

September 28, 2010

## POLICY MEMORANDUM 2003-4 (Revised)

### Subject: Use of Automated Teller Machines (“ATMs”) by Retailers

1. **Purpose:** The purpose of this memorandum is to provide guidance to retailers on the acceptable placement and usage of ATMs.
2. **Applicability:** All retail liquor stores.
3. **Discussion:** Retailers and companies that sell or lease ATMs have contacted ABC requesting permission to place an ATM in or at the retail store premises.
  - a. Statutory Authority.
    - K.S.A. 41-308(b) strictly limits a retailer’s ability to sell anything other than liquor and lottery tickets or to provide any service or other thing of value. A retailer may not sell or give away, or permit to be sold or given away, in or from the licensed premises, any service or thing of value whatsoever except alcoholic liquor in the original package and lottery tickets, along with some limited exceptions not applicable to this issue.
    - K.S.A. 41-711 prohibits the sale at retail of alcoholic liquor in premises that have an opening into another place of business.
    - K.A.R. 14-13-13(l) prohibits a retailer from allowing any other person to use the premises for a business activity other than the sale of alcoholic liquor
  - b. Kansas Attorney General Opinions.
    - Opinion 1991-72 provided that the obvious legislative intent of K.S.A. 41-308(b) was to curtail those items given to a consumer and those services provided to a consumer.
    - Opinion 2002-35 specifically addressed ATMs in liquor stores. The Attorney General found that state law prohibits the placement of an operable ATM in a licensed retail liquor store.
  - c. Placement of Automated Teller Machines.
    - ATMs may be placed **outside** the retail premises if all the following conditions are met:
      - Customer access to the ATM exclusively occurs outside the retail premises;
      - Access to the ATM for system maintenance or stocking occurs exclusively outside the retail premises;
      - No cash or documents from the ATM are commingled with cash or documents from the retail liquor store.
    - ATMs shall **not** be located:
      - Inside the licensed premises of a retail liquor store;
      - Inside any vestibule of a retail liquor store; or
      - On the exterior wall of a retail liquor store **if** access to the machine for system maintenance or stocking is located inside the retail premises.
    - Any retail licensee who has prior written permission from the ABC to install an ATM outside the guidelines of this policy memorandum may retain the machine in its approved configuration.
    - Any retailer whose licensed premises hosts an ATM without written permission from the ABC is required to remove the ATM immediately.

**POLICY MEMORANDUM 2003-4 (Revised)**

**Subject: Use of Automated Teller Machines by Retailers**

**4. Additional Comments:**

- a. Failure to comply with the applicable statutes, regulations and/or this policy memorandum, may result in administrative action for violation of the liquor laws.
- b. Alcoholic Beverage Control Enforcement Agents will verify compliance with the provisions of the applicable statutes, regulations and this policy memorandum.

**5. Clarification of Policy:** All clarification requests to this policy should be directed in writing to this office via mail, fax, or submitted to the agency's email at [abc\\_mail@kdor.state.ks.us](mailto:abc_mail@kdor.state.ks.us).

**6. Effective Date of this policy:** This policy is effective from the date of signature until further notice.

***Original Signed and On File***

Thomas W. Groneman

cc: Assistant Attorney General  
Chief of Enforcement  
Licensing Supervisor  
Compliance Supervisor  
Administration Supervisor  
Enforcement Agents