-refundable registration fee for renewal applications is \$10. [Subsection (a) of K.S.A. 41-317]

At time of initial licensing, applicants must submit and maintain a licensing 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 term commences on the date that the license is issued by the director. [Subsection (m) of K.S.A. 41-310] At the end of the two-year license term, the license is renewable for another two-year term unless 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 may collect a biennial occupation or license tax of not less than \$200 and not more than \$600. [Subsections (1)(1) and (1)(2) of K.S.A. 41-310]

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

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

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

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

Qualifications for licensure - ownership

Subsections (a) and (b) of K.S.A. 41-311 and K.A.R. 14-13-2 list 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. [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 (April 23, 2001) 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 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 Oct. 25, 2004]

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 Feb. 9, 2005]

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 Jan. 19, 2005.]

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

- **Supervisor of law enforcement officers.** The individual cannot hold a position that appoints or supervises any law enforcement officer. However, members of the governing body of a city or county (assume this means city council members and county commissioners) are exempt from this restriction. [Subsection (a)(7) of K.S.A. 41-311] Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the individual is located in the county, city, etc. as the RLS. [Ruling approved by the Director on Jan. 19, 2005.]

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

- **Acting as agent of another.** The individual cannot intend to act as an agent for another in operating the licensed business. [Subsection (a)(8) of K.S.A. 41-311]
- **CMB 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 Jan. 19, 2005.]

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 percent of the outstanding shares of that corporation or a similar holding in any other form of business organization.

The individual's spouse may hold a microbrewery license, farm winery license, or both. [Subsection (b)(3) of K.S.A. 41-311, as amended by 2010 SB 452]

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 a 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 in 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 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 renewal of 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 renewal for 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]

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] See Policy memorandum 2002-5 at <http://www.ksrevenue.org/abcpolicy.htm> for more information.

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 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 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 deeds or, if the applicants do not own the premises, copies of current leases. [Subsection (b)(2) of K.A.R.14-13-2]
- When ABC records indicate the location is currently or has recently been occupied by another similar licensed business, the Director has approved the following procedures (Ruling by the Director on Oct. 11, 2004):

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

- An incorporated city may prohibit the sale of alcoholic liquor in the original package in the following manner: the qualified voters of the city may 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. If qualified voters in a subsequent election vote to allow such sales, then retail liquor licenses may continue to be issued for locations in that city. [Subsection (c) of K.S.A. 41-301] 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] 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 election results prevent the licensee from operating during the entire second year of the license term, the licensee may qualify for a refund of ½ of the license fee in accordance with rules and regulations adopted by the Secretary of Revenue. [Subsection (d) of K.S.A. 41-302 and K.S.A. 41-326, as amended by 2010 SB 452]**
- **The list of cities that do not allow retail sales of alcoholic liquor in the original package may be found on our Web page at <http://www.ksrevenue.org/abcgeneral.html>**
- Retail liquor store licenses may be issued by the Director of ABC for a properly zoned location (see below) outside of an incorporated city if the board of county commissioners passes a resolution approving the license. The applicant for licensure must include a certified copy of the county resolution with its application. [Subsection (a) of K.S.A. 41-303]
- If a retail liquor store license has been issued by the Director of ABC to a premises located outside an incorporated city 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.] 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.

- The list of counties that do not allow retail sales of alcoholic liquor in the original package may be found on our Web page at <http://www.ksrevenue.org/abcgeneral.html>
- 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]
- 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]

Proximity of retail liquor store to church or school

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 unless the premises was licensed before the church or school moved in. [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]

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-805** (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 K.A.R. 14-13-14(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]

Salesperson's permit requirement

Any retailer or employee of a retailer who takes or solicits orders for the sale of alcoholic liquor or promotes the sale of alcoholic liquor while **off** the retailer's licensed premises must hold a salesperson's permit. [K.S.A. 41-333]. Refer to Policy Memorandum 2003-1 for more information concerning salesperson's permits. ABC Policy memorandums are available for download from our website at <http://www.ksrevenue.org/abcpolicy.html>

No salesperson's permit is required for a retailer or retailer's employee working solely 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 a.m. and 11 p.m.

- 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 p.m. [Subsection (a) of K.S.A. 41-712]

Retail liquor stores must be closed on the following days:

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

[Subsection (a) of K.S.A. 41-712]

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 a.m. and 11 p.m.
 - 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 p.m. [Subsection (b) of K.S.A. 41-712]
- Sunday, between 12 p.m. and 8 p.m.

