



# **HANDBOOK FOR**

  

# **DRINKING ESTABLISHMENTS**

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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 cereal malt beverage. [Subsection (a) of K.S.A. 41-2601, referring to subsection (c) of K.S.A. 41-102]

### “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 (c) of K.A.R. 14-21-1]

### “Bulk wine”

means wine that is sold to a club, drinking establishment, caterer, or public venue by a retailer or wine distributor in barrels, casks or similar bulk containers which individually exceed 20 liters. [Subsection (f) of K.A.R. 14-14-1]

### “Dispense”

means to portion out servings of alcoholic liquor for consumption. This term shall include the pouring of drinks of alcoholic liquor and opening original containers of alcoholic liquor by the licensee or licensee’s employee for consumption by customers, and shall not include any self-dispensing by a customer. [Subsection (d)(1) of K.S.A. 41-2658]

### "Drinking Establishment" (“DE”)

means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold. Drinking establishments include a railway car. [Subsection (h) of K.S.A. 41-2601]

### “Individual drink”

means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term includes beverages containing not more than eight ounces of wine, 32 ounces of beer or cereal malt beverage, or four ounces of a spirit or combination of spirits. [Subsection (l) of K.S.A. 41-2601]

### “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]

"Infuse"

means to add flavor or scent to a liquid by steeping additional ingredients in the liquid. [Subsection (d)(2) of K.S.A 41-2658]

"Licensed premises"

means those areas described in an application for a drinking establishment license that are under the control of the applicant and are intended as the area in which alcoholic liquor is to be served. [Subsection (i) of K.A.R. 14-21-1]

"Municipal Corporation"

means the governing body of a city or county. [Subsection (p) of K.S.A. 41-2601]

"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]

"Railway car"

means a locomotive drawn conveyance used for the transportation and accommodation of human passengers that is confined to a fixed rail route and which derives from sales of food for consumption on the railway car not less than 30% of its gross receipts from all sales of food and beverages in a 12-month period. [Subsection (r) of K.S.A. 41-2601]

"Retailer"

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

"Sample"

means a serving of alcoholic liquor which contains not more than: (A) one-half ounce of distilled spirits; (B) one ounce of wine; and (C) two ounces of beer or cereal malt beverages. 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]

"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; License and Application Fees**

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

The license term commences on the date that the license is issued by the director. 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. [Subsection (a) of K.S.A. 41-2629]

Biennial license fees are listed in K.S.A. 41-2622 as follows:

- Drinking establishment - \$2,000. [subsection (a)(6)]
- Drinking establishment/caterer - \$3,000. [subsection (a)(8)]
- Hotel with its entire premises licensed as a drinking establishment - \$6,000. [subsection (a)(7)]
- Hotel with its entire premises licensed as a drinking establishment and is also a caterer - \$7,000. [subsection (a)(9)]

The applicant may pay either the full amount of the license fee or may pay half of the license fee at the time of application. The remaining half of the license fee, plus 10 percent 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 percent fee timely will result in the license being canceled. [Subsections (c) and (d) of K.S.A. 41-2606]

The license fee is refundable if the applicant is denied a license. [Subsection (e) of K.S.A. 41-2606]

There is an additional application fee of \$30 for new applicants and \$10 for renewals. There will be an additional \$20 modernization fee assessed to each application fee (initial or renewal). That fee is not refundable. [Subsection (a) of K.S.A. 41-2606, as amended by 2018 HB 2362]

In addition to the above fees, the city or county in which the licensed premises is located may collect a biennial occupation or license tax of not less than \$200 and not more than \$500. [Subsection (b) of K.S.A. 41-2622]

Licensee must also post a tax bond. See the section in this handbook for “Tax Bond.”

Once all of the forms, fees and other required documentation for licensure are submitted to and accepted by director, the director has 30 days to either issue the license or issue an order denying the license. If no license is issued or no denial order is issued within that time, then the license is deemed to be denied. The applicant may agree in writing to give the director an additional 30 days to either issue or deny the license. [K.S.A. 41-2628, referencing K.S.A. 41-319]

Any denial of an application for a license by the director must be done in accordance with the Kansas Administrative Procedures Act (K.S.A. 77-501 et seq.).

A drinking establishment license is a personal privilege and is not assignable. [Subsection (c) of K.S.A. 41-2629]

## **Qualifications for Licensure**

### Partnerships

Each partner in a partnership must meet the licensing qualifications for individual ownership below. [K.S.A. 41-2623(a)(5)]

### Corporations

Corporations must be organized (incorporated) in Kansas. [K.S.A. 41-2623(a)(8)]

For corporations to be licensed, each officer, manager and director thereof, and any stockholder owning a total of more than 5 percent of the common or preferred stock thereof, must meet the licensing qualifications for persons as listed below, except for citizenship and residency requirements. [K.S.A. 41-2623(a)(6)] In addition, each such person cannot have been an officer, manager, director or stockholder owning a total of more than 5 percent of the common or preferred stock in another corporation that either had a license revoked under the Kansas Club and Drinking Establishment Act or was convicted of a violation of the Kansas Club and Drinking Establishment Act or the Kansas Cereal Malt Beverage Act. [K.S.A. 41-2623(a)(7)]

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 meet the licensing qualifications for persons as listed below except for residence in the county where the licensed premises will be located. [Subsection (a) of K.S.A. 41-2625]

### Limited Liability Companies (LLC's)

LLCs must meet the same qualifications for licensure as a corporation as set forth in K.S.A. 41-2623 (see above). [Subsection (a) of K.S.A. 41-2623a] This includes the following requirements:

- The LLC must be organized under the laws of Kansas. [K.S.A. 41-2623(a)(8)]
- Each person having more than a 5 percent interest in the LLC must meet the licensing qualifications for persons as listed below, except for the citizenship and residency requirements. [K.S.A. 41-2623(a)(6)]
- The LLC 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 meet the licensing qualifications for persons as listed below except for residence in the county where the licensed premises will be located. [Subsection (a) of K.S.A. 41-2625]

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. 41-2623a]

### Municipal Corporations

Municipal corporations are not subject to most licensing qualifications. A municipal corporation shall be issued a license unless it has had a previous license revoked for cause. [K.S.A.41-2654(b)]

