



**HANDBOOK**

**FOR**

**DISTRIBUTORS**

**(SPIRITS, WINE, BEER)**

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Changes made to this handbook since the previous revision(s) have been highlighted with a **light blue 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 [Kdor\\_abc.email@ks.gov](mailto:Kdor_abc.email@ks.gov).

## Definitions

### “Alcoholic candy”

means any candy or other confectionary product with an alcohol content greater than 0.5% alcohol by volume (for purposes of manufacturing), or 1% alcohol by volume (for purposes of sale at retail).

[Subsection (b) of K.S.A. 41-102]

### "Alcoholic liquor"

means alcohol, **alcoholic candy**, 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 (c) 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 (d) of K.S.A. 41-102]

### "Beer distributor"

is defined as a person licensed to sell beer or CMB to any person authorized by law to sell beer or CMB at retail. [Subsection (c) of K.A.R. 14-14-1]

### “Beneficial interest”

means any ownership interest by a person or that person’s spouse in a business, corporation, partnership, trust, association, or other form of business organization that exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization. [Subsection (d) of K.A.R. 14-14-1]

### "Cereal malt beverage" (CMB)

means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage (FMB), but does not include any such liquor which is more than 3.2% alcohol by weight. [Subsection (a) of K.S.A. 41-2701] Since 3.2% alcohol by weight is equivalent to 4% alcohol by volume, CMB does not include any FMB which contains more than 4% alcohol by volume.

### "Distributor"

means a 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 the Liquor Control Act or the Cereal Malt Beverage Act. [Subsection (i) of K.S.A. 41-102]

### "Domestic beer"

is beer which contains no more than **15%** alcohol by weight and is manufactured in Kansas. [Subsection (j) of K.S.A. 41-102]

### "Flavored malt beverage"

means a malt beverage which meets the formula definitions as set forth in Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau regulations published Jan. 3, 2005, at 27 CFR Parts 7 and 25. [Subsection (b) of K.S.A. 41-2729]

Paragraph (a) of section 7.11 of 27 CFR Part 7 deals with the use of flavorings in malt beverages.

Paragraph (b) of section 25.15 of 27 CFR Part 25 deals with the use of flavorings in beer. They

are essentially identical. No more than 49 percent of the overall alcohol content of the malt beverage or beer may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. In the case of malt beverage or beer with an alcohol content of more than 6% by volume, no more than 1.5 percent of the volume of the malt beverage or beer may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

“Hard Cider”

means any alcoholic beverage that:

- (1) Contains less than 8.5% alcohol by volume;
- (2) has a carbonation level that does not exceed 6.4 grams per liter; and
- (3) is obtained by the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including such beverages containing sugar added for the purpose of correcting natural deficiencies.

[Subsection (o) 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]

“Powdered alcohol”

means alcohol that is prepared in a powdered or crystal form for either direct use or for reconstitution in a non-alcoholic liquid. [Subsection (x) of K.S.A. 41-102]

"Product"

as used in this handbook means "spirits" for spirits distributors, "wine" for wine distributors and "beer" for beer distributors.

"Retailer"

means a person who sells or offers for sale at retail any alcoholic liquor or CMB, except a microbrewery or farm winery. This term includes retail liquor stores, class A and B clubs, drinking establishments and caterers. [Subsection (z) of K.S.A. 41-102]

"Sample"

means a serving of alcoholic liquor which contains not more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or (3) two ounces of beer or cereal malt beverage. A sample of a mixed alcoholic beverage shall contain not more than one-half ounce of distilled spirits. [Subsection (u) of K.S.A. 41-2601]

"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 (gg) of K.S.A. 41-102]

"Supplier"

means an out-of-state manufacturer of alcoholic liquor or cereal malt beverage or an agent of such manufacturer, other than a salesperson. [Subsection (hh) 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. The term "wine" shall include hard cider and any other product that is commonly known as a subset of wine. [Subsection (jj) of K.S.A. 41-102]

### **Application for Licensure - Required Forms, Fees and Licensing Bond**

Apply online at <https://www.ksabconline.org> or download and print the online forms from our webpage at <http://www.ksrevenue.org/abconprem.html>. Follow the directions for submitting the application to ABC.

Biennial license fees are listed in K.S.A. 41-310 as follows:

- Spirits distributor's license - \$2,000 per each place of business in Kansas. [subsection (f)]
- Wine distributor's license - \$2,000 per each place of business in Kansas. [subsection (g)]
- Beer distributor's license - \$2,000 per each place of business in Kansas. [subsection (h)]

The license fee is refundable if the applicant is denied a license. [Subsection (d) of K.S.A. 41-317]

The applicant may pay either the full amount of the license fee or may pay ½ of the license fee at the time of application. The remaining ½ of the license fee, plus 10% of the remaining balance, is due one year from the date on which the license was issued. Failure to pay the remaining license fee and 10% fee timely will result in the license being canceled. [Subsections (b) and (c) of K.S.A. 41-317]

There is an additional application fee of \$30 for new applicants and \$10 for renewals. There will also be an additional \$20 modernization fee assessed to each application type (initial or renewal). The application and modernization fees are not refundable. [Subsection (a) of K.S.A. 41-317, as amended by New Section 1 of 2018 HB 2362]

At time of application, applicants must submit and maintain a licensing bond. See Licensing Bond section for details.

