



**HANDBOOK**

**FOR**

**MICRODISTILLERIES**

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Changes made to this handbook since the previous revision(s) have been highlighted with a **yellow 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

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

"Microdistillery" means a facility which produces spirits from any source or substance that is licensed by the director to manufacture, store and sell spirits. [Subsection (r) of K.S.A. Above changes made to handbooks: Microbreweries, Farm Wineries]

A microdistillery is not considered to be a retailer. [Subsection (y)(2) of K.S.A. 41-102] A microdistillery is not considered to be a manufacturer. [Subsection (p)(2) of K.S.A. 41-102]

"Non-beverage user" means any manufacturer of any of the products set forth and described in K.S.A. 41-501, and amendments thereto, when the products contain alcohol or wine, and all laboratories using alcohol for non-beverage purposes. [Subsection (t) of K.S.A. 41-102] Non-beverage users include:

- Religious organizations using wine imported solely and exclusively for sacramental purposes. [Subsection (d) of K.S.A. 41-501]
- Manufacturers of patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or experimental or mechanical purposes. [Subsection (e)(1) of K.S.A. 41-501]
- Any school or college using alcohol or wine for scientific, chemical, experimental or mechanical purposes. [Subsection (k) of K.S.A. 41-501]
- Any hospital, sanatoria or other institutions using alcohol or wine for caring for the sick. [Subsection (k) of K.S.A. 41-501]

“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 (w) of K.S.A. 41-102]

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

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

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

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

The applicant may pay either the full amount of the license fee or may pay half of the license fee at the time of application. The remaining half of the license fee, plus 10 percent of the remaining balance, is

due one year from the date on which the license was issued. Failure to pay the remaining license fee and 10 percent fee timely will result in the license being canceled. [Subsections (b) and (c) of K.S.A. 41-317]

The non-refundable registration fee for an initial license application is \$50. The non-refundable registration fee for renewal applications is \$10. [Subsection (a) of K.S.A. 41-317]

At the time of initial licensing, 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 suspended or revoked, as long as the licensee and premises continue to meet the requirements of all relevant laws and regulations. [K.S.A. 41-327]

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

- If the applicant is a corporation, a certificate of authority issued by the Kansas Secretary of State to do business in Kansas. [K.S.A. 41-313]
- If the applicant is a corporation, provide a copy of a duly executed power of attorney appointing a person who is a citizen of the United States and a resident of Kansas as its agent and authorizing that agent to accept service of process from the Director of ABC and Kansas courts and to exercise full authority of the corporation and full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to alcoholic liquor and the microdistillery business. The agent must be approved by the Director of ABC as having satisfactory character. [K.S.A. 41-313]
- If the applicant is a foreign corporation (not incorporated in Kansas), provide a copy of a duly authorized and executed power of attorney authorizing the Kansas Secretary of State to accept service of process from the Director of ABC and Kansas courts and accept service of any notice or order provided for in the Liquor Control Act. Such service shall be binding upon the corporation. [K.S.A. 41-313]

Once all of the forms, fees, licensing bond and other required documentation for licensure are submitted to and accepted by director, the director has 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. 77-501 et seq.). [K.S.A. 41-321]

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

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

## **Qualifications for Licensure**

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

### Partnerships

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

### Corporations

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

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

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

Every corporation seeking a license shall appoint a citizen of the United States and resident of Kansas as process agent to receive service of process and exercise authority of the corporation. The process agent must meet the licensing qualifications for person ownership below except for residence in the county where the licensed premises will be located. [Subsection (a) of K.S.A. 41-313]

### Limited Liability Companies (LLC)

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

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

Every LLC seeking a license shall appoint a citizen of the United States and resident of Kansas as process agent to receive service of process and exercise authority of the LLC. The process agent must meet the licensing qualifications for person ownership below except for residence in the county where the licensed premises will be located. [Subsection (a) of K.S.A. 41-313]

The statutes relating to the formation and operation of LLCs are K.S.A. 17-7663 et seq. enacted in 1999 and 2000. An LLC is composed of one or more members. [Subsection (f) of K.S.A. 17-7663]

### Trusts

For trusts to be licensed, each grantor, beneficiary and trustee must meet the licensing qualifications for person ownership below. However, a beneficiary does not have to be at least 21 years of age. [Subsection (f)(6) of K.S.A. 41-311]