### Trusts

For trusts to be licensed, each grantor, beneficiary and trustee must meet the licensing qualifications for individual ownership below. However, beneficiaries do not have to be at least 21 years of age. [K.S.A. 41-2623(a)(9)]

### Persons

K.S.A. 41-2623 lists the qualifications for an initial license. The same requirements must be met for renewal of an existing license except as specifically indicated. Subsection (a)(1) of K.S.A. 41-2623 requires that licensees meet most of the same restrictions as retailers licensed under the Liquor Control Act, specifically paragraphs (1), (2), (4), (5), (6), (7), (8), (9), (12), (13) and (15) in subsection (a) of K.S.A. 41-311 (also listed in subsection (a) of K.A.R. 14-21-3):

- ***Age requirement.***

The person must be at least 21 years of age. [Subsection (a)(6) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(4) of K.A.R. 14-21-3]

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 as referenced in subsection (a)(1) of K.S.A. 41-2623]

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

The person must be a U.S. citizen. [Subsection (a)(1) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- ***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 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(1) of K.A.R. 14-21-3]

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 as referenced in subsection (a)(1) of K.S.A. 41-2623]

For a renewal license, this requirement also applies to the person's spouse, but only if the conviction occurred during the time that that the person's spouse was licensed under the Club and Drinking Establishment Act. [Subsection (a)(13) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- ***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, and 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 (a)(1) of K.S.A. 41-2623 and subsection (a)(2) of K.A.R. 14-21-3]

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 as referenced in subsection (a)(1) of K.S.A. 41-2623]

For a renewal license, this requirement also applies to the person's spouse, but only if the conviction occurred during the time that that the person's spouse was licensed under the Club and Drinking Establishment Act. [Subsection (a)(13) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- ***Conviction of owning 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 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(3) of K.A.R. 14-21-3]

"Pandering" is not currently defined 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 (k) of K.A.R. 14-21-1 as a charge alleging:

- 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 as referenced in subsection (a)(1) of K.S.A. 41-2623]

For a renewal license, this requirement also applies to the person's spouse, but only if the conviction occurred during the time that that the person's spouse was licensed under the Club and Drinking Establishment Act. [Subsection (a)(13) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- ***Law enforcement officer.***

The person cannot be a law enforcement official (not defined in statute). ABC defines this as being either a police officer or head of a police agency. [Subsection (a)(7) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(5)(B) of K.A.R. 14-21-3] Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the law enforcement officer is located in the same jurisdiction as the licensee. [Ruling 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 as referenced in subsection (a)(1) of K.S.A. 41-2623]

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

The person cannot hold a position which 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 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(5)(A) of K.A.R. 14-21-3] Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the law enforcement officer is located in the same jurisdiction as the licensee. [Ruling 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 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- ***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 as referenced in subsection (a)(1) of K.S.A. 41-2623 and subsection (a)(6) of K.A.R. 14-21-3]



- ***Previous liquor license revocation.***

The person cannot have had a license revoked under the provisions of the Club and Drinking Establishment Act. [Subsection (a)(2) of K.S.A. 41-2623]

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 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- ***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 (15) of K.S.A. 41-311 as referenced in subsection (a)(1) of K.S.A. 41-2623]

- ***Resident of Kansas.***

The person must be a resident of Kansas for at least one year immediately preceding the date of application. [Subsection (a)(3) of K.S.A. 41-2623]

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]

- ***Resident of county.***

The person must be a resident of the county where the licensed premises will be located. [Subsection (b)(2) of K.S.A. 41-2623]

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]

- ***Beneficial interest in certain other liquor license(s).***

The person cannot have a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquors as licensed under the Liquor Control Act. The person cannot have a beneficial interest in any business licensed under the Club and Drinking Establishment Act **except** as follows [Subsection (a)(4) of K.S.A. 41-2623]:

- A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more other clubs or drinking establishments licensed under the act if such other clubs or drinking establishments are also located in hotels. [Subsection (a)(4)(A) of K.S.A. 41-2623]

- A license for a drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants. [Subsection (a)(4)(B) of K.S.A. 41-2623]

- A license for a drinking establishment may be issued to a person who has a beneficial interest in a caterer. [Subsection (a)(4)(C) of K.S.A. 41-2623]

- A license for a drinking establishment may be issued to a person who has a beneficial interest in a microbrewery, microdistillery or farm winery licensed under the Kansas Liquor Control Act. [Subsection (a)(4)(E) of K.S.A. 41-2623]

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 as referenced in subsection (a)(1) of K.S.A. 41-2623]

### Federal Registration

The applicant must register as an alcohol dealer with the federal government. [Ruling by the director on Aug. 20, 2012] The registration form is available for download from our webpage at <http://www.ksrevenue.org/abconprem.html> or at <http://www.ttb.gov/forms/f56305d.pdf>.

### **Business Name**

A drinking establishment must use the doing business as (“DBA”) name provided in the application for licensure unless written permission has been granted by the Director to change it. A DE wishing to change its DBA name must complete and submit form ABC-22 and receive written permission from the director prior to advertising or posting the new DBA name. [Ruling by the director on July 30, 2012]

### **Requirements for the Licensed Premises**

#### "Wet" county.

The licensed premises must be located in a "wet" county. Information concerning the status of each county may be found on the ABC website at: <http://www.ksrevenue.org/pdf/abcwetdrymap.pdf>. A county is wet if:

- the board of county commissioners has approved a resolution permitting liquor by the drink (with or without a 30 percent food requirement), **or**
- the majority of the voters in that county approved the amendment to the Kansas Constitution in November 1986 to allow liquor by the drink or subsequently approved a proposition in a state general election to permit liquor by the drink (with or without a 30 percent food requirement) and which has not revoked that approval in a subsequent election. See K.S.A. 41-2646 for the requirements for the election. [Subsection (a) of K.S.A. 41-2642]
- Subsection (b) of K.S.A. 41-2646 sets forth the procedure whereby voters of the county may petition for a vote on whether the county shall become "wet" or "dry." The petition must contain at least 10 percent of the electors who voted for the office of Secretary of State at the last preceding general election at which such office was elected. When any such election takes place, the county election officer shall transmit a copy of the results to the Director. Since no time period is specified as to when such changes become effective, they should become effective as soon as the election results are received from the county election officers. [Subsection (d) of K.S.A. 41-2646]