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 application, new applicants shall also submit the following to the Director of ABC:

- A diagram of the proposed licensed premises for approval. Licensees must notify ABC prior to making any changes to their licensed premises. [Subsection (c) of K.A.R. 14-14-2]
- If the applicant is a corporation, a certificate of authority issued by the Kansas Secretary of State to do business in Kansas. [Subsection (a) of K.S.A. 41-313]
- If the applicant is a corporation, provide a copy of a duly executed power of attorney appointing a person who is a citizen of the United States and a resident of Kansas as its agent and authorizing that agent to accept service of process from the Director of ABC and Kansas courts and to exercise full authority of the corporation and full authority, control and responsibility for the conduct of all

business and transactions of the corporation within the state relative to alcoholic liquor and the microbrewery business. The agent must be approved by the Director of ABC as having satisfactory character. [Subsection (a) of K.S.A. 41-313]

- If the applicant is a foreign corporation (not incorporated in Kansas), provide a copy of a duly authorized and executed power of attorney authorizing the Kansas Secretary of State to accept service of process from the Director of ABC and Kansas courts and accept service of any notice or order provided for in the Liquor Control Act. Such service shall be binding upon the corporation. [Subsection (a) of K.S.A. 41-313]

Once all of the forms, fees, licensing bond and other required documentation for licensure are submitted to and accepted by Director, the Director has 20 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 order denying a license is appealable to the Secretary of Revenue by filing a form available from the office of the secretary. The form must be either mailed to the secretary by certified mail or personally served upon the office of the secretary within 15 days from the date of service of the Director's order upon the licensee. The review of the Director's order will be conducted in accordance with the provisions of the Kansas Administrative Procedures Act (K.S.A. 77-501 et seq.). [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 distributor's license is a personal privilege and is not assignable. [K.S.A. 41-326]

### **Qualifications for Licensure**

A separate license is required for distribution of each category of product (spirits, wine or beer). See subsection (d) of K.S.A. 41-311.

There is no statute, regulation or policy that prevents a person or entity from holding more than one of the same type of distributor license (spirits, wine or beer). However, each licensee should hold a franchise from the supplier for a different geographic area. [Ruling by Director on June 29, 2005.]

Subsection (d) of K.S.A. 41-311 lists the qualifications for an initial license. The same requirements must be met for renewal of an existing license except as specifically indicated:

#### Partnerships

Each partner in a partnership must meet all of the licensing qualifications for person ownership listed below. [Subsection (d)(2) of K.S.A. 41-311]

#### Corporations

Each officer, Director and stockholder of the corporation must meet all of the licensing qualifications for person ownership listed below. Once the corporation has been issued a distributor's license, no stockholder of that corporation may transfer any of the stock of that corporation to a person who does not meet the licensing qualifications for person ownership listed below. However, see additional

provisions in subsection (d)(1) which cover situations where a stockholder dies or the stock is held by a trust. [Subsection (d)(1) of K.S.A. 41-311]

Every corporation seeking a license shall appoint a citizen of the United States and resident of Kansas as process agent to receive service of process and exercise authority of the corporation. The process agent must be satisfactory to and approved by the Director. [Subsection (a) of K.S.A. 41-313]

#### Limited liability companies (LLC)

LLCs must meet the same qualifications for licensure as a corporation as set forth in K.S.A. 41-311 and K.S.A. 41-311b. [Subsection (a) of K.S.A. 311c] **However**, persons having more than a 5 percent interest in the ownership of the LLC must meet the qualifications for ownership of a person (see below).

The LLC must submit a copy of its Articles of Organization and its Operating Agreement to the Director in a form and manner as prescribed by the Director. [Subsection (b) of K.S.A. 41-311c]

Every LLC seeking a license shall appoint a citizen of the United States and resident of Kansas as process agent to receive service of process and exercise authority of the LLC. The process agent must be satisfactory to and approved by the Director. [Subsection (a) of K.S.A. 41-313]

#### Trusts

For trusts to be licensed, each grantor, beneficiary and trustee must meet the licensing qualifications for person ownership listed below. However, a beneficiary does not have to be at least 21 years of age. [Subsection (d)(3) of K.S.A. 41-311]

#### Persons

- ***U.S. Citizenship***

The person must be a U.S. citizen. [Subsection (a)(1) of K.S.A. 41-311]

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

- ***Felony conviction***

The person 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 person'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 person's spouse, but only if the conviction occurred during the time that the person's spouse was licensed under the Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- ***Previous liquor license revocation***

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

- ***Conviction for keeping a house of prostitution***

The person 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 person'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 person's spouse, but only if the conviction occurred during the time that the person'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 person 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 (o) of K.A.R. 14-14-1 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 person'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 person's spouse, but only if the conviction occurred during the time that the person's spouse was licensed under the Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- ***Age requirement***

The person 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 person's spouse. [Subsection (a)(12) of K.S.A. 41-311]

- ***Employee of ABC***

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

- ***Law enforcement officer***

The person 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.]

Persons not certified as law enforcement officers, including non-commissioned correctional facility employees, are not included as "law enforcement officers" for purposes of acquiring a license. [Ruling by the Director on July 24, 2012]

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

- ***Supervisor of law enforcement officers***

The person 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 person is located in the same county, city, etc. as the **potential licensed premises**. [Ruling approved by the Director on Jan. 19, 2005.]

