



HANDBOOK FOR SALESPERSONS

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

Definitions

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

"Salesperson" means any natural person who either (1) procures or seeks to procure an order, bargain, contract or agreement for the sale of alcoholic liquor or cereal malt beverage, or (2) is engaged in promoting the sale of alcoholic liquor or cereal malt beverage, or in promoting the business of any person, firm or corporation engaged in the manufacturing and selling of alcoholic liquor or cereal malt beverage, whether the seller resides within the State of Kansas and sells to licensed buyers within Kansas, or whether the seller resides outside the State of Kansas and sells to buyers within the State of Kansas.[Subsection (x) of K.S.A. 41-102]

Who must obtain a salesperson permit

Any person working for a supplier or distributor as a sales representative soliciting or taking orders either in person or by telephone from Kansas liquor licensees for alcoholic liquor or cereal malt beverage (product) must obtain a salesperson permit. However, the following exceptions apply:

- persons who deliver product to licensees for distributors but do not solicit or take orders [ABC Policy Memorandum 2003-1]
- employees who solicit orders for distributors only on the distributor's licensed premises [ABC Policy Memorandum 2003-1]
- a retail liquor store owner or employee who sells product only on the store's licensed premises [K.S.A. 41-333]

Application process

The applicant must be employed by a manufacturer, supplier or licensed distributor. The applicant for an initial permit must complete and submit form ABC-142 to the ABC Licensing Segment. The applicant's signature must be notarized and the employer must complete the verification at the end.

The fee for an initial or renewal salesperson permit is \$10. [Subsection (b) of K.S.A. 41-334]

Renewals are submitted by the salesperson's employer annually. The renewal request is submitted to ABC Licensing segment in the form of a list of all salespersons to be renewed. The information required for each salesperson is their name, date of birth, social security number and date that the current permit expires. No individual application is required. Upon receipt of the list and fee for each renewal, ABC Licensing Segment will issue a renewal strip with the next renewal date. The strip must be applied to the back of each salesperson's permit

Change of address or employment

A salesperson must notify the Director within 5 days of any change in employment by a liquor licensee. The licensee has the same obligation. [K.S.A. 41-337]

A salesperson must notify the Director within 5 days of any change of address from that which was indicated on the new or renewal application for a permit. [K.S.A. 41-338]

Qualifications for permit

Each permit allows the salesperson to act as a salesperson for only one employer, whose name must appear on the permit. However, if a person acts as a salesperson for more than one employer, he or she may apply for a permit for each employer. [Subsection (a) of K.S.A. 41-334]

Each permit is good for one year from the date of issuance. [Subsection (b) of K.S.A. 41-334]

The individual must be a natural person at least 21 years of age. [Subsection (a) of K.S.A. 41-334]

The individual shall not have a beneficial interest in any licensed retail liquor store, club, drinking establishment, caterer or temporary permit holder. [Subsection (c) of K.S.A. 41-334]

The individual must, in good faith, devote a major part of his or her time (be the principal occupation of the person) in selling, or taking or soliciting orders for the sale of alcoholic liquor or CMB for the manufacturer or licensed distributor. If the person is employed full-time by the manufacturer or licensed distributor, then the sales activity does not have to be the major part of the person's time. [K.S.A. 41-340] An example would be a delivery truck driver for a licensed distributor.

The Director may refuse to issue a permit to any individual who has been convicted of a felony or of a violation of the Kansas Liquor Control Act or CMB Act. [Subsection (c) of K.S.A. 41-334]

The individual shall not 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 as referenced in Subsection (c) of K.S.A. 41-334]

The individual shall not have been convicted "of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality." Cannot have forfeited bond to appear in court to answer charges for any of these crimes. [Subsection (a)(5) of K.S.A. 41-311 as referenced in Subsection (c) of K.S.A. 41-334] "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" (soliciting customers for prostitutes) and procuring a person to be a prostitute. These acts are currently prohibited by K.S.A. 21-3513 - Promoting prostitution.

