



## **HANDBOOK**

**FOR**

## **TEMPORARY PERMITS**

**Temporary Permits Issued Under K.S.A. 41-2645  
of the Club and Drinking Establishment Act**

**Temporary Permits Issued Under K.S.A. 41-347  
of the Liquor Control Act**

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Changes made to this handbook since the previous revision(s) have been highlighted with a yellow background. Statutory changes that become effective on January 1, 2017, are highlighted with a green 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.

## Temporary Permits Issued Under K.S.A. 41-2645 of the Club and Drinking Establishment Act

### Definitions

#### "Alcoholic liquor"

means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include cereal malt beverage. [Subsection (a) of K.S.A. 41-2601, referring to subsection (b) of K.S.A. 41-102]

#### "Beer"

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

#### "Beneficial interest"

means any ownership interest of a person or that person's spouse in a business, corporation, partnership, business trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization. [Subsection (c) of K.A.R. 14-23-1]

#### "Cereal malt beverage"

(CMB) 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 (FMB), as defined in K.S.A. 41-2729, and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight. [Subsection (a) of K.S.A. 41-2701] Since 3.2% alcohol by weight is equivalent to 4% alcohol by volume, then CMB does not include any FMB which contains more than 4% alcohol by volume.

#### "Dispense"

means to portion out servings of alcoholic liquor for consumption. This term shall include the pouring of drinks of alcoholic liquor and opening original containers of alcoholic liquor by the licensee or licensee's employee for consumption by customers, and shall not include any self-dispensing by a customer. [Subsection (d)(1) of K.S.A 41-2658]

#### "Hard Cider"

means any alcoholic beverage that:

- (1) Contains less than 8.5% alcohol by volume;
- (2) has a carbonation level that does not exceed 6.4 grams per liter; and
- (3) is obtained by the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including such beverages containing sugar added for the purpose of correcting natural deficiencies.

[Subsection (n) of K.S.A. 41-102 effective Jan.1, 2017]

#### "Individual drink"

means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term includes beverages containing not more than eight ounces of wine,

32 ounces of beer or cereal malt beverage, or four ounces of a spirit or combination of spirits. [Subsection (l) of K.S.A. 41-2601]

"Industry member"

means any distributor, manufacturer or supplier or any agent, salesperson or representative thereof. [Subsection (f) of K.A.R. 14-10-5]

"Permit holder"

means a person granted a temporary permit pursuant to K.S.A. 41-2645 of the Club and Drinking Establishment Act and regulations adopted pursuant thereto. [Subsection (k) of K.A.R. 14-23-1]

"Permitted premises"

means the area in which alcoholic liquor is to be served pursuant to the temporary permit as described in the application. [Subsection (l) of K.A.R. 14-23-1]

"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]

"Special event"

means a picnic, bazaar, festival, or other similar community gathering, which has been approved by the local governing body of any city, county or township. [Subsection (j) of K.S.A. 41-719]

"Wine"

means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. Effective Jan. 1, 2017, the term "wine" shall include hard cider and any other product that is commonly known as a subset of wine. [Subsection (ii) of K.S.A. 41-102]

### **Qualifications for a Temporary Permit**

K.S.A. 41-2645 authorizes the director to issue temporary permits to organizations or to one or more persons to sell and serve alcoholic liquor for consumption on unlicensed premises that are open to the public. "Person" may be an individual (natural person), partnership, corporation or association. [Subsection (m) of K.A.R. 14-23-1]

Partnerships

Each partner must meet all of the qualifications for persons listed below. [Subsection (c) of K.A.R. 14-23-3]

Corporations

Each officer, manager, director or stockholder owning a beneficial interest in the corporation must meet all of the qualifications for persons listed below. [Subsection (a) of K.A.R. 14-23-3]

Limited Liability Companies (LLC)

LLCs must meet the same qualifications for licensure as a corporation as set forth in K.S.A. 41-2623 (see above). [Subsection (a) of K.S.A. 41-2623a] This includes the following requirements:

- The LLC must be organized under the laws of Kansas. [K.S.A. 41-2623(a)(8)]

- Each person having more than a 5 percent interest in the LLC must meet the licensing qualifications for persons as listed below, except for the citizenship and residency requirements. [K.S.A. 41-2623(a)(6)]
- The LLC 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 persons as listed below except for residence in the county where the licensed premises will be located. [Subsection (a) of K.S.A. 41-2625]

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. 41-2623a]

#### Associations (unincorporated clubs or groups)

Each officer, manager, director, owner or member with a beneficial interest in the association must meet all of the qualifications for persons listed below.