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

- ***Acting as agent of another***

The person cannot intend to act as an agent for another in operating the licensed business. [Subsection (a)(8) of K.S.A. 41-311]

- ***Other liquor licenses***

The person cannot hold a beneficial interest in a manufacturer, retailer, **microdistillery**, farm winery or microbrewery. [Subsection (d)(4) of K.S.A. 41-311]

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

- ***Treatment of persons with a beneficial interest***

Any person who has a beneficial interest in the distributor's license will be treated as a partner and therefore must also meet all of the qualifications for ownership that a person 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 manufacturer's receipts or profits from the sale of alcoholic liquor. A lessor will be considered to have a beneficial interest if the amount of rent is based on whole or in part on a percentage of the distributor's receipts or profits from the sale of alcoholic liquor. All financing and lease agreements that exclude alcoholic beverage sales are subject to review and approval by the Director. [Subsection (d) of K.A.R. 14-14-2]

- ***Conviction of violating the intoxicating liquor laws***  
The Director may deny an initial license or deny renewal an existing license if the person or the person's spouse has been convicted of violating the intoxicating liquor laws of any state or the United States or has forfeited bond to appear in court on charges of any such violation, within 10 years immediately preceding the date of application for an initial license or for renewal of an existing license. [Subsection (a) of K.S.A. 41-330]
- ***Conviction of violating the Cereal Malt Beverage Act***  
The Director may deny an initial license or deny renewal an existing license if the person or the person'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]
- ***Interest in manufacturer***  
No manufacturer licensed in Kansas and no out-of-state manufacturer which distributes alcoholic liquors in Kansas may directly or indirectly own or have any interest in a distributor licensed in Kansas. [K.S.A. 41-704]
- ***Non-residents***  
Each officer, Director or stockholder of a corporation who is a non-resident of Kansas on the date of application or has been a resident of Kansas for less than one year immediately preceding the date of submission of the application must provide fingerprints, information and documentation as required by K.S.A. 41-311b so that ABC can determine whether they meet the criminal conviction requirement above.
- ***Previous finding of hidden beneficial interest***  
The person cannot, after a hearing before the Director, be found to have held an undisclosed beneficial interest in any liquor license which was obtained by means of fraud or any false statement made on the application for such license. [Subsection (a)(15) of K.S.A. 41-311]

#### Federal permit

The applicant must possess a basic permit issued by the federal government and must register with the federal government as an alcohol dealer. The application and registration forms are available for download from our webpage at <http://www.ksrevenue.org/abcdistlic.html> or at <http://www.ttb.gov/forms/f510024.pdf>. [Ruling by the Director, Aug. 20, 2012]

#### **Additional Requirements for Non-Residents**

Each non-resident applicant for a distributor's license shall file with the Kansas Secretary of State its written consent, irrevocable, that any action or garnishment proceeding may be commenced against such applicant in the proper court of any county in Kansas in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the resident agent specified in subsection (a), etc. The Irrevocable Consent to Jurisdiction (ABC-160) is used for this purpose. The Secretary of State requires a \$35 filing fee for this form and charges \$1 for each additional file-stamped copy. A file-stamped copy must be provided by the applicant to ABC. [Subsection (b) of K.S.A. 41-313]

The president and/or secretary of a corporation organized under the law of any other state or foreign country must sign a resolution stating that he/she has authority to sign the Irrevocable Consent to Jurisdiction form (ABC-160). [Subsection (b) of K.S.A. 41-313] However, ABC will accept signatures

of other corporate officers if accompanied by a letter stating (1) why the president and/or secretary are not available to sign the form, and (2) that the officers who do sign the form have authority to do so on behalf of the corporation. [Ruling made by ABC attorney on July 6, 2005.]

### **Restrictions on Employees**

There are no age or other restrictions placed on distributors' employees by the Liquor Control Act or related administrative regulations.

### **Franchise Agreements for Specific Products and Geographic Distribution Rights**

K.S.A. 41-410 requires that all distributors licensed in Kansas must provide to ABC a signed copy of the franchise agreement between the distributor and their supplier, manufacturer, farm winery, microbrewery or microdistillery.

Termination of an existing franchise agreement does not require ABC approval. However, the supplier, manufacturer, farm winery, microbrewery or microdistillery must give ABC at least 30 days advance notice before the termination becomes effective. Any notice submitted to the ABC by a **supplier** must also be accompanied by an affidavit Form ABC-1007 stating that the termination, modification or alteration is not caused by the failure of the distributor to comply with any provision of the Liquor Control Act or any rules and regulations adopted pursuant thereto. A manufacturer, farm winery, microbrewery or microdistillery is not required to submit an affidavit.

Upon receipt of the notice of termination and affidavit (required for suppliers only), the Director is required to "immediately" send notice by certified mail to all affected parties of the impending termination, modification or alteration of the franchise agreement. [Subsections (c) and (d) of K.S.A. 41-410]

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

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

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

Voluntary relinquishment of a franchise agreement by a distributor will be processed by ABC in the same manner as a termination. [Ruling by the Director, Sept. 10, 2012]

Termination of a franchise agreement, other than by mutual agreement of the parties, must be for "reasonable cause." [Subsection (f) of K.S.A. 41-410] In any situation where termination is disputed, the

aggrieved party may file an action in state district court to determine whether there is "reasonable cause." [Subsection (e) of K.S.A. 41-410]

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

A franchise agreement does not automatically terminate upon close of business by either the supplier or the distributor, unless the agreement specifically authorizes such termination.

### **Signs, Advertising, Trade Practices and Promotional Activities**

For further clarification of trade practices involving product displays, point of sale items and equipment, refer to "Policy Memorandum 2016-1" dated March 30, 2016, which can be viewed at <https://www.ksrevenue.org/pdf/abcpm2016-1.pdf>.