#### Zoning.

The applicable city, township or county zoning codes must permit a DE at that geographic location. [Subsection (b) of K.S.A. 41-2608]

#### Control of premises by licensee.

The licensed premises must be constructed and operated in such a manner that the licensee has sufficient control to assure compliance with all applicable liquor laws and regulations. The licensed premises must include all portions of the premises where the DE's customers are permitted to possess and consume alcoholic liquor sold by the DE. Applicants for an initial license must furnish a diagram of the proposed

licensed premises for approval by ABC. [Subsection (c) of K.S.A. 41-2642 and subsection (a)(2) of K.A.R. 14-21-2]

For DE's located within a hotel or motel, the licensed premises may include the guest rooms, banquet rooms and common areas. Any guest room equipped with a "mini-bar" where guests are permitted to remove and consume alcoholic liquor must be included in the licensed premises. [Subsection (d) of K.S.A. 41-2642 and subsection (a)(2) of K.A.R. 14-21-2]

#### Owner or lessee.

Except for municipal corporations, stadiums, arenas, convention centers, museums, theaters amphitheatres and other similar premises, the licensee must either be the legal owner of the licensed premises or be a lessee or sub-lessee of the legal owner. If the applicant does not own the premises to be licensed, then the applicant must furnish a copy of the current lease for review by ABC. [Subsection (b)(1) of K.S.A. 41-2623]

If the lease provides for rent to be calculated based upon a percentage of the receipts or profit from the sale of alcoholic liquor or other items to be mixed with alcoholic liquor, then the landlord is deemed to have a beneficial interest in the licensed premises. In this case, unless the lessor is a city, county or state agency, the lessor must meet all of the qualifications for licensure. [Subsection (e) of K.A.R. 14-21-3]

#### Beverage service agreement.

If the premises to be licensed is owned by the city or county, or is a stadium, arena, convention center, theater, museum, amphitheater or other similar premises, the applicant may submit an executed agreement to provide alcoholic beverage services at the premises in lieu of a lease. [Subsection (b)(1) of K.S.A. 41-2623]

#### Premises currently or previously occupied by another DE or club.

When ABC records indicate the location is currently or has recently been occupied by another similar licensed business, the Director has approved the following procedures (Ruling by the Director on July 24, 2012):

- If the current business has an active license and the current business' lease is still in effect, ABC shall send a certified letter to the last known address of the current licensee, notifying the licensee that its license will be canceled if the licensee does not reply to the ABC within ten days. Any alcoholic liquor remaining on the premises will be deemed by the Director to be abandoned and shall be seized and sold by the ABC. Proceeds from the sale will go to the state general fund.
- If the current business no longer has an active license (expired or revoked) ABC will issue a license for another business to occupy that location.

#### Extension of premises.

A drinking establishment may permanently or temporarily extend its licensed premises upon written approval by the director. The request to extend premises must be submitted to ABC at least 10 days prior to the proposed extension. [Subsection (b) of K.A.R. 14-21-21] The request shall be made on a form (ABC-806) approved by the director and shall include the following information:

- A diagram of the extended premises, clearly showing the boundaries of the premises, all entrances and exits, and the area in which the service of alcoholic liquor will occur [Subsection (c) of K.A.R. 14-21-21];
- In the case of a temporary extension, the date(s) and time(s) that the premises will be extended [Subsection (d) of K.A.R. 14-21-21];

- If the licensee does not own or lease the area into which the premises are being extended, the application shall include written permission from the governing body of the city or county, and the owner, landlord, or the property manager to extend the premises. [Subsection (e) of K.A.R. 14-21-21]

The boundary of the extended premise shall be clearly marked by a three-dimensional obstacle. [Subsection (g) of K.A.R. 14-21-21] The licensee shall maintain, on the licensed premises, a copy of the diagram submitted to ABC with the request for extension and a copy of the director's approval to extend the premises. [Subsection (i) of K.A.R. 14-21-21]

### **Right of Governing Body to Request a Hearing on whether a License should be Issued, Denied, Revoked or Suspended**

The governing body of any city or county may request notification when an application is filed for a new or renewed license in such city or county. [Subsection (a) of K.S.A. 41-2651] If the governing body makes such a request, the Director shall notify the governing body when an application is received. [Subsection (a) of K.S.A. 41-2651] Once notified, the governing body shall have 10 days to request a hearing before the director on whether an initial license should be issued or an existing license should be renewed. [Subsection (b) of K.S.A. 41-2651]

The governing body of any city or county may, at any time, request a hearing to determine whether a license issued under the Club and Drinking Establishment Act should be revoked or suspended. [Subsection (c) of K.S.A. 41-2651]

The hearing shall be conducted in accordance with the Kansas Administrative Procedures Act. [Subsection (d) of K.S.A. 41-2651] At such hearing, the governing body shall have the right to present testimony and evidence and make recommendations regarding whether the director should issue or renew the license. [Subsection (e) of K.S.A. 41-2651] K.A.R. 14-21-22 provides factors for the director to consider in making such determination.

### **Restrictions on Employees**

All persons who are serving alcoholic beverages or CMB must be at least 18 years old. However, any server who is under the age of 21 must be supervised by a person who is at least 21 years old. [Subsections (a) and (f) of K.S.A. 41-2610 and Subsections (b)(1) and (b)(3) of K.A.R. 14-21-9]

All persons who are mixing or dispensing alcoholic beverages or CMB must be at least 21 years old. [Subsection (g) of K.S.A. 41-2610 and Subsection (b)(2) of K.A.R. 14-21-9]

No person connected\* (see below) with the dispensing, mixing and serving of alcoholic liquor or CMB can have:

- a conviction of a felony or of any crime involving a morals charge in Kansas, any other state, or the United States at any time. [Subsection (b) of K.S.A. 41-2610] "Morals charge" is defined in subsection (k) of K.A.R.14-21-1 as a charge alleging:
  - 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
  - a conviction of a violation of any intoxicating liquor law of Kansas, any other state, or the United States within the previous two years. [Subsection (b)(5) of K.A.R. 14-21-9]
  - two or more convictions within the previous five years of K.S.A. 21-5607, furnishing alcoholic liquor to a minor, or a similar law of any other state, or of the United States; or have three or more convictions within the previous five years of any other intoxicating liquor law of Kansas or any other state, or of the United States. [Subsection (c) of K.S.A. 41-2610] This would include convictions for driving while intoxicated (DWI) or driving under the influence (DUI).
- \* **"Person connected"** includes any manager or assistant manager in charge of the daily operations of the club. [Subsection (j) of K.A.R. 14-21-1] The Director has ruled that "person connected" also includes any person who manages or supervises any person actually doing the dispensing, mixing and serving of alcoholic liquor or CMB, regardless of their title. [Policy Memorandum 2001-4]

No person employed in the dispensing, mixing and serving of alcoholic liquor or CMB can be:

- a manufacturer, distributor or retailer. [Subsection (b)(6) of K.A.R. 14-21-9]
- an officer, agent or employee of a manufacturer, distributor or retailer. [Subsection (b)(6) of K.A.R. 14-21-9]

Persons who dispense beer from carts on golf courses must be at least 21 years old because there is no 21 year old supervisor who can see what they are doing, as there would be inside a building where 18-year olds are allowed to carry alcoholic products to the tables. [Ruling made by the director on April 30, 2007]

Food servers who have a disqualifying conviction may take orders for alcoholic liquor from customers as long as another, qualified person mixes or dispenses and serves the alcoholic liquor to the customers. [Interpretation made by AAG on Feb. 1, 2005]

### **Records to be Retained and Available for Inspection**

Each DE shall retain the following records of purchases and sales for a period of three years:

- Sales slips and other purchase documents for all alcoholic liquor purchased from retailers or distributors. [Subsection (e) of K.A.R. 14-21-10]
- Invoices and other records of sales of alcoholic liquor to all customers. [Subsection (a) of K.S.A. 79-3609 as referenced in subsection (a) of K.S.A. 79-4105 of the Liquor Enforcement Tax Act]

These records are subject to inspection by the director or any agent or employee of the director. [Subsection (g) of K.A.R. 14-21-10]. For a period of 90 days after the purchase, sale or sampling, 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]

Holders of a combination DE/caterer license must keep the records of their DE separate from the records of their catering business. [K.A.R. 14-22-8]

### **Hours and Days of Sales**

There shall be no serving, mixing or consumption of alcoholic liquor on the licensed premises between the hours of 2 a.m. and 6 a.m. on any day. [Subsection (a) of K.S.A. 41-2614, as amended by Section 6 of 2018 HB 2470]

### **Concealed Carry of Weapons by Patrons on the Licensed Premises**

The Personal and Family Protection Act (K.S.A. 75-7c01 et seq.), commonly known as the concealed carry law, prohibits persons who have been issued a license under this act from carrying a concealed weapon into any portion of the licensed premises of a drinking establishment. However, this prohibition does not automatically apply to a drinking establishment which is also defined by K.S.A. 41-2601 as a restaurant. [Subsection (a)(12) of K.S.A. 75-7c10]

A "restaurant" is defined as a business which has both a drinking establishment license and a food service establishment license, and meets the 30 percent food sales requirement if located in a county subject to that requirement. [Subsection (p) of K.S.A. 41-2601]

A drinking establishment which also meets the definition of a restaurant may elect to prohibit concealed carry on its premises. If it does so, then it must post at the public entrances to the premises signs of a design approved by the Kansas Attorney General indicating that concealed carry is prohibited. [Subsection (a)(2) of K.S.A. 75-7c11]

### **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, on ABC webpage: <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 application 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.

## **Obtaining, Transporting and Paying for Alcoholic Liquor**

A DE may only obtain its alcoholic liquor as follows:

- Purchase alcoholic liquor from a Kansas licensed retail liquor store. [Subsection (a) of K.A.R. 14-21-10] The retail liquor store must have a federal wholesaler's basic permit. The DE shall not warehouse any liquor on the premises of the retail liquor store. [Subsection (c) of K.A.R. 14-21-10] The retail liquor store may deliver the alcoholic liquor to the DE's premises. [Subsection (b) of K.A.R. 14-21-10] The DE must pay the retailer for the alcoholic liquor delivered before or at the time of delivery. [Subsection (a)(5) of K.A.R. 14-13-9] If both the DE and the retailer agree, payment may be made by electronic funds transfer. Payment by EFT must be made no later than the next banking business day after the date of delivery of the product to the drinking establishment. [Paragraph 3.c. of ABC Policy Memorandum 2001-2] [Ruling by the director, July 30, 2012]
- Purchase wine in barrels, casks and other bulk containers from wine distributors which are authorized by franchise agreements on file with the director to sell wine within the geographic area where the DE is located. [Subsection (c)(2) of K.S.A. 41-306a and subsection (a) of K.A.R. 14-21-10] The wine distributor may deliver the alcoholic liquor to the DE's premises. [Subsection (b) of K.A.R. 14-21-10] If both the DE and the wine distributor 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 to the DE. [Paragraph 3.c. of ABC Policy Memorandum 2001-2] The wine distributor must have a federal wholesaler's basic permit. The DE shall not warehouse any wine on the premises of the wine distributor. [Subsection (d) of K.A.R. 14-21-10]
- Purchase beer and cereal malt beverages from beer distributors which are authorized by franchise agreements on file with the Director to sell beer within the geographic area where the DE is located. [Subsections (b)(3) and (c)(2) of K.S.A. 41-307 and subsection (a) of K.A.R. 14-21-10] The beer distributor may deliver the alcoholic liquor to the DE's premises. [Subsection (b) of K.A.R. 14-21-10] If both the DE and the beer distributor 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 to the DE. [Paragraph 3.c. of ABC Policy Memorandum 2001-2] The beer distributor must have a federal wholesaler's basic permit. The DE shall not warehouse any beer on the premises of the wine distributor. [Subsection (d) of K.A.R. 14-21-10]
- Transfer or purchase domestic beer from a microbrewery if the microbrewery is owned by the same entity as the DE. [Subsection (a)(5) of K.S.A. 41-308b]
- Purchase domestic wine from a Kansas farm winery [Subsection (a)(2) of K.S.A. 41-308a]
- Purchase alcoholic liquor from a sheriff's sale, a sale authorized by the Director, or from a licensee who is quitting business. [K.S.A. 41-1102, 41-1122, 41-1123, 41-1125 and Policy Memorandum 2010-1]

