



HANDBOOK

FOR

CEREAL MALT BEVERAGE ACT

K.S.A. 41-2701 et seq.

Last Amended July 1, 2016

**Division of Alcoholic Beverage Control
Kansas Department of Revenue
Docking State Office Building
915 SW Harrison Street
Topeka, Kansas 66612-1558**

Phone: 785-296-7015 / Fax: 785-296-7185

Website: www.ksrevenue.org/abc.html

E-mail: KDOR_abc.email@ks.gov

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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.

Definitions

"Retailer"

A "retailer" is a person who sells or offers for sale any cereal malt beverage ("CMB") for use or consumption and not for resale in any form. [Subsection (e) of K.S.A. 41-2701]

A retailer may only sell CMB at the place of business specified on their license. They may not deliver CMB to locations outside the place of business. [A.G.'s Opinion 87-1 issued Jan. 9, 1987]

"Cereal malt beverage"

"Cereal malt beverage" is defined in the CMB Act by subsection (a) of K.S.A. 41-2701 as having not more than 3.2% alcohol by weight produced by fermentation and not by distillation. The same definition appears in subsection (b) of K.A.R. 14-15-1. This is in contrast to the definition of beer in the Liquor Control Act, subsection (c) of K.S.A. 41-102, as having more than 3.2% alcohol by weight produced by fermentation. The same definition appears in subsection (a) of K.A.R. 14-15-1.

"Malt beverage"

"Malt beverage" is defined by Federal Regulation (27 CFR Part 7) as an alcohol or alcohol-free beverage containing less than 2.5% alcohol by volume and made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, and the following:

- malted barley comprising not less than 25 percent by weight of the total weight of fermentable ingredients
- hops (or their parts of products) in an amount equivalent to seven and one-half pounds per 100 barrels (3100 gallons) of finished malt beverage and may contain:
 - ❖ other malted cereals
 - ❖ unmalted or prepared cereals
 - ❖ other carbohydrates (or products prepared therefrom)
 - ❖ carbon dioxide
 - ❖ other wholesome products suitable for human food consumption

[Additional information located within The Beverage Alcohol Manual (BAM), Volume 3 (Basic Mandatory Labeling Information for Malt Beverages), published by the U.S. Dept. of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)]

Licensure Process and Fees

An application for a retailer's license is submitted on a form prepared by the Attorney General's Office and must be verified. [Subsection (c) of K.S.A. 41-2702] **The form is available on the Attorney General's website at <http://ag.ks.gov/licensing/other-forms>.**

The completed application should be submitted to the:

- City clerk if the retailer is located within an incorporated city.
- County clerk if the retailer is located outside of an incorporated city.
- Director of ABC if the retailer is operating on a railway car.

See also subsection (b) of K.S.A. 41-2702 for a requirement for the Board of County Commissioners to give notice to the clerk of the township where the business will be located if outside an incorporated city.

A premise can hold both an on-premises license and an off-premises license. [implied by subsection (f)(1) of K.S.A. 41-2704]

Licenses are not transferable from one person to another. [Subsection (h) of K.S.A. 41-2702]

On-premises licenses

The fee for a retailer's license to sell CMB for consumption on the licensed premises (other than a railway car) is not less than \$25 nor more than \$200, as prescribed by the county commission or governing body of the city. [Subsection (d)(1) of K.S.A. 41-2702] The fee for a retailer's license to sell CMB for consumption of the premises of a railway car is \$100. [Subsection (d)(2) of K.S.A. 41-2702] These fees go to the county or city, as the case may be.

Off-premises licenses

The fee for a retailer's license to sell CMB in the original and unopened container and not for consumption on the licensed premises, is not less than \$25 nor more than \$50, as prescribed by the county commission or governing body of the city. [Subsection (e) of K.S.A. 41-2702] These fees go to the county or city, as the case may be.

Special Event (Temporary) Retailers' Permit

The fee for a special event retailer's permit to sell CMB for consumption on un-licensed premises for a limited duration is not less than \$25 nor more than \$200, as prescribed by the county commission or governing body of the city. [Subsection (e) of K.S.A. 41-2704] These fees go to the county or city which issued the permit.

State CMB Stamp

In addition to payment of the fees described above, each licensee or special event retailer's permit holder must purchase from the city or county clerk a \$25 state CMB stamp to be affixed to the license or permit. City and county clerks obtain these stamps from the Division of ABC Licensing Segment and remit the \$25 stamp fees collected from the CMB licensees to the Division of ABC quarterly. [Subsections (d) and (e) of K.S.A. 41-2702]

City and county clerk information can be found on our website at <http://www.ksrevenue.org/cmbinfo.html>

Qualifications for Licensure

Subsection (b) of K.S.A. 41-2703 lists the qualifications for an initial license. The same requirements must be met for renewal of an existing license and for any special event retailer's permit except as specifically indicated.

Corporations

Each manager, officer and director of the corporation must meet all of the licensing qualifications for individual ownership below except for citizenship and residency requirements. Each stockholder owning more than 25 percent of the corporation's stock must meet all of the licensing qualifications for individual ownership listed below except for citizenship and residency requirements. [Subsection (b)(7) of K.S.A. 41-2703]

The governing body may deny a license to a corporation if any manager, officer or director of the corporation, or any stockholder owning more than 25 percent of the corporation's stock, has been

convicted of a violation of the Club and Drinking Establishment Act or the CMB Act in Kansas or has been a manager, officer or director of a corporation, or a stockholder owning more than 25 percent of a corporation's stock, which has had its retailer's license revoked. [Subsection (c) of K.S.A. 41-2703]

Partnerships

Each partner in a partnership must meet the licensing qualifications for individual ownership listed below. [Subsection (b)(6) of K.S.A. 41-2703]

The governing body may deny a license to a partnership if any partner has been convicted of a violation of the Club and Drinking Establishment Act or the CMB Act in Kansas or has been a manager, officer or director of a corporation, or a stockholder owning more than 25 percent of a corporation's stock, which has had its retailer's license revoked. [Subsection (c) of K.S.A. 41-2703]

Limited Liability Company (LLC)

LLCs must meet the same qualifications for licensure as a corporation as set forth in K.S.A. 41-2703 (see above), except that each person having an aggregate of 25 percent or more ownership interest in the LLC must meet the licensing qualifications for persons as listed below [Subsection (a) of K.S.A. 41-2703a]

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. 41-2703a]

The governing body may deny a license to an LLC if any manager, officer or director of the LLC, or any member owning more than 25 percent of the LLC, has been convicted of a violation of the Club and Drinking Establishment Act or the CMB Act in Kansas or has been a manager, officer or director of a corporation, or a stockholder owning more than 25 percent of a corporation's stock, which has had its retailer's license revoked. [Subsection (c) of K.S.A. 41-2703]

Persons

- ***Age requirement.***

The person must be at least 21 years of age. [Subsection (c)(5) of K.S.A. 41-2702]

