

## **Changing Beer Sales in Kansas Effective April 1, 2019**

House Sub for Senate Bill 13 becomes effective April 1, 2019 and changes how and where beer and cereal malt beverage (CMB) is sold in Kansas. Retail liquor stores and CMB retailers are impacted by these changes.

### **CMB Retailers - on or after April 1, 2019:**

- CMB retailers may sell beer that is 6% alcohol by volume (ABV) or less in addition to CMB products.
- No additional licensing is required.
- The ABC director has oversight of beer sales by CMB licensees to ensure an orderly market.
- CMB retailers are required to request permission from the ABC director to sell beer or CMB below the acquisition cost. The CMB retailer cannot carry such product for 12 months after the product has been sold.
- There are no changes to the hours of sale or employees age requirements.
- Rules and regulations have been promulgated as required and can be found on the Secretary of State's website. They will also be published soon on the ABC website.
- CMB retailers cannot offer samples of beer or CMB.
- Industry members are authorized to do tasting or sampling activities at a CMB retail establishment as authorized by K.A.R. 14-10-17 referencing 27 CFR 6.95.
- CMB retailers are not authorized to wholesale to on-premise licensees.
- CMB retailers must purchase their beer or CMB from a beer distributor.

### **Retail Liquor Stores - on or after April 1, 2019 the licensee may sell:**

- CMB without additional licensing.
- Any other goods and services not exceeding 20% of the retailer's total gross sales. These sales and services must be the same entity holding the liquor license. Excluded from the 20% are sales of:
  - Lottery tickets
  - Cigarettes
  - Tobacco Products
- No change to the days/hours of sale or employee age requirements.
- No change to taxation of products currently sold by a retail liquor store.
  - **8% Liquor Enforcement Tax – beer, wine, spirits, non-alcoholic beer and CMB.**
- Sales Tax – other goods or services.
- The licensee must obtain a sales tax certificate if selling other goods and services (if you do not already have one).

- **VESTIBULES** - The requirement for separate business entrances or vestibules remains if sales of other goods and services will exceed the 20% of total gross sales (excluding sales of lottery tickets, cigarette and tobacco products).
  - Give careful consideration before tearing down that wall.

Beginning April 1, 2019 a retail liquor store:

- Must track sales of alcoholic liquor, CMB, other goods and services, lottery tickets and cigarette and tobacco products.
- Must monitor sales 12 months prior to renewing your license on or after April 1, 2020 to ensure that sales of other goods and services do not exceed 20% of alcoholic liquor sales, excluding lottery, cigarette and tobacco products. Sales of CMB are not included in the 20% other goods and services.
  - The report form will be similar to on-premise licensees with a 30% food sales requirement.
  - The Department will run reports to verify.
- May have other goods and services on the licensed premises even if they have a party shop off of the licensed premises.
- May offer discounts on non-alcoholic products or services.
- May raffle other goods and services that are not alcoholic liquor branded. An industry member may continue to do such raffles.
- May have an ATM on the licensed premises if the licensee owns or leases the ATM. Policy Memo 2003-4 will be updated to reflect this change
- The retailer may have advertisements inside the licensed premises.
- There are no restrictions for outside signage.

Retail liquor stores are not authorized to sell to CMB retailers, even if they possess a Basic Permit to wholesale.

**Implementing the Changes**

The ABC director will allow delivery of beer to CMB retailers and CMB to retail liquor stores beginning March 1, 2019 to ensure an orderly market.

**CMB retailers**

- May possess beer 6%ABV or less beginning March 1, 2019.
- Sales of beer are prohibited prior to April 1, 2019.
- Beer may be placed on the shelf, in the cooler or other area on the licensed premises. Must have signage that clearly indicates such beer is not for sale prior to April 1, 2019.
- Beer may be covered with shrink wrap or other covering and cooler doors may be locked or the glass covered.
- The burden for not selling beer prior to April 1, 2019 is placed on the CMB retailer.
- It is important to become familiar with trade practices. Refer to Policy Memorandum 2016-1.

**Retail liquor stores**

- May possess other goods and services on the licensed premises beginning March 1, 2019.
- Sales of CMB and other goods or services are prohibited prior to April 1, 2019.
- CMB and other goods and services may be placed on the shelf, in the cooler or other area on the licensed premises. Must have signage that clearly indicates such CMB or other goods and services are not for sale prior to April 1, 2019.
- CMB and other goods and services may be covered with shrink wrap or other covering and cooler doors may be locked or the glass covered.

- The burden for not selling CMB or other goods and services prior to April 1, 2019 is placed on the retail liquor store.

### **Beer distributors**

- May deliver beer to CMB licensees and CMB to retail liquor stores beginning March 1, 2019.
- May divide accounts among distributors for a one-time exception to reset a cooler provided the schematic has been approved.
- Distributors must sell beer to CMB retailers and retail liquor stores at the same price. Section 4 of SB13, subsection (y)(1) states that on and after April 1, 2019 “retailer” will essentially mean retail liquor stores and CMB retailers, since they will both be considered “retailers” under Kansas law. **This applies to deliveries beginning 3/1/19.**
- Distributors may stock and rotate their product at any time.
- Distributors may not use the establishment’s software/hardware. This would be providing a service and is prohibited.

### **Tax Information on Beer Sales**

HB 2502 amended the sales tax statute definition of CMB to include beer 6% or less for the purposes of collecting sales tax.

- CMB retailers will collect sales tax on all beer and CMB sales.
- Retail liquor stores will collect:
  - 8% liquor enforcement tax on beer (wine, spirits and non-alcoholic beer) sales
  - **8% liquor enforcement tax on CMB sales**
  - Sales tax on other goods and services
- Drinking Establishments who also possess a CMB retailers license will continue to collect the 10% liquor drink tax on all sales of alcoholic liquor and CMB.

### **Alcoholic Beverage Control Division**

House Sub for SB 13 in the 2017 legislative session left the ABC in an awkward position because ABC does not issue CMB retailer licenses. HB 2502 gives ABC the authority to:

- Issue citations for violations of the CMB Act or rules and regulations regarding the sale, consumption or possession of beer 6% ABV or less to the CMB retailer and impose a civil fine of not more than \$1,000 for each violation.
- Authorizes the ABC director to refuse to issue the state CMB stamp if the applicant owes any fines imposed by the director.
- Clarifies the information required for the report to the 2029 legislature is based on information available to the ABC director.