[Subsection (b) of K.A.R. 14-23-3]

#### Persons

K.A.R. 14-23-3 lists the required (non-discretionary) qualifications for applicants for temporary permits. There are no requirements that pertain to the spouse of an applicant for a temporary permit.

[Subsection (d) of K.A.R. 14-23-3]

- Must be at least 21 years of age. [(d)(4)]
- Cannot be an employee of the Director of ABC. [(d)(5)]
- Cannot have been convicted of a felony in Kansas, any other state or the United States. [(d)(1)]
- Cannot have been convicted of being the keeper of a house of prostitution, a proprietor of a gambling house, pandering or any crime opposing decency and morality, or forfeited bond to appear in court on any such charge. [(d)(2) and (3)]
- Cannot have had a license or permit issued by the Director of ABC revoked. [(d)(7)]

Note: This provision applies to applicants who were previously partners in a partnership which had a license or permit revoked, since each partner may be held accountable for the misdeeds of the partnership. [Interpretation by ABC Attorney on Dec. 22, 2004]

- Cannot intend to use the permit to act as an agent for another person. [(d)(6)]
- Cannot have been an officer, manager, director of or stockholder owning a beneficial interest in a corporation which has:
  - \* had a license revoked under the club and drinking establishment act, or
  - \* been convicted of a violation of the club and drinking establishment act or the cereal malt beverage act. [(d)(8)]

Note: The words above "owning a beneficial interest" apply only to stockholders. [Interpretation by ABC Attorney on Dec. 22, 2004]

The Director of ABC may refuse to issue a temporary permit if:

- The applicant previously violated any provision of the Kansas Liquor Control Act, the Kansas Club and Drinking Establishment Act, the Kansas Cereal Malt Beverage Act or the Kansas Liquor Drink Tax Act. [Subsection (j) of K.S.A. 41-2645 and subsection (b)(4) of K.A.R. 14-23-4]
- The applicant had a license or permit revoked under the Kansas Club and Drinking Establishment Act. [Subsection (b)(4) of K.A.R. 14-23-4]
- The applicant, or any officer, director, partner, registered agent, trustee, manager or owner of the applicant, has previously had a temporary permit or license issued under the Kansas Club and Drinking Establishment Act which was surrendered and at the time of such surrender the holder of the permit or license had been ordered to appear and show cause why the permit or license should not be revoked or suspended. [Subsection (b)(1) of K.A.R. 14-23-4]
- The applicant has designated an area for the event that is the same as the area designated for a permit or license that was the subject of an order to appear and show cause why the permit or license should not be revoked or suspended at the time the permit or license was surrendered, and it appears that the application for the temporary permit is an attempt to avoid any possible remedial action taken by the director against the former licensee or permit holder. [Subsection (b)(3) of K.A.R. 14-23-4]
- The application was filed with the director less than 14 days prior to the event. [Subsection (b)(5) of K.A.R. 14-23-4]
- The application is for premises that are licensed under the Liquor Control Act, the Club and Drinking Establishment Act or the Cereal Malt Beverage Act. [Subsection (a) of K.S.A. 41-2645]

### **Process for Obtaining a Temporary Permit**

Subsections (b) through (h) of K.S.A. 41-2645 describe the process for obtaining a temporary permit:

- Apply online at [www.ksabconline.org](http://www.ksabconline.org) or download and print the online form ABC-830 from our webpage at [www.ksrevenue.org/abc-temp-permit-apply](http://www.ksrevenue.org/abc-temp-permit-apply). Follow the directions for submitting the application with the director at least 14 days before the event unless the 14 days is waived by the director for good cause. [Subsection (c) of K.S.A. 41-2645]
- A temporary permit shall be issued for a period of time not to exceed three consecutive days, except for a permit issued for the Kansas State Fair (see below). The dates and hours that the temporary permit is valid shall be specified on the permit. [Subsection (f) of K.S.A. 41-2645]
- Only one temporary permit may be issued to a person or entity for each annual Kansas State Fair in Hutchinson. The permit shall be good for the entire period of the state fair and allows the sale of wine in the unopened, original container and the sale and serving of person drinks of wine and/or beer at a location on the state fair grounds designated by the State Fair Board in a written agreement with the applicant for the temporary permit. A copy of the agreement must be provided with the application for the permit. [Subsection (f)(2) of K.S.A. 41-2645]
- No more than four temporary permits shall be issued to any organization or person in a calendar year. [Subsection (f)(1) of K.S.A. 41-2645]

