



HANDBOOK

FOR

FARM WINERIES

Division of Alcoholic Beverage Control
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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.

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 by a human being, but shall not include any cereal malt beverage. [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 which exceeds 5 percent 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]

"Domestic fortified wine"

means wine which contains more than 14%, but not more than 20% alcohol by volume and which is manufactured in this state. [Subsection (k) of K.S.A. 41-102]

"Domestic table wine"

means wine which contains not more than 14% alcohol by volume and which is manufactured without rectification or fortification in this state. [Subsection (l) of K.S.A. 41-102]

- Note: "Rectification" is not defined in the Liquor Control Act but is defined in Webster's Dictionary as adjusting the proof of alcoholic beverages by adding water or other liquids.

"Farm winery"

means a winery licensed under the Liquor Control Act by the director to manufacture, store and sell domestic table wine and domestic fortified wine. [Subsection (n) of K.S.A. 41-102] A farm winery is limited to producing no more than 100,000 gallons of wine per year. [Subsection (a)(1) of K.S.A. 41-308a]

“Farm winery outlet”

means facility owned by the owner of a farm winery that is licensed to manufacture, store and sell the same brands of domestic table wine and domestic fortified wine as the farm winery. [Subsection (g) of K.A.R. 14-11-1]

“Farmers’ market”

means any common facility or area where producers or growers gather on a regular, recurring basis to sell fruits, vegetables, meats and other farm products directly to consumers. [Subsection (d) of K.S.A. 41-351]

“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]

"Manufacturer"

means a Kansas brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage. "Manufacturer" does not include a microbrewery or a farm winery. [Subsection (q) of K.S.A. 41-102]

"Original package"

means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of the alcoholic liquor, to contain and to convey any alcoholic liquor. Original container does not include a sleeve. [Subsection (v) of K.S.A. 41-102]

"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]

"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 <https://www.ksrevenue.org/abcfarmwine.html>. Follow the directions for submitting the application to ABC.

The biennial license fee is \$500. The biennial fee for a farm winery outlet is \$100. [Subsection (e) of K.S.A. 41-310] This fee is refundable if the applicant is denied a license.

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% fee timely will result in the license being canceled. [Subsections (b) and (c) of K.S.A. 41-317]

The application fee for an initial license application is \$30. The application fee for renewal applications is \$10. In addition, there is a \$20 modernization fee assessed on both application types (initial and renewal). [Subsection (a) of K.S.A. 41-317, and 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, the applicant shall also submit the following to the director of ABC:

- One copy of Form ABC-255 - Affidavit of Kansas Farm Winery Regarding Compliance with Requirement to Use 30% Kansas Products Pursuant to Subsection (c) of K.S.A. 41-308a. Use Form ABC-257 for license renewal. These forms are available on ABC webpage: <https://www.ksrevenue.org/abcforms.html>

In addition to the application, new applicants shall also submit the following to the director of ABC:

- 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]
- If the applicant is a foreign corporation (not incorporated in Kansas), file with the Kansas Secretary of State a completed Irrevocable Consent to Jurisdiction (form ABC-160). A copy of form ABC-160 file stamped by the Kansas Secretary of State, must be provided to the ABC Licensing Unit. [Subsection (b) 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 applicant may file a notice of appeal from a director's denial order with the Secretary of Revenue within 15 days after service of the order. [K.S.A. 41-321]

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

A farm winery license is a personal privilege and is not assignable. [K.S.A. 41-326]

Qualifications for Licensure

To be issued a farm winery license, the applicant (individual, partnership, corporation, LLC or trust) cannot have a beneficial interest in a distributor or a manufacturer, except that a farm winery may also be licensed as a manufacturer. The person cannot have a beneficial interest in retailer, or another farm winery license. However, the person's spouse could have a beneficial interest in a retail liquor store. [Subsection (f)(4) of K.S.A. 41-311]

The Club and Drinking Establishment Act (K.S.A. 41-2601 et seq.) prohibits any license issued under the act from being held by any person holding a beneficial interest in the manufacture, preparation or wholesaling or retail sale of alcoholic liquor. However, there is an exception for farm wineries. A person who has a beneficial interest in a farm winery may also be issued a class B club, drinking establishment or caterer's license, assuming that the person meets all of the qualifications for such additional license. However, the exception does not allow them to hold a class A club license or combination drinking establishment/caterer license. [Subsection (a)(4)(E) of K.S.A. 41-2623] Subsections (a)(6) and (a)(7) of K.S.A. 41-308a, also confirm that farm wineries may also hold these three types of licenses issued under the Club and Drinking Establishment Act.