## **Selling and Serving of Alcoholic Beverages**

A DE may offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises which may be open to the public, if the premises are located within a "wet county." [Subsection (a) of K.S.A. 41-2642]

A DE shall sell and serve alcoholic liquor only by the individual drink [subsection (h) of K.S.A. 41-2601], except that a DE may sell or serve:

- Beer or CMB in a pitcher capable of containing not more than 64 fluid ounces. [Subsection (c)(4) of K.S.A. 41-2640]
- Margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages, as approved by the Director, in a pitcher containing not more than 64 fluid ounces. [Subsection (c)(6) of K.S.A. 41-2640]

Alcoholic liquor shall be dispensed only from original containers, except that a DE or its agent or employee may dispense:

- Alcoholic liquor from a machine or container used to mix alcoholic liquor with other liquids or solids intended for human consumption. [Subsection (a)(1) of K.S.A. 41-2658]
- Alcoholic liquor from a machine or container used to chill alcoholic liquor, which may contain additional liquids or solids intended for human consumption. [Subsection (a)(2) of K.S.A. 41-2658]
- Infused alcoholic liquor from a container used to infuse alcoholic liquor with other substances intended for human consumption. [Subsection (a)(3) of K.S.A. 41-2658]

A DE or its agent or employee may infuse alcoholic liquor with spices, herbs, fruits, vegetables, candy or other substances intended for human consumption if no additional fermentation occurs during the process. [Subsection (c) of K.S.A. 41-2658]

A DE may sell CMB if it has a current CMB retailer's license issued by a city or county pursuant to the CMB Act. [Subsection (a) of K.S.A. 41-2702]

A DE may offer for sale, sell and serve CMB for consumption on the licensed premises if the DE obtains an on-premises license under the CMB Act. [Subsection (h) of K.S.A. 41-2704]

Multiple cans or bottles of beer or CMB may be sold to a customer at the same time. The bottles or cans may be opened prior to service. [Approved by the director June 18, 2010]

A DE may offer up to five samples per customer per visit. Samples cannot be combined in any form, no cover can be charge during the day samples are served. Samples must be withdrawn from inventory. The DE will pay tax on the samples at acquisition costs. [K.S.A. 41-2642(a)(c)]

Most of the restrictions on the pricing of drinks dispensed at clubs, DEs, caterers and temporary permit holders by their employees or agents are set forth in subsection (a) of K.S.A. 41-2640, which prohibits:

- Offering or serving free alcoholic liquor or CMB to any person with the exception of samples. [Subsection (a)(1)] This is interpreted as also prohibiting employees or agents of the licensee from "buying" drinks for anyone on the licensed premises.
- Selling, offering or serving any drink at a price below acquisition cost of the drink. [Subsection (a)(2)] The acquisition cost shall include the cost of both the alcoholic liquor and non-alcoholic liquor contained in the drink, but not the cost of water, ice, labor, overhead and any other items of clearly negligible value. [K.A.R. 14-21-15]
- Selling, offering or serving an unlimited number of drinks to any person for a set period of time at a fixed price, except at private functions not open to the general public or to the general membership of a club. [Subsection (a)(3)]

- Encouraging or permitting any game or contest which involves drinking alcoholic liquor or CMB or the awarding of drinks as prizes on the licensed premises. [Subsection (a)(4)]
- Advertising or promoting in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (4). [Subsection (a)(5)]

DEs may offer and advertise happy hours and other drink specials. DEs may charge different prices for the same drink at any time during the business day. This includes “Ladies night” or discounts to other select patrons. Mug clubs and other reward programs resulting in reduced priced drinks for members of the program are allowed. [Subsection (c) of K.S.A. 41-2640]

## **Sale of Business Already Licensed**

### Individuals and partnerships

If an individual (sole proprietor) or partnership which owns a currently licensed DE sells the business to another individual or business entity, or the partnership interests change, then the license will be terminated effective no later than the date of transfer of ownership and the new owner will be required to apply for a new license and meet the licensing requirements for an initial license.

### Corporations

If a corporation which owns a currently licensed DE is sold intact (the corporation continues to exist, but one or more of the stockholders changes), then the business may continue to operate the DE under the existing license if the corporation retains the same FEIN. The corporation must submit the following to ABC Licensing: a copy of the corporation meeting minutes documenting the sale, a Notice of Ownership Change form (ABC-809), and a Financial Disclosure (form ABC-801) disclosing its source of funding to purchase the corporation.

### Limited Liability Companies (LLCs)

If an LLC which owns a currently licensed DE is sold intact (the LLC continues to exist, but one or more of the members changes), then the business may continue to operate the DE under the existing license if the LLC retains the same FEIN. The sale agreement must include language which explicitly makes the new members of the LLC liable for any state taxes which are due at the time of sale or may be found later to be due for any time period prior to the date of sale. The LLC must submit the following to ABC Licensing: a copy of the sale agreement; a Notice of Ownership Change (form ABC-809); and a Financial Disclosure (form ABC-801) disclosing its source of funding to purchase the LLC.

## **Transfer of a Drinking Establishment's Stock upon the Closing of the Business**

When a licensed DE closes for any reason, including when the license has expired or has been revoked, the licensee may apply to the Director of ABC for permission to sell the licensee's stock of alcoholic liquor to another licensee, as follows:

- Bulk wine, beer and cereal malt beverages in the unopened original containers may be sold back to the distributor from which it was originally purchased. [Subsection (d)(1) of K.S.A. 41-728] The DE and distributor must complete and submit form ABC-812 (Request Permission to Sell Inventory of Alcoholic Beverages).
- Alcoholic liquor in unopened original containers may be sold to any licensed retailer, DE, class A or B club or caterer. The DE and purchasing licensee must complete and submit form ABC-812 (Request Permission to Sell Inventory of Alcoholic Beverages). [Policy Memorandum 2010-1]

Any liquor left on the premises after the DE closes shall be deemed abandoned by the director and shall be seized and sold. [Policy Memorandum 2010-1]

## **Authorized Activities**

### Minibars in hotels.

If located in a hotel of which the entire premises are licensed as a DE or as a DE/caterer, a DE may sell alcoholic liquor or cereal malt beverage by means of minibars located in guest rooms of such hotel. There are no restrictions on the hours that a hotel guest may purchase products from the minibar in the guest's room. Minibars are subject to the following restrictions:

- The key, magnetic card or other device required to attain access to a minibar in a guest room shall be provided only to guests who are registered to stay in such room and who are 21 or more years of age.
- Containers or packages of spirits or wine sold by means of a minibar shall hold not less than 50 nor more than 200 milliliters.
- A minibar shall be restocked with alcoholic liquor or cereal malt beverage only during hours when the hotel is permitted to sell alcoholic liquor and cereal malt beverage as a drinking establishment.