- ***Resident of county.***

he person must be a resident of the county where the licensed premises is located for at least six months. [Subsection (b)(1) of K.S.A. 41-2703]

- ***Resident of Kansas.***

The person must be a resident of Kansas for at least one year immediately preceding application for licensure. [Subsection (b)(2) of K.S.A. 41-2703]

- ***Character and reputation.***

The person must be of good character and reputation in the community in which he or she resides. [Subsection (b)(3) of K.S.A. 41-2703]

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

The person must be a citizen of the United States. [Subsection (b)(4) of K.S.A. 41-2703]

- ***Criminal convictions.***

The person must not have been convicted of or released from incarceration, probation or parole for, a felony or any other crime involving moral turpitude, drunkenness, DUI, or a violation of the liquor laws of Kansas, any other state, or the United States, within two years immediately preceding the date of application. [Subsection (b)(5) of K.S.A. 41-2703]

- ***Manager or agent.***

If the person's place of business is conducted (managed) by a manager or agent, then the manager or agent must meet all of the qualifications for a license. [Subsection (b)(8) of K.S.A. 41-2703]

- ***Spouse.***

The person's spouse must meet all of the qualifications for ownership except for citizenship, residency or age. **However**, this requirement applies only to an initial license and not to a renewal of an existing license. [Subsection (b)(9) of K.S.A. 41-2703]

If the person's spouse was ever licensed under the CMB Act, that spouse must not have had a conviction of a felony or any other crime involving moral turpitude, drunkenness, DUI, or violation of the liquor laws of Kansas, any other state, or the United States, during the time that the spouse held such license. [Subsection (b)(10) of K.S.A. 41-2703]

Restrictions on Employees

Employees involved with the sale, serving or dispensing of CMB must have no convictions of a felony or an intoxicating liquor law of Kansas, any other state or of the United States. [Subsection (c)(6) of K.S.A. 41-2708]

Employees involved in dispensing or selling CMB must be at least 18 years of age. [Subsection (c)(5) of K.S.A. 41-2708]

Subsection (f)(1) of K.S.A. 41-2704 provides that a licensee's employee must be at least 18 years of age to dispense and sell CMB if the place of business holds a CMB license only for sale of CMB for off-premises consumption.

Subsection (f)(2) of K.S.A. 41-2704 provides that a licensee's employee must be at least 18 years of age to dispense and sell CMB if:

- the licensee is also a licensed food service establishment as defined by K.S.A. 36-501 (regulating food service and lodging establishments) and
- at least 50 percent of the licensee's gross receipts are derived from the sale of food for consumption on the licensed premises.

The CMB act has no age restrictions on employees such as stock clerks who are not dispensing or selling CMB.

Hours and Days of Operation

The following applies to the sale of CMB for both on-premises and off-premises licensees. The CMB Act does not regulate the hours for consumption of CMB at businesses licensed for on-premises consumption.

Businesses licensed for on-premises consumption of CMB

Sales are permitted between 6 a.m. and 12 a.m. on the days indicated below. However, the hours are extended to 2 a.m. if the business also has a drinking establishment or club license. They are not required to be closed on any holiday.

- Every Monday through Saturday
- Every Sunday if the business:
 1. derives at least 30 percent of its gross receipts from the sale of food to be consumed on the licensed premises, and
 2. is located in a county or city where Sunday sales have been authorized by city ordinance (for premises in cities) or by county resolution (for premises in townships but not in a city).

[Subsections (b), (c) and (h) of K.S.A. 41-2704]

Special Event (Temporary) retailers' permit holders

Sales of CMB for consumption on the permitted premises are permitted between 6 a.m. and 12 a.m. on the days indicated below:

- Every Monday through Saturday
- Every Sunday if the permit holder:
 3. derives at least 30 percent of its gross receipts from the sale of food to be consumed on the permitted premises, and
 4. the special event is located in a county or city where Sunday sales have been authorized by city ordinance (for premises in cities) or by county resolution (for premises in townships but not in a city).

[Subsection (e) of K.S.A. 41-2703 and Subsections (b), (c) and (h) of K.S.A. 41-2704]

Businesses licensed for off-premises consumption of CMB

Sales are permitted as indicated below. Where Sunday sales have been approved, off-premises CMB licensees are not required to be closed on any holiday except Easter Sunday.

- Every Monday through Saturday, between 6 a.m. and 12 a.m.
- Every Sunday, except Easter, between 12 p.m. and 8 p.m., **if** located in a city or township where the days of sale of CMB in the original package has been expanded pursuant to K.S.A. 41-2911

[Subsections (b) and (c) of K.S.A. 41-2704]

When cities or counties expand the days of sale pursuant to K.S.A. 41-2911, they must include both retail liquor stores and stores that sell CMB. They cannot expand one type of sales without the other. They must also expand to exactly those days listed in the statute. They cannot pick and choose which of those days they expand to. However, they may limit sales on Sundays to hours no less than the 12 p.m. to 8 p.m. provided in the statute. [Attorney General Opinion No. 2006-2 issued Jan. 4, 2006]

The governing body may prescribe hours of closing more restrictive than state statute. [Subsection (a) of K.S.A. 41-2704]

Signs, Advertising, Trade Practices and Promotional Activities

Outside signs

Industry members may give, lend or sell basic signs advertising the industry member's products. The value of the signs may not exceed \$400. The industry member cannot make payments or give credits to the licensee for displaying their sign and cannot pay for the installation, removal or operation of the

sign. This would prohibit the industry member from supplying the structure to mount the sign on, such as a billboard, marquee with space to post additional information, a semi-trailer truck, etc. [27 CFR ch. 1, Sec. 6.102, as adopted by K.A.R. 14-10-17]

Definition of advertising

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

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

Radio and television advertising

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

Industry members selling, giving or lending equipment or supplies

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

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

Industry members selling or giving services

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

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

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

Industry members shall not obtain tickets to a concert or other event and give them away to consumers either directly or through a third party if the concert or other event is being held on a licensee's premises. This is interpreted as furnishing something of value to the licensee (inducing consumers to visit the licensed premises) in violation of subsection (a) of K.S.A. 41-703. [Ruling by the director on Aug. 1, 2005]

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

However, industry members may furnish, give, rent, loan or sell newspaper cuts, mats or engraved blocks to a licensee for use in their advertising of the industry member's products. [27 CFR, ch. 1, Sec. 6.92, as adopted by K.A.R. 14-10-17]

Industry members may put the name of the retailer on the label or packaging of the products sold to retailers. If the name is added to a label that has previously been registered with ABC, the new label must be separately registered with ABC. [Ruling by the director on Aug. 20, 2007]

Product displays

Industry members may give or sell product displays to licensees. The selling or giving of the product displays may be conditioned upon the purchase of enough of the liquor products advertised on the display for the initial completion of the display. No other conditions are allowed. [Subpart (c)(3) of 27 CFR, ch. 1, Sec. 6.83, as adopted by K.A.R. 14-10-17]