The following is a list of criminal law violations which prevent a person from holding a Salesperson Permit:

<u>Crime</u>	<u>K.S.A.</u>
rape (morals charge) *	21-3502
indecent liberties with a child (morals charge)	21-3503
aggravated indecent liberties with a child (morals charge)	21-3504
adultery (morals charge)*	21-3507
indecent solicitation of a child (morals charge)*	21-3510
prostitution (morals charge)*	21-3512
promoting prostitution (pandering or keeping a house of prostitution)*	21-3513
bigamy (morals charge)*	21-3601
incest (morals charge)*	21-3602
aggravated incest (morals charge)	21-3603
promoting obscenity (moral charge)	21-4301
promoting obscenity to minors (moral charge)	21-4301a
promotion to minors of obscenity harmful to minors (morals charge)	21-4301c
gambling (morals charge)*	21-4303
illegal bingo operation (morals charge)	21-4303a
commercial gambling (owning or operating a gambling place)	21-4304
dealing in gambling devices (morals charge)	21-4306
possession of a gambling device (morals charge)	21-4307
installing communication facilities for gamblers (morals charge)	21-4308

* These crimes are listed in ABC Policy Memorandum 2003-1

Display of salesperson permit

A salesperson must exhibit his or her permit at any time while engaging in soliciting, taking orders for, or promoting the sale of alcoholic liquor or CMB; upon demand of any agent or employee of the Director; and upon request of any licensee. [K.S.A. 41-335]

Vehicles

A salesperson is not required to register with ABC the vehicle he or she uses to perform their duties as a salesperson.

Authorized activities

A salesperson working for a supplier or manufacturer may provide samples of alcoholic liquor or CMB to distributors if the supplier or manufacturer obtains a Temporary Permit pursuant to K.S.A. 41-332 to import the alcoholic liquor or CMB into Kansas. The alcoholic liquor or CMB may be shipped by the supplier or manufacturer to the distributor or hand-carried by a licensed salesperson or other employee working for the supplier or manufacturer.

Prohibited activities

A salesperson shall not sell, supply, furnish, give, pay for, loan or lease any furnishing, fixture or equipment for the licensed premises of any licensed retailer of alcoholic liquor or CMB. [Subsection (a) of K.S.A. 41-341]

A salesperson shall not pay for the license, or advance, furnish, lend or give money for payment of the license of any retailer of alcoholic liquor or CMB. [Subsection (b) of K.S.A. 41-341]

A salesperson shall not purchase or become the owner of any note, mortgage or other evidence of indebtedness of, or provide any security for, any licensed retailer of alcoholic liquor or CMB. [Subsection (c) of K.S.A. 41-341]

A salesperson shall not have any interest directly or indirectly in the ownership, or be involved in the conduct or operation, or be the lessor or lessee of the premises, of any licensed retailer of alcoholic liquor. [Subsection (d) and (e) of K.S.A. 41-341]

A salesperson shall not do any act on behalf of their employer which that licensee or permit holder is prohibited from doing.

A salesperson shall not accept any rebate from any manufacturer of alcoholic liquor or cereal malt beverage which is sold or distributed in Kansas. [Subsection (b) of K.A.R. 14-14-11]

Administrative actions for violations of statutes and regulations

The Director may suspend or revoke the salesperson permit of any person who:

- no longer meets the qualifications to hold a permit
- has been convicted of a felony
- has violated any provision of the Liquor Control Act or Cereal Malt Beverage Act or any rules and regulations adopted thereunder.

[Subsection (a) of K.S.A. 41-339]

All suspensions and revocations of the salesperson permit must be in accordance with the Kansas Administrative Procedures Act. [Subsection (b) of K.S.A. 41-339]

When ABC staff finds that the holder of salesperson permit may no longer be eligible for any of the above reasons, the information will be submitted to the ABC attorney for review with the Director. If the Director finds that salesperson permit should be suspended or revoked, then the attorney will draft a Summary Order pursuant to KAPA and give it to LLA to docket and mail out. The order will include instructions on how the person may request a formal hearing if the person wishes to appeal the Director's action.

Appendix A

Statutes from the Liquor Control Act which specifically apply to Salespersons

41-333. Salespersons; permit required; exception. Any natural person may act as a salesperson for the sale of, or the taking or soliciting of orders for the sale of, alcoholic liquor or cereal malt beverage in the state of Kansas only after such person has first applied for and received a permit therefor from the director, except that no such permit shall be required of a licensed retailer or an employee of such retailer operating solely on the licensed retail premises.

History: L. 1987, ch. 182, § 127; L. 1990, ch. 179, § 3; July 1.

41-334. Same; application; fee; qualifications. (a) Any natural person over the age of 21 may apply to the director for a salesperson's permit. The application shall be in such form and shall include such terms as the director may prescribe, and shall include a provision that the holder will comply with the Kansas liquor control act and the cereal malt beverage laws of this state, and any rules and regulations adopted under such act or laws. The application and any permit issued pursuant thereto shall set forth the name and address of the person, firm or corporation whom the applicant represents and also the name, address and a description of the applicant. A salesperson shall not represent any person, firm or corporation whose name does not appear on [the permit as] the salespersons' employer. No person shall act as salesperson for more than one person, firm or corporation under one permit. Additional permits may be granted the same applicant for additional principals.