[Subsection (d) of K.S.A. 41-2642]

### Drink tickets provided by hotels

If the entire premises of a hotel is licensed as a DE, the hotel may provide tickets or coupons to its guests that are redeemable on the hotel premises for alcoholic beverages. The hotel is responsible for remitting liquor drink tax on each drink served, as provided by law, and the price may not be less than the acquisition cost of the alcoholic beverage. [K.S.A. 41-2640(d)]

If the entire premises of a hotel is **not** licensed as a DE, the hotel may enter into an agreement with one or more outside clubs or DEs to provide coupons or tickets to its guests which are then redeemable for alcoholic beverages at the outside club or DE. Any club or DE agreeing to redeem such coupons or tickets shall collect an agreed upon price from the hotel in advance, which shall be no less than the acquisition cost of the particular drink plus the required liquor drink tax for that drink. The club or DE shall then remit the liquor drink tax amount as provided by law. [K.S.A. 41-2640(f)]

### Free food or entertainment.

A DE may offer free food or entertainment at any time. [Subsection (c) of K.S.A. 41-2640]

### Gift certificates and cards.

A DE may sell gift certificates or gift cards that can be subsequently used to purchase drinks. [Ruling approved by the director on Jan. 25, 2005] Liquor drink tax is collected when the card is redeemed.

### Reward programs.

A DE may offer customers a “mug club” or other reward program which results in a discount on drink prices. [Subsection (c) of K.S.A. 41-2640]

### Combination pricing.

A DE may offer specials including meals, entertainment and/or drinks of alcoholic liquor for a single price. [Ruling by the director on July 23, 2012] Drinks of alcoholic liquor offered in this way may not be offered or advertised in an unlimited fashion. If such a special is offered, the DE shall assign a portion of the price to the alcoholic liquor included. The portion assigned to the alcoholic liquor shall be not

less than the acquisition cost of the drink to the DE. The receipt shall record that portion and the liquor drink tax collected on that portion as separate items. [K.A.R. 92-24-15 and K.A.R. 92-24-16]

Customers providing their own alcoholic liquor.

A DE may allow a customer to bring into the licensed premises bottles of their own alcoholic liquor to be consumed by the customer and the customer's invited guests. The DE may also prohibit such practice. [K.S.A. 41-2647]

The DE may not warehouse the customer's bottles of alcoholic liquor and the customer must remove all such bottles when departing the licensed premises. [Subsection (b) of K.A.R. 14-21-13]

If a DE allows this practice, it may charge the customer a "corkage fee" for mixing/dispensing and/or serving drinks from the customer's bottles of alcoholic liquor. The corkage fee is subject to the 10 percent retail liquor drink tax imposed by K.S.A. 79-41a01 et seq. [Subsection (a)(1) of K.A.R. 92-24-11]

The "doggie bag law" does not apply in this situation because it only applies to bottles *purchased* from the licensee. Therefore, the DE may allow a customer to remove a bottle of alcoholic liquor that the customer brought into the licensed premises without requiring the customer to purchase a "doggie bag." However, the DE may sell doggie bags to these customers if the DE chooses to.

Catered events on licensed premises.

If the DE has a DE/caterer's license, then it may cater events on its own premises if a sponsor contracts with them to do so. [K.S.A. 41-2644 and the last sentence of K.A.R. 14-22-13] A caterer may be its own sponsor for a catered event. [Ruling by the Director on May 16, 2011]

Wine storage areas.

A DE may allow patrons to store wine purchased from the licensee in the original, unopened containers on the licensed premises for later consumption. The wine shall be kept separate from all other alcohol stock in a secure, locked area, separated by customer. The licensee shall at all times have the means to enter each customer's wine storage area and the wine storage area is subject to the requirement for immediate access and inspection. [Subsections (b) and (c) of K.A.R. 14-21-12 and subsection (e) of K.S.A. 41-2642]

A receipt showing the quantity of each brand of wine purchased by the customer shall be maintained in each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee shall mark the receipt showing the date of removal and the quantity of each brand removed. [Subsection (d)(2) of K.A.R. 14-21-12]

Removal of opened wine and beer from licensed premises.

The "doggie bag law," authorizes clubs and DEs to permit patrons to remove opened containers of wine and beer from the licensed premises using "doggie bags." It is the licensee's choice as to whether to provide this service to patrons. However, if they do offer this service, they need to make sure that the previously opened container is resealed and placed in a tamper-proof, transparent bag. The patron must be provided with a dated sales receipt for the product. Only bottles of wine and bottles and cans of beer in their original containers which have been purchased by patrons from the club or DE and opened and partially consumed qualify for this procedure. [K.S.A. 41-2653]

Wine kept in customer's wine storage area may be removed subject to the doggie bag law if all other requirements for removal are met. The licensee shall provide a copy of the original receipt from the sale

with a notation that the wine was removed from the customer's wine storage area on the date the customer partially consumed it. [Subsection (f)(2) of K.A.R. 14-21-12]

### Sampling of alcoholic liquor.

A DE may offer up to five samples per customer per visit. Samples cannot be combined in any form, no cover can be charge during the day samples are served. Samples must be withdrawn from inventory. The DE will pay tax on the samples at acquisition costs

A DE may allow an agent or employee of an industry member to purchase drinks for the DE's customers. All alcoholic liquor provided by industry members on the DE's premises must be purchased from the DE licensee. The DE remains responsible for any violations of the club or drinking establishment act, or its regulations, including service to an incapacitated person. [Ruling by the director, July 30, 2012]

A DE may allow a microbrewery or microdistillery to serve free samples of its manufactured beer or spirits on the DE premises at special events monitored and regulated by the division of ABC. [Ruling by the director, Aug. 13, 2012, based on K.S.A. 41-353 and K.S.A. 41-308b]

A DE may allow a farm winery to serve free samples of its manufactured wine and sell wine in the original container on the DE premises at special events monitored and regulated by the division of ABC. [Ruling by the director, Aug. 13, 2012, based on K.S.A. 41-308a]

Each microbrewery, farm winery or microdistillery shall provide electronic notification to ABC prior to participating in a special event.

