



# **HANDBOOK**

## **FOR**

# **RETAILERS**

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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

### "Adjacent premises"

means an enclosed permanent structure that is contiguous to the licensed premises and may be located in front of, beside, behind, below, or above the licensed premises. "Adjacent premises" must be under the direct or indirect control of the retailer. This term shall not include empty lots, parking lots, temporary structures, or enclosed structures not contiguous to the licensed premises. [Subsection (a) of K.A.R. 14-13-1]

### "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]

### "Beer"

means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content. [Subsection (d) of K.S.A. 41-102] 3.2% alcohol by weight is equivalent to 4.0% alcohol by volume.

### "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 (b) of K.A.R. 14-13-1]

### "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 (c) of K.A.R. 14-13-1]

### "Church"

means a building that is owned or leased by a religious organization and is used exclusively as a place for religious worship and other activities ordinarily conducted by a religious organization. [Subsection (d) of K.A.R. 14-13-1]

### "Director"

means the Director of the Division of Alcoholic Beverage Control within the Kansas Department of Revenue. [Subsection (h) of K.S.A. 41-102]

### "Distributor"

means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this act or cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2702, and amendments thereto. [Subsection (i) of K.S.A. 41-102]

“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]

“Licensed premises”

means those areas described in an application for a retailer’s license that are under the control of the applicant and are intended as the area in which alcoholic liquor is to be sold for consumption off the licensed premises or stored for later sale. [Subsection (f) of K.A.R. 14-13-1]

“Mixer”

means any liquid capable of being consumed by a human being that may be combined with alcoholic liquor for consumption. [Subsection (h) of K.A.R. 14-13-1]

"Non-alcoholic malt beverage"

means a beverage containing less than 0.5% alcohol by volume obtained by alcohol fermentation of an infusion or coction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content. [K.S.A. 41-343]

"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 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]

"Retailer"

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

"Sale"

means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal, proprietor, agent, servant or employee. [Subsection (aa) of K.S.A. 41-102]

"Sample"

means a serving of alcoholic liquor which contains not more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or (3) two ounces of beer or cereal malt beverage. A sample of a mixed alcoholic

beverage shall contain not more than one-half ounce of distilled spirits. [Subsection (u) of K.S.A. 41-2601]

"Spirits"

means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances. [Subsection (gg) of K.S.A. 41-102]

"Tasting event"

means any time during which a retailer or supplier is serving free samples of alcoholic liquor on the retailer's licensed premises or at adjacent premises monitored and regulated by the Director. [Subsection (i) of K.A.R. 14-13-1]

"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 [www.ksrevenue.org/abcoffprem.html](http://www.ksrevenue.org/abcoffprem.html). Follow the directions for submitting the application to ABC.

The biennial license fee is \$500. [Subsection (k) 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 percent fee timely will result in the license being canceled. [Subsections (b) and (c) of K.S.A. 41-317]

There is an additional application fee of \$30 for new applicants and \$10 for renewals. There will also be an additional \$20 modernization fee assessed to each application type (initial or renewal). [K.S.A. 41-213] The application and modernization fees are not refundable. [Subsection (a) of K.S.A. 41-317, as amended by New Section 1 of 2018 HB 2362]

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

The license term commences on the date that the license is issued by the Director. [Subsection (m) of K.S.A. 41-310] At the end of the two-year license term, the license is renewable for another two-year term unless sooner suspended or revoked, as long as the licensee and premises continue to meet the requirements of all relevant laws and regulations. [K.S.A. 41-327]

In addition to the above fees, the city or township in which the licensed premises is located may collect a biennial occupation or license tax of not less than \$200 and not more than \$600. [Subsections (1)(1) and (1)(2) of K.S.A. 41-310]

Once all of the forms, fees, licensing bond 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. [Subsection (a) of K.S.A. 41-319]

An order by the Director denying a license shall state the reason(s) therefore. The order denying a license is appealable to the Secretary of Revenue by filing a form available from the Office of the Secretary. The form must be either mailed to the Secretary by certified mail or personally served upon the Office of the Secretary within 15 days from the date of service of the Director's order upon the licensee. The review of the Director's order will be conducted in accordance with the provisions of the Kansas Administrative Procedures Act. [K.S.A. 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 retailer's license is a personal privilege and is not assignable. [K.S.A. 41-326]

### **Qualifications for Licensure - Ownership**

Subsections (a) and (b) of K.S.A. 41-311, K.S.A. 41-311c and K.A.R. 14-13-2 list most of the qualifications for an initial license. The same requirements must be met for renewal of an existing license except as specifically indicated. [Subsection (a)(9) of K.S.A. 41-311]

#### Partnerships

Each person who is a partner in a partnership must meet the licensing qualifications for person ownership, as listed below, regardless of the percentage of ownership. [Subsection (b)(5) of K.S.A. 41-311]

#### Corporations

Corporations are prohibited by statute from holding a retail license. [Subsection (b)(6) of K.S.A. 41-311]

#### Limited Liability Companies (LLCs)

Each person who is a member of an LLC is required to meet the same licensing qualifications as partners in a partnership. [Subsection (a) of K.S.A. 41-311c] In other words, each member of the LLC must meet the licensing qualifications for person ownership, as listed below, regardless of the percentage of ownership.

#### Trusts

For trusts to be licensed, each person who is a grantor, beneficiary and trustee must meet the licensing qualifications for ownership below. **However**, beneficiaries of the trust do not have to be at least 21 years of age. [Subsection (b)(7) 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]

- ***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]

- ***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]

- ***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, or has 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]

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

- ***Law enforcement officer.***

The person cannot be a law enforcement official. [Subsection (a)(7) of K.S.A. 41-311] "Official" is not defined in the statute but is interpreted as being any law enforcement officer or head of a law enforcement agency. Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the law enforcement official is located in the same county, city, etc. as the RLS. [Ruling approved by the Director on Jan. 19, 2005.]

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

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

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

The person cannot hold a position that appoints or supervises any law enforcement officer. However, members of the governing body of a city or county (assume this means city council members and county commissioners) are exempt from this restriction. [Subsection (a)(7) of K.S.A. 41-311] Since this subsection does not mention jurisdiction, it is assumed that this restriction



applies regardless of whether the person is located in the county, city, etc. as the RLS. [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]

- ***CMB licensee.***

The person may hold a CMB license issued pursuant to the CMB Act, specifically K.S.A. 41-2702. [Subsection (a)(10) of K.S.A. 41-311]

- ***Resident of Kansas.***

The person must be a resident of Kansas for at least four years immediately preceding the date of application for licensure and must maintain Kansas residency while licensed. [Subsections (b)(1) and (b)(2) of K.S.A. 41-311] Because of these requirements, the provisions of K.S.A. 41-311b for the licensure of non-residents, which was enacted in 2001, does not apply to retailers. [Ruling made by legal counsel after conferring with the Attorney General's Office, and approved by the Director on Jan. 19, 2005.]