(b) Upon approval of any application by the director, the director shall issue a permit to the applicant for one year upon the payment of an annual fee of \$10, which fee shall accompany the application.

(c) No person shall be issued a salesperson's permit if such person does not meet the qualifications of subsections (a)(4) and (5) of K.S.A. 41-311 and amendments thereto or if such person has a beneficial interest in any licensed retailer of alcoholic liquor or cereal malt beverage or any licensed club, drinking establishment or caterer. The director may deny a permit to any person who has been convicted of a felony or of a violation of the Kansas liquor control act or cereal malt beverage laws of this state.

History: L. 1987, ch. 182, § 128; April 30.

41-335. Same; exhibition of permit. All salespersons shall exhibit their permits at any time while engaged in soliciting, taking orders for, or promoting the sale of alcoholic liquor or cereal malt beverage, upon demand of any agent or employee of the director or upon request of any licensee.

History: L. 1987, ch. 182, § 129; April 30.

41-336. Same; purchase only from permit holder; exception. No licensee shall purchase alcoholic liquor or cereal malt beverage from, or give an order to, any person who is not the holder of a permit duly issued hereunder, except that an employee of a licensed distributor may solicit sales while on the licensed premises of such distributor without such a permit.

History: L. 1987, ch. 182, § 130; April 30.

41-337. Same; termination of employment; notice; surrender of permit. If a salesperson leaves the employ of the employer specified on the salesperson's permit, the salesperson shall immediately notify the director and surrender the permit to the director within five days. Failure to

surrender the permit within five days shall make the salesperson ineligible for any other permit for a period prescribed by the director. It shall also be the duty of the employer whose name is specified on the salesperson's permit to notify the director within five days of the termination of a salesperson's employment.

History: L. 1987, ch. 182, § 131; April 30.

41-338. Same; notice of address change required. If the holder of a salesperson's permit changes address from that noted on the application for the permit, the salesperson shall notify the director of such change of address within five days. Failure to so notify the director of a change of address shall make the salesperson's permit subject to revocation in accordance with the Kansas administrative procedure act.

History: L. 1987, ch. 182, § 132; April 30.

41-339. Same; suspension or revocation of permit; administrative action against employer.

(a) If the holder of salesperson's permit is convicted of a felony or violates the provisions of the Kansas liquor control act or the cereal malt beverage laws of this state, or any rules and regulations adopted thereunder, the director may suspend or revoke any and all permits issued to such salesperson. The director shall suspend or revoke a salesperson's permit if the salesperson is not qualified to receive a permit pursuant to K.S.A. 41-334.

(b) In addition to suspending or revoking a salesperson's permit, the director may suspend or revoke the authority of the salesperson's employer to sell alcoholic liquor or cereal malt beverage to licensed distributors within the state of Kansas or, if the salesperson is an employee of a licensed distributor, suspend or revoke such distributor's license.

(c) Any suspension or revocation of a license or permit pursuant to this section shall be in accordance with the Kansas administrative procedure act.

History: L. 1987, ch. 182, § 133; April 30.

41-340. Same; principal occupation of salesperson required; exception. No salesperson's permit shall be issued except to a person who, in good faith, devotes a major part of the person's time to selling, or taking or soliciting orders for the sale of, alcoholic liquor or cereal malt beverage and whose principal occupation is that of a salesperson of the person, firm or corporation on whose behalf the application is filed. Nothing in this section shall prohibit the issuance of a permit to a person who is regularly employed on a full-time basis by a manufacturer or licensed distributor of alcoholic liquor or cereal malt beverage and who, incident to the person's regular employment for such manufacturer or distributor, may sell, take or solicit orders for the sale of alcoholic liquor or cereal malt beverage.

History: L. 1987, ch. 182, § 134; April 30.

41-341. Same; prohibited acts. No salesperson shall directly or indirectly: (a) Sell, supply, furnish, give, pay for, loan or lease any furnishing, fixture or equipment on the premises of a place of business of a licensee authorized under this law to sell alcoholic liquor or cereal malt beverage at retail; (b) pay for any such license, or advance, furnish, lend or give money for payment of such license; (c) purchase or become the owner of any note, mortgage or other evidence of indebtedness of such licensee or any form of security therefor; (d) be interested in the ownership, conduct or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (e) be interested, directly or indirectly, or as owner, part owner, lessee or lessor thereof, in any premises upon which alcoholic liquor or cereal malt beverage is sold at retail, and any person having any such interest as described above shall not be eligible to receive or to hold a salesperson's permit.

History: L. 1987, ch. 182, § 135; April 30.