- Permits shall only be issued for premises where the city, county or township zoning codes allow the use for which the permit is issued. The temporary permit shall specify the premises for which the permit has been issued. [Subsection (d) of K.S.A. 41-2645] Permits shall only be issued in counties which allow the sale of liquor by the drink. See subsections (d)(1) and (d)(2) of K.S.A. 41-2645.
- The application must state the purposes for which the proceeds from the event will be used and the proceeds shall only be used for that purpose. [Subsections (c) and (g) of K.S.A. 41-2645]
- The application must be accompanied by a fee of \$25 for each day of the event that a permit is needed. The fee must be paid by either a cashier's or certified check from a Kansas bank, US postal money order, or cash. [Subsection (c) of K.S.A. 41-2645] The fee is **not** refundable. [K.A.R. 14-23-6]
- The application must be accompanied by a diagram of the premises covered by the proposed permit, clearly showing the boundaries of the premises, the entrance(s) to and exit(s) from the premises, and the area where alcoholic liquor will be served. [Subsection (c) of K.A.R. 14-23-2]
- A temporary permit, once issued, cannot be transferred or assigned by the permit holder to another organization or person. [Subsection (i) of K.S.A. 41-2645]

### **Special Event Temporary Permits**

A temporary permit may be issued to a qualified applicant to sell and serve liquor by the drink on a city, county or township street, alley, road, sidewalk or highway for a special event under the following conditions [Subsection (e)(1) of K.S.A. 41-2645]:

- The street, alley, road, sidewalk, and highway is closed to motor vehicle traffic by the governing body.
- A written request for the sale and service of liquor by the drink has been made to the governing body.
- The special event has been approved by the governing body by ordinance or resolution.

Drinking establishments inside or adjacent to the special event premises may elect to extend their licensed premises into the event premises.

The temporary permit holder and any drinking establishment licensee who has elected to extend the licensed premises into the event premises shall be jointly liable for violations of all laws governing the sale and consumption of alcoholic liquor. [Subsection (e)(3) of K.S.A. 41-2645]

### **Kansas State Fair Temporary Permits**

The director may issue a sufficient number of temporary permits, as required by the Kansas State Fair Board, authorizing the sale on the premises specified in the permit of:

- wine in its original, unopened container
- the serving of wine and beer by the drink

The permits shall be issued to persons who have entered into an agreement with the board and subject to conditions imposed by the board. [Subsection (f)(2)(B) of K.S.A. 41-2645]

### Term of Temporary Permit

A temporary permit shall be issued for no longer than three days, except:

- A temporary permit issued for the state fair remains valid for the duration of the state fair; and
- A temporary permit issued for a special event as defined in K.S.A. 41-719 may, at the director's discretion, remain valid for the duration of the special event, but shall not be valid longer than 30 days.

[Subsection (f) of K.S.A. 41-2645]

### Fundraising Activities that are Exempt from Needing a Temporary Permit under K.S.A. 41-401(h)

K.S.A. 41-104 of the Kansas Liquor Control Act lists activities which are exempt from state regulation under the Liquor Control Act, Club and Drinking Establishment Act, and the Cereal Malt Beverage Act. Subsection (h) states that the following activity is exempt:

(h) The serving of complimentary alcoholic liquor or cereal malt beverages at fund raising activities of **charitable organizations as defined by K.S.A. 17-1760**, and amendments thereto, and as qualified pursuant to 26 U.S.C.A. 501(c) and by **committees formed pursuant to K.S.A. 25-4142 et seq.**, and amendments thereto. The serving of such alcoholic liquor at such fund raising activities shall not constitute a sale pursuant to this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto. Any such fund raising activity shall not be required to obtain a license or a temporary permit pursuant to this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto.

To be exempt from state regulation, which means exempt from obtaining a temporary permit, the following conditions must be met:

- The event at which the alcoholic liquor is served must be an official fundraising event of the organization.
- The event must be sponsored by either a "charitable organization" or by a "candidate, party or political committee," as defined in the statutes referenced in subsection (h). For further explanation of the definitions, see ABC publication "Reference Guide for Charitable or Political Fundraising Events Where Complimentary Alcoholic Beverages are Served."
- The alcoholic drinks served must be "complimentary." "Complimentary" is not defined in the liquor statutes or regulations. Therefore, the common usage definition as found in most dictionaries will be used: "given free as an act of courtesy." As used in a fundraising setting, this means that there is no charge made to patrons specifically for the alcoholic liquor or cereal malt beverage and the patrons do not pay anything of value specifically to receive the alcoholic liquor or cereal malt beverage.