Retail liquor stores must be closed on the following holidays:

- Easter
- Thanksgiving Day
- Christmas Day

[Subsection (b) of K.S.A. 41-712]

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. (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. (See procedure below)

When cities or counties expand the days of sale under K.S.A. 41-712, they **must** include **both** liquor retail sales and CMB retail sales. 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 less than the 12 p.m. to 8 p.m. provided in the statute. [Attorney General Opinion No. 2006-2 issued Jan. 4, 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 than 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 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 city 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 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 than what is in the statute. Within two weeks after passage, the resolution must be published once in the designated official county newspaper. The resolution shall become effective 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, trade practices, and promotional activities

Outside signs. Industry members may give, lend or sell basic signs advertising the industry member's products. The sign cannot have any secondary value. In other words, the industry member cannot give a scoreboard or other equipment to a licensee under the theory that it is just a sign advertising their

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

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

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

Radio and television advertising. Licensees may purchase live radio or TV commercials to take place at the licensed premises if the licensee pays the entire cost of the commercial. An industry member may be present and hand out promotional items to consumers on the premises during the time the commercial is broadcast but shall not participate in the commercial or pay any of the cost thereof. [Ruling by the Director on Aug. 1, 2005] A licensee may arrange for a radio or television station to run a remote broadcast from the licensee's parking lot or anywhere **outside** the licensed premises and the licensee or the radio or television station may give away food or promotional items at that location. Any food or other items may be given free to the public. The food cannot be paid for by an industry member (manufacturer, supplier or distributor).

Industry members selling, giving or lending equipment or supplies. Industry members are prohibited from giving or lending money, equipment, supplies, services or anything of value to a licensee except as permitted by K.A.R. 14-10-8. The following are allowed:

- Glassware, as long as the price is not less than what the industry member paid for it.
- Tapping and dispensing equipment, as long as the price is not less than what the industry member paid for it.
- Carbon dioxide gas and ice, as long as the price is not less than the local market price.
- Coil cleaning service.

Industry members selling or giving services. Industry members are prohibited from inducing licensees to purchase product from them by paying or crediting the licensee for any advertising, display or distribution service. The following practices are specifically prohibited:

- participating in paying for an advertisement placed by the retailer.
- the purchase of advertising on signs, scoreboards, programs, scorecards, and similar items from the retail concessionaire at ballparks, racetracks or stadiums.
- the purchase of advertising in a publication of the retailer which is distributed to consumers or the general public.
- reimbursements to retailers for setting up product or other displays.
- rental of display space in the licensed premises.

[Subsection (a) of K.A.R. 14-10-10]

Industry members shall not obtain tickets to a concert or other event and give them away to consumers either directly or through a third party if the concert or other event is being held on a licensee's premises. This is interpreted as furnishing something of value to the licensee (inducing consumers to visit the licensed premises) in violation of subsection (a) of K.S.A. 41-703. [Ruling by the Director on Aug. 1, 2005]

Industry members shall not arrange for a radio station to have its mobile unit park at a licensee's location and offer something of value to the public for finding the mobile unit and broadcast clues to find the mobile unit. This is interpreted as furnishing something of value to the licensee (inducing consumers to visit the licensed premises) in violation of subsection (a) of K.S.A. 41-703. [Ruling by the Director on Aug. 1, 2005]

However, industry members may furnish, give, rent, loan or sell newspaper cuts, mats or engraved blocks to a licensee for use in their advertising of the industry member's products. [Subsection (e) of K.A.R. 14-10-10]

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

Also, industry members may furnish, give, rent, loan or sell product displays to licensees. [Subsection (a) of K.A.R. 14-10-13] Subsection (c) of K.A.R. 14-10-13 places limitations on the value of the product displays. "Product display" means any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine or malt beverages are displayed and sold. [Subsection (b) of K.A.R. 14-10-13]

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

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

Consumer advertising specialties ("CAS") offered by industry members. Industry members may give, furnish or sell to retailers (on or off-premise licensees) consumer advertising specialties, such as ash trays, bottle or can openers, cork screws, matches, printed recipes, informational pamphlets, cards and leaflets, post cards, posters, printed sports schedules, pens, pencils, koozies, t-shirts, ball caps and other similar items as approved by the Director for unconditional distribution to the general public. The CAS must bear conspicuous and substantial advertising material about the product or the industry member. The retailer's name and address may not appear on any CAS provided by an industry

member. The licensee shall not be paid or credited in any manner, directly or indirectly, for this distribution service. [Subsection (c) of K.A.R. 14-10-10]