"Product display" means any wine racks, bins, barrels, casks, shelving, or similar items whose primary function is to hold and display consumer products. [Subpart (b) of 27 CFR, ch. 1, Sec. 6.83, as adopted by K.A.R. 14-10-17] The total value, based on actual cost to the industry member, of all product displays given or sold by an industry member may not exceed \$300 per brand at any one time in any one licensed premises. [Subpart (c)(1) of 27 CFR, ch. 1, Sec. 6.83, as adopted by K.A.R. 14-10-17]

All product displays must bear conspicuous and substantial, permanently affixed, advertising material about the product or the industry member. The product display may also include the name and address of the retailer. [Subpart (c)(2) of 27 CFR, ch. 1, Sec. 6.83, as adopted by K.A.R. 14-10-17]

Point of Sale ("POS") Advertising Materials

Industry members may provide to licensees items intended to be used within the establishment to attract customers' attention to the products of the industry member. Such advertising materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, menu cards, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, banners, display cards, ceiling danglers, table tents and alcoholic beverage lists or menus dealing with alcoholic beverages. [Subpart (b)(1) of 27 CFR, ch. 1, Sec. 6.84, as adopted by K.A.R. 14-10-17]

All POS must bear conspicuous and substantial, permanently affixed, advertising material about the product or the industry member. The POS may also include the name and address of the retailer. [Subpart (c)(1) of 27 CFR, ch. 1, Sec. 6.84, as adopted by K.A.R. 14-10-17]

Consumer advertising specialties (“CAS”) offered by industry members

Industry members may provide to licensees consumer advertising specialties that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ashtrays, bottle or can openers, corkscrews, shopping bags, matches, printed recipes, informational pamphlets, cards and leaflets, post cards, posters, printed sports schedules, pens, pencils, koozies, t-shirts, ball caps and other similar items as approved by the director for distribution to the general public. [Subpart (b)(2) of 27 CFR, ch. 1, Sec. 6.84, as adopted by K.A.R. 14-10-17]

The CAS must bear conspicuous and substantial advertising material about the product or the industry member. The CAS may also include the retailer’s name and address. The licensee shall not be paid or credited in any manner, directly or indirectly, for this distribution service. [Subpart (c) of 27 CFR, ch. 1, Sec. 6.84, as adopted by K.A.R. 14-10-17]

Retailer-Generated Consumer Advertising Specialties (“CAS”)

A retailer (on or off-premise licensee) may generate and distribute unconditionally and free of charge to the general public CAS intended to be carried away by the consumer. Such items include ash trays, bottle or can openers, cork screws, matches, printed recipes, informational pamphlets, cards and leaflets, post cards, posters, printed sports schedules, pens, pencils, koozies, t-shirts, ball caps and other similar items as approved by the director. Each CAS must bear conspicuous and substantial advertising material relating to the operation of the retail establishment.

There can be no requirement to purchase anything in order to receive the retailer-generated CAS. Industry members are prohibited from providing or paying for retailer-generated CAS.

Table 1: Point of Sale (POS) and Consumer Advertising Specialties (CAS) Quick Reference

Type of Materials	Purpose	For consumers	Advertising about	Costs paid by	Keep Records	Notify ABC of New Items
Industry Member POS	Materials provided by industry member for use within a retailer’s premises to attract customer attention to the products	No	Industry member or product May include retailer’s information	Industry member or retailer	No	No
Industry Member CAS	Materials provided by industry member designed to be carried away by consumers	Yes	Industry member or product May include retailer’s information	Industry member or retailer	No	Yes
*Retailer-generated CAS	Materials generated by retailers that are designed to be carried away by consumers	Yes	Retailer. Can include name, logo, address, phone, website, etc.	Retailer	No	Yes

* Retailer means any on or off-premise establishment and includes retail liquor dealers, clubs, public venues, drinking establishments, and caterers.

Offering coupons, premiums, rebates and refunds to customers by industry members

Industry members may offer coupons through retailers (on and off-premise licensees) to consumers if all retailers within the market where the offer is made may redeem the coupons. Industry members

may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee. [Subpart (a) of 27 CFR, ch. 1, Sec. 6.96, as adopted by K.A.R. 14-10-17] The Director has interpreted this regulation to also permit redemption of such coupons for free or discounted non-alcoholic items at grocery stores.

Industry members may offer contest prizes, premiums, refunds and like items directly to consumers. A premium may or may not be conditioned upon the purchase of an alcoholic beverage. The retailer shall not accept any reimbursement, payment or credit for providing this service to the industry member. Officers, employees and representatives of distributors and retailers shall be excluded from participation. [Subpart (b) of 27 CFR, ch. 1, Sec. 6.96, as adopted by K.A.R. 14-10-17]

"Premium" is not defined in the statutes or regulations but is defined by Webster's Dictionary as "something offered free or at a reduced price as an inducement to buy." and by Black's Law Dictionary as "a reward for an act done."

Industry member support of events sponsored by licensees

Industry members may not support these events through the donation of money, advertising, consumer advertising specialties or product. [Subsection (a) of K.S.A. 41-702 and subsection (a) of K.A.R. 14-14-11] Subsection (e) of K.S.A. 41-703 authorizes the Secretary of Revenue to adopt rules and regulations authorizing exceptions to the general prohibition in K.S.A. 41-702. K.A.R. 14-10-1 et seq. dictates exceptions to the prohibition on industry members giving anything of value to retailers and it does not provide for any assistance with licensee sponsored events, whether they be fundraising or otherwise. Industry members may participate in these events but any fees paid by such industry members shall be the same as paid by any other participant.

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.

Support of fundraising events sponsored by Charities, Not-for-profit Organizations with **no** Retailer Involvement

Industry members may support these events through the donation of money and consumer advertising specialties directly to the charity. They may not donate product. Industry members may participate in these events, however any contributions made or fees paid by such industry members shall be the same as that contributed or paid by any other participant.

Industry member support to Liquor Association Sponsored Events

Industry members may participate in these events to a limited extent. Industry members may: display products at a convention or trade show; rent display space at the same rental rate paid by all other exhibitors; provide hospitality independent from that provided by the retail association; purchase tickets to functions and pay 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]

Table 2: Industry member support to fundraising and other events

Type of Support	Retailer Sponsored Event	Charity sponsored events with retailer involvement	Charity sponsored events with NO retailer involvement	Liquor association sponsored events
Monetary Donations	No	Conditional (2)	Yes	No
Product Donations	No	No	No	Conditional (3)
CAS Donations	No	Conditional (2)	Yes	Yes
Participation Fees	Conditional (1)	Conditional (1)	Yes	Conditional (1)

Conditions

- (1) Participation fees not in excess to those paid by all other participants.
- (2) May only be provided to the charity. Donations may not go through retailer or any other party.
- (3) May be provided as hospitality or at industry seminars.