## **Responsibility for Violations at the Event**

Each permit holder is responsible for all violations of the Club and Drinking Establishment Act and associated regulations by the following individuals during the event while on the premises covered by the temporary permit [K.A.R. 14-23-9]:

- employees of the permit holder
- persons serving or mixing alcoholic beverages
- any employee of any business contracting with the permit holder to provide food or services in connection with the event.

## **Restrictions on Employees**

All persons who are serving alcoholic beverages must be at least 18 years old. However, any server who is under the age of 21 must be supervised by a person who is at least 21 years old. [Subsections (a) and (f) of K.S.A. 41-2610 and Subsections (a) and (c) of K.A.R. 14-23-7]

All persons who are mixing or dispensing alcoholic beverages must be at least 21 years old. [Subsection (g) of K.S.A. 41-2610 and Subsection (b) of K.A.R. 14-23-7]

No person who is dispensing, mixing and serving alcoholic liquor can:

- Have a conviction of a felony or of any crime involving a morals charge in Kansas, any other state, or the United States at any time. [Subsection (b) of K.S.A. 41-2610] "Morals charge" is defined in subsection (i) of K.A.R.14-23-1 as a charge alleging:
  - 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
  - Illegal cohabitation
  - adultery
  - bigamy
  - a crime against nature
- have a conviction of a violation of any intoxicating liquor law of Kansas, any other state, or the United States within the previous two years. [Subsection (e) of K.A.R. 14-23-7]
- have two or more convictions within the previous five years of K.S.A. 21-5607, furnishing alcoholic liquor to a minor, or a similar law of any other state, or of the United States; or have three or more convictions within the previous five years of any other intoxicating liquor law of Kansas or any other state, or of the United States. [Subsection (c) of K.S.A. 41-2610] This would include convictions for driving while intoxicated (DWI) or driving under the influence (DUI).

Food servers who have a disqualifying conviction may take orders for alcoholic liquor from customers as long as another, qualified person mixes or dispenses and serves the alcoholic liquor to the customers. [Ruling by the director on Feb. 1, 2005]

### **Hours and Days of Sales**

There shall be no serving, mixing or consumption of alcoholic liquor on the premises covered by the temporary permit between the hours of 2 a.m. and 9 a.m. on any day. [Subsection (c)(4) of K.A.R. 14-23-5]

### **Purchasing, Transporting and Paying for Alcoholic Liquor**

The permit holder shall purchase alcoholic liquor only from:

- a Kansas licensed retail liquor store that possesses a federal wholesaler's basic permit [Subsection (a)(1) of K.S.A. 41-308 and subsections (a) and (c) of K.A.R. 14-23-8]
- a licensed Kansas farm winery [Subsection (a)(2) of K.S.A. 41-308a and subsection (a) of K.A.R. 14-23-8].

The retailer or farm winery shall not deliver the alcoholic liquor to the temporary permit holder. [Subsection (b) of K.A.R. 14-23-8] The permit holder must pick up the alcoholic liquor purchased from the licensed retail liquor store or farm winery on the same day as the purchase is made. [Subsection (c) of K.A.R. 14-23-8]

For each purchase of alcoholic liquor made by the permit holder, the permit holder shall retain a copy of the sales slip for a period of one year. The sales slip shall include, at a minimum, the following information about the sale [Subsection (d) of K.A.R. 14-23-8]:

- Date of the sale.
- Name and address of the retailer or farm winery.
- Name and address of the permit holder as it appears on the permit
- Brand, size and amount of all alcoholic liquor purchased.
- Cost of the alcoholic liquor and total cost of the order including the enforcement tax.

### **Selling and Serving of Alcoholic Beverages**

A temporary permit holder may offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises which may be open to the public, if the premises is located within a "wet county." Information concerning the status of each county may be found on the ABC website at:

<http://www.ksrevenue.org/pdf/abcwetdrymap.pdf> [Subsections (a) and (d) of K.S.A. 41-2645]

A temporary permit holder shall sell and serve alcoholic liquor only by the individual drink, except that a temporary permit holder may sell or serve:

- Beer or CMB in a pitcher capable of containing not more than 64 fluid ounces. [Subsection (c)(4) of K.S.A. 41-2640]
- Margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages, as approved by the director, in a pitcher containing not more than 64 fluid ounces. [Subsection (c)(6) of K.S.A. 41-2640]

A temporary permit holder may sell wine in the unopened, original container at the state fair. [Subsection (f)(2) of K.S.A. 41-2645]