A farm winery licensee may hold up to three farm winery outlet store licenses. [Subsection (b) of K.S.A. 41-308a]

A farm winery licensee may hold a special order shipping license. [K.S.A. 41-350]

A farm winery licensee may hold a farmers market sales permit. [K.S.A. 41-351]

Subsections (a) and (f) of K.S.A. 41-311 list the qualifications for an initial license. The same requirements must be met for renewal of an existing license except as specifically indicated below.

Partnerships

Each partner must meet all of the qualifications for individual ownership below. [Subsection (f)(4) of K.S.A. 41-311]

Corporations

At least 50 percent of the stock must be owned by persons who meet all of the licensing qualifications for individual ownership below. The owners of the remaining stock must meet all of the licensing qualifications for individual ownership below except for the U.S. citizenship and Kansas and county residency requirements. [Subsection (f)(5) of K.S.A. 41-311]

A person who is an officer and/or director of a corporation but not a stockholder does not have to meet any of the qualifications for an individual owner.

A individual stockholder owning less than 50 percent of the stock must provide fingerprints, information and documentation as required by K.S.A. 41-311b if that person is a non-resident of Kansas on the date of application or have been a resident of Kansas for less than one year immediately preceding the date of submission of the application. If such stockholder is a corporation, then the director may require that each officer, director and major stockholder provide fingerprints, information and documentation as required by K.S.A. 41-311b. If such stockholder is a partnership, then the director may require that each partner provide fingerprints, information and documentation as required by K.S.A. 41-311b. If such stockholder is a trust, then the director may require that each trustee provide fingerprints, information and documentation as required by K.S.A. 41-311b.

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 individual ownership below. However, a beneficiary does not have to be at least 21 years of age. [Subsection (f)(6) 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]

- ***Resident of Kansas.***

The person must be a resident of Kansas on the date of application for licensure and must maintain Kansas residency while licensed. [Subsection (f)(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, 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]

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 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]

- ***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 licensee. [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 county, city, etc. as the licensee. [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]

- ***Beneficial interest in another license issued under the Liquor Control Act or CMB Act.***

The person cannot have a beneficial interest in a manufacturer, distributor or retailer licensed under the Liquor Control Act or a retailer licensed under the CMB Act. [Subsection (f)(2) and (3) of K.S.A. 41-311]

The spouse of an applicant for a farm winery licensee may own and hold a retailer's license if the spouse does not hold a microbrewery, **microdistillery** or farm winery license. [Subsection (f)(3) of K.S.A. 41-311]

- ***Beneficial interest in a license issued under the Club and Drinking Establishment Act.***

The person may have a beneficial interest in a class B club license, drinking establishment license or caterer's license issued pursuant to the Club and Drinking Establishment Act. The person cannot have a beneficial interest in class A club license or a combination drinking establishment/caterer license. [Subsection (a)(4)(E) of K.S.A. 41-2623 and subsections (a)(6) and (a)(7) of K.S.A. 308a]

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]

- ***CMB license.***
The person cannot hold a CMB license issued pursuant to the CMB Act. [Subsection (a)(10) of K.S.A. 41-311]
- ***Current in payment of all liquor taxes.***
If a person is not current in the payment of all liquor drink taxes and enforcement taxes, gallonage tax, fees or fines to the State of Kansas, then the director may reject the application for an initial license or license renewal. [Ruling approved by the Director]
- ***Conviction of violating the intoxicating liquor laws.***
The director may deny an initial license or deny renewal of 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 of 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]
- ***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]

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 new license webpage at <http://www.ksrevenue.org/abcfarmwine.html> or at <http://www.ttb.gov/forms/f510024.pdf>. [Ruling by the director, August 20, 2012]

Location of the Licensed Premises

- The location of the licensed premises must be zoned agricultural, commercial or business. [Subsection (b) of K.S.A. 41-710] However, Attorney General Opinion 92-92 states that this statute is in conflict with K.S.A. 19-2921, which states that land used for agricultural purposes is exempt from county zoning regulations. There is room for disagreement with this opinion, however, because farm wineries go beyond the mere raising of agricultural products. In addition, a farm winery may use up to 70 percent non-Kansas products in making its wine and could be obtaining all of its Kansas products from somewhere other than the site where the farm winery is located. Therefore, it is highly questionable whether every farm winery automatically meets the definition of "agriculture" cited as the basis for the opinion.
- There is no requirement that the farm winery must be located in a "wet" county in order to manufacture or sell wine in the unopened container. However, the farm winery cannot give out free samples of wine unless it is located in a "wet" county where drinking establishments are allowed to

sell alcoholic liquor by the drink. [Subsection (a)(4) of K.S.A. 41-308a] Information concerning the status of each county may be found on the ABC website at:

<http://ksrevenue.org/pdf/abcwetdrymap.pdf>

- The premises cannot be located within 200 feet of a public or parochial school, college or church unless the existence of the licensed premises predates the school, college or church. [Subsection (c)(1) of K.S.A. 41-710] In the case of a school or college, the distance shall be the shortest distance, measured in a straight line, from the outside wall of the premises to the nearest property line of the school or college. In the case of a church, the distance shall be shortest distance, measured in a straight line from the outside wall of the premises to the actual church building. [Attorney General Opinion No. 91-29 issued March 25, 1991] **However**, a city may, by ordinance, waive this restriction for licensed premises located within a core commercial district as defined by K.S.A. 12-17,122. [Subsection (d) of K.S.A. 41-710]
- The premises must conform to all applicable local building regulations, if any. [Subsection (c)(2) of K.S.A. 41-710]
- A farm winery license or outlet license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license. [Subsection (f) of K.S.A. 41-308a]
- All original packages of finished wine must be stored upon the licensed premises of the farm winery or the farm winery's outlet until sold or served as free samples in accordance with applicable statutes. [K.A.R. 14-11-5]
- If a farm winery also has a drinking establishment or class B club license, the licensed premises for the two licenses may partially overlap. [Subsection (a)(6) of K.S.A. 41-308a] However, that portion of the licensed premises of the farm winery where free samples are served to consumers shall not be part of the licensed premises of the drinking establishment or class B club, as this would violate subsection (a)(1) of K.S.A. 41-2640.

Farmers' Market Sales Permit

A farm winery licensee may apply to the director for an annual farmers market sales permit. Apply online at <https://www.ksabconline.org> or download and print the online forms from our webpage <https://www.ksrevenue.org/abcfarmwine.html> accompanied by a \$25 application fee. The permit allows the licensee, a member of the licensee's family who is at least 21 years of age, or an employee of the licensee who is at least 21 years of age, to sell domestic table wine and domestic fortified wine manufactured by the farm winery in the original, unopened container at any farmers' market within the state of Kansas, except not on state-owned property. [K.S.A. 41-351 and K.A.R. 14-11-24]

Sales and Service of Free Samples Off the Licensed Premises

A farm winery licensee may serve samples free of charge and sell unopened containers of its domestic wine off the farm winery premises at "special events monitored and regulated by the division of ABC". [Subsection (a)(4) of K.S.A. 41-308a] "Monitored and regulated" is not defined. The ABC therefore construes the term to require the director's permission before a farm winery licensee may participate in special event. The farm winery licensee shall submit electronic notification not less than 10 days prior

to the event. Log on or register for a Kansas Customer Service Center account at <https://www.kdor.ks.gov/Apps/kcsc/login.aspx> to register special events online.

“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.

No person may purchase the wine to be used for sampling from the farm winery. The wine must be withdrawn, without charge, from the farm winery’s inventory. [Interpretation of subsection (a)(4) of K.S.A. 41-308a eff. August 28, 2012] However, a farm winery may accept an appearance or convenience fee to serve free samples of wine at a special event. The appearance or convenience fee is not subject to liquor enforcement tax but would be subject to income tax. [Ruling by the director, Sept. 19, 2012]

A farm winery licensee may participate in and conduct product tastings at a retail licensee’s premises for presentation and educational purposes. All wine must come from the retailer’s inventory. [K.S.A. 2013 Supp. 41-308d]

Employees

Employees of farm wineries and winery outlets are subject to the following restrictions pursuant to subsection (g) of K.S.A. 41-308a:

- Any employees involved with the manufacture, sale or serving of any alcoholic liquor must be at least 18 years old.
- Any employee who is under the age of 21 years must at all times be under the supervision of an on-premises employee of the licensee who is 21 years of age or over.
- Any employee who is mixing or dispensing alcoholic liquor must be at least 21 years old.
- No person shall be employed in the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

Days and Hours of Sales

Farm wineries and their outlet stores may sell their wine in unopened original containers at the licensed premises for off-premises consumption between 6 a.m. and 12 a.m. **on any day**. [Subsection (d) of K.S.A. 41-308a] Farm wineries and their outlet stores are not subject to the restrictions on days and hours of sale that are imposed on retail liquor stores by K.S.A. 41-712.

If a farm winery is also licensed as a club or drinking establishment, it may sell wine and other alcoholic liquor for consumption on the licensed premises in accordance with the Club and Drinking Establishment Act, specifically K.S.A. 41-2614. [Subsection (a)(6) of K.S.A. 41-308a]

Label Requirements and Approval

Labels on domestic table wine above 7% ABV and domestic fortified wine must meet the requirements under federal regulations promulgated by the TTB.

Each farm winery shall submit for the Director's approval a sample of each label used on the wine it produces before the wine is offered for sale. The \$25 registration fee specified in subsection (b) of K.S.A. 41-331 does not apply to farm wineries. [K.A.R. 14-11-26] To comply, a farm winery must apply online at <https://www.ksabconline.org>.

Director's Permit for the Import of Small Quantities of Wine

The director may issue a permit to the Kansas State Fair or to any bona fide group of grape growers or wine makers, including licensed farm wineries, to import small quantities of wine to be used for bona fide educational and scientific testing tasting programs. Such wine may only be given out as free samples and shall not be sold. Such wine shall not be subject to the Gallonage Tax imposed by K.S.A. 41-501 et seq. The permit shall identify specifically the brand and type of wine to be imported, the quantity to be imported, the tasting program for which the wine is to be used and the time and location of such program. A copy of the permit must accompany the wine imported at all times. [Subsection (e) of K.S.A 41-308a] Farm wineries may conduct the tasting programs on the licensed premises of the farm winery or its outlet store(s). [Subsection (a)(4) of K.S.A. 41-308a]

K.A.R. 14-14-13 requires that the application for a permit be submitted to the Director at least 45 days before the tasting program is to be held. The application must include the following:

- The date and time of the program.
- The exact location where the program will be held.
- The brand, type and quantity of wine to be imported.
- A statement that any wine samples offered will be consumed on the premises described in the application and in accordance with all applicable law.

Products Used in the Manufacture of Wine

Not less than 30 percent of the products utilized in the manufacture of domestic table wine and domestic fortified wine during the production year by the licensee shall be grown in Kansas.

Upon **a formal written request of the licensee**, the director may authorize a lesser proportion based upon the director's findings and judgment. [Subsection (c) of K.S.A. 41-308a] Requests for waivers of the 30 percent requirement must include a plan for coming into compliance with the requirement and will be considered on a case by case basis. Normally waivers will be restricted to situations where Kansas products being used by the licensee become temporarily unavailable due to circumstances beyond the control of the licensee, such as unusually bad weather or insect or disease damage. ***A waiver of the 30 percent requirement will not be made solely to enable a new farm winery to get started.*** [Ruling made by the director on Feb. 4, 2005]

Farm Winery also Licensed as a Manufacturer

A farm winery that is also licensed as a manufacturer must maintain separate storage facilities, separate production records, and separate sales records for all alcoholic liquor manufactured under the manufacturer's license. [Subsection (d) of K.A.R. 14-11-25]. No alcoholic liquor manufactured under the manufacturer's license may be displayed, sold, or sampled in the farm winery, farm winery outlet, or at a farmers' market. [Subsection (e) of K.A.R. 14-11-25] No wine manufactured under the manufacturer's license shall be shipped to any consumer in Kansas unless the manufacturer also possesses a special order shipping license. [K.S.A. 41-350] No wine manufactured under the manufacturer's license shall be shipped under the farm winery's special order shipping license. [Subsection (e) of K.A.R. 14-11-25]

Distribution of Products and Franchise Agreements

A farm winery may self-distribute its products directly to consumers, retail liquor stores, clubs, drinking establishments, caterers, and holders of temporary permits issued under the Club and Drinking Establishment Act. A farm winery may also distribute its products through licensed distributors. [Subsection (a)(2) of K.S.A. 41-308a]

If a farm winery chooses to distribute a particular product through a licensed distributor, the farm winery must enter into an exclusive franchise agreement with that distributor for a specified geographic area, which may be the whole state or part of the state. A farm winery may self-distribute *and* use a licensed distributor for the same product within the same geographic area **if such practice is allowed by the franchise agreement.** [Subsection (a) of K.S.A. 41-410]

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 farm winery 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 farm winery under the existing franchise agreement has gone out of business, then ABC will require documents or evidence supporting the assertion.

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

Wine Manufactured Solely and Exclusively for Sacramental Purposes

Bottles of wine made solely and exclusively for sacramental purposes shall be labeled as such when bottled. The bottles shall be stored in an area of the licensed premises which is segregated from the other bottles of wine made by the farm winery and posted with a sign indicating that the bottles stored within are to be sold solely and exclusively for sacramental purposes. [Ruling by the director on Aug. 7, 2006]

Authorized Activities

Farm wineries may engage in the activities listed below (those that are also authorized at farm winery outlets are so designated):

Manufacturing.

Farm wineries and farm winery outlets may manufacture and store domestic table wine and domestic fortified wine totaling no more than 100,000 gallons per year. [Subsection (a)(1) of K.S.A. 41-308a] Since that is the primary activity of a winery, all steps of the manufacturing process must take place on the licensed premises. Subsection (n) of K.S.A. 41-102 describes the activities that are included in the manufacturing process. The manufacturing process begins with the fermentation of the grapes, fruits, berries or other agricultural products and ends with the finished wine sealed in an original package. [Ruling approved by the director on Aug. 7, 2006.]

Mead.

Mead is a wine made from honey, which is a Kansas agricultural product. Farm wineries and farm winery outlets may manufacture, store and sell mead in the same manner as any other domestic wine product. [Ruling by the director, July 17, 2012]

Sales to other licensees.

Farm wineries may sell wine to licensed wine distributors, retailers, clubs, drinking establishments, caterers and temporary permit holders under the Club and Drinking Establishment Act. [Subsection (a)(2) of K.S.A. 41-308a]

Delivery to other licensees.

A farm winery may deliver its products to distributors, retailers, clubs, drinking establishments, and caterers. Holders of temporary permits must pick up their purchases from the winery. [Subsection (b)

of K.A.R. 14-11-7] The vehicles used by the farm winery to make such deliveries do not need to be registered with ABC. [Ruling by the director on Dec. 20, 2006]

Sales to retail customers physically present on the licensed premises.

Farm wineries and farm winery outlets may sell wine in the unopened original container for consumption off the licensed premises to consumers who are at least 21 years of age and physically present on the licensed premises. Consumers are people who are purchasing the wine for their personal consumption and not for resale. The consumer may request that the farm winery ship the wine to an address specified by the consumer rather than take the wine with them. If the address is in a state other than Kansas, the farm winery should ensure that such shipment complies with all applicable laws and regulations of such state. No special order shipping license is required for shipping in this situation, whether the address is in Kansas or outside of Kansas. [Subsections (a)(3) of K.S.A. 41-308a and subsection (g) of K.S.A. 41-104] Subsection (g) of K.S.A. 41-104 is interpreted as applying to farm wineries because the subsection states that it applies to "a person which holds a valid license authorizing the manufacture of wine" rather than to a "manufacturer." Farm wineries are defined by subsection (m) of K.S.A. 41-102 as being licensed to "manufacture" wine. "Shipment" in that subsection is interpreted as meaning that a common carrier is utilized and does not authorize the farm winery itself to deliver wine to individual consumers at a location away from the licensed premises. [Ruling by ABC director on Oct. 3, 2006.] There are no restrictions on the retail price charged.

Sales to retail customers not on the licensed premises.

Farm wineries and farm winery outlets may sell wine in the original unopened container to consumers via the internet, mail or telephone. Consumers are people who are purchasing the wine for their personal consumption and not for resale. If the wine is shipped to an address in Kansas, the farm winery must have a special order shipping license and follow all of the provisions of K.S.A. 41-350. If the wine is shipped to an address outside of Kansas, no special order shipping license is required, but the farm winery should ensure that such shipment complies with all applicable laws and regulations of such state. [Subsection (a)(8) of K.S.A. 41-308a] There are no restrictions on the retail price charged.

Sale of domestic wine at a farmers' market.

Farm wineries may sell domestic wine manufactured by the farm winery in the original, unopened container at a farmers' market approved by the Director. The farm winery must possess a farmers' market sales permit from the Director. Dispensing of samples is prohibited at the farmers market. [K.S.A. 41-351]

Serving of samples on the licensed premises.

Farm wineries and farm winery outlets may serve on the licensed premises free samples of wine manufactured by the licensee if the premises is located in a county where the sale of alcoholic liquor is legally permitted in licensed drinking establishments. Information concerning the status of each county may be found on the ABC website at: <http://www.ksrevenue.org/pdf/abcwetdrymap.pdf>. Samples may be served only during those days and times that clubs and drinking establishments are authorized to serve and sell alcoholic liquor. [Subsections (a)(4) and (d) of K.S.A. 41-308a]

Outlet stores.

Farm wineries may operate up to three outlet stores in addition to their winery location. Each outlet store must be separately licensed by the farm winery. [Subsection (b) of K.S.A. 41-308a]

Selling wine for consumption on the licensed premises.

A farm winery licensee may sell its manufactured domestic wine for consumption on the licensed premises. The wine may be sold by the glass or in the original container. No additional license is necessary. The farm winery will collect and remit the 8 percent liquor enforcement tax on wine sold for consumption on the farm winery premises. [Subsection (a)(5) of K.S.A. 41-308a]

Advertising and display of products.

Domestic wine intended for retail sales may only be displayed away from the licensed premises (winery or outlet stores) if done at a state or county fair or other agricultural show only if approved in writing by the director. Farm wineries should request this approval in writing as far in advance as possible. Sales of wine, dispensing of free samples, and taking orders at such events are prohibited.

Domestic wine intended for retail sales may also be displayed at retail liquor stores and farmers' markets for which the farm winery possesses a bona fide farmers market sales permit. [K.A.R. 14-11-15]

Contracting for bottling and labeling services.

An outside contractor may be used to bottle and label wine produced if the practice is approved by the TTB, subject to the following restriction:

All bottling and labeling services must be performed on the licensed premises of the Kansas winery with the owner or an employee of the Kansas farm winery present to assure that all Kansas statutes and regulations are followed. [Approved by the director on April 9, 2007]

Prohibited Activities

Consumption on the licensed premises.

Farm wineries shall not sell alcoholic liquor, other than the winery's manufactured domestic wine, to a customer for consumption on the licensed premises unless the farm winery also has a drinking establishment license or class B club license issued under the Club and Drinking Establishment Act. [Subsection (a) of K.S.A. 41-308a]

A farm winery outlet shall not sell alcoholic liquor to a customer for consumption on the licensed premises unless the farm winery outlet also has a drinking establishment license or class B club license issued under the Club and Drinking Establishment Act. [Subsection (b) of K.S.A. 41-308a]

Sales to minors.

Farm wineries and farm winery outlets shall not sell or furnish wine or other alcoholic liquor to a person under 21 years of age. [K.A.R. 14-11-28]

Open containers on the license premises.

Farm wineries and farm winery outlets that sell domestic table wine or domestic fortified wine at retail shall not allow an original package or container of any domestic wine to be opened in or on that portion of the licensed premises that is used for retail sales, except as needed for serving free samples. [K.A.R. 14-11-6]

Sale of powdered alcohol.