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

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

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

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

Type of Materials	Purpose	For consumers	Advertising about	Costs paid by	Keep Records	Notify ABC of New Items
Industry Member POS	Materials provided by industry member for use within a retailer’s premises to attract customer attention to the products	No	Industry member or product May include retailer’s information	Industry member or retailer	No	No
Industry Member CAS	Materials provided by industry member designed to be carried away by consumers	Yes	Industry member or product May <u>not</u> include retailer’s information	Industry member or retailer	No	Yes
*Retailer-generated CAS	Materials generated by retailers that are designed to be carried away by consumers	Yes	Retailer. Can include name, logo, address, phone, website, etc.	Retailer	No	Yes

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

Offering coupons, premiums, rebates and refunds to customers by industry members. Industry members may offer coupons, premiums, rebates and refunds through retailers (on and off-premise licensees) to consumers if they are to be redeemed by the industry member or their agents. A premium may or may not be conditioned upon the purchase of an alcoholic beverage. The retailer shall not accept any reimbursement, payment or credit for providing this service to the industry member.

Officers, employees and representatives of distributors and retailers shall be excluded from participation. [Subsection (b) of K.A.R. 14-10-11]

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

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

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

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

Industry member support of fundraising events sponsored by charitable organizations with sponsorship in whole or in part by a liquor licensee. Industry members may support these events through the donation of money and consumer advertising specialties directly to the charity, but not to the event sponsor or any other party. They may not donate product. Industry members may participate in these events, however any contributions made or fees paid by such industry members shall be the same as that contributed or paid by any other participant.

Industry member support of fundraising events sponsored by Charities, Not-for-profit Organizations with no Retailer Involvement. Industry members may support these events through the donation of money and consumer advertising specialties directly to the charity. They may not donate product. Industry members may participate in these events, however any contributions made or fees paid by such industry members shall be the same as that contributed or paid by any other participant.

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

Table 2: Industry member support to fundraising and other events

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

Conditions

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

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. Keg registration tags may be ordered free of charge in reasonable quantities by submitting form ABC-171 Keg Tag Order Form (available from our website at <http://www.ksrevenue.org/abcforms.html>) to the ABC [Subsections (a) and (f) of K.S.A. 41-2905]

At the time of sale, the retail liquor store shall record the following information on form ABC-170 Keg Registration Form (available from our website at <http://www.ksrevenue.org/abcforms.html>):

- 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 Nov. 28, 2005]

Keg registration tags assigned to a retailer may be transferred with approval of the Director only for emergency purposes or in the case of a retailer selling its business to another licensee. Form ABC-172 must be completed and submitted to ABC prior to the transfer. Tags may be transferred at any time after written approval is granted by the Director. Form ABC-172 is available for download from our website at <http://www.ksrevenue.org/abcforms.html>

Unused keg registration tags may be returned to ABC when accompanied by a complete Form ABC-173 (available on our website at <http://www.ksrevenue.org/abcforms.html>).

Finality of sales of alcoholic liquor by retailers

Sales of alcoholic liquor under the Liquor Control Act are final, except that retailers may:

- Buy back any item of alcoholic liquor from a consumer when required by the distributor. Approval of the director is not required. [Subsection (b)(1) of K.A.R. 14-13-12]
- Buy back any alcoholic liquor product from a club, drinking establishment or caterer for which the club, drinking establishment or caterer has approval from the Director to close out. [Subsection (b)(2) of K.A.R. 14-13-12]
- Buy back or exchange, within 24 hours after sale to a consumer, any item of alcoholic liquor which is damaged or deteriorated in quality. Approval of the director is not required. [Subsection (b)(3) of K.A.R. 14-13-12]
 - Liquor containers that are damaged or deteriorated in quality include containers that leak, contain foreign matter, are short-filled, have broken federal seals, have badly stained or soiled labels, or which are otherwise unfit for sale to the general public. [Subsection (a) of K.A.R. 14-13-12]

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 retail liquor store closes for any reason, including when the license has expired or has been revoked, and the retailer wishes to transfer the inventory to another licensee, the retailer shall apply to the Director of ABC for permission to sell the retailer's stock of alcoholic liquor to the other licensee. The seller and buyer must complete form ABC-812 (Request to Sell Inventory). If the sale is to one or more liquor licensees or distributors, an inventory of the alcoholic liquor to be transferred to each buyer must be completed. The alcoholic liquor shall not be sold or purchased by another liquor licensee 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. The 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 April 17, 2006]

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 Sept. 10, 2007 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 clubs and drinking establishments. Alcoholic liquor and non-alcoholic malt beverages may be sold to the holder of a class A or a class B club license or a drinking establishment license issued pursuant to the Club and Drinking Establishment Act for resale by such licensee, if the club's or drinking establishment's 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]