### Persons

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

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

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

- ***Resident of Kansas.***

The person must be a resident of Kansas on the date of application for licensure and must maintain Kansas residency while licensed. [Subsection (f)(1) of K.S.A. 41-311]

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

- ***Felony conviction.***

The person cannot have been convicted of a felony in Kansas or any other state or the United States. [Subsection (a)(2) of K.S.A. 41-311]

For an initial license, this requirement also applies to the person's spouse regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311]

For a renewal license, this requirement also applies to the person's spouse, but only if the conviction occurred during the time that the person's spouse was licensed under the Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

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

The person cannot have had a license revoked for cause under the Kansas Liquor Control Act or the Kansas Beer and Cereal Malt Beverage Keg Registration Act or the cereal malt beverage laws of Kansas or any other state. However, a revocation will be disregarded if it occurred more than 10 years ago and was the result of a conviction of a misdemeanor. [Subsection (a)(3) of K.S.A. 41-311]

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

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

The person cannot have been convicted of being a keeper of a house of prostitution or is keeping a house of prostitution. Cannot have forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution. [Subsection (a)(4) of K.S.A. 41-311]

For an initial license, this requirement also applies to the person's spouse regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311]

For a renewal license, this requirement also applies to the person's spouse, but only if the conviction occurred during the time that the person's spouse was licensed under the Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- ***Conviction for owning a gambling house, pandering or crime opposed to decency or morality.***  
The person cannot have been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality and cannot have forfeited bond to appear in court to answer charges for any of these crimes. This includes both felonies and misdemeanors. [Subsection (a)(5) of K.S.A. 41-311] "Pandering" is not currently used in the Kansas criminal law. Black's Law Dictionary defines a "panderer" as one who solicits for prostitution. The definition of "pander" includes being a "pimp" or procurer of persons to be prostitutes. Most of these acts are currently prohibited by K.S.A. 21-3513 (promoting prostitution).

Crimes involving morality are defined as including:

- prostitution
- procuring any person
- solicitation of a child under 18 years of age for any immoral act involving sex
- possession or sale of narcotics, marijuana, amphetamines or barbiturates
- rape
- incest
- gambling
- adultery
- bigamy

For an initial license, this requirement also applies to the person's spouse regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311]

For a renewal license, this requirement also applies to the person's spouse, but only if the conviction occurred during the time that the person's spouse was licensed under the Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- ***Age requirement.***  
The person must be at least 21 years of age. [Subsection (a)(6) of K.S.A. 41-311]  
  
For either an initial or renewal license, this requirement does not apply to the person's spouse. [Subsection (a)(12) of K.S.A. 41-311]
- ***Employee of ABC.***  
The person cannot be an employee of the Division of Alcoholic Beverage Control. [Subsection (a)(7) of K.S.A. 41-311]
- ***Law enforcement officer.***  
The person cannot be a law enforcement official. [Subsection (a)(7) of K.S.A. 41-311] "Official" is not defined in the statute but is interpreted as being any law enforcement officer or head of a law enforcement agency. Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the law enforcement official is located in the same county, city, etc. as the licensee. [Ruling approved by the Director on Jan.19, 2005.]

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

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

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

The person cannot hold a position that appoints or supervises any law enforcement officer. However, members of the governing body of a city or county (assume this means city council members and county commissioners) are exempt from this restriction. [Subsection (a)(7) of K.S.A. 41-311] Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the person is located in the county, city, etc. as the licensee. [Ruling approved by the director on Jan. 19, 2005.]

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

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

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

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

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

For an initial license, this requirement also 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 a license issued under the Club and Drinking Establishment Act.***

The person may have a beneficial interest in a class B club license, drinking establishment license or caterer's license issued pursuant to the Club and Drinking Establishment Act. [Subsection (a)(4)(E) of K.S.A. 41-2623]

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

- ***CMB license.***

The person cannot hold a CMB license issued pursuant to the CMB Act. [Subsection (a)(10) of K.S.A. 41-311]

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

If a person is not current in the payment of all liquor drink taxes and enforcement taxes, gallonage tax, fees or fines to the State of Kansas, then the Director may reject the application for an initial license or license renewal. [Ruling approved by the director]