This requirement does not apply to the person's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- ***Other liquor licenses.***

The person cannot also hold a manufacturer's license, distributor's license, microbrewery license, farm winery license, or another retailer's license. [Subsections (b)(3) and (b)(4) of K.S.A. 41-311]

- ***Beneficial interest in an industry member.***

The person cannot have a beneficial interest in the manufacture, preparation or wholesaling of alcoholic beverages. This is interpreted as applying whether the activity takes place in Kansas or some other jurisdiction (another state or country). [Subsection (b)(3) of K.S.A. 41-311]

The person's spouse may hold a microbrewery license, farm winery license, or both. [Subsection (b)(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]

- ***Beneficial interest in another retail liquor store.***

The person cannot have a beneficial interest in another retail liquor store licensed under the Kansas Liquor Control Act. [Subsection (b)(4) of K.S.A. 41-311]

For either an initial or renewal license, this requirement does not apply to the person's spouse. [Subsection (b)(4) of K.S.A. 41-311]

- ***Current in payment of all liquor excise taxes.***

If a person is not current in the payment of all excise or enforcement taxes, fees or fines to the State of Kansas, then the Director may reject the application for an initial license or license renewal. [K.A.R. 14-13-2(c)(5)]

- ***Conviction of violating the Liquor Control Act.***

If a person has been criminally convicted of any violation of the Kansas Liquor Control Act, the Director may deny issuance of a retail license. [Subsection (b) of K.S.A. 41-314]

- ***Conviction of violating the intoxicating liquor laws.***

The Director may deny an initial license or 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 renewal for 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]

#### 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/abcoffprem.html> or at <http://www.ttb.gov/forms/f510024.pdf>. [Ruling by the Director, Aug. 20, 2012]

#### **Qualifications for Licensure - Business Name (DBA)**

The application for a license must include the "doing business as" name to be used for the business. [Subsection (a) of K.A.R. 14-13-15]

The "doing business as" name shall not suggest to the public that the store is part of a chain of stores or is operated by a corporation. [Subsection (b) of K.A.R. 14-13-15] See Policy Memorandum 2002-5 at <https://www.ksrevenue.org/pdf/abcpm025.pdf> for more information.

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

- A retailer's license is good for only one location. [K.S.A. 41-315]
- Applicants for initial retailer's licenses must furnish a diagram of the proposed licensed premises for approval. Licensees must notify ABC prior to making any changes to their licensed premises. The premises shall not have an inside entrance or opening which connects to any other place or business. [K.S.A. 41-711] However, a vestibule may be constructed at the entrance to the licensed premises which also includes an entrance to another business such as a "party shop," subject to guidelines in ABC Policy Memorandum 2002-1 which include:
  - (a) The vestibule must be a neutral, non-business area. No advertising, equipment or business transactions shall occur or be placed in the vestibule.
  - (b) The vestibule must provide separate lockable entrances into both the retail liquor store and the other business or businesses. Open entryways with a lockable door only into one business area are not allowed.

(c) The walls of the vestibule and all common walls separating the retail liquor store from other adjacent businesses must be constructed in such a manner that there are no holes or openings large enough to pass items of merchandise through. This includes items sold in either business. The walls must go from the floor to the ceiling so as not to allow items to be passed over partial walls in any manner.

• On and after April 1, 2019, a retailer will **not** be required to maintain a vestibule if it will be selling “other goods and services” that will **not** amount to more than 20% of its gross sales receipts. However, if the retailer **will** be selling “other goods and services” that amount to more than 20% of its gross sales receipts, such items must be kept physically separate from the liquor inventory by means of a vestibule or similar method. [Interpretation of 2017 SB 13, see L. 2017 Ch. 56, Sec. 6]

- Applicants for retailer’s licenses must furnish deeds or, if the applicants do not own the premises, copies of current leases. [Subsection (b)(2) of K.A.R.14-13-2]
- 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 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.

- Each liquor store shall post its d/b/a name within the store or on the exterior of the store. [Subsection (c) of K.A.R. 14-13-15]
- Once issued, the retailer’s license must be framed and hung in plain view in a conspicuous place on the licensed premises. [K.S.A. 41-325]

### **Qualifications for Licensure - Geographic Location of the Licensed Premises**

- An incorporated city may prohibit the sale of alcoholic liquor in the original package in the following manner: the qualified voters of the city may petition for the issue of whether to prohibit such sales (“go dry”) to be placed on the ballot in any regular general city election held pursuant to K.S.A. 41-302. If qualified voters in a subsequent election vote to allow such sales, then retailer’s licenses may continue to be issued for locations in that city. [Subsection (c) of K.S.A. 41-301] A copy of the results of any such election shall be transmitted by the governing body of such city to the Director. [Subsection (c) of K.S.A. 41-302] If a city votes to prohibit such sales, then any existing retailer shall have the right to continue to operate for a period of 90 days after the result of such election is canvassed or until the expiration of such license, whichever period of time is shorter. If the election results prevent the licensee from operating during the entire second year of the license term, the licensee may qualify for a refund of one-half of the license fee in accordance with rules and regulations adopted by the Secretary of Revenue. [Subsection (d) of K.S.A. 41-302 and subsection (b) of K.S.A. 41-326]

- The list of cities that do not allow retail sales of alcoholic liquor in the original package may be found on our webpage at <https://www.ksrevenue.org/abcgeninfo.html>.
- Retailer's licenses may be issued by the Director of ABC for a properly zoned location (see below) outside of an incorporated city if the board of county commissioners passes a resolution approving the license. The applicant for licensure must include a certified copy of the county resolution with its application. [Subsection (a) of K.S.A. 41-303]
- If a retailer's license has been issued by the Director of ABC to a premises located outside an incorporated city and the premises is subsequently annexed to a city that allows retail liquor stores, then the license shall remain valid. [Subsection (b) of K.S.A. 41-303.] However, no statute appears to cover the situation where a premise is annexed to a city that does not allow retail liquor stores. This situation will be treated in the same manner as when a city goes from approving retail liquor stores to banning them. The licensee shall be allowed to continue to operate for 90 days after annexation, or until the license expires, whichever is the shorter period.
- If the licensed premise is to be located in an area which is zoned, then the premises must comply with all applicable zoning regulations. [Subsection (a) of K.S.A. 41-710]
- Must comply with all local building regulations. [Subsection (c)(2) of K.S.A. 41-710]
- The city or township where the license premise is to be located may request a hearing before the Director on whether the Director should approve or deny an initial retailer's license application. The hearing shall be conducted in accordance with the Kansas Administrative Procedures Act. [K.S.A. 41-318]

### **Proximity of Retail Liquor Store to Church or School**

No retailer's license shall be issued by the Director of ABC for a premises located within 200 feet of any public or parochial school or college or church unless the premises was licensed before the church or school moved in. [Subsection (c)(1) of K.S.A. 41-710] **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]

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]

If an existing licensee whose premise is within 200 feet of a church, school or college ceases business, a new application must be submitted to the ABC for a retailer's license within 30 days or the 200 foot exception will not apply.