Obtaining, Transporting and Paying for Alcoholic Liquor

- A CMB retailer or holder of a special event retailer’s permit may purchase CMB only from Kansas licensed beer distributors which are authorized by franchise agreements on file with the director to sell beer within the geographic area where the retailer is located. [Subsection (c)(2) of K.S.A. 41-307] The beer distributor may deliver the CMB to the retailer’s premises or to the special event premises. [Subsection (e) of K.S.A. 41-307]
- CMB may not be purchased from a distributor on credit. [K.S.A. 41-2707] If both the retailer and the beer distributor agree, payment may be made by electronic funds transfer. Payment must be made no later than the next banking business day after the date of delivery of the CMB. [Paragraph 3.c. of ABC Policy Memorandum 2001-2]

Authorized Activities

(The term “Retailers” in this section applies to special event permit holders and on-premises and off-premises licensees unless otherwise noted.)

Businesses also licensed under the Club and Drinking Establishment Act

CMB may be sold on premises which are licensed pursuant to both the CMB Act and Club and Drinking Establishment Act at any time when alcoholic liquor is allowed by law to be served on the premises. [Subsection (h) of K.S.A. 41-2704]

Access to law enforcement officers

Every licensed premises and special event shall be open to law enforcement officers at all times during business hours. [Subsection (e) of K.S.A. 41-2704]

Open to the public

Every licensed premise except clubs licensed under the Club and Drinking Establishment Act shall be open to the public at all times during business hours. [Subsection (e) of K.S.A. 41-2704]

Free food and/or entertainment

Retailers may offer free food (but not free CMB) and entertainment to its customers. [Subsection (b)(1) of K.S.A. 41-2722]

Gift certificates and cards

Retailers may **sell** gift certificates or gift cards that can be subsequently used to purchase CMB. [Ruling approved by the director on Jan. 25, 2005]

Reward programs

Retailers may offer customers a “mug club” or other reward program which results in a discount on CMB prices. [Subsection (b) of K.S.A. 41-2722]

Combination pricing

Retailers licensed for on-premise sales may offer specials including meals, entertainment and/or drinks of CMB for a single price. [Ruling by the director on July 23, 2012]

Pitchers

Retailers licensed for on-premise sales may sell and serve CMB in pitchers containing not more than 64 fluid ounces. [Subsection (b)(3) of K.S.A. 41-2722]

Charge different prices for CMB throughout the day

Retailers may charge different prices for CMB on the same day. [Subsection (b)(2) of K.S.A. 41-2722]

Prohibited Activities

(The term “Retailers” in this section applies to special event permit holders and on-premises and off-premises licensees unless otherwise noted.)

Private rooms or booths

Retailers shall not allow any private rooms or booths on the licensed premises or special event premises unless the business is also licensed as club or drinking establishment pursuant to the Club and Drinking Establishment Act. [Subsection (d) of K.S.A. 41-2704]

Alcoholic liquor

Retailers shall not sell to any person or allow any person to possess any alcoholic liquor on the licensed premises or special event premises unless the business is also licensed as club or drinking establishment pursuant to the Club and Drinking Establishment Act. [Subsection (g) of K.S.A. 41-2704 and subsection (a)(5) and subsection (b) of K.S.A. 41-2708]

Sales on credit, tab or barter

Retailers shall not sell CMB on credit, passbook (tab), or barter for goods or services. Payment must be made by cash, check or credit card. Any credit card used must be good for purchasing goods or services from at least 100 persons (or businesses) not related to the issuer of the credit card. [K.S.A. 41-2706]

Purchases from distributors

Licensees shall not purchase CMB from a distributor on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandize, in payment for services rendered; or by extension of credit of any kind, type or class. [K.S.A. 41-2707]

Intoxicated persons

Licensees shall not permit any intoxicated or drunk persons (owner, employees, patrons, etc.) to remain on the licensed premises or special event premises. [Subsection (a)(2) of K.S.A. 41-2708]

Sales to minors

Licensees shall not sell CMB to anyone under the age of 21 years. [Subsection (a)(3) of K.S.A. 41-2708]

Gambling

Licensees shall not permit any gambling on the licensed or special event premises. [Subsection (c)(4) of K.S.A. 41-2708]

Mixing of drinks

Licensees shall not permit anyone to mix drinks on the licensed or special event premises using materials purchased on the licensed or permitted premises or brought into the licensed or permitted premises for that purpose. [Subsection (a)(4) of K.S.A. 41-2708]

Keg registration act

Licensees shall not violate any provision of the Beer and Cereal Malt Beverage Keg Registration Act. [Subsection (a)(6) of K.S.A. 41-2708] Special event retailers' permit holders are exempt from the provisions of the Beer and Cereal Malt Beverage Keg Registration Act. [Subsection (f) of K.S.A. 41-2703]

Free CMB

Licensees shall not offer or serve free CMB to any person. [Subsection (a)(1) of K.S.A. 41-2722]

Minimum price

Licensees shall not offer or serve to any person CMB at a price less than the acquisition cost of the CMB to the licensee. [Subsection (a)(2) of K.S.A. 41-2722]

Unlimited number of drinks

Licensees shall not sell, offer or serve to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public. [Subsection (a)(3) of K.S.A. 41-2722]

Drinking games or contests

Licensees shall not encourage or permit any game or contest on the licensed premises which involved drinking CMB or the awarding of drinks as prized. [Subsection (a)(4) of K.S.A. 41-2722]

Advertising or promotion of prohibited activities

Licensees shall not advertise or promote, either on or off the licensed premises, any of the activities prohibited by subsection (a)(1) through (a)(4) above. [Subsection (a)(5) of K.S.A. 41-2722]

Providing price list upon request

Licensees shall not refuse to make available upon request a price list showing the licensee's current prices for all CMB beverages it sells. [Subsection (e) of K.S.A. 41-2722]

The CMB Act does not address the legality of patrons of an on-premises licensee taking their CMB drink off of the licensed premises. This practice should be controlled by county or city ordinance. The prohibition on alcoholic liquor (spirits, wine and "strong" beer) being taken off of the licensed premises which are also licensed for such beverages under the Club and Drinking Establishment Act

are included in subsection (e) of K.A.R. 14-21-12. Also, K.S.A. 41-719 prohibits the consumption of alcoholic liquor (not including CMB) on public and private property except in a few specific situations specified in the statute.

Administrative Actions for Violations of Statutes

The governing body of the city or county (if the licensed premises is outside the city limits), in which the licensed or permitted premises is located may, with five days' notice to the licensee or permit holder, revoke or suspend the license or permit for any of the reasons provided in K.S.A. 41-2708(a).

The governing body of the city or county (if the licensed premises is outside the city limits), in which the licensed or permitted premises is located shall, with five days' notice to the licensee or permit holder, revoke or suspend the license or permit for any of the reasons provided in K.S.A. 41-2708(c).