“Special event” is defined as a public or private gathering of two or more persons, arranged for a specific commercial, charitable or social purpose, having a limited duration and not conducted in the ordinary course of business.

### Self-Service Beer or Wine

A drinking establishment may offer customers self-service beer, wine or both from automated devices on the licensed premises. [K.S.A. 41-2640(e)(1), as amended by Section 7 of 2018 HB 2470]

A licensee wishing to use an automated device for self-service must provide written or electronic notification to the Director at least 48 hours prior to the licensee's use of such a device. [K.S.A. 41-2640(e)(2)(B), as amended by Section 7 of 2018 HB 2470]

In order to utilize an automated device to self-serve either beer or wine, the following practice shall be followed by all customers and licensees:

- A customer shall purchase programmable, prepaid access card from the licensee or licensee's employee. To do so, the customer must produce a valid driver's license, ID card or other government issued document that verifies that the customer is at least 21 years of age.
- The access card must be programmed to allow the dispensing of no more than 15 ounces of wine or 32 ounces of beer. Once the card has been used to dispense that amount, it will become inactive. Cards can be “reactivated” once they have become inactive, if the licensee or licensee's employee chooses to do so.
- Cards shall be programmed so that they cannot be used for the first time on any business day, or for the first time after any subsequent reactivation, until the customer has provided proper identification to verify that they are at least 21 years of age.



- Cards shall become inactive at the end of each business day. For purposes of clarification, a “business day” means 6:00 a.m. until 2:00 a.m. the following calendar day.

[K.S.A. 41-2640(e)(2)(D), (E), (F) and (G), as amended by Section 7 of 2018 HB 2470]

## **Prohibited Activities (also see section on "Selling and Serving of Alcoholic Beverages")**

### Unqualified employees.

A DE shall not knowingly employ any person who does not meet the qualifications set forth in K.S.A. 41-2610 and K.A. R. 14-21-9.

### Purchases of liquor stock.

A DE shall not purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee. [Subsection (e) of K.S.A. 41-2610] See section entitled "Obtaining, transporting and paying for alcoholic beverages."

### Removal of alcoholic liquor or beer from premises.

A DE shall not allow a customer to remove from the licensed premises alcoholic liquor or beer purchased from the licensee. [Subsection (e) of K.A.R. 14-21-12] However, these exceptions are permitted:

- A DE may allow its patrons to removed partially consumed bottles of wine and beer under the “doggy bag law”. See authorized activities above for details. [K.S.A. 41-2653 and subsection (f)(1) of K.A.R. 14-21-12]
- A DE that has extended its licensed premises into a special event area, as defined by K.S.A. 41-719, for which a temporary permit has been issued may allow alcoholic liquor purchased in the licensed premises to be removed from the licensed premises into the special event area. [Subsection (e)(2) of K.S.A. 41-2645 and subsection (g) of K.A.R. 14-21-12]

### Selling alcoholic liquor or cereal malt beverage below cost.

A DE shall not sell any individual drink at a price less than the acquisition cost of the drink to the licensee, plus liquor drink tax. [Subsection (a)(2) of K.S.A. 41-2640]

### Serving free alcoholic liquor.

With the exception of samples, a DE shall not serve any free alcoholic liquor or cereal malt beverage in any form to any person. [Subsection (a)(1) of K.S.A. 41-2640]

### Sale of powdered alcohol.

A licensee shall not sell, offer to sell, or serve free of charge any powdered alcohol. [Subsection (a)(5) of K.S.A. 41-2640]

### Offering 2-for-1 or buy-one-get-one-free specials.

A DE may not offer or sell any drink special which implies or indicates that a drink is free. [Subsections (a)(1) and (a)(5) of K.S.A. 41-2640]

### Allowing a drinking game.

A DE shall not encourage or permit any game or contest that involves the consumption of alcoholic liquor or cereal malt beverage on the licensed premises. [Subsection (a)(4) of K.S.A. 41-2640] This does not include “water pong” or any other game in which participants consume only water or other non-alcoholic liquid. It **does** include any game advertised or promoted as including only water or other non-

alcoholic liquid but during which the participants consume alcoholic liquor or cereal malt beverage. [Ruling by the director on July 30, 2012]

Serving of alcoholic beverages in pitchers.

A DE shall not serve any alcoholic beverage other than beer, cereal malt beverage, margaritas, sangria, mojitos, and daiquiris in a pitcher. [K.S.A. 41-104 and Subsection (c) of K.S.A. 41-2640]

Refill any original container.

A DE or its agent or employee shall not refill any original container with any alcoholic liquor or any other substance. [Subsection (b) of K.S.A. 41-2658]

Tournaments involving poker or other card games.

The Kansas Racing and Gaming Commission has ruled that games of chance or skill which result in something of value being awarded as a prize, regardless of whether any fee was charged to enter the game, constitutes gambling and is, therefore, illegal. A DE may not allow persons on the licensed premises to participate in poker tournaments or other card games where something of value is awarded as a prize, regardless of whether any fee was charged to enter the game. [Ruling by the director on March 13, 2012.]

Gambling machines.

The Kansas Racing and Gaming Commission has ruled that gambling machines capable of being reset or which provide or are used to provide a reward to the player are illegal. The presence of such a machine on a DE's premises may subject the DE to criminal gambling charges. Criminal gambling charges can result in revocation of the drinking establishment's license. [Subsection (f) of K.S.A. 41-2611]

Illegal consumption of alcoholic liquor.

Allowing any person to consume alcoholic liquor on the licensed premises contrary to the provisions of the Club and Drinking Establishment Act is a criminal offense, subject to fine and imprisonment, in addition to possible administrative action by the Director. [K.S.A. 41-2604]

Illegal possession or consumption of alcoholic liquor or cereal malt beverage by a minor.