#### Outside signs

Industry members may give, lend or sell basic signs advertising the industry member's products. The value of the signs may not exceed \$400. 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. [27 CFR ch. 1, Sec. 6.102, as adopted by K.A.R. 14-10-17]

#### 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. 14-10-17. 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 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 (d) of 27 CFR, ch. 1, Sec. 6.21, as adopted by K.A.R. 14-10-14]

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. [27 CFR, ch. 1, Sec. 6.92, as adopted by K.A.R. 14-10-17]

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]

#### Product displays

Industry members may give or sell product displays to licensees. The selling or giving of the product displays may be conditioned upon the purchase of enough of the liquor products advertised on the display for the initial completion of the display. No other conditions are allowed. [Subpart (c)(3) of 27 CFR, ch. 1, Sec. 6.83, as adopted by K.A.R. 14-10-17]

"Product display" means any wine racks, bins, barrels, casks, shelving, or similar items whose primary function is to hold and display consumer products. [Subpart (b) of 27 CFR, ch. 1, Sec. 6.83, as adopted by K.A.R. 14-10-17] The total value, based on actual cost to the industry member, of all product displays

given or sold by an industry member may not exceed \$300 per brand at any one time in any one licensed premises. [Subpart (c)(1) of 27 CFR, ch. 1, Sec. 6.83, as adopted by K.A.R. 14-10-17]

All product displays must bear conspicuous and substantial, permanently affixed, advertising material about the product or the industry member. The product display may also include the name and address of the retailer. [Subpart (c)(2) of 27 CFR, ch. 1, Sec. 6.83, as adopted by K.A.R. 14-10-17]

#### Point of Sale (“POS”) Advertising Materials

Industry members may provide to licensees items intended to be used within the establishment to attract customers’ attention to the products of the industry member. 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. [Subpart (b)(1) of 27 CFR, ch. 1, Sec. 6.84, as adopted by K.A.R. 14-10-17]

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. [Subpart (c)(1) of 27 CFR, ch. 1, Sec. 6.84, as adopted by K.A.R. 14-10-17]

#### Consumer advertising specialties (“CAS”) offered by industry members

Industry members may provide to licensees consumer advertising specialties that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ashtrays, bottle or can openers, corkscrews, shopping bags, 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 distribution to the general public. [Subpart (b)(2) of 27 CFR, ch. 1, Sec. 6.84, as adopted by K.A.R. 14-10-17]

The CAS must bear conspicuous and substantial advertising material about the product or the industry member. The CAS may also include the retailer’s name and address. The licensee shall not be paid or credited in any manner, directly or indirectly, for this distribution service. [Subpart (c) of 27 CFR, ch. 1, Sec. 6.84, as adopted by K.A.R. 14-10-17]

#### 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**

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 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, public venues, drinking establishments, and caterers.

Offering coupons, premiums, rebates and refunds to customers by industry members

Industry members may offer coupons through retailers (on and off-premise licensees) to consumers if all retailers within the market where the offer is made may redeem the coupons. Industry members may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee. [Subpart (a) of 27 CFR, ch. 1, Sec. 6.96, as adopted by K.A.R. 14-10-17] The Director has interpreted this regulation to also permit redemption of such coupons for free or discounted non-alcoholic items at grocery stores.

Industry members may offer contest prizes, premiums, refunds and like items directly to consumers. 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. [Subpart (b) of 27 CFR, ch. 1, Sec. 6.96, as adopted by K.A.R. 14-10-17]

"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 participate in these events to a limited extent. Industry members may: display products at a convention or trade show; rent display space at the same rental rate paid by all other exhibitors; provide hospitality independent from that provided by the retail association; purchase tickets to functions and pay registration fees at the same price paid by all other attendees, participants, or exhibitors; and pay for advertising in programs or brochures if the total payments made by an industry member for all such advertisements does not exceed \$300 per year for any retail association. [27 CFR, ch. 1, Sec. 6.100, as adopted by K.A.R. 14-10-17]

**Table 2: Industry member support to fundraising and other events**

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

**Conditions**

- (1) Participation fees not in excess to 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) May be provided as hospitality or at industry seminars.

**Finality of Sales**

A distributor's sales of alcoholic liquor to a club, drinking establishment, public venue, caterer or retail liquor store shall be final, except that a distributor may:

- Buy back any item of alcoholic liquor to close it out, with permission of the ABC Director.



- Buy back any item of alcoholic liquor or CMB when required to do so by the supplier of such alcoholic liquor or CMB.
- Buy back or exchange, within 24 hours after delivery, any item of alcoholic liquor or CMB which is damaged or found to have deteriorated in quality.

[Subsection (d) of K.S.A. 41-728]

## **Pricing Restrictions**

Kansas does not regulate the pricing of products sold by manufacturers or suppliers to distributors in Kansas.

Distributors must sell each product at the same price to each retail liquor store, club, drinking establishment or caterer in their franchise area. [Subsection (f)(1) of K.A.R. 14-14-11] This is interpreted as meaning that the distributor must sell each product at the same price to all licensees of the same type, but the distributor can charge different prices for the same product to different types of licensees. In other words, the price charged for Product A must be the same to all retail liquor stores but can be different from the price charged for Product A when sold to all drinking establishments or all clubs or all caterers.