Multiple cans or bottles of beer may be sold to a customer at the same time. The bottles or cans may be opened prior to service. [Approved by the director June 18, 2010]

Most of the restrictions on the pricing of drinks dispensed by temporary permit holders or their employees or agents are set forth in subsection (a) of K.S.A. 41-2640, which prohibits:

- Offering or serving free alcoholic liquor to any person. [Subsection (a)(1)] This is interpreted as also prohibiting employees or agents of the permit holder from "buying" drinks for anyone on the licensed premises.
- Selling, offering or serving any drink at a price below acquisition cost of the drink. [Subsection (a)(2)] The acquisition cost shall include the cost of both the alcoholic liquor and non-alcoholic liquor contained in the drink, but not the cost of water, ice, labor, overhead and any other items of clearly negligible value. [K.A.R. 14-23-12]
- Selling, offering or serving an unlimited number of drinks to any person for a set period of time at a fixed price, except at private functions not open to the general public or to the general membership of a club. [Subsection (a)(3)]
- Encouraging or permitting any game or contest which involves drinking alcoholic liquor or the awarding of drinks as prizes on the licensed premises. [Subsection (a)(4)]
- Advertising or promoting in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (4). [Subsection (a)(5)]

### **Other Requirements**

Permit holders shall be present at all times during the event or designate another person to be responsible for the conduct of the event if the permit holder is absent. If the permit holder is an organization, the organization must designate a person to act as their agent to be responsible for the conduct of the event. [Subsection (d) of K.A.R. 14-23-5]

Permit holders must admit any law enforcement officer to the premises covered by the temporary permit. [Subsection (c)(3) of K.A.R. 14-23-5]

Permit holders must display on a poster or other device at the entrance to the premises covered by the temporary permit: [Subsection (b) of K.A.R. 14-23-5]

- the temporary permit

- the name of the agent of the organization who is in charge of the event
- A diagram of the premises covered by the permit, clearly showing the boundaries of the premises, entrance(s) to and exit(s) from the premises, and the area in which the service of alcoholic liquor will take place
- In the case of a special event, as defined by K.S.A. 41-719, the business names of all drinking establishments that have elected to extend their licensed premises into the event.

The boundary of any premises covered by a temporary permit must be marked by a three-dimensional obstacle. [Subsection (b) of K.A.R. 14-23-10]

### **Authorized Activities**

#### Free food or entertainment.

A temporary permit holder may offer free food or entertainment at any time. [Subsection (c) of K.S.A. 41-2640]

#### Customers providing their own alcoholic liquor.

A temporary permit holder may allow a customer to bring into the permitted premises bottles of their own alcoholic liquor to be consumed by the customer and the customer's invited guests. The permit holder may also prohibit such practice. [Subsection (b) of K.A.R. 14-23-11] The permit holder may not warehouse the customer's bottles of alcoholic liquor and the customer must remove all such bottles when departing the permitted premises. [Subsection (b) of K.A.R. 14-23-11]

If a permit holder allows this practice, it may charge the customer a "corkage fee" for mixing/dispensing and/or serving drinks from the customer's bottles of alcoholic liquor. The corkage fee is subject to the 10 percent retail liquor drink tax imposed by K.S.A. 79-41a01 et seq.

#### Combination pricing.

A temporary permit holder may offer specials including food, entertainment and/or drinks of alcoholic liquor for a single price. [Ruling by the director on July 23, 2012] If such a special is offered, the permit holder shall assign a portion of the price to the alcoholic liquor included. The portion assigned to the alcoholic liquor shall be not less than the acquisition cost of the drink to the permit holder. The receipt shall record that portion and the liquor drink tax collected on that portion as separate items. [K.A.R. 92-24-15 and K.A.R. 92-24-16]

#### Sampling of alcoholic liquor.

A temporary permit holder may allow a microbrewery or microdistillery to serve free samples of its manufactured beer or spirits on the permitted premises at special events monitored and regulated by the division of ABC. [Ruling by the director, Aug. 13, 2012, based on K.S.A. 41-353 (New section 2 of 2012 Sub for HB 2689) and K.S.A. 41-308b]

A temporary permit holder may allow a farm winery to serve free samples of its manufactured wine and sell wine in the original container on the permitted premises at special events monitored and regulated by the division of ABC. [Ruling by the director, Aug. 13, 2012, based on K.S.A. 41-308a]

Each microbrewery, farm winery or microdistillery shall possess written approval of the director to participate in the special event.

“Special event”, as used in this section, 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.

Charging different prices.

A temporary permit holder may sell and serve drinks at different prices throughout the day. This includes discounts to certain groups of people and “