A licensee or permit holder shall have 20 days after the order of the governing body of a city or the county commission suspending or revoking any CMB license or permit to appeal to the district court in the county where the licensed or special event premises is located. The license or permit shall stay suspended or revoked during the appeal. The district court shall have original jurisdiction over the matter. [Subsection (d) of K.S.A. 41-2708]

Criminal Prosecution

The county attorney or city attorney may prosecute any person for violation of the CMB Act within their jurisdiction. If found guilty, the person may be fined up to \$500 and/or be sentenced to a maximum of up to one year in prison. [K.S.A. 41-2711]

Appendix A - Kansas Cereal Malt Beverage Act

41-2701. Definitions.

As used in this act unless the context otherwise requires:

(a) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 2010 Supp. 41-2729, and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.

(b) "Director" means the director of alcoholic beverage control of the department of revenue.

(c) "Manufacturer" means a manufacturer as defined by K.S.A. 41-102 and amendments thereto.

(d) "Person" means any individual, firm, partnership, corporation or association.

(e) "Retailer" means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.

(f) "Place of business" means any place at which cereal malt beverages are sold.

(g) "Distributor" means a beer distributor licensed pursuant to the Kansas liquor control act.

(h) "Legal age for consumption of cereal malt beverage" means 21 years of age, except that "legal age for consumption of cereal malt beverage" shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

History: L. 1937, ch. 214, § 1; L. 1949, ch. 243, § 1; L. 1978, ch. 189, § 1; L. 1985, ch. 171, § 5; L. 1985, ch. 168, § 7; L. 1987, ch. 182, § 97; L. 2006, ch. 160, § 2; July 1.

41-2702. Retailer's license; application; notice; fee; state stamp; license nontransferable.

(a) No retailer shall sell any cereal malt beverage without having first secured a license for each place of business as herein provided. In case such place of business is located within the corporate limits of a city, the application for license shall be made to the governing body of such city. In all other cases, the application for license shall be made to the board of county commissioners in the county in which such place of business is to be located, except that the application for license to sell on railway cars shall be made to the director as hereinafter provided.

(b) A board of county commissioners shall not issue or renew a retailer's license without giving the clerk of the township where the place of business is to be located written notice by registered mail of the filing of the application for licensure or renewal. The township board may within 10 days file advisory recommendations as to the granting of such license or renewal and such advisory recommendations shall be considered by the board of county commissioners before such license is issued. If an original license is granted and issued, the board of county commissioners shall grant and issue renewals thereof upon application of the license holder, if the license holder is qualified to receive the same and the license has not been revoked as provided by law.

(c) An application for a retailer's license shall be verified and upon a form prepared by the attorney general of the state and shall contain:

(1) The name and residence of the applicant;

(2) the length of time that the applicant has resided within the state of Kansas;

(3) the particular place of business for which a license is desired;

(4) the name of the owner of the premises upon which the place of business is located; and

(5) a statement that the applicant is a citizen of the United States and not less than 21 years of age and that the applicant has not within two years immediately preceding the date of making application been convicted of a felony, any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

(d) In addition to the fee provided by subsection (e), each application for a retailer's license to sell cereal malt beverages for consumption on the licensed premises shall be accompanied by a fee as follows:

(1) For licensure of a place of business other than a railway car, a fee of not less than \$25 nor more than \$200, as prescribed by the board of county commissioners or the governing body of the city, as the case may be; and

(2) For licensure to sell on railway cars, a fee of \$100.

(e) Each applicant for a retailer's license or renewal of such a license shall submit to the director a copy of the completed application for such license or license renewal, together with a fee of \$25. Upon receipt of such application, the director shall authorize a state stamp to be affixed to the license. No such stamp shall be affixed to any license except such stamps as provided by the director and no retailer's license shall be issued or renewed unless such stamp has first been affixed thereto.

(f) The director shall remit all fees collected by the director to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, except that the director may provide for the deposit in the cereal malt beverage tax refund fund of such amounts as necessary for the refund of any license fees collected hereunder.

(g) The board of county commissioners of the several counties or the governing body of a city shall issue a license upon application duly made as otherwise provided for herein, to any retailer engaged in business in such county or city and qualified to receive such license, to sell only cereal malt beverages in original and unopened containers, and not for consumption on the premises. The annual license fee for such license, which shall be in addition to the fee provided by subsection (e), shall be not less than \$25 nor more than \$50.

(h) No license issued under this act shall be transferable.

History: L. 1937, ch. 214, § 2; L. 1949, ch. 244, § 4; L. 1953, ch. 240, § 1; L. 1970, ch. 188, § 1; L. 1978, ch. 189, § 2; L. 1987, ch. 182, § 98; L. 1988, ch. 165, § 6; L. 2001, ch. 5, § 133; July 1.

41-2703.

Same; issuance, denial, when; term of license; notice to distributors of nonrenewal, when.

(a) After examination of an application for a retailer's license, the board of county commissioners or the director shall, if they approve the same, issue a license to the applicant. The governing body of the city shall, if the applicant is qualified as provided by law, issue a license to such applicant.

(b) No retailer's license shall be issued to:

(1) A person who is not a resident of the county in which the place of business covered by the license is located, has not been a resident of such county for at least six months or has not been a resident in good faith of the state of Kansas.

(2) A person who has not been a resident of this state for at least one year immediately preceding application for a retailer's license.

(3) A person who is not of good character and reputation in the community in which the person resides.

(4) A person who is not a citizen of the United States.

(5) A person who, within two years immediately preceding the date of application approval, has been convicted of, released from incarceration for or released from probation or parole for a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

(6) A partnership, unless all the members of the partnership are otherwise qualified to obtain a license.

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than the citizenship and residency requirements.

(8) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications of a licensee.

(9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection (b) (9) shall not apply in determining eligibility for a renewal license.

(10) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this act.

(c) After examination of an application for a retailer's license, the board of county commissioners or the governing body of a city may deny a license to a person, partnership or corporation if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager, director or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which has:

(1) Had a retailer's license revoked under K.S.A. 41-2708, and amendments thereto; or

(2) been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(d) Retailer's licenses shall be issued either on an annual basis or for the calendar year. If such licenses are issued on an annual basis, the board of county commissioners or the governing body of the city shall notify the distributors supplying the county or city on or before April 1 of the year if a retailer's license is not renewed.

(e) In addition to, and consistent with the requirements of K.S.A. 41-2701 et seq., and amendments thereto, the board of county commissioners of any county or the governing body of any city may provide by resolution or ordinance for the issuance of a special event retailers' permit which shall allow the permit holder to offer for sale, sell and serve cereal malt beverage for consumption on unpermitted premises, which may be open to the public, subject to the following:

(1) A special event retailer's permit shall specify the premises for which the permit is issued;

(2) a special event retailer's permit shall be issued for the duration of the special event, the dates and hours of which shall be specified in the permit;

(3) no more than four special event retailer's permits may be issued to any one applicant in a calendar year; and

(4) a special event retailer's permit shall not be transferable or assignable.