The practice by distributors of charging a fee to retailers for repacking cases of product is not a violation of the Kansas Liquor Control Act. [Ruling by Director on Feb. 1, 2005]

Distributors may charge a delivery fee to retailers, etc., which varies from one area to the next within the distributor's franchise area, as long as the price difference can be justified by the difference in cost to the distributor to make such deliveries. [Ruling by Director on Feb. 1, 2005]

## **Record Keeping**

The following records must be maintained by the distributor:

- Records of all alcoholic liquor bought and sold, all receipts, all expenditures, all invoices and all sales tickets. [Subsection (e) of K.A.R. 14-14-8]
- Records of all equipment, supplies, samples, retailer advertising specialty items and product display items furnished to retailers, clubs, drinking establishment, public venues or caterers must be kept on the distributor's licensed premises for a period of three years. Each record shall contain the following information:
  - ◆ name and address of the retailer, club, drinking establishment or caterer receiving the item
  - ◆ date furnished
  - ◆ description of the item furnished
  - ◆ cost of the item furnished to the industry member
  - ◆ any charges to the retailer, club, drinking establishment and caterer

[27 CFR Part 6, Subpart D, Sec. 6.81(b), as adopted by reference in K.A.R. 14-10-17]
- Records of all alcoholic liquor or wine sold to a nonbeverage user. The records shall show the quantities of alcoholic liquor and wine sold to any nonbeverage user, the name, address, and license number of the nonbeverage user and any other information the Director may require. [Subsection (b) of K.A.R. 14-14-10]

For a period of 90 days after the sale, the records must be kept on the licensed premises. The records may be in electronic or paper format. If electronic, the records must be available to print upon request by the Director or any agent or employee of the Director. [Ruling by the Director on July 16, 2012]

After 90 days, the records may be stored off the licensed premises but shall be provided within a reasonable time upon request. [Ruling by the Director on July 16, 2012]

These records are subject to inspection by the Director or any agent or employee of the Director. [Subsection (b) of K.A.R. 14-14-10]

## **Authorized Activities**

### Purchase, import and store products

Distributors may purchase and import spirits, wine, beer or CMB from manufacturers, suppliers, farm wineries, microbreweries, microdistilleries and other distributors and store the same on their licensed premises. [Subsection (a) of K.S.A. 41-306 for spirits distributors; subsection (a) of K.S.A. 41-306a for wine distributors; subsection (a) of K.S.A. 41-307 for beer distributors]

Wine and spirits which are manufactured in the United States must be purchased from the primary American source of supply or from another spirits or wine distributor licensed in Kansas. However, spirits or wine may also be purchased at a sheriff's sale in Kansas [Subsection (a) of K.S.A. 41-306 for spirits distributors; subsection (a) of K.S.A. 41-306a for wine distributors] or from a sale by the Director or another licensee closing business. [Policy Memorandum 2010-1]

### Sales to out-of-state entities

Distributors may sell products to entities outside of Kansas if legal in the jurisdiction where such entities are doing business. [Subsection (b)(3) of K.S.A. 41-306 for spirits distributors; subsection (b)(3) of K.S.A. 41-306a for wine distributors; subsection (b)(4) of K.S.A. 41-307 for beer distributors]

### Sales to other distributors

Distributors may sell products to other distributors licensed in Kansas. [Subsection (b)(1) of K.S.A. 41-306 for spirits distributors; subsection (b)(1) of K.S.A. 41-306a for wine distributors; subsection (b)(2) of K.S.A. 41-307 for beer distributors]

### Sales to retail liquor stores

Distributors may sell products to retail liquor stores licensed in Kansas which are located within the geographic territory specified in brand franchise agreements approved by the ABC Director. [Subsection (b)(2) of K.S.A. 41-306 for spirits distributors; subsection (b)(2) of K.S.A. 41-306a for wine distributors; subsection (b)(3) of K.S.A. 41-307 for beer distributors]

### Restrictions on containers of products purchased

Distributors may purchase products in barrels, casks and other bulk containers and bottle such products for resale. All such bottles or containers shall be sealed, labeled and made to comply with all Kansas and federal laws and regulations and rules governing the preparation and bottling of spirits. [Subsection (c) of K.S.A. 41-306 for spirits distributors; subsection (d) of K.S.A. 41-306a for wine distributors; subsection (d) of K.S.A. 41-307 for beer distributors]

#### Sales of bulk wine to clubs, public venues and drinking establishments

Wine distributors may sell wine in barrels, casks or other bulk containers to licensed clubs, public venues and drinking establishments which are located within the geographic territory specified in brand franchise agreements approved by the ABC Director. [Subsection (c)(2) of K.S.A. 41-306a]

#### Sales of bulk wine to caterers

Wine distributors may sell wine in barrels, casks or other bulk containers to licensed caterers. [Subsection (c)(1) of K.S.A. 41-306a]

#### Sales of beer to clubs, public venues and drinking establishments

Beer distributors may sell beer to licensed clubs, public venues and drinking establishments which are located within the geographic territory specified in brand franchise agreements approved by the ABC Director. [Subsection (b)(3) of K.S.A. 41-307]

Beer distributors may store beer on the premises of a public venue for purchase as necessary by the public venue licensee. [Subsection (f) of K.S.A. 41-307]

#### Sales of beer to caterers

Beer distributors may sell beer to licensed caterers. [Subsection (b)(1) of K.S.A. 41-307]

#### Sales of CMB to other distributors

Beer distributors may sell CMB to other licensed beer distributors. [Subsection (c)(1) of K.S.A. 41-307]

#### Sales of CMB to clubs and drinking establishments

Beer distributors may sell CMB to licensed clubs and drinking establishments licensed under the Club & Drinking Establishment Act and to retailers licensed under the CMB Act which are located within the geographic territory specified in brand franchise agreements approved by the ABC Director. [Subsection (c)(2) of K.S.A. 41-307]

#### Sales of CMB to entities outside of Kansas

Beer distributors may sell CMB to entities outside of Kansas if legal in the jurisdiction where such entities are doing business. [Subsection (c)(3) of K.S.A. 41-307 for beer distributors]

#### Buy-back of outdated or defective products

Distributors may require retailers to buy back alcoholic liquor from customers. [Subsection (b)(1) of K.A.R. 14-13-12]

#### Return of product from public venue

With the approval of the distributor, a public venue may return unopened containers of alcoholic liquor for a full refund upon the conclusion of an event, provided the next scheduled event for that public venue is more than 90 days from the date of the concluded event. [Subsection (a)(6) of K.S.A. 41-2655 (New Section 1 of 2012 Sub. for HB 2689)]