### **Goods Sold on the Licensed Premises Verses Goods Sold at Party Shops**

**Prior to April 1, 2019**, retailers shall not sell anything on the licensed premises other than alcoholic liquor, alcoholic liquor packaged by the manufacturer with non-alcoholic goods approved by the Director of ABC, and Kansas Lottery tickets. [Subsection (b)(2) of K.S.A. 41-308] Other items may be sold by a retailer at a location adjacent to the licensed premises, sometimes referred to as a "party shop." Typically such items include snacks, non-alcoholic mixers, ice, and party accessories. See the section entitled

"Qualifications for Licensure - Characteristics of the Licensed Premises" for restrictions on the physical connections between the registered premises and a party shop.

**On and after April 1, 2019**, a retailer may sell cereal malt beverage and any other goods or services on the licensed premises. However, the sale of such other goods and services (excluding cigarettes, tobacco products and lottery tickets) cannot exceed 20% of the retailer's total gross sales. [K.S.A. 41-308, as amended by 2017 SB 13]

## **Restrictions on Employees**

The following restrictions apply to all persons employed (working, whether paid or not) by a retailer, including clerks, stockers and janitors:

- Must be at least 21 years old. [Subsection (a)(2) of K.S.A. 41-713]
- Cannot have been convicted of any felony. [Subsection (a)(3) of K.S.A. 41-713]

Licensees are directly responsible for any violation of the Liquor Control Act or associated regulations by their employees. [Subsection (b) of K.A.R. 14-13-5]

Subsection (c) of K.A.R. 14-13-14 requires the owner or owners to provide additional information to the Director before allowing anyone other than the owner or owners to perform any management or operational services, including the following activities listed in K.A.R. 14-13-14(a):

- Hiring, firing or supervising the licensee's employees.
- Ordering products for the store, coordinating deliveries or determining the amount or type of inventory to be maintained at the store.
- Determining the advertising, marketing and promotional programs to be used.
- Negotiating or executing any contracts on behalf of the licensee.
- Paying or authorizing payment for services or product purchased by the store.
- Performing any other task essential to the operation of the store.

No person employed to perform management or operational services shall receive compensation based on a percentage of the gross receipts from the sale of liquor. [Subsection (c)(1)(A) of K.A.R. 14-13-14]

Any person employed by the owner to perform management or operational services must meet the same qualifications for licensure as the owner. This would prohibit the owner of a retail liquor store from performing any management or operational services for the owner of another retail liquor store. [Subsection (d)(1) of K.A.R. 14-13-14]

## **Hours and Days of Sales**

### Basic hours and days.

Licensed retailers in cities or in the unincorporated areas of a county where sales times have not been expanded may be open and sell products as follows:

- Monday through Saturday, between 9 a.m. and 11 p.m.
  - The governing body of any city may pass an ordinance, or the board of county commissioners of any county may pass a resolution, making the closing time earlier, but not before 8 p.m. [Subsection (a) of K.S.A. 41-712]

Retail liquor stores in such cities or counties must be closed on the following days:

- Memorial Day
- Independence Day

- Labor Day
- Thanksgiving Day
- Christmas Day
- Sundays

[Subsection (a) of K.S.A. 41-712]

#### Expanded hours and days.

Licensed retailers in cities or in the unincorporated areas of a county where sales times have been expanded may be open and sell products as follows:

- Monday through Saturday, between 9 a.m. and 11 p.m.
  - The governing body of any city may pass an ordinance, or the board of county commissioners of any county may pass a resolution, making the closing time earlier, but not before 8 p.m. [Subsection (b) of K.S.A. 41-712]
- Sunday, between 12 p.m. and 8 p.m.

Retail liquor stores in such cities and counties must be closed on the following holidays:

- Easter
- Thanksgiving Day
- Christmas Day

[Subsection (b) of K.S.A. 41-712]

**These hours apply only to the times in which a retail liquor store may sell alcoholic liquor. They may remain open outside of these hours to sell non-alcoholic goods and services.**

#### **Procedure to Change Hours and Days of Sales - Within Incorporated City Limits [K.S.A. 79-2911]**

The procedure to change from basic days and hours to expanded days and hours or vice versa is the same. There are two methods:

- The governing body of the city can pass an ordinance expanding or reducing the days and hours. The ordinance must specify either all of the expanded days and hours or all of the basic days and hours. It cannot specify something different than what is in the statute. The ordinance must then be published once a week for two consecutive weeks in the designated official city newspaper. The ordinance shall become effective 60 days after publication or at a later date if specified in the ordinance. However, if within that 60 days, a petition meeting the requirements in subsection (b)(2) is filed requesting that the proposition be submitted to the voters, then the resolution shall not become effective and an election must be conducted in accordance with subsection (b)(3). [Subsection (b)(1) of K.S.A. 41-2911]
- The voters of the city can submit a petition meeting the requirements of subsection (b)(2) requesting that the issue of expanding or reducing the days and hours be submitted to the voters. The election must be conducted in accordance with subsection (b)(3). [Subsection (b)(2) of K.S.A. 41-2911]

When cities expand the days of sale under K.S.A. 41-712, they **must** include **both** liquor retail sales and CMB retail sales. They cannot expand one type of sales without the other. However, they may limit sales on Sundays to hours less than the 12 p.m. to 8 p.m. provided in the statute. It should also be noted that if a city chooses to expand the days of sale under K.S.A. 41-712, they **may** then further restrict the days of sale to include additional holidays, but they **cannot** do so without first expanding to Sunday sales in general. [Attorney General Opinion No. 2006-2 issued Jan. 4, 2006; see also *City of Junction City v. Lee*, 216 Kan. 495, 501 (1975).]

## **Procedure to Change Hours and Days of Sales - In County Outside Incorporated City Limits [K.S.A. 79-2911]**

The procedure to change from basic days and hours to expanded days and hours or vice versa is the same.

- The county commission can pass a resolution expanding or reducing the days and hours. The resolution must specify either all of the expanded days and hours or all of the basic days and hours. It cannot specify something different than what is in the statute. Within two weeks after passage, the resolution must be published once in the designated official county newspaper. The resolution shall become effective 60 days after publication or at a later date if specified in the resolution. However, if within that 60 days, a petition meeting the requirements in subsection (a)(2) is filed requesting that the proposition be submitted to the voters, then the resolution shall not become effective and an election must be conducted in accordance with subsection (a)(3). [Subsection (a)(1) of K.S.A. 41-2911]
- The voters of the county can submit a petition meeting the requirements of subsection (a)(2) requesting that the issue of expanding or reducing the days and hours be submitted to the voters. The election must be conducted in accordance with subsection (a)(3). [Subsection (a)(2) of K.S.A. 41-2911]

When counties expand the days of sale under K.S.A. 41-712, they **must** include **both** liquor retail sales and CMB retail sales. They cannot expand one type of sales without the other. However, they may limit sales on Sundays to hours less than the 12 p.m. to 8 p.m. provided in the statute. It should also be noted that if a county chooses to expand the days of sale under K.S.A. 41-712, they **may** then further restrict the days of sale to include additional holidays, but they **cannot** do so without first expanding to Sunday sales in general. [Attorney General Opinion No. 2006-2 issued Jan. 4, 2006; see also *City of Junction City v. Lee*, 216 Kan. 495, 501 (1975).]