(f) A special event retailer's permit holder shall not be subject to the provisions of the beer and cereal malt beverage keg registration act, K.S.A. 41-2901 et seq., and amendments thereto.

History: L. 1937, ch. 214, § 3; L. 1949, ch. 244, § 5; L. 1973, ch. 201, § 1; L. 1973, ch. 202, § 1; L. 1978, ch. 189, § 3; L. 1987, ch. 182, § 99; L. 2001, ch. 189, § 5; L. 2009, ch. 87, § 1; L. 2011, ch. 57, § 3; April 28.

41-2703a. Licensure qualifications for limited liability company.

(a) Notwithstanding any other provision of law, any limited liability company applying for a license under the Kansas cereal malt beverage act shall be required to meet the qualifications for licensure of a corporation under K.S.A. 41-2703, and amendments thereto, except that only those individuals owning in the aggregate 25% or more of the ownership interest in such limited liability company shall be required to meet the qualifications for an individual to obtain a license.

(b) Any limited liability company applying for a license under the Kansas cereal malt beverage act shall submit a copy of its articles of organization and operating agreement to the director in such form and manner as prescribed by the director.

(c) This section shall be a part of and supplemental to the Kansas cereal malt beverage act.

History: L. 2015, ch. 82, § 10; July 1.

41-2704. Hours and days of sale; standards; prohibited acts.

(a) In addition to and consistent with the requirements of the cereal malt beverage act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) Within any city where the days of sale at retail of cereal malt beverage in the original package have not been expanded as provided by K.S.A. 2010 Supp. 41-2911, and amendments thereto, or have been so expanded and subsequently restricted as provided by K.S.A. 2010 Supp. 41-2911, and amendments thereto, and within any township where the hours and days of sale at retail of cereal malt beverage in the original package have not been expanded as provided by K.S.A. 2010 Supp. 41-2911, and amendments thereto, or have been so expanded and subsequently restricted as provided by K.S.A. 2010 Supp. 41-2911, and amendments thereto, no cereal malt beverages may be sold:

(1) Between the hours of 12 midnight and 6 a.m.; or

(2) on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city.

(c) Within any city where the days of sale at retail of cereal malt beverage in the original package have been expanded as provided by K.S.A. 2010 Supp. 41-2911, and amendments thereto, and have not been subsequently restricted as provided in K.S.A. 2010 Supp. 41-2911, and amendments thereto, and within any township where the days of sale at retail of cereal malt beverage in the original package have been expanded as provided by K.S.A. 2010 Supp. 41-2911, and amendments thereto, and have not been subsequently restricted as provided by K.S.A. 2010 Supp. 41-2911, and amendments thereto, no person shall sell at retail cereal malt beverage:

(1) Between the hours of 12 midnight and 6 a.m.;

(2) in the original package before 12 noon [or] after 8 p.m. on Sunday;

(3) on Easter Sunday; or

(4) for consumption on the licensed premises on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city.

(d) No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply if the licensed premises also are licensed as a club pursuant to the club and drinking establishment act.

(e) Each place of business shall be open to the public and to law enforcement officers at all times during business hours, except that a premise licensed as a club pursuant to the club and drinking establishment act shall be open to law enforcement officers and not to the public.

(f) Except as otherwise provided by this subsection, no licensee shall permit a person under the legal age for consumption of cereal malt beverage to consume or purchase any cereal malt beverage in or about a place of business. A licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage, if:

(1) The licensee's place of business is licensed only to sell at retail cereal malt beverage in the original package and not for consumption on the premises; or

(2) the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50 percent of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(g) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(h) Cereal malt beverages may be sold on premises which are licensed pursuant to both the cereal malt beverage act and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.

History: L. 1937, ch. 214, § 4; L. 1951, ch. 302, § 1; L. 1963, ch. 268, § 1; L. 1965, ch. 316, § 35; L. 1981, ch. 201, § 3; L. 1982, ch. 211, § 2; L. 1985, ch. 171, § 6; L. 1987, ch. 182, § 100; L. 1987, ch. 183, § 4; L. 1994, ch. 166, § 2; L. 2005, ch. 201, § 13; Nov. 15.

41-2705. Loans or gifts from manufacturer or distributor prohibited.

(a) Except to the extent permitted pursuant to K.S.A. 41-703 and amendments thereto, no retailer, or any officer, associate, member, representative or agent thereof, shall accept, receive or borrow money or anything else of value, or accept or receive credit, directly or indirectly, from: (1) Any manufacturer or distributor; (2) any person connected with, in any way representing or a member of the family of a manufacturer or distributor; (3) any stockholders in a manufacturer or distributor; or (4) any officer, manager, agent or representative of a manufacturer or distributor.

(b) Any licensee who shall permit or assent, or be a party in any way, to any violation or infringement of the provisions of this section or of K.S.A. 41-702 or 41-703, and amendments thereto, shall be deemed guilty of a violation of this act, and any money loaned contrary to a provision of this section shall not be recovered, or any note, mortgage or other evidence of indebtedness, or security, or any lease or contract obtained or made contrary to this act shall be unenforceable and void.

History: L. 1937, ch. 214, § 5; L. 1947, ch. 238, § 1; L. 1965, ch. 316, § 36; L. 1974, ch. 195, § 4; L. 1975, ch. 253, § 1; L. 1977, ch. 170, § 1; L. 1982, ch. 210, § 3; L. 1987, ch. 182, § 101; Jan. 1, 1988.

41-2706. Certain sales on credit or in trade prohibited.

(a) Except as provided by subsection (b), no person shall sell or furnish cereal malt beverages at retail to any person on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise; or in payment for any services rendered. If any person extends credit for such purpose, the debt attempted to be created shall not be recoverable at law and, in addition, such person shall be subject to the penalties provided in K.S.A. 41-2707 and amendments thereto.

(b) A licensed retailer may sell cereal malt beverages to a consumer on credit pursuant to a credit card which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the credit card.

History: L. 1949, ch. 244, § 1; L. 1987, ch. 182, § 102; L. 1995, ch. 266, § 5; July 1.

41-2707. Same; penalties.

No distributor shall sell or furnish cereal malt beverages to a retailer on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise; in payment for any service rendered or to be rendered; or by any extension of credit of any kind, type or class. Any distributor or retailer who violates any of the terms of this section or K.S.A. 41-2706 and amendments thereto shall be subject to all penalties and forfeitures provided by K.S.A. 41-2705 and 41-2708, and amendments thereto, and any debt attempted to be created in violation hereof shall not be recoverable at law.

History: L. 1949, ch. 244, § 2; L. 1987, ch. 182, § 103; Jan. 1, 1988.

41-2708. Revocation or suspension of license; grounds; appeal.