#### Storage and delivery of another distributor's products

A distributor may enter into an agreement, if approved by the ABC Director, with another licensed distributor, to store alcoholic liquor and CMB on their licensed premises and deliver the same to any retailer licensed under the Liquor Control Act or CMB Act. [Subsection (d) of K.S.A. 41-306 for spirits distributors; subsection (d) of K.S.A. 41-306a for wine distributors; subsection (e) of K.S.A. 41-307 for beer distributors]

### Form of payment for products sold

Except as prohibited by K.S.A. 41-702, 41-703 and 41-2707, a distributor may accept any financial instrument, other than a second-party check or credit, to pay for alcoholic liquor or CMB purchased by a club, drinking establishment, public venue, caterer or retail liquor store. [Subsection (c) of K.S.A. 41-728] To protect themselves from inadvertently making a sale to an unlicensed entity, distributors should require that when retailers pay by check for product they are purchasing, the name on the check should be essentially identical to the licensed retailer's business name. Distributors should never accept a personal check from an employee of the retail business. [Policy approved by the Director on Sept. 14, 2004]

### Electronic Funds Transfers

If the distributor and the retailer, club, drinking establishment, public venue or caterer agree, payment may be made by electronic funds transfer. Payment must be made no later than the next banking business day after the date of delivery of the product. [Paragraph 3.c. of ABC Policy Memorandum 2001-2]

### Pre-payment for products by retailers

A distributor may enter into a prepayment plan with a retailer, club, drinking establishment, public venue or caterer for payment for purchases of alcoholic liquor and CMB as long as the amount prepaid does not exceed the usual purchases made for the time period for which prepayment is made. [Subsection (c) of K.S.A. 41-728]

### Gifts of branded clothing

Distributors may give t-shirts which include the manufacturer's or distributor's logo or other advertising to drinking establishments to be worn by their employees while working on the licensed premises, as long as the gift is not conditioned upon the drinking establishment purchasing any products from the distributor. [Approved by the Director on Jan. 12, 2005 as to beer distributors and expanded to include all distributors on Aug. 13, 2007.]

### Delivery of products

Distributors may deliver product to any licensee that it is authorized by statute to sell to.

A spirits distributor may, on behalf of a retailer, store on the distributor's licensed premises and deliver spirits sold by the retailer to a public venue. [Subsection (e) of K.S.A. 41-306]

### Free samples of spirits

Spirits distributors may serve free samples of spirits to its own employees, or to a licensed retailer and such retailer's employees. The samples shall be served on the licensed premises of the distributor or the retailer. No samples shall be served in any area open to the public or where retail sales are made. No samples shall be provided to any minor. The samples must be taken from the distributor's inventory and are subject to the liquor enforcement tax, based on the applicable current posted bottle or case price. [Subsection (f) of K.S.A. 41-306]

### Free samples of wine

Wine distributors may serve free samples of wine to its own employees, or to a licensed retailer and such retailer's employees, or to persons licensed under the Club and Drinking Establishment Act and such person's employees. The samples shall be served on the licensed premises of the distributor or such retailer or such person licensed under the Club and Drinking Establishment Act. No samples shall be served in any area open to the public or where retail sales are made. No samples shall be provided to any minor. The samples must be taken from the distributor's inventory and are subject to the liquor

enforcement tax, based on the applicable current posted bottle or case price. [Subsection (f) of K.S.A. 41-306a]

#### Free samples of beer

Beer distributors may serve free samples of beer to its own employees or to a licensed retailer and such retailer's employees, or to persons licensed under the Club and Drinking Establishment Act and such person's employees. The samples shall be served on the licensed premises of the distributor or such retailer or such person licensed under the Club and Drinking Establishment Act. No samples shall be served in any area open to the public or where retail sale are made. No samples shall be provided to any minor. The samples must be taken from the distributor's inventory and are subject to the liquor enforcement tax, based on the applicable current posted bottle or case price. [Subsection (g) of K.S.A. 41-307]

#### Pickup of products at distributor's warehouse

Distributors may permit licensees to pick up products at the distributor's licensed premises. [Inference from subsection (e) of K.S.A. 41-307, which allows a distributor to store and deliver to a retailer on the distributor's premises alcoholic liquor or CMB from another distributor. There appears to be no other statute or regulation that mentions whether such practice is legal or not. Ruling made by the Director on Feb. 28, 2006.]

On March 20, 2006, the Director ruled that distributors may conduct industry seminars on the premises of a licensed drinking establishment if (1) the event is confined to an area of the licensed premises with controlled access and not accessible to the public and (2) only employees of the distributor and the invited retailers are admitted to the event. The distributor must pay the liquor enforcement tax on these samples at the time they are withdrawn from inventory, based upon the current posted price per bottle or case. [Subsection (e) of K.A.R. 14-14-6a]

#### "Dry sampling" at retail liquor stores

Retailers may allow employees or agents of a Kansas licensed distributor to **give** away original containers of alcoholic liquor which the distributor has purchased from the retailer to customers **outside** the licensed premises. The samples are to be provided unconditionally for consumption away from the retailer's premises. [Ruling by the Director on April 3, 2012]

#### Sweepstakes and raffles

Industry members may conduct sweepstakes (raffles) for the public to participate in on a retailer's licensed premises, 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] The following procedure was approved by the Director on Aug. 2, 2012:

- Entry forms for a sweepstakes conducted by an industry member may be provided and collected in the retailer's licensed premises or made available on the internet website of the industry member or their agent. 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 item to be given away may be displayed on the retailer's licensed premises. There must be conspicuous mention of the contest, including the date it closes or when the drawing will be, on, about or around the prize item.
- The selection of the winner and awarding of the prize or prizes for a sweepstakes or raffle conducted by an industry member may take place on the retailer's premises. After the drawing,

the retailer must have maintain, for a period of three years, evidence that the prize was awarded and not taken by anyone associated with the retailer.