## **Serving Free Samples of Alcoholic Liquor**

A retailer may serve free samples of alcoholic liquor at tasting events on the licensed premises or at adjacent premises monitored and regulated by the ABC. [Subsection (a) of K.S.A. 41-308d] Samples may only be served during hours in which it is legal for the retailer to sell liquor. [Subsection (c) of K.A.R. 14-13-16] The retail and adjacent premises are subject to immediate entry and inspection by the Director or any agent or employee of the Director. [Subsection (e) of K.A.R. 14-13-16]

- The liquor must come from the retailer's inventory. [Subsection (b)(1) of K.A.R. 14-13-16] Each bottle removed from inventory shall be marked as reserved for samples only in a manner that does not obscure the label. [Subsection (b)(2) of K.A.R. 14-13-16]
- Samples must be poured and served by an employee or agent of the retailer. [Subsection (a) of K.S.A. 41-308d]
- No samples may be served to anyone less than 21 years of age. [Subsection (a)(4) of K.S.A. 41-308d]
- No samples may be removed from the retail or adjacent premises. [Subsection (a)(4) of K.S.A. 41-308d]
- Liquor may be mixed with other liquor or non-alcoholic mixers and ice for sampling purposes. [Subsection (b) of K.S.A. 41-713]



- The owner or manager of the retail store may consume wine before or during a tasting event to verify it has not deteriorated in quality or become unfit for consumption. No other employee of the retailer may consume liquor while on duty. [Subsection (d) of K.A.R. 14-13-16]
- A retailer may provide cups, napkins and mixers for a tasting event on the licensed premises. For tasting events at adjacent premises, the retailer may provide cups, napkins, food, mixers and other similar items. No other service or thing of value may be provided by the retailer. [Subsection (f) of K.A.R. 14-13-16]
- 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

Persons holding a Kansas supplier's permit may purchase liquor from a retailer and serve free samples of that liquor at tasting events on the retailer's premises or adjacent premises monitored and regulated by ABC. [Subsection (a)(1) of K.S.A. 41-308d] Distributors may not participate except to provide educational materials about the products being sampled. [Subsection (g) of K.A.R. 14-13-16] For the purposes of sampling, a distributor who also possesses a Kansas supplier permit is limited to providing educational information only. [Subsection (b) of K.A.R. 14-13-17]

- The supplier must purchase the liquor from the retailer. [Subsection (c) of K.A.R. 14-13-17]
- The supplier's employee or agent may pour and serve samples and provide educational information about the products. [Subsection (a)(1) of K.S.A. 41-308d]
- A supplier may provide food, mixers, cups, napkins, and other similar items during a tasting event occurring at a retailer's adjacent premises. Suppliers may provide cups, napkins and mixers for tasting events occurring on the retailer's licensed premises. [Subsection (e) of K.A.R. 14-13-17]

At the conclusion of the tasting event, any remaining liquor used for sampling must be secured. Any liquor in adjacent premises must be disposed of or returned to the retail premises prior to the retailer's normal close of business on that day. [Subsection (h)(1) of K.A.R. 14-13-16] Partial bottles of liquor may be:

- disposed of;
- stored in a locked storage area, separate from alcoholic liquor intended for sale; or
- sealed with a tamperproof seal around the opening of the container. [Subsection (h)(2) of K.A.R. 14-13-16 and subsection (d) of K.A.R. 14-13-17]

Records of inventory withdrawn or sold to a supplier for sampling must be maintained for a period of three years. See the section on records for further information.

### **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" located on the ABC webpage at: <https://www.ksrevenue.org/pdf/abcpm2016-1.pdf>.

#### Outside signs.

Industry members may give, lend or sell basic signs advertising the industry member's products. The value of the signs may not exceed \$400. The industry member cannot make payments or give credits to the licensee for displaying their sign and cannot pay for the installation, removal or operation of the sign. This would prohibit the industry member from supplying the structure to mount the sign on, such as a



billboard, marquee with space to post additional information, a semi-trailer truck, etc. [27 CFR ch. 1, Sec. 6.102, as adopted by K.A.R. 14-10-17]

#### Definition of advertising.

“Advertising” means the medium of radio, television, newspapers, periodicals, circulars, pamphlets, or other publications or any sign or outdoor advertising or any other printed or graphic matter. [K.A.R. 14-8-1] Webster's Dictionary (New Riverside University Edition published in 1984) defines "graphic" as:

- pertaining to written representation
- pertaining to pictorial representation
- pictorial device, as an illustration or chart
- display by a computer or imaging device

#### Radio and television advertising.

Licensees may purchase live radio or TV commercials to take place at the licensed premises if the licensee pays the entire cost of the commercial. An industry member may be present and hand out promotional items to consumers on the premises during the time the commercial is broadcast but shall not participate in the commercial or pay any of the cost thereof. [Ruling by the Director on Aug. 1, 2005] A licensee may arrange for a radio or television station to run a remote broadcast from the licensee's parking lot or anywhere **outside** the licensed premises and the licensee or the radio or television station may give away food or promotional items at that location. Any food or other items may be given free to the public. The food cannot be paid for by an industry member (manufacturer, supplier or distributor).

#### Industry members selling, giving or lending equipment or supplies.

Industry members are prohibited from giving or lending money, equipment, supplies, services or anything of value to a licensee except as permitted by K.A.R. 14-10-17. The following are allowed:

- Glassware, as long as the price is not less than what the industry member paid for it.
- Tapping and dispensing equipment, as long as the price is not less than what the industry member paid for it.
- Carbon dioxide gas and ice, as long as the price is not less than the local market price.
- Coil cleaning service.

#### Industry members selling or giving services.

Industry members are prohibited from inducing licensees to purchase product from them by paying or crediting the licensee for any advertising, display or distribution service. The following practices are prohibited:

- Participating in paying for an advertisement placed by the retailer.
- The purchase of advertising on signs, scoreboards, programs, scorecards, and similar items from the retail concessionaire at ballparks, racetracks or stadiums.
- The purchase of advertising in a publication of the retailer which is distributed to consumers or the general public.
- Reimbursements to retailers for setting up product or other displays.
- Rental of display space in the licensed premises.

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

Industry members shall not obtain tickets to a concert or other event and give them away to consumers either directly or through a third party if the concert or other event is being held on a licensee's premises. This is interpreted as furnishing something of value to the licensee (inducing consumers to visit the

licensed premises) in violation of subsection (a) of K.S.A. 41-703. [Ruling by the Director on Aug. 1, 2005]

Industry members shall not arrange for a radio station to have its mobile unit park at a licensee's location and offer something of value to the public for finding the mobile unit and broadcast clues to find the mobile unit. This is interpreted as furnishing something of value to the licensee (inducing consumers to visit the licensed premises) in violation of subsection (a) of K.S.A. 41-703. [Ruling by the Director on Aug. 1, 2005]

However, industry members may furnish, give, rent, loan, or sell newspaper cuts, mats, or engraved blocks to a licensee for use in their advertising of the industry member's products. [27 CFR 6.92, as adapted 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-generate 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<br><br>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<br><br>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.