(a) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, may revoke or suspend the license for any one of the following reasons:

(1) The licensee has violated any of the provisions of K.S.A. 41-2701 et seq., and amendments thereto, or any rules or regulations made by the board or the city, as the case may be;

(2) Drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee's place of business;

(3) The sale of cereal malt beverages to any person under the legal age for consumption of cereal malt beverage;

(4) Permitting any person to mix drinks with materials purchased in or upon the place of business or brought in for that purpose;

(5) The sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor as defined by K.S.A. 41-102, and amendments thereto; or

(6) The licensee has been convicted of a violation of the beer and cereal malt beverage keg registration act.

(b) The provisions of subsections (a)(4) and (5) shall not apply if the place of business or premises also are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(c) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application therefor;

(2) The licensee has become ineligible to obtain a license under this act;

(3) Nonpayment of any license fees;

(4) Permitting any gambling in or upon the licensee's place of business;

(5) Employment of persons under 18 years of age in dispensing or selling cereal malt beverages;

(6) Employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States; or

(7) There has been a violation of K.S.A. 21-4106 or 21-4107, prior to their repeal, or K.S.A. 2011 Supp. 21-6204, and amendments thereto, in or upon the licensee's place of business.

(d) Within 20 days after the order of the board revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending

the license shall not suspend the order of revocation or suspension during the pendency of any such appeal.

History: L. 1937, ch. 214, § 6; L. 1949, ch. 245, § 1; 1951, ch. 302, § 2; L. 1965, ch. 316, § 37; L. 1973, ch. 202, § 2; L. 1976, ch. 145, § 195; L. 1985, ch. 171, § 7; L. 1987, ch. 182, § 104; L. 1995, ch. 258, § 5; L. 2002, ch. 44, § 8; L. 2004, ch. 1, § 2; L. 2009, ch. 87, § 2; L. 2011, ch. 30, § 183; July 1.

41-2709. Injunction proceedings.

The attorney general, or any county attorney of the state within his county or any city attorney within his city shall at all times have the power to enjoin any party from selling cereal malt beverages within the county or city notwithstanding said party has a license and permit if it shall appear that the licensee has violated any provision or regulation of this act or any of the rules or regulations prescribed under this act. Injunction proceedings shall be the same as is now prescribed for the enjoining of intoxicating liquor nuisances.

History: L. 1937, ch. 214, § 7; May 1.

41-2710. [Repealed 1951]

41-2711. Penalties for violation of act.

Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

History: L. 1937, ch. 214, § 8; May 1.

41-2712. Invalidity of part.

Should any court declare any section, clause or provision of this act to be unconstitutional such decision shall affect only such section, clause or provision so declared unconstitutional and shall not affect any other section, clause or provision of this act.

History: L. 1937, ch. 214, § 9; May 1.

41-2713. [Repealed 1987]

41-2714, 41-2715, 41-2716, 41-2717. [Repealed 1990]

41-2718. [Repealed 1987]

41-2719. [Repealed 1994 – Amended into 41-804 and transferred to 8-1599]

41-2720. [Repealed 1994]

41-2721. [Repealed 1988]

41-2722. Certain sales practices prohibited; penalties; drink defined.

(a) No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverage for consumption on the licensed premises shall:

(1) offer or serve any free cereal malt beverage to any person;

(2) offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee;

(3) sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;

(4) encourage or permit, on the licensed premises, any game or contest which involves drinking cereal malt beverage or the awarding of drinks as prizes; or

(5) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (4).

(b) A retailer may:

(1) offer free food or entertainment at any time;

(2) sell, offer to sell and serve individual drinks at different prices throughout the day; or

(3) sell or serve cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.

(c) Violation of any provisions of this section is a misdemeanor punishable as provided by K.S.A. 41-2711 and amendments thereto.

(d) Violation of any provision of this act shall be grounds for suspension or revocation of the retailer's license as provided by K.S.A. 41-2708 and amendments thereto.

(e) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages.

(f) This section shall be part of and supplemental to K.S.A. 41-2701 through 41-2721, and amendments thereto.

History: L. 1985, ch. 173, § 5; L. 1986, ch. 185, § 8; L. 2012, ch. 144, Sec. 43; May 31.

41-2723, 41-2724. [Repealed 1987]

41-2725. Cereal malt beverage prohibited at state capitol.

(a) No person shall drink or consume cereal malt beverage in the state capitol building or on the grounds of the state capitol building.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both.

(c) As used in this section, terms have the meanings provided by K.S.A. 41-2701 and amendments thereto.

History: L. 1995, ch. 59, § 2; July 1.

41-2726. Sales below cost prohibited.

(a) No retailer licensed under K.S.A. 41-2701 *et seq.* and amendments thereto to sell cereal malt beverage in original and unopened containers and not for consumption on the licensed premises shall sell or offer for sale any cereal malt beverage at a price that is less than the acquisition cost of such cereal malt beverage to the licensee.

(b) Violation of this section is a misdemeanor punishable as provided by K.S.A. 41-2711 and amendments thereto.

(c) Violation of this section shall be grounds for suspension or revocation of the retailer's license as provided by K.S.A. 41-2708 and amendments thereto.

History: L. 1996, ch. 154, § 8; July 1.

41-2727. Use of minors to determine compliance with law, exceptions.

(a) Any person listed in subsections (b)(1), (b)(2) or (b)(3) may engage or direct a person under the legal age for consumption of cereal malt beverage to violate the provisions of K.S.A. 41-2701, *et seq.*, and amendments thereto, in order to develop a program or system which determines and encourages compliance with the provisions thereof prohibiting the furnishing or sale of cereal malt beverages to a

person under the legal age for consumption of cereal malt beverage or the consumption of cereal malt beverages by such persons.

(b) No person shall engage or direct a person under the legal age for consumption of cereal malt beverage to violate any provision of K.S.A. 41-2701 *et seq.*, and amendments thereto, for purposes of determining compliance therewith unless such person is:

(1) An officer having authority to enforce the provisions of K.S.A. 41-2701 *et seq.*, and amendments thereto;

(2) an authorized representative of the attorney general, a county attorney or a district attorney; or

(3) a licensee under the provisions of K.S.A. 41-2701, *et seq.*, and amendments thereto, or such licensee's designee pursuant to a self-compliance program designed to increase compliance with the provisions of K.S.A. 41-2701 *et seq.*, and amendments thereto if such program has been approved by the director.

History: L. 2000, ch. 166, § 7; July 1.

K.S.A. 41-2728.

(a) K.S.A. 41-2701 through 41-2727 and section 14, and amendments thereto, shall be known and may be cited as the Kansas cereal malt beverage act.

(b) Except as specifically provided in the Kansas cereal malt beverage act, the power to regulate all phases of the manufacture, distribution, sale, possession, transportation and traffic in cereal malt beverages is vested exclusively in the state and shall be exercised as provided in the Kansas cereal malt beverage act. No city or county shall enact any ordinance or resolution which is in conflict with the provisions of the Kansas cereal malt beverage act and any such ordinance or resolution shall be null and void.

(c) The provisions of this act are severable. If any provision of this act is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would have enacted the remainder if this act without such invalid or unconstitutional provision.

History: L. 2005, ch. 201, § 12; November 15.