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

The director may deny an initial license or deny renewal of an existing license if the person or the person's spouse has been convicted of violating the intoxicating liquor laws of any state or the United States or has forfeited bond to appear in court on charges of any such violation, within 10

years immediately preceding the date of application for an initial license or for renewal of an existing license. [Subsection (a) of K.S.A. 41-330]

- ***Conviction of violating the Cereal Malt Beverage Act.***

The director may deny an initial license or deny renewal of an existing license if the person or the person's spouse has been convicted of violating the laws of any state relating to cereal malt beverages, within 10 years immediately preceding the date of application for an initial license or for renewal of an existing license. [Subsection (b) of K.S.A. 41-330]

- ***Previous finding of hidden beneficial interest.***

The person cannot, after a hearing before the director, be found to have held an undisclosed beneficial interest in any liquor license which was obtained by means of fraud or any false statement made on the application for such license. [Subsection (15) of K.S.A. 41-311]

#### Federal permit

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

#### **Microdistillery Packaging and Warehousing Facility**

Each microdistillery licensee may have one facility separate from their manufacturing facility for packaging and warehousing their products. The microdistillery must obtain a separate Microdistillery Packaging and Warehousing Facilities License. [Subsection (b) of K.S.A. 41-354]

The biennial license fee is \$200. [Subsection (e)(4) 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 ½ of the license fee at the time of application. The remaining ½ of the license fee, plus 10% of the remaining balance, is due one year from the date on which the license was issued. Failure to pay the remaining license fee and 10% fee timely will result in the license being canceled. [Subsections (b) and (c) of K.S.A. 41-317]

The non-refundable registration fee for an initial license application is \$50. The non-refundable registration fee for renewal applications is \$10. [Subsection (a) of K.S.A. 41-317]

This license allows the microdistillery to perform the following activities only:

- The transfer of spirits manufactured at the microdistillery's licensed premises to the packaging and warehousing facility for the purpose of packaging and/or storage. [Subsection (b)(1) of K.S.A. 41-354] On August 20, 2012, the director approved the following activities that may be conducted at the packaging and warehousing facility as part of the packaging process:
  - ◆ dilution of concentrated spirits to its final product
  - ◆ filtration of otherwise finished spirits
- The transfer of spirits manufactured by the licensee from the packaging and warehousing premises back to the main manufacturing premises. [Subsection (b)(2) of K.S.A. 41-354]

- The removal of spirits manufactured by the licensee for the purpose of delivery to a licensed spirits distributor. [Subsection (b)(3) of K.S.A. 41-354]

### **Location of the Licensed Premises**

- The location of the licensed premises must be zoned agricultural, commercial or business. [Subsection (b) of K.S.A. 41-710] However, Attorney General Opinion 92-92 states that this statute is in conflict with K.S.A. 19-2921, which states that land used for agricultural purposes is exempt from county zoning regulations.
- There is no requirement that the microdistillery must be located in a "wet" county in order to manufacture or sell spirits for off-premise consumption. However, a microdistillery may not serve samples of its manufactured spirits unless it is located in a "wet" county where drinking establishments are allowed to sell alcoholic liquor by the drink. [2012 Sub. for HB 2689, New Section 2, subsection (a)(4)] Information concerning the status of each county may be found on the ABC website at: <http://www.ksrevenue.org/pdf/abcwetdrymap.pdf>
- The premises cannot be located within 200 feet of a public or parochial school, college or church unless the existence of the licensed premises predates the school, college or church. [Subsection (c)(1) of K.S.A. 41-710] In the case of a school or college, the distance shall be the shortest distance, measured in a straight line, from the outside wall of the premises to the nearest property line of the school or college. In the case of a church, the distance shall be shortest distance, measured in a straight line from the outside wall of the premises to the actual church building. [Attorney General Opinion No. 91-29 issued March 25, 1991] **However, a city may, by ordinance, waive this restriction for licensed premises located within a core commercial district as defined by K.S.A. 12-17,122. [Subsection (d) of K.S.A. 41-710]**
- The premises must conform to all applicable local building regulations, if any. [Subsection (c)(2) of K.S.A. 41-710]
- A microdistillery license or microdistillery packaging and warehousing facility license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license. [Subsection (e) of K.S.A. 41-354]
- All original packages of finished spirits must be stored upon the licensed premises of the microdistillery or the microdistillery's packaging and warehousing facility until sold or served as free samples in accordance with applicable statutes.