Delivery of alcoholic liquor and non-alcoholic malt beverages sold to clubs and drinking establishments. A retail liquor store may deliver alcoholic liquor and non-alcoholic malt beverages to a club or drinking establishment, but only to the licensed premises of the club or drinking establishment [Subsection (a)(2) of K.S.A. 41-308, K.S.A. 41-344] The alcoholic liquor or non-alcoholic malt beverages must be removed from the retail liquor store's premises and delivered to the club or drinking establishment 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] Deliveries must be made using employees registered with ABC by that retail liquor store. [Subsection (a)(2) and (a)(3) of K.A.R. 14-13-9] A delivery fee may be charged by the retail liquor store. [Subsection (b)(1) of K.S.A. 41-308]

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 to caterers. A retail liquor store may deliver alcoholic liquor to the principal place of business of a caterer. [Subsection (a)(2) of K.S.A. 41-308 and subsection (b) of K.A.R. 14-22-10] The alcoholic liquor must be removed from the retail liquor store's premises and delivered to the caterer's principal place of business 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] Deliveries must be made using employees registered with ABC by that retail liquor store. [Subsection (a)(2) and (a)(3) of K.A.R. 14-13-9] 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 or non-alcoholic malt beverage 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 of 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] There is no restriction on what time the distributor may deliver to the premises of a retail liquor store.

Purchases from farm wineries. A retailer may purchase domestic table wine and domestic fortified wine for resale from a Kansas licensed farm winery which manufactured the 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]

Value-added packs. Value-added packs (non-alcoholic items included with alcoholic liquor in the same package) may be sold to customers if the gift packs are packaged **by an industry member** and approved by the Director in advance. [Subsection (b)(3) of K.S.A. 41-308 and subsection (a) of K.A.R. 14-10-11] The retailer may not break apart a value-added pack and sell or deliver the contents separately. [K.A.R. 14-13-13(g)(1)]

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. The retail liquor store must submit form **ABC-812** to the Director for prior approval. [Subsection (b)(2) of K.A.R. 14-13-12 and subsection (b) of K.S.A. 41-345]

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]

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 Nov. 14, 2005] The liquor enforcement tax is not charged until the gift certificate or gift card is used to purchase alcoholic products from the store.

Discount cards for repeat customers. Customers may be provided with a card which is punched **or marked for each purchase and, upon reaching a specified number of purchases,** 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 enforcement tax. [Ruling by the Director on April 4, 2005]

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 tear-pad but not in the form of neckhangers on bottles or tear-pads 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 entry forms may be acquired. 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]

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 and subsection (n) of K.A.R. 14-13-13]

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 Oct. 18, 2007]

Giving free samples. A retail liquor store shall not give away free samples of alcoholic liquor or non-alcoholic malt beverages on the licensed premises. [Subsection (b) of K.S.A. 41-30 as interpreted by Attorney General Opinion No. 2006-7 dated March 2, 2006, Policy memorandum 2011-1]

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 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] The retailer may pay for the delivery by electronic funds transfer if agreed to by the distributor. [Policy Memorandum 2001-2]

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 in, on or about 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 or farm winery licensed and located in Kansas, except that a retailer may also purchase confiscated alcoholic liquor at a sheriff's sale [K.S.A. 41-708], alcoholic liquor from a sale authorized by the Director [K.S.A. 41-1122], or alcoholic liquor from another licensee who is quitting the business [K.S.A. 41-1102].

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. [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 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]

Breaking apart value-added packs. A retail liquor store shall not break apart a value-added pack purchased from a distributor and sell or give away, from the licensed premises, any non-alcoholic goods included in the pack. [K.A.R. 14-13-13(g)(1)]

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]

Refer to policy memorandum 2003-7 for more information concerning what items may or may not be displayed on a retailer's premises. ABC policy memorandums are available for download from our website at <http://www.ksrevenue.org/abcpolicy.html>

Administrative actions for violations of statutes and regulations

The Director may suspend or revoke any license issued by the Division of Alcoholic Beverage Control for violation of any relevant provisions of the Liquor Control Act or any administrative regulation 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 also impose a fine not to exceed \$1,000 on a licensee for each violation of the Liquor Control Act or one of the regulations adopted thereunder. [K.S.A. 41-328]

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

The Director may revoke the 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]

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]

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]

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 percent liquor enforcement tax. [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 liquor enforcement tax return and remits the tax due to the department. [K.S.A. 79-4103] The tax return and payment must be received by the department by the 25th day of the month following the month that the sales were made. [K.S.A. 79-4103]

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

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

An application for an initial or renewal retail liquor license may be rejected by the Director if the applicant or 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. Failure to file returns or pay the liquor enforcement tax may result in a fine of up to \$1,000 per delinquent return or payment and revocation of the license.

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 percent liquor enforcement taxes as provided by the act.