- 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.

#### Serving alcoholic liquor or CMB at certain fundraising activities

A distributor may serve complimentary alcoholic liquor or CMB at fundraising activities of:

- Charitable organizations which engage in the activity of soliciting funds or donations for any fraternal, benevolent, social, educational, alumni, historical, humane, public health or other charitable purpose, and have been granted exemption from payment of federal income taxes by the Internal Revenue Service; or
- Candidate, party or political committees formed pursuant to Kansas campaign finance laws, K.S.A. 25-4142 et seq.

The alcoholic liquor or CMB may not be donated by the distributor. The distributor may only serve alcoholic liquor or CMB which has been purchased by the sponsor of the fundraising activity as permitted by law. [Subsection (h) of K.S.A. 41-104]

#### **Prohibited Activities**

##### Providing services or equipment to licensees

Distributors shall not provide any service or thing of value to retail liquor stores, clubs, drinking establishments and caterers except as provided by rules and regulations adopted by the Secretary of Revenue. [K.S.A. 41-703 and Subsection (b) of K.A.R. 14-10-6] See Article 10 of the Kansas Administrative Regulations for exceptions.

##### Price discrimination to retail liquor stores

Distributors shall not discriminate in pricing of cases, sleeves and bottles of spirits, wine or beer among the retailers it sells to within the same franchise agreement geographic area. [Subsection (b) of K.S.A. 41-1101] This prohibition does not apply to military retail stores located upon military bases located in Kansas, since they are exempt from licensure under the Kansas Liquor Control Act.

##### Price discrimination to clubs and drinking establishments

Distributors shall not discriminate in pricing of cases and bottles of wine or beer among licensed clubs or drinking establishments it sells to within the same franchise agreement geographic area. The delivery charge shall not be considered a part of the price of wine or beer sold by a distributor. [Subsection (c) of K.S.A. 41-1101]

##### Multiple case discounts

Distributors shall not give any retailer a multiple case discount when selling alcoholic liquor or cereal malt beverage. [Subsection (e) of K.S.A. 41-1101]

##### Providing financing or things of value to CMB licensees

Distributors shall not provide any money or anything of value to a CMB licensee. [K.S.A. 41-2705]

##### Credit sales

Distributors shall not sell spirits, wine, beer or CMB to any club, drinking establishment, public venue or caterer on credit. [Subsection (a) of K.S.A. 41-728] Payment must be made to the distributor either in

advance, at the time of delivery, or within one banking day after delivery. [Paragraph 3c of ABC Policy Memo 2001-2]

#### Sales to licensees which then fail to pay the distributor

If a licensee takes delivery of product from a distributor and fails to pay for that product or pays with a check that "bounces", then the licensee will be deemed to have made a purchase on credit in violation of subsection (a) of K.S.A. 41-728. In such case, the distributor shall not deliver any more product to the licensee until the licensee has made payment or made good on the "bounced" check. [Ruling by the Director on July 12, 2007]

#### Combining sales to two or more licensees

Distributors shall not combine sales of spirits, wine, beer or CMB to two or more clubs, drinking establishments, caterers or retail liquor store, even if owned by the same person or entity. [Subsection (b) of K.S.A. 41-728]

#### Refusing entry to and inspection of the premises

A distributor may not deny access to and inspection of the licensed premises to any agent or employee of the Director. Such refusal shall be grounds for revocation of the license. Subsection (d) of K.A.R. 14-14-11]

#### Sale of powdered alcohol

A licensee shall not sell or offer for sale any powdered alcohol. [K.S.A. 41-730]

#### Giving free product

A distributor may not give away or donate product to any person or organization for any reason. [K.S.A. 41-406, 41-406a and 41-407, read in conjunction with K.S.A. 41-104]

A distributor wishing to participate in a charitable event may donate money, which the charitable organization may use as it sees fit, which may include the purchase from a retail liquor store of the products distributed by that distributor.

### **Administrative Action for Violations of Statutes and Regulations**

If an ABC enforcement agent observes a violation of the state liquor statutes or administrative regulations, the agent may issue an administrative citation setting forth the details of the violation as listed in subsection (c) of K.S.A. 41-106. The agent shall deliver the administrative citation to the licensee or person in charge of the licensed premises at the time of the violation. A copy of the administrative citation shall also be sent to the licensee by U.S. mail within 30 days after the date of the violation. [Subsection (a) of K.S.A. 41-106]

If a law enforcement officer from any other law enforcement agency observes a violation of the state liquor statutes, the law enforcement officer may prepare a notice of the violation (Form ABC-60) and serve the notice on the licensee or person in charge of the licensed premise. The law enforcement officer shall then submit a report of the violation to ABC for review to determine if administrative action should be taken against the licensee. If ABC decides to take action, then an administrative citation and notice of administrative action is sent to the licensee by U.S. mail within 30 days after the date of the violation. [Subsection (b) of K.S.A. 41-106]

The "person in charge" is defined as any individual or employee present on the licensed premises at the time of the alleged violation that is responsible for the operation of the licensed premises. If no individual or employee has been designated by the licensee as being in charge, then any employee present is

considered the “person in charge” for the purpose of delivering an administrative citation by an ABC enforcement agent or for delivering a notice of violation by any other law enforcement officer. [Subsection (e) of K.S.A. 41-106]

The Director may suspend, involuntary cancel or revoke any license issued by the Division of Alcoholic Beverage Control for any of the following reasons after the issuance of a citation to the licensee and a hearing conducted by the Director pursuant to the Kansas Administrative Procedures Act in which the licensee has an opportunity to participate:

- Providing false information on the license application or at any hearing relating to the issuance of the license.
- Violation of any provision of the Liquor Control Act or any administrative regulation adopted pursuant to such act.
- No longer meets the qualifications to obtain a license pursuant to K.S.A. 41-311 or K.S.A. 41-311b.