The person must own the premises to be licensed or have a valid written lease thereon at the time of application. [Subsection (a)(11) of K.S.A. 41-311]

### **Service of Free Samples Off the Licensed Premises**

A microdistillery may serve free samples of its manufactured spirits off the licensed premises at "special events monitored and regulated by the division of ABC". [Subsection (a)(4) of K.S.A. 41-354] "Monitored and regulated" is not defined. The ABC therefore construes the term to require the Director's permission before a microdistillery licensee may participate in special event. The

microdistillery licensee shall complete and submit form ABC-842 not less than 10 days prior to the event.

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

No person may purchase the spirits to be used for sampling from the microdistillery. The spirits must be withdrawn, without charge, from the microdistillery’s inventory. [Interpretation of subsection (a)(4) of K.S.A. 41-354 made by the director on Aug. 28, 2012] However, a microdistillery may accept an appearance or convenience fee to serve free samples of its manufactured spirits at a special event. The appearance or convenience fee is not subject to liquor enforcement tax but would be subject to income tax. [Ruling by the director, Sept. 19, 2012]

## **Employees**

Employees of microdistilleries and microdistillery packaging and warehousing facilities are subject to the following restrictions [Subsection (f) of K.S.A. 41-354]:

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

## **Days and Hours of Sale**

A microdistillery may sell spirits to consumers for consumption off-premises at any time between 6 a.m. and 12 a.m. on any day except Sunday and from 11 a.m. to 7 p.m. on Sundays. [Subsection (c) of K.S.A. 41-354]

## **Label Requirements and Approval**

Each label of manufactured spirits must comply with the labeling requirements of federal regulations adopted by the United States Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau. The regulations may be found at 27 CFR Part 7.

Each microdistillery shall submit for the director's approval a sample of each label used before the spirit is offered for sale. The \$25 registration fee provided in subsection (b) of K.S.A. 41-331 does not apply to microdistilleries. To comply, a microdistillery must apply online at [www.ksrevenue.org/abcfndbrform.html](http://www.ksrevenue.org/abcfndbrform.html).

## **Director's Permit for the Importation of Small Quantities of Spirits**

The Director may issue a permit to the Kansas State Fair or to any bona fide group of distillers for the import into Kansas of small quantities of spirits to be used for bona fide educational and scientific testing tasting programs. Such spirits may only be given as free samples and shall not be sold. Such spirits shall not be subject to the gallonage tax imposed by K.S.A. 41-501 et seq. [Subsection (d) of K.S.A. 41-354]

Application for the permit must be made to the director by letter at least 45 days in advance of the tasting program. The application must include the following:

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

The director will then respond with either an approval or denial. If approved, the approval and the letter of application will serve as the permit. If denied, the director will state the basis for the denial.

## **Distribution of Products and Franchise Agreements**

A microdistillery may distribute its products through licensed spirits distributors. [Subsection (a)(2) of K.S.A. 41-354] If a microdistillery chooses to distribute a particular product through a licensed distributor, then it must enter into an exclusive franchise agreement with that distributor for a specified geographic area, which may be the whole state or part of the state. The microdistillery may use the sample Franchise Agreement (ABC-1043) available for download from our website.

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

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

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

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

- Mail a letter by certified mail to all affected parties notifying them of the pending termination. This would include the distributor being terminated and the proposed new distributor, if any. A

copy of the notice of termination and the affidavit (required for suppliers only) from the supplier, manufacturer, farm winery, microbrewery or microdistillery will be enclosed. The letter will state the effective date of the termination, which will be 30 days after ABC received the notice of termination from the supplier, manufacturer, farm winery, microbrewery or microdistillery. A copy of this letter will also be sent to the supplier, manufacturer, farm winery, microbrewery or microdistillery so that they are made aware of the effective date of the termination on ABC's records.

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

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

Termination of a franchise agreement, other than by mutual agreement of the parties, must be for "reasonable cause." [Subsection (f) of K.S.A. 41-410] In any situation where termination is disputed, the aggrieved party may file an action in state district court to determine whether there is "reasonable cause." [Subsection (e) of K.S.A. 41-410]

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

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

## **Authorized Activities**

### Manufacturing.

A microdistillery may manufacture not more than 50,000 gallons of spirits during the calendar year. [Subsection (a)(1) of K.S.A. 41-354]

### Sales to distributors.

A microdistillery may sell its manufactured spirits to licensed spirits distributors. [Subsection (a)(2) of K.S.A. 41-354]

### Sales to consumers for off-premises consumption.

A microdistillery may sell its manufactured spirits in the original, unopened container to consumers for consumption off the licensed premises. [Subsection (a)(3) of K.S.A. 41-354] There is no restriction on the price charged.