Knowingly or unknowingly permitting any person under 21 years of age to possess or consume alcoholic liquor or cereal malt beverage on the licensed premises is a criminal offense, subject to fine and imprisonment, in addition to possible administrative action by the director. [K.S.A. 41-2615] **However**, the following exception and defense applies:

- An exception is made for an employee of the licensee who is serving alcoholic liquor or cereal malt beverage under the supervision of another employee of the licensee who is at least 21 years of age. [Subsection (a) of K.S.A. 41-2615]
- It is a defense to prosecution if the licensee had reasonable cause to believe that the minor was 21 years of age or older **and** the minor exhibited a driver's license, Kansas non-driver's ID card, or other official or apparently official document, containing a photograph that reasonably appears to be the minor and purporting to establish that such minor was 21 years of age or more. [Subsection (c) of K.S.A. 41-2615]

Refusing immediate entry and inspection of the premises to law enforcement officers.

The right to immediate entry and inspection of the licensed premises by law enforcement officers is a condition of the license. The right to immediate entry is not limited to regular business hours, but exists

whenever the premises is occupied. Denial of this right to immediate entry is grounds for revocation of the license. [K.S.A. 41-2613]

Intoxication of manager or employee.

The licensee's manager or employee has been intoxicated while on duty. [Subsection (d) of K.S.A. 41-2611]

Allowing disorderly conduct.

Permitting any disorderly person to remain on the licensed premises. [Subsection (e) of K.S.A. 41-2611]

Violation of certain state or federal laws.

Allowing a violation of the laws of this state, or of the United States, pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge, on the licensed premises. [Subsection (f) of K.S.A. 41-2611]

Federal wagering occupational stamp.

The purchase of a federal wagering occupational stamp issued by the United States Treasury Department by the licensee or any of its managing officers or employees and display of the stamp on the licensed premises. [Subsection (g) of K.S.A. 41-2611]

Federal coin operated gambling device stamp.

The purchase of a federal coin operated gambling device stamp issued by the United States Treasury Department by the licensee or any of its managing officers or employees and display of the stamp on the licensed premises. [Subsection (h) of K.S.A. 41-2611]

Human rights violation.

The licensee has been found guilty of a human rights violation under Article 10 of Chapter 44 of the Kansas Statutes Annotated or guilty of discrimination pursuant to K.S.A. 21-6102. [Subsection (i) of K.S.A. 41-2611]

Public nuisance.

The licensee has been found guilty of permitting or maintaining a public nuisance pursuant to K.S.A. 21-6204. [Subsection (j) of K.S.A. 41-2611]

## **Participation in Common Consumption Areas**

### **Form and approval required for participation**

A licensee may request permission to participate in a common consumption area, if that licensee's licensed premises are immediately adjacent to or within the common consumption area. To request permission, the licensee shall submit an ABC-838 form. [Subsection (d) of New Section 1, 2017 Substitute for House Bill 2277]

Once a licensee receives approval to participate in a common consumption area from ABC, the licensee shall keep documentation of such approval provided by ABC posted on the licensed premises at all times. It is the licensee's responsibility to ensure that the Common Consumption Area permit is active prior to any participation in the common consumption area. [Ruling by the Director on June 23, 2017]

A licensee who has received approval to participate in a common consumption area may allow its patrons to remove alcoholic beverages purchased on the licensed premises into the designated common consumption area. Any alcoholic beverages removed from the licensed premises in this manner must be in a container that displays the licensee's trade name or logo or other unique identifying mark of the licensee. [Subsection (e) of New Section 1, 2017 Substitute for House Bill 2277]

#### Liability for violations

Any licensee adjacent to or within a common consumption area will be liable for any violation of a law or regulation governing the sale and consumption of alcoholic liquor that occurs on that licensee's licensed premises. [Subsection (f)(1) of New Section 1, 2017 Substitute for House Bill 2277]

### **Administrative Actions 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 who 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 after the issuance of a citation to the licensee and a hearing conducted by the Director pursuant to the Kansas Administrative Procedures Act (K.S.A. 77-501 et seq.) in which the licensee has an opportunity to participate, for any of the following reasons:

- Providing false information on the license application or at any hearing relating to the issuance of the license. [Subsection (a) of K.S.A. 41-2609]
- Violation of any provision of the Club and Drinking Establishment Act or any administrative regulation adopted pursuant to such act (see handbook section above entitled "Prohibited activities). [Subsection (b) of K.S.A. 41-2609]
- No longer meets the qualifications to obtain the license. [Subsection (c) of K.S.A. 41-2609]

[K.S.A. 41-2609 and 41-2611]

The director may also impose a fine not to exceed \$1,000 on a licensee for each violation of the Club and Drinking Establishment Act. The order imposing the fine is appealable in accordance with provisions of the Kansas Administrative Procedures Act (K.S.A. 77-501 et seq.). [K.S.A. 41-2633a]

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>.

### **Liquor Drink Tax**

Sales of alcoholic liquor and cereal malt beverage made by DEs are subject to the 10 percent liquor drink tax pursuant to K.S.A. 79-41a01 et seq. The tax is paid by the consumer and computed on the full purchase price of the drink, including any mandatory gratuity charged by the DE. The DE must file a monthly return of taxes collected and submit the return and the taxes to the department by the 25<sup>th</sup> day of the month subsequent to the month in which the taxes were collected.

The liquor drink tax is imposed as an alternative to the Kansas retail sales tax. Therefore, alcoholic drinks subject to the liquor drink tax are exempt from the Kansas retail sales tax. [Subsection (a) of K.S.A. 79-3606]

Any DE that becomes delinquent in the filing of returns and/or payment of its liquor drink taxes is subject to being fined or having its license suspended or revoked by the director. [Subsection (b) of K.S.A. 79-41a07]

### **Tax Bond**

No license will be issued or renewed without the proper tax bond having been provided. The bond must be equal to 25 percent of the actual or estimated annual tax liability, or \$1,000, whichever is greater. The bond may be a cash bond, escrow bond, or corporate surety bond. [K.A.R. 92-24-23 as authorized by subsection (e) of K.S.A. 79-41a03]

Licensees will not be registered for the liquor drink tax until the bond requirement is satisfied. [Subsection (a) of K.A.R. 92-24-23]