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

| Type of Event/<br>Support | Retailer<br>Sponsored Event | Charity<br>sponsored events<br>with retailer<br>involvement | Charity<br>sponsored events<br>with NO retailer<br>involvement | Liquor<br>association<br>sponsored events |
|---------------------------|-----------------------------|---|--|---|
| Monetary<br>Donations     | No                          | Conditional (2)   | Yes  | No  |
| Product<br>Donations      | No                          | No  | No   | Conditional (3)                           |
| CAS Donations             | No                          | Conditional (2)   | Yes  | Yes                                       |
| Participation<br>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.

Industry member support to Liquor Association Sponsored Events.

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

**Registration and Sale of Kegs of Beer**

The registration and sale of kegs of beer is governed by the Beer and Cereal Malt Beverage Keg Registration Act, K.S.A 41-2901 through 41-2906, initially passed by the Kansas Legislature in 2002. [K.S.A. 41-2901] It applies to the retail sale of any container of beer with a capacity of four gallons or more. [Subsection (a) of K.S.A. 41-2905] It does not apply to the sale by retailers to clubs, drinking establishments, hotel drinking establishments and caterers licensed under the club and drinking establishment act. [Subsection (h) of K.S.A. 41-2905] This exception also applies to sales by beer distributors to public venues. [Ruling of the Director, Aug. 31, 2012]

Prior to or at the time of the retail sale of a keg, the retailer must affix to the keg a registration tag. Keg registration tags may be ordered free of charge in reasonable quantities by submitting form ABC-171 Keg Tag Order Form (available from our website at [www.ksrevenue.org/abcforms.html](http://www.ksrevenue.org/abcforms.html)) to the ABC. [Subsections (a) and (f) of K.S.A. 41-2905]

At the time of sale, the retailer shall record the following information on form ABC-170 Keg Registration Form (available from our website at <http://www.ksrevenue.org/abcforms.html>):

- the keg number
- the date of the sale
- the purchaser's name and address
- the number on the purchaser's driver's license, Kansas non-driver's identification card or other official or apparently official document containing both the purchaser's picture and the purchaser's signature, which shall be exhibited at the time of sale.

Such records shall be kept on the licensed premises until the keg is returned or until the expiration of six months following the date of the sale of the keg. [Subsection (a) of K.S.A. 41-2905]

These records shall be available for inspection by any law enforcement officer during normal business hours of the retailer. These records shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or K.S.A. 21-3610 or 41-727, and amendments thereto. These records shall not be sold, distributed or otherwise released to any person other than an agent of the retailer or to a law enforcement agency. [Subsection (b) of K.S.A. 41-2905]

The loan of a tap or pump may be included with the sale of a keg of beer to customers if no additional charge is made for the tap or pump. This is permitted because taps and pumps are designed to be used in conjunction with the keg to properly control the removal of the purchased beer from the keg. The retailer may require the customer to make a reasonable deposit for the loan of the keg and tap or pump, to be refunded in full upon return of these items in usable condition. However, items which are merely for the convenience of customers but are not essential to the dispensing of the alcoholic liquor, such as cooling equipment, may not be leased or sold by the retailer to customers. [Interpretation of K.S.A. 41-308(b) by the Director on Nov. 28, 2005]

Keg registration tags assigned to a retailer may be transferred with approval of the Director only for emergency purposes or in the case of a retailer selling its business to another licensee. Form ABC-172 must be completed and submitted to ABC prior to the transfer. Tags may be transferred at any time after written approval is granted by the Director. Form ABC-172 is available for download from our website at [www.ksrevenue.org/abcforms.html](http://www.ksrevenue.org/abcforms.html).

Unused keg registration tags may be returned to ABC when accompanied by a complete Form ABC-173 (available on our website at [www.ksrevenue.org/abcforms.html](http://www.ksrevenue.org/abcforms.html)).

### **Finality of Sales of Alcoholic Liquor by Retailers**

Sales of alcoholic liquor under the Liquor Control Act are final, except that retailers may:

- Buy back any item of alcoholic liquor from a consumer when required by the distributor. Approval of the Director is not required. [Subsection (b)(1) of K.A.R. 14-13-12]

- Buy back any alcoholic liquor sold to the holder of a temporary permit within three business days after the event concludes if the holder of the temporary permit has received the Director's approval to return the liquor. [Subsection (h) of K.S.A. 41-2645]
- Buy back any item of alcoholic liquor sold to a public venue if the next scheduled event for the public venue is more than 90 days from the conclusion of the previous event and the Director has given approval to the public venue to return the liquor. [Subsection (a)(6) of K.S.A. 41-2655]
- Buy back any alcoholic liquor product from a club, drinking establishment or caterer for which the club, drinking establishment or caterer has approval from the Director to close out. [Subsection (b)(2) of K.A.R. 14-13-12]
- Buy back or exchange, within 24 hours after sale to a consumer, any item of alcoholic liquor which is damaged or deteriorated in quality. Approval of the Director is not required. [Subsection (b)(3) of K.A.R. 14-13-12]
  - Liquor containers that are damaged or deteriorated in quality include containers that leak, contain foreign matter, are short-filled, have broken federal seals, have badly stained or soiled labels, or which are otherwise unfit for sale to the general public. [Subsection (a) of K.A.R. 14-13-12]

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

Retailers shall retain the following records of items removed from inventory for tasting, purchases and sales:

- Invoices, purchase orders and sales tickets for all alcoholic liquor purchased. [Subsection (a) of K.A.R. 14-13-10]
- Invoices, purchase orders and sales tickets for all alcoholic liquor sold to class A and class B clubs, drinking establishments, public venues, caterers and temporary permit holders. [Subsection (b) of K.A.R. 14-13-10]
- Invoices, purchase orders, and sales tickets for all sales made to suppliers for tasting events. [Subsection (c) of K.A.R. 14-13-17]
- ~~Invoices and other records of sales of alcoholic liquor to all other 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]~~ On and after April 1, 2019, retailers shall also keep all sales receipts from the sale to customers of all alcoholic liquor, cereal malt beverage, and any other goods and services excluding the sale of lottery tickets and cigarette and tobacco products. [K.A.R. 14-13-10(d)]

Retailers 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. [Subsection (d) of K.A.R. 14-13-10]

For a period of 90 days after the withdrawal of alcoholic liquor from inventory, the records involving a retailer tasting event 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. After 90 days, the records may be stored off the licensed premises but shall be provided within a reasonable time upon request. [Subsection (k) of K.A.R. 14-13-16 and subsection (f) of K.A.R. 14-13-17]

### **Transfer of a Retailer's Stock Upon the Closing of the Business**

When a retail liquor store closes for any reason, including when the license has expired or has been revoked, and the retailer wishes to transfer the inventory to another licensee, the retailer shall apply to the Director of ABC for permission to sell the retailer's stock of alcoholic liquor to the other licensee. The seller and buyer must complete form ABC-812 (Request to Sell Inventory). If the sale is to one or more liquor licensees or distributors, an inventory of the alcoholic liquor to be transferred to each buyer must be completed. The alcoholic liquor shall not be sold or purchased by another liquor licensee until written permission is granted by the Director. [K.S.A. 41-1102 and subsection (a) of K.A.R. 14-13-8]