### Serving of samples on the licensed premises.

A microdistillery may serve free samples of its manufactured spirits on the licensed premises if the premises are located in a county where the sale of alcoholic liquor is legally permitted in licensed drinking establishments. [Subsection (a)(4) of K.S.A. 41-354] Samples may be served only during those days and times that clubs and drinking establishments are authorized to serve and sell alcoholic liquor. [Subsection (c) of K.S.A. 41-354]

#### Sales to consumers for on-premises consumption.

If the microdistillery is also licensed as a club or drinking establishment, it may sell its manufactured spirits and other alcoholic liquor for consumption on the licensed premises as authorized by the Club and Drinking Establishment Act. [Subsection (a)(5) of K.S.A. 41-354] Such sales shall only take place during times when clubs and drinking establishments are authorized to serve and sell alcoholic liquor. There is no statutory prohibition on a microdistillery owning more than one DE and selling its spirits to consumers at each.

#### Sales as a caterer.

If a microdistillery is also licensed as a caterer, the sale of spirits and other alcoholic liquor for consumption on unlicensed premises as authorized by the Kansas Club and Drinking Establishment Act. [Subsection (a)(6) of K.S.A. 41-354]

### **Prohibited Activities**

#### Sales for consumption on the licensed premises.

A microdistillery shall not sell alcoholic liquor to a customer for consumption on the licensed premises unless the microdistillery also has a drinking establishment license or class B club license issued under the Club and Drinking Establishment Act. [Subsection (a) of K.S.A. 41-354]

#### Sales to minors.

A microdistillery shall not sell or furnish spirits or other alcoholic liquor to a person under 21 years of age.

#### Sales to retail liquor stores.

A microdistillery shall not sell spirits to retail liquor stores. [Prohibited by implication because it is not authorized by subsection (a) of K.S.A. 41-354]

#### Sales to clubs and drinking establishments.

A microdistillery shall not sell spirits to clubs and drinking establishments other than to itself if so licensed. [Subsection (a)(5) of K.S.A. 41-354]

#### Sales to caterers.

A microdistillery shall not sell spirits to caterers other than to itself if so licensed. [Subsection (a)(6) of K.S.A. 41-354]

#### Sale of powdered alcohol.

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

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

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

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

The “person in charge” is defined as any individual or employee present on the licensed premises at the time of the alleged violation who is responsible for the operation of the licensed premises. If no individual or employee has been designated by the licensee as being in charge, then any employee present is considered the “person in charge” for the purpose of delivering an administrative citation by an ABC Enforcement Agent or for delivering a notice of violation by any other law enforcement officer. [Subsection (e) of K.S.A. 41-106]

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

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

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

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

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 <http://www.ksrevenue.org/abclawsnotices.html>

## **Gallonaage Tax and Reporting**

Kansas microdistilleries must pay the gallonaage tax on all spirits manufactured. [Subsection (b) of K.S.A. 41-501] Kansas microdistilleries must report and remit their gallonaage tax to the ABC Marketing Unit no later than the 15<sup>th</sup> day of the following month using the Kansas Microdistillery Gallonaage Tax Return and Report (ABC-1041). This form must be filed each month even if no spirits are manufactured. [K.S.A. 41-502]

The gallonaage tax rate for spirits is \$2.50 per gallon. [Subsection (b)(1) of K.S.A. 41-501]

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

Spirits manufactured by a microdistillery and sold to out-of-state wholesalers are exempt from the gallonaage tax. The microdistillery must provide an affidavit with its monthly report to the director for such exempt sales. Bills of lading are subject to review by the director. [Subsection (c) of K.S.A. 41-501]

Spirits sold to a non-beverage user are exempt from the gallonaage tax if they are sold for use in the manufacture of any of the following products:

- Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations
- Flavoring extracts and syrups and food products
- Scientific, industrial and chemical products
- Scientific, chemical, experimental or mechanical purposes

## **Records Requirement**

Microdistilleries must maintain records of:

- All spirits produced [K.S.A. 41-501];
- All sales of spirits [Subsection (a) of K.S.A. 79-3609];

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

For a period of 90 days after the purchase, withdrawal or sale, the records must be kept on the licensed premises. The records may be in electronic or paper format. If electronic, the records must be available to print upon request by the director or any agent or employee of the director.