[ABC Attorney's note: Section 14 was stricken from legislation prior to enactment.]

K.S.A. 41-2729.

(a) This act shall be known as the flavored malt beverage act.

(b) "Flavored malt beverage" means a malt beverage which meets the formula definitions as set forth in department of the treasury, alcohol and tobacco tax and trade bureau regulations published January 3, 2005, at 27 CFR Parts 7 and 25.

(c) Notwithstanding any other provision of law, any malt product which meets the formula definitions of 27 CFR Parts 7 and 25 published January 3, 2005, regarding flavored malt beverages shall have imposed upon it the tax rate for malt beverages as set forth in K.S.A. 41-501, and amendments thereto, for beer and cereal malt beverage.

(d) Notwithstanding any other provision of law, any malt product which meets the definitions of 27 CFR Parts 7 and 25 published Jan. 3, 2005, regarding flavored malt beverages shall be deemed in compliance with the labeling requirements of this state when its labeling meets the requirements of 27 CFR Parts 7 and 25 published Jan. 3, 2005.

(e) Any manufacturer or brewer who intends that its products be classified as a flavored malt beverage under this act shall file with the secretary of revenue its registration of such products on a form prescribed by the secretary for such purpose, along with such other documentation as the secretary may require by rules and regulations.

History: L. 2006, ch. 160, § 1; July 1, 2006

[ABC Attorney's Note: the following statute passed in 2005 as section 9 of SB 298. It is included here because it is referenced in K.S.A. 41-2704.]

K.S.A. 41-2911.

(a) (1) The board of county commissioners of any county may, by resolution:

(A) Expand the days of sale at retail of cereal malt beverage in the original package to allow such sale within the unincorporated area of the county on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and expand the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the unincorporated area of the county, to allow such sale within the unincorporated area of the county on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day; or

(B) restrict the days of sale at retail of cereal malt beverage in the original package to prohibit such sale within the unincorporated area of the county on Sunday and restrict the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the unincorporated area of the county, to prohibit such sale within the unincorporated area of the county on Sunday, Memorial Day, Independence Day and Labor Day.

Such resolution shall be published once, within two weeks after its adoption, in the official county newspaper. Such resolution shall not become effective earlier than 60 days following the date of its publication or Nov. 15, 2005, whichever is later. If, within 60 days following publication of the resolution, a petition requesting that a proposition be submitted for approval by the voters is filed in accordance with subsection (a)(2), such resolution shall not become effective until a proposition is submitted to and approved at an election as provided by this subsection (a).

(2) A petition to submit a proposition to the qualified voters of a county pursuant to this subsection (a) shall be filed with the county election officer. The petition shall be signed by qualified voters of the county who reside within the unincorporated area of the county equal in number to not less than 5% of the voters of the county residing within the unincorporated area of the county who voted for the office of president of the United States at the last preceding general election at which such office was elected. The appropriate version of the following shall appear on the petition:

(A) If licensing of sale at retail of alcoholic liquor in the original package is not authorized within the unincorporated area of the county, the petition shall read: "We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the unincorporated area of _____ county."

(B) If licensing of sale at retail of alcoholic liquor is authorized within the unincorporated area of the county, the petition shall read: "We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the unincorporated area of _____ county and whether sale at retail of alcoholic liquor in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day) within the unincorporated area of _____ county."

(3) Upon submission of a valid petition calling for an election pursuant to this subsection (a), the county commission shall call a special election to be held not later than 45 days after submission of the petition unless a countywide primary or general election is to be held within 90 days after submission of the petition, in which case the proposition shall be submitted at such countywide election.

Thereupon, the county election officer shall cause the appropriate version of the following proposition to be placed on the ballot in the unincorporated area of the county at such election:

(A) If licensing of sale at retail of alcoholic liquor is not authorized within the unincorporated area of the county, the following proposition shall be placed on the ballot: “Within the unincorporated area of _____ county shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday)?”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the unincorporated area of the county, the following proposition shall be placed on the ballot: “Within the unincorporated area of _____ county shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) and shall the sale at retail of alcoholic liquor in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day)?”

(b) (1) The governing body of any city may, by ordinance:

(A) Expand the days of sale at retail of cereal malt beverage in the original package to allow such sale within the city on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and expand the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the city, to allow such sale within the city on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day; or

(B) restrict the days of sale at retail of cereal malt beverage in the original package to prohibit such sale within the city on Sunday and restrict the days of sale at retail of alcoholic liquor in the original package, if licensing of such sale of alcoholic liquor is authorized within the city, to prohibit such sale within the city on Sunday, Memorial Day, Independence Day and Labor Day.

Such ordinance shall be published at least once each week for two consecutive weeks in the official city newspaper. Such ordinance shall not become effective earlier than 60 days following the date of its publication or Nov. 15, 2005, whichever is later. If, within 60 days following publication of the ordinance, a petition requesting that a proposition be submitted for approval by the voters is filed in accordance with subsection (b)(2), such ordinance shall not become effective until a proposition is submitted to and approved at an election as provided by this subsection (b).

(2) A petition to submit a proposition to the qualified voters of a city pursuant to this subsection (b) shall be filed with the county election officer. The petition shall be signed by qualified voters of the city equal in number to not less than 5 percent of the voters of the city who voted for the office of president of the United States at the last preceding general election at which such office was elected. The appropriate version of the following shall appear on the petition:

(A) If licensing of sale at retail of alcoholic liquor in the original package is not authorized within the city, the petition shall read: “We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the city of _____.”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the city, the petition shall read: “We request an election to determine whether sale at retail of cereal malt beverage in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) within the city of _____ and whether sale at retail of alcoholic liquor in the original package shall be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day) within the city of _____.”

(3) Upon submission of a valid petition calling for an election pursuant to this subsection (b), the city governing body shall call a special election to be held not later than 45 days after submission of

the petition unless a citywide primary or general election is to be held within 90 days after submission of the petition, in which case the proposition shall be submitted at such citywide election. Thereupon, the county election officer shall cause the appropriate version of the following proposition to be placed on the ballot in the city at such election:

(A) If licensing of sale at retail of alcoholic liquor is not authorized within the city, the following proposition shall be placed on the ballot: “Within the city of _____ shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday)?”

(B) If licensing of sale at retail of alcoholic liquor is authorized within the city, the following proposition shall be placed on the ballot: “Within the city of _____ shall sale at retail of cereal malt beverage in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.) (prohibited on Sunday) and shall the sale at retail of alcoholic liquor in the original package be (allowed on any Sunday, except Easter, between the hours of 12 noon and 8 p.m. and on Memorial Day, Independence Day and Labor Day) (prohibited on Sunday, Memorial Day, Independence Day and Labor Day)?”

(c) The county election officer shall transmit to the director a copy of the results of an election pursuant to this section.

(d) An election provided for by this section shall be called and held in the manner provided by the general bond law.

History: L. 2005, ch. 201, § 9; November 15.