If the retailer fails to timely sell its stock of alcoholic liquor, the Director may take possession of the liquor until such time as the retailer has found a purchaser and the sale has been approved by the Director. [Subsection (b) of K.A.R. 14-13-8]

### **Seizure and Sale of Licensee's Liquor Stock by a Judgment Creditor or Bankruptcy Creditor**

If the sheriff of any county obtains possession of alcoholic liquor inventory as the result of a levy of execution for a judgment creditor, he or she may conduct a sale of that alcohol if there is a court order directing such a sale. Such an order shall specify the time, place and manner of the sale. Once the costs of such an action are paid, the remaining balance of proceeds from the sale shall be paid to the judgment creditor, with any excess amount being returned to the debtor. [Subsection (a) of K.S.A. 41-1125]

If a bank or other creditor assumes possession of a licensee's alcoholic liquor inventory, it may request permission from the Director to conduct a sale of the alcoholic liquor to attempt to satisfy the debt. Such a sale shall only be made to the holder of a valid Kansas liquor license, and cannot occur without written authorization of the Director. The Director may require a detailed inventory or other information as deemed necessary, prior to the sale. The proceeds from such a sale shall go to the creditor in the amount necessary to satisfy the debt, and any remaining proceeds shall be returned to the debtor. [Subsection (b) of K.S.A. 41-1125]

### **Loss of Liquor Stock through Theft, Disaster or Deterioration**

If alcoholic liquor is lost through theft or through fire, flood or other disaster, or must be destroyed due to becoming unsellable from damage or deterioration, the licensee shall prepare a written report of the circumstances to the Director of ABC and attach a list of the number and size of containers and the brand, proof, age and category of alcoholic liquor which have been damaged, lost or destroyed. Cases of theft shall be reported by the licensee to the proper police or sheriff's department. The licensee shall submit a copy of the report produced by the police or sheriff's department to the licensee's report sent to the Director of ABC.

When alcoholic liquor is destroyed or made unsellable by fire, flood or other disaster, the situation shall be investigated by an ABC agent, who shall submit a report verifying the circumstances to the Director of ABC. [Approved by the Director on Sept. 10, 2007 following the same procedures set forth in K.A.R. 92-24-21 for the liquor drink tax]



## **Authorized Activities**

### Retail sales to individuals.

Prior to April 1, 2019, alcoholic liquor, **alcoholic candy**, and non-alcoholic malt beverages may be sold in the original package to customers for use and consumption off of and away from the licensed premises. On and after April 1, 2019, retailers may sell alcoholic liquor, cereal malt beverage, and any other good or service for use and consumption off of and away from the licensed premises. The sale of any non-alcohol product (excluding cigarettes, tobacco products and lottery tickets) cannot exceed 20% of the retailer's gross sales receipts. Any sale and delivery of alcoholic liquor must take place on the licensed premises. See definition section at the front of this handbook. [Subsection (a) of K.S.A. 41-308 and K.S.A. 41-344]

### Sales to clubs, public venues and drinking establishments.

Alcoholic liquor and non-alcoholic malt beverages may be sold to the holder of a class A or a class B club license, a public venue license or a drinking establishment license issued pursuant to the Club and Drinking Establishment Act for resale by such licensee, if the club's, public venue's or drinking establishment's licensed premises is located within the same county or a county adjacent to the county where the retail liquor store is located. [Subsection (a)(2) of K.S.A. 41-308] The retailer must have a federal wholesaler's basic permit obtained from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury and display a sign on its premises stating that the retailer is a "Wholesale Liquor Dealer under Federal Law." [Subsection (a)(5) of K.A.R. 14-13-9]

### Delivery of alcoholic liquor and non-alcoholic malt beverages sold to clubs, public venues and drinking establishments.

A retailer may deliver alcoholic liquor and non-alcoholic malt beverages to the licensed premises of a club, public venue, or drinking establishment. [Subsection (a)(2) of K.S.A. 41-308] The alcoholic liquor or non-alcoholic malt beverages must be removed from the retailer's premises and delivered to the club, public venue or drinking establishment only during the hours and days in which the retail liquor store may be legally open. [Subsection (f) of K.A.R. 14-13-13] A delivery fee may be charged by the retailer. [Subsection (b)(1) of K.S.A. 41-308]

### Sales to licensed caterers.

Alcoholic liquor may be sold to the holder of a caterer license issued pursuant to the Club and Drinking Establishment Act for resale by such licensee. [Subsection (a)(2) of K.S.A. 41-308] The retailer must have a federal wholesaler's basic permit obtained from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury and display a sign on its premises stating that the retailer is a "Wholesale Liquor Dealer under Federal Law." [Subsection (a)(5) of K.A.R. 14-13-9]

### Delivery of alcoholic liquor to caterers.

A retailer may deliver alcoholic liquor to the principal place of business of a caterer. [Subsection (a)(2) of K.S.A. 41-308 and subsection (b) of K.A.R. 14-22-10] The alcoholic liquor must be removed from the retailer's premises and delivered to the caterer's principal place of business only during the hours and days in which the retail liquor store may be legally open. [Subsection (f) of K.A.R. 14-13-13] A delivery fee may be charged by the retailer. [Subsection (b)(1) of K.S.A. 41-308]

#### Sales to temporary permit holders.

Alcoholic liquor may be sold to the holder of a temporary permit issued pursuant to the Club and Drinking Establishment Act for resale by such permit holder. [Subsection (a)(1) of K.S.A. 41-308] The retailer must have a federal wholesaler's basic permit obtained from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury and display a sign on its premises stating that the retailer is a "Wholesale Liquor Dealer under Federal Law." [Subsection (c) of K.A.R. 14-23-8] A retailer shall not deliver alcoholic liquor to a temporary permit holder. [Subsection (b) of K.A.R. 14-23-8]

#### Purchases from distributors.

Alcoholic liquor and non-alcoholic malt beverages shall be purchased only from a Kansas licensed distributor which has on file with ABC a franchise agreement with a supplier authorizing that distributor to sell that brand and label of alcoholic liquor or non-alcoholic malt beverage within the geographic area where the retail liquor store is located. [Subsection (b)(2) of K.S.A. 41-306 for spirits; subsection (b)(2) of K.S.A. 41-306a for wine; subsection (b)(3) of K.S.A. 41-307 for beer; subsection (a) of K.S.A. 41-345 for non-alcoholic malt beverage] However, if a distributor who is authorized to sell a particular brand and label of alcoholic liquor or non-alcoholic malt beverage to a retailer refuses to do so, then the retailer may purchase the brand and label from any other licensed distributor. [Subsection (d) of K.S.A. 41-701]

#### Deliveries from distributors.

Deliveries from distributors may be accepted only at the licensed premises of the retail liquor store. [K.A.R. 14-14-14] There is no restriction on what time the distributor may deliver to the premises of a retail liquor store.