[Subsections (a) and (b) of K.S.A. 41-320, K.S.A. 41-320a and K.A.R. 14-16-15]

The Director may also impose a civil fine not exceeding \$1,000 for each violation. Any fine imposed for a violation of the act shall be by written order of the Director and state the nature of the violation, amount of fine, and the right of the licensee to appeal the order. A licensee will be granted a formal hearing under KAPA upon written request to the Director. Fines are to be remitted to the State Treasurer for deposit into the state general fund. [K.S.A. 41-328]

The Director may determine a penalty based on the ABC’s fine and penalty schedule, dated July 16, 2012. 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 <https://www.ksrevenue.org/pdf/LiqPenGrid.pdf>.

Any order by the Director suspending, involuntarily cancelling or revoking an existing license, or imposing a fine on a licensee is appealable to the Secretary of Revenue by filing a form available from the office of the secretary. The form must be either mailed to the secretary by certified mail or personally served upon the office of the Secretary within 15 days from the date of service of the Director’s order upon the licensee. The review of the Director’s order will be conducted in accordance with the provisions of the Kansas Administrative Procedures Act (K.S.A. 77-501 et seq.). [K.S.A. 41-321]

## **Tax and Reporting Requirements**

### Gallonage Tax and Payment

Distributors must file a monthly gallonage tax return and remit any payment due by the 15th of the following month. The return must be filed even if no alcoholic liquor or Cereal Malt Beverage (CMB) was received during the report period. No payment is required for any monthly gallonage tax due that is \$5 or less. [Revenue Ruling, 2010]

Payment by electronic funds transfer (EFT) is available. Information is available on our website at: <http://www.ksrevenue.org/efabcinfo.html>

The tax rates are set by K.S.A. 41-501 as follows:

- 18 cents per gallon on beer and cereal malt beverage;
- 30 cents per gallon on wine containing 14 percent or less alcohol by volume;
- 75 cents per gallon on wine containing more than 14 percent alcohol by volume; and



- \$2.50 per gallon on all spirits

A distributor may take a gallonage tax credit on spirits sold to a military installation. [Subsection (c) of K.S.A. 41-501] A distributor may also take a gallonage tax credit on alcoholic liquor or cereal malt beverage shipped to a distributor out of state [Subsection (c) of K.S.A. 41-501]

For questions relating to gallonage tax, you may contact the ABC marketing unit at [abc.marketing.unit@kdor.ks.gov](mailto:abc.marketing.unit@kdor.ks.gov) or 785-296-7015.

#### Liquor Enforcement Tax and Payment

Beer and wine sold by a distributor to clubs, drinking establishments, public venues and caterers is subject to the 8 percent liquor enforcement tax. [K.S.A. 79-4101] The distributor collects the tax from the club, drinking establishment, public venue or caterer at time of sale. [K.S.A. 79-4102] The distributor then files a monthly 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]

Each distributor must file its liquor enforcement tax return every month, regardless of whether any alcoholic liquor was sold to a club, drinking establishment, public venue or caterer during that tax period. Any distributor with no taxable sales during the tax period should report zero sales for that month.

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

Each distributor engaged in sales of alcoholic liquor to clubs, drinking establishments, public venues and caterers must file form ABC-73: Monthly Report of On-Premise Sales no later than the 15<sup>th</sup> day of the month following the on-premise sale, **unless** the distributor files and pays its enforcement tax electronically. Distributors engaged in sales to clubs, drinking establishments, public venues and caterers must file this report even if no on-premise sales were conducted during the previous month.

For questions relating to liquor enforcement tax, you may contact the Miscellaneous Tax segment at [kdor\\_miscellaneous.tax@ks.gov](mailto:kdor_miscellaneous.tax@ks.gov) or 785-368-8222 option 5 then option 4.

#### Reporting Requirements

Each distributor must make a monthly report of all purchases and sales of taxable alcoholic liquor and cereal malt beverages.

Distributors have the option to file their reports electronically through Electronic Data Interchange (EDI) or file their reports conventionally using the (ABC-215) Distributors' Monthly Gallonage Tax Return, (ABC-217) Distributors' Monthly Report of Purchases and (ABC-219) Distributors' Monthly Report of Sales.

For questions about reporting forms or procedures, contact the ABC marketing unit at [kdor\\_abc.marketing.unit@ks.gov](mailto:kdor_abc.marketing.unit@ks.gov) or 785-296-7015.

#### **Licensing Bond**

Distributors must post and maintain a licensing bond on form ABC-803 (escrow bond) or form ABC-804 (surety bond). Bond amounts are established by K.S.A. 41-317(g) as listed below:

- For a spirits distributor: \$15,000 or an amount equal to the highest monthly liability for gallonage taxes during the previous 12-month period, whichever is greater; or

- For a beer or wine distributor: \$5,000 or an amount equal to the highest monthly liability for gallonage taxes during the previous 12-month period, whichever is greater.
- If a distributor holds more than one distributor's license, the bond shall be the highest monthly liability for gallonage taxes among all the licenses.

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