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

## **Liquor Enforcement Tax**

Kansas imposes a liquor enforcement tax on all spirits sold by a microdistillery to Kansas consumers for off-premise consumption. The tax is 8 percent of the retail sale price of the spirits and is collected by the microdistillery from the consumer at the time of sale. [K.S.A. 79-4101] 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] The tax return must be filed each month even if no spirits are sold by

the licensee. Any microdistillery with no sales during the tax period should report zero sales for that month

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

This 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]

A microdistillery which also holds a club, drinking establishment or caterer's license must remit liquor enforcement tax on all spirits transferred from the microdistillery for sale by the club, drinking establishment or caterer.

### **Licensing Bond**

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

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

## Appendix A

**41-354. Microdistillery license; rights of licensee, samples; rules and regulations; other.** (a) A microdistillery license shall allow:

- (1) The manufacture of not more than 50,000 gallons of spirits per year and the storage thereof;
- (2) the sale to spirit distributors of spirits, manufactured by the licensee;
- (3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of spirits manufactured by the licensee;
- (4) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of spirits manufactured by the licensee, if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;
- (5) if the licensee is also licensed as a club or drinking establishment, the sale of spirits and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act; and

(6) if the licensee is also licensed as a caterer, the sale of spirits and other alcoholic liquor for consumption on unlicensed premises as authorized by the club and drinking establishment act.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a microdistillery licensee, the director may issue not to exceed one microdistillery packaging and warehousing facility license to the microdistillery licensee. A microdistillery packaging and warehousing facility license shall allow:

(1) The transfer, from the licensed premises of the microdistillery to the licensed premises of the microdistillery packaging and warehousing facility, of spirits manufactured by the licensee, for the purpose of packaging or storage, or both;

(2) the transfer, from the licensed premises of the microdistillery packaging and warehousing facility to the licensed premises of the microdistillery, of spirits manufactured by the licensee; or

(3) the removal from the licensed premises of the microdistillery packaging and warehousing facility of spirits manufactured by the licensee for the purpose of delivery to a licensed spirits wholesaler.

(c) A microdistillery may sell spirits in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 11 a.m. and 7 p.m. on Sunday. If authorized by subsection (a), a microdistillery may serve samples of spirits and serve and sell spirits and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor.

(d) The director may issue to the Kansas state fair or any bona fide group of distillers a permit to import into this state small quantities of spirits. Such spirits shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such spirits shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of spirit to be imported, the quantity to be imported, the tasting programs for which the spirit is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of spirits pursuant to this subsection and the conduct of tasting programs for which such spirits are imported.

(e) A microdistillery license or microdistillery packaging and warehousing facility license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(f) No microdistillery shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premises supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor;  
or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

(g) Whenever a microdistillery licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and all fees paid for the license in accordance with the Kansas administrative procedure act.

(h) The provisions of this section shall take effect and be in force from and after July 1, 2012.

(i) All rules and regulations adopted on and after July 1, 2012, and prior to July 1, 2013, to implement this section shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary until revised, amended, revoked or nullified pursuant to law.

(j) This section shall be a part of and supplemental to the Kansas liquor control act.

**History:** L. 2012, ch. 144, § 2; L. 2013, ch. 130, § 5; July 1.

### **Legislative History**

- K.S.A. 41-354 was passed in 2012 as Section 2 of Sub. for HB 2689, effective July 1, 2012, creating the microdistillery license and defining what activities are permitted and prohibited.
- K.S.A. 41-354 was amended in 2013 by Section 5 of Senate substitute for HB 2199 (see 2013 Session Laws, Chapter 130) effective July 1, 2013, adding subsection (j) making it part of the Liquor Control Act.
- K.S.A. 41-308b was amended in 2016 by Section 1 of Senate Bill 326 effective July 1, 2016, as follows: A person applying for a microdistillery license no longer has to be a resident of Kansas for one year prior to application for licensure. Instead, the person must be a resident of Kansas on the date of application and during the term of licensure.