#### "Dry sampling" by distributors.

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

#### Purchases from farm wineries.

A retailer may purchase domestic table wine and domestic fortified wine for resale from a Kansas licensed farm winery which manufactured the wine. [Subsection (a)(2) of K.S.A. 41-308a]

#### Storage of alcoholic liquor.

All alcoholic liquor owned by a retailer must be stored on the licensed premises. Once any alcoholic liquor is sold, it shall no longer be stored on the licensed premises. [Subsection (e) of K.A.R. 14-13-9] **However**, with the approval of the Director, a retailer may use a detached storage area exclusively for the storage of alcoholic liquor if located within 100 yards of the licensed premises. [Subsection (b)(6)(A) of K.A.R. 14-13-2] Alcoholic liquor and non-alcoholic malt beverages may be stored in refrigerators, cold storage units, iceboxes and other cooling devices, and sold to consumers in a chilled condition. [Subsection (d) of K.S.A. 41-308 and subsection (b) of K.S.A. 41-345]

#### Value-added packs.

Value-added packs (non-alcoholic items included with alcoholic liquor in the same package) may be sold to customers if the gift packs are packaged by an industry member and approved by the Director in advance. [Subsection (b)(3) of K.S.A. 41-308 and subsection (a) of K.A.R. 14-10-11] The retailer may not break apart a value-added pack and sell or deliver the contents separately. [K.A.R. 14-13-13(g)(1)]

Buy-backs from individual customers mandated by distributor.

Alcoholic liquor and non-alcoholic malt beverages may be bought back from a customer (meaning unlicensed person) when the retailer is required to do so by the distributor of that product. [Subsection (b)(1) of K.A.R. 14-13-12 and subsection (b) of K.S.A. 41-345]

Buy-backs from other licensees.

Alcoholic liquor and non-alcoholic malt beverage may be bought back from a club, drinking establishment, public venue or caterer that is going out of business, with the advance approval of the Director. The retailer must submit form ABC-812 to the Director for prior approval. [Subsection (b)(2) of K.A.R. 14-13-12 and subsection (b) of K.S.A. 41-345]

Buy-back of defective products.

Any item of alcoholic liquor and non-alcoholic malt beverages may be exchanged or bought back from a customer, within 24 hours of delivery, if the item is damaged as described in subsection (a) of K.A.R. 14-13-12, which includes "leaking, containing foreign matter, short-filled, having broken federal seals, having badly soiled or stained labels, or otherwise unfit for sale to the general public. [Subsection (b)(3) of K.A.R. 14-13-12]

Payment by credit card.

A customer may pay for alcoholic liquor or nonalcoholic malt beverage using a credit card, if the credit card can be used to purchase goods or services from at least 100 persons not related to the issuer of the credit card. [Subsection (a) of K.S.A. 41-717] Retailers may charge an additional convenience fee to customers who purchase alcoholic liquor using a credit or debit card. [Ruling by the Director on July 17, 2012]

Gift certificates and cards.

A retailer may sell gift certificates or gift cards to the public which are redeemable for alcoholic liquor at that same store. [Interpretation of subsection (b) of K.S.A. 41-308 by the Director on Nov. 14, 2005] The liquor enforcement tax is not charged until the gift certificate or gift card is used to purchase alcoholic products from the store.

Discount cards for repeat customers.

Customers may be provided with a card which is punched or marked for each purchase and, upon reaching a specified number of purchases, the customer is entitled to a discount on the next purchase, as long as the discounted price is no less than the retailer's cost plus enforcement tax. [Ruling by the Director on April 4, 2005]

Sweepstakes and raffles.

Industry members may conduct sweepstakes (raffles) for the public to participate in on a retailer's licensed premises, as long as there is no charge for participation or purchase of an alcoholic beverage required, and no alcoholic beverage is awarded as a prize. [Subsection (g) of K.A.R. 14-13-13 and Kansas criminal gambling laws] The following procedure was approved by the Director on Aug. 2, 2012:

- Entry forms for a sweepstakes conducted by an industry member may be provided and collected in the retailer's licensed premises or made available on the internet website of the industry member or their agent. Entry forms may be in the form of a tear-pad but not in the form of neckhangers on bottles or tear-pads which look like neckhangers.

- The item to be given away may be displayed on the retailer's licensed premises. There must be conspicuous mention of the contest, including the date it closes or when the drawing will be, on, about or around the prize item.
- The selection of the winner and awarding of the prize or prizes for a sweepstakes or raffle conducted by an industry member may take place on the retailer's premises. After the drawing, the retailer must have maintain, for a period of three years, evidence that the prize was awarded and not taken by anyone associated with the retailer.
- Industry members conducting any type of raffle may not include in any radio or other media advertising the name or location of the licensed retailer where entry forms may be acquired. This is considered as furnishing something of value (advertising) to the licensee in violation of subsection (a) of K.S.A. 41-703.

Retailers are not authorized by any statute or regulation to conduct their own sweepstakes, raffle, drawing or other game of chance, or to participate in any such activity sponsored by another entity except an industry member as described above. [Subsection (b) of K.S.A. 41-308 and subsection (b) of K.A.R. 14-10-11]

### **Prohibited Activities**

#### Sale or giving of other goods and services.

**Prior to April 1, 2019**, a retailer shall not sell, offer for sale, give away or permit to be sold, offered for sale or given away in or from the licensed premises any service or thing of value whatsoever except alcoholic liquor in the original package (as received from the distributor) except for lottery tickets and shares sold by the Kansas Lottery and the free distribution of advertising matter as authorized by regulations. [Subsection (b) of K.S.A. 41-308]

**On and after April 1, 2019**, a retailer may sell cereal malt beverage and any other goods or services on the licensed premises. However, the sale of such other goods and services cannot exceed 20% of the retailer's total gross sales. [K.S.A. 41-308, as amended by 2017 SB 13]

#### Sale of powdered alcohol.

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

#### Sale to and possession by minors.

A retailer shall not sell alcoholic liquor to a minor (person under 21 years of age) or allow a minor to possess alcoholic liquor upon the licensed premises. [Subsection (a) of K.S.A. 41-727 and subsection (m) of K.A.R. 14-13-13]

#### Sales at below cost.

A retailer shall not sell any alcoholic liquor at less than the acquisition cost to the retailer without first obtaining a permit to do so pursuant to K.S.A. 41-729 from the Director. [Subsection of K.S.A. 41-729] This restriction also prevents a retailer from giving away or donating alcoholic liquor to any person or entity. [Ruling by the Director on Oct. 18, 2007]

#### Entertainment and games on licensed premises.

**Prior to April 1, 2019**, a retailer shall not furnish any entertainment or permit any game of skill or chance on the licensed premises. **This provision will no longer be effective on and after April 1, 2019.** [Subsection (c) of K.S.A. 41-308]

Taking post-dated or insufficient funds checks.

A retailer shall not accept a post-dated funds check or knowingly take an insufficient funds check for payment for alcoholic liquor. [Subsections (n)(1) and (n)(3) of K.A.R. 14-13-13]

Insufficient funds checks to distributors.

A retailer shall not pay a distributor for alcoholic liquor with an insufficient funds check. [Subsection (n)(2) of K.A.R. 14-13-13]

Buying from distributor on credit.

A retailer shall not accept delivery from a distributor without making payment for the alcoholic liquor when delivered or prior to delivery. [Subsection (n)(4) of K.A.R. 14-13-13] The retailer may pay for the delivery by electronic funds transfer if agreed to by the distributor. [Policy Memorandum 2001-2]

Selling to other licensees on credit.