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

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 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 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. 41-321]

Gallonge Tax and Reporting

Kansas farm wineries and farm winery outlets must pay the gallonage tax on all domestic table wine and domestic fortified wine manufactured. [Subsection (a) and (b) of K.S.A. 41-501] Kansas farm wineries and farm winery outlets must report all sales and remit their gallonage tax to the ABC Marketing Unit no later than the 15th day of each month using the Kansas Farm Winery Monthly Gallonge Tax Return and Report form (ABC-1013). This form must be filed each month even if no domestic table wine or domestic fortified wine is manufactured. [K.S.A. 41-502]

If the farm winery has one or more outlets, or a bona fide farmers' market sales permit or special order shipping license, the monthly sales reports for all licenses and permits must be filed as a consolidated report.

The Kansas gallonage tax rates on domestic wine and domestic table wine are:

- 30 cents per gallon on wine containing 14% or less alcohol by volume
- 75 cents per gallon on wine containing more than 14% alcohol by volume

[Subsection (b)(1) of K.S.A. 41-501]

Payment by electronic funds transfer is available. Contact KDOR Electronic Services Unit at <http://www.ksrevenue.org/eftabcinfo.html> for more information. No farm winery must remit payment for any monthly gallonage tax less than \$5. [Revenue Ruling, 2010]

Wine sold to out-of-state wholesalers is tax exempt from the gallonage tax. Bills of lading are subject to review by the director. [Subsection (c) of K.S.A. 41-501]

Wine manufactured solely and exclusively for sale to religious organizations for sacramental purposes is exempt from the gallonage tax. [Subsection (d) of K.S.A. 41-501] The director ruled on Aug. 7, 2006 that the words "solely and exclusively" means that the wine must be designated and marked "for sacramental purposes only" at the time it is bottled in order to qualify for the gallonage tax exemption.

A farm winery that also possesses a manufacturer's license shall report and pay gallonage tax on alcoholic liquor manufactured under the manufacturer's license separately from its farm winery gallonage tax. [Subsection (h) of K.A.R. 14-11-25]

Records Requirements

Farm wineries and farm winery outlets must maintain records of:

- All domestic table wine and domestic fortified wine produced [K.S.A. 41-501];
- All sales of domestic table wine and domestic fortified wine [Subsection (a) of K.A.R. 14-11-29];

Farm wineries shall retain these records for a period of three years. They are subject to inspection by the director or any agent or employee of the director.

For a period of 90 days after the purchase, withdrawal or 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. [Subsection (k) of K.A.R. 14-13-16 and subsection (f) of K.A.R. 14-13-17]

After 90 days, the records may be stored off the licensed premises but shall be provided within a reasonable time upon request.

Liquor Enforcement Tax

Kansas imposes a liquor enforcement tax on all wine sold by farm wineries to clubs, drinking establishments, caterers, and temporary permit holders, and to Kansas consumers. The tax is 8 percent of the retail sale price of the wine and is collected by the farm winery from the consumer at the time of sale. [K.S.A. 79-4101] This tax is a substitute for the Kansas sales tax. Thus such sales are exempt from the Kansas sales tax. [Subsection (g) of K.S.A. 41-501 and subsection (a) of K.S.A. 79-3606] The tax return and payment must be received by KDOR by the 25th day of the following month in which the sales were made. [K.S.A. 79-4103] Each farm winery and farm winery outlet must file its liquor enforcement tax return every month, regardless of whether any wine was sold during that tax period. Any farm winery or farm winery outlet with no 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>.

Sales of wine by a farm winery or farm winery outlet store to a consumer are not subject to the liquor enforcement tax in these situations:

- When the wine is sold to a consumer via the internet, mail, telephone, etc. (the consumer is not present on the licensed premises) and is shipped to that consumer at an address outside of Kansas. However, the wine sale may be subject to taxes imposed by the state that the wine is shipped to. [Memo from the Director of Division of Policy & Research to the Director of ABC dated July 17, 2006]
- When the wine is sold to a consumer present on the licensed premises but is shipped to that consumer at an address outside of Kansas. However, the wine sale may be subject to taxes imposed by the state that the wine is shipped to. [Memo from the Director of Division of Policy & Research to the Director of ABC dated July 18, 2006]

Licensing Bond

Farm wineries must post and maintain a licensing bond in the amount of \$2,000. [Subsection (g)(6) of K.S.A. 41-317] Bond shall be posted on form ABC-803 (escrow bond) or form ABC-804 (surety bond)

Bonds shall be made payable to the Kansas Director of Alcoholic Beverage Control for and on 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]