A retailer shall not deliver alcoholic liquor to a club, drinking establishment, public venue or caterer without receiving payment prior to or at the time of such delivery. [Subsection (n)(5) of K.A.R. 14-13-13] If both the purchasing licensee 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 purchaser. [Paragraph 3.c. of ABC Policy Memorandum 2001-2] [Ruling by the Director, July 30, 2012]

Consumption on licensed premises.

A retailer shall not allow alcoholic liquor to be consumed in, on or about the licensed premises, except as needed for tasting events. [Subsection (b) of K.S.A. 41-719]

Removal of liquor without payment.

A retailer shall not allow alcoholic liquor to be removed from the licensed premises without receiving payment for the same. [Subsection (n)(6) of K.A.R. 14-13-13]

Third-party checks.

A retailer shall not accept a check in payment of alcoholic liquor except a personal check from the purchaser. [Subsection (b) of K.S.A. 41-717]

Receiving or possessing untaxed liquor.

A retailer shall not receive or possess any alcoholic liquor upon which the gallonage tax has not been paid. Violators may be criminally charged with a misdemeanor and if convicted, subject to a fine not exceeding \$500 and imprisonment not to exceed 12 months. [K.S.A. 41-508]

Purchase of liquor from unlicensed source.

A retailer shall not purchase alcoholic liquor from any source other than from a distributor or farm winery licensed and located in Kansas, except that a retailer may also purchase alcoholic liquor at a sheriff's sale [K.S.A. 41-708], from a sale authorized by the Director [K.S.A. 41-1122], or from another licensee who is quitting the business [K.S.A. 41-1102].

Sales to incapacitated persons.

A retailer shall not knowingly sell, give away, dispose of, exchange, deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person or any person who is physically or mentally incapacitated by the consumption of alcoholic liquor. [K.S.A. 41-715] An incapacitated person is defined in the "Thirty-first" rule of K.S.A. 77-201 as "an individual whose ability to receive and evaluate relevant information, or to effectively communicate decisions, or both, even with

the use of assistive technologies or other supports, is impaired to the degree that the person lacks the capacity to manage the person's estate, or to meet essential needs for the person's physical health, safety or welfare, as defined in K.S.A. 59-3051, and amendments thereto, whether or not a guardian or a conservator has been appointed for that person."

Intoxication of a manager or employee.

A retailer shall not allow any manager or employee of the licensee to **be** intoxicated while on duty. [Subsection (j) of K.A.R. 14-13-13]

Sales of liquor not in original container.

A retailer shall not stock or sell any bottle, cask or other container of alcoholic liquor, except the original package which was lawfully manufactured and distributed. [K.S.A. 41-718] A retailer may break apart sleeves, multipacks, and cases of alcoholic liquor if the individual units meet all the federal and state requirements for containers and label. [Ruling by Director].

Mixing of alcoholic beverages.

A retailer shall not allow anyone to mix alcoholic drinks on the licensed premises. [K.S.A. 41-713]

Breaking apart value-added packs.

A retailer shall not break apart a value-added pack purchased from a distributor and sell or give away, from the licensed premises, any non-alcoholic goods included in the pack. [K.A.R. 14-13-13(g)(1)]

Advertising on premises.

A retailer shall not advertise any other business on the licensed premises, by sign, brochure, business card, or any other means. This is considered offering other products for sale and is prohibited. [Subsection (b) of K.S.A. 41-308]

Refer to policy memorandum 2003-7 for more information concerning what items may or may not be displayed on a retailer's premises. This Policy Memorandum can be found at: <https://www.ksrevenue.org/pdf/abcpm037.pdf>.

### **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 that is responsible for the operation of the licensed premises. If no individual or employee has been designated by the licensee as being in charge, then any employee present is

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

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

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

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

The Director may also revoke the license of any retailer who has been convicted by any court of a violation of the provisions of the Liquor Control Act. [Subsection (b) of K.S.A. 41-314]

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

The Director may determine a penalty based on the ABC’s fine and penalty schedule, dated July 16, 2012. Penalties may vary from the schedule based on the presence of mitigating or aggravating circumstances. The liquor penalty grid is available for download from our website at <https://www.ksrevenue.org/pdf/LiqPenGrid.pdf>

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

### **Sale of Alcoholic Liquor Seized as Evidence**

The Director is authorized to sell at public or private auction any alcoholic liquor that was seized by ABC agents or other law enforcement officers as evidence for use in any investigation, proceeding or trial, once such liquor is no longer needed for that purpose. [K.S.A. 41-1122]

### **Criminal Prosecution**

Violation of any provision of the Liquor Control Act or the Liquor Enforcement Tax Act may result in criminal prosecution against the violator. A conviction for violation of any provisions of the Liquor Control Act shall be classified as a misdemeanor. (K.S.A. 41-1121)

A fine not exceeding \$500 may be imposed upon the first conviction and a fine not exceeding \$1,000 and/or imprisonment not exceeding six months may be imposed for the second or subsequent conviction. [Subsection (b) of K.S.A. 41-901]

## **Liquor Enforcement Tax**

Alcoholic liquor and non-alcoholic malt beverages sold by retailers to individual customers for their own consumption or to clubs, drinking establishments, public venues, holders of temporary permits and caterers for resale are subject to the 8 percent liquor enforcement tax. Alcoholic liquor and non-alcoholic malt beverages sold by retailers to suppliers for free samples at tasting events are also subject to the 8 percent liquor enforcement tax. [K.S.A. 79-4101 and subsection (b) of 41-345]

Cereal malt beverages, along with any other non-alcoholic good or service, sold by retail liquor store licensees to customers are subject to applicable Kansas retail sales tax. [Effect and interpretation of 2018 HB 2502]

The retailer collects the tax from the purchaser at time of sale. [K.S.A. 79-4102] The retailer then files a monthly liquor enforcement tax return and remits the tax due to the department. [K.S.A. 79-4103] The tax return and payment must be received by the department by the 25th day of the following month in which the sales were made. [K.S.A. 79-4103]

Liquor enforcement and Sales tax may be filed and paid electronically at <https://www.kdor.ks.gov/Apps/kcsc/login.aspx>.

Liquor Enforcement tax is a substitute for the Kansas retail sales tax. Therefore, alcoholic liquor sold to consumers is exempt from the retail sales tax. [Subsection (g) of K.S.A. 41-501 and subsection (a) of K.S.A. 79-3606]

An application for an initial or renewal retailer's license may be rejected by the Director if the applicant or grantor, beneficiary, trustee or partner is currently delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas. [Subsection (d) of K.A.R. 14-13-2]

It is unlawful for any person to evade, or attempt to evade, the payment of tax or duty on any alcoholic liquor. [Subsection (a) of K.S.A. 41-407] Failure of a licensee to file returns or pay the liquor enforcement tax is treated as an evasion or an attempt to evade. Failure to file returns or pay the liquor enforcement tax may result in a fine of up to \$1,000 per delinquent return or payment and revocation of the license.

## **Licensing Bond**

Retailers must post and maintain a licensing bond in the amount of \$2,000. [Subsection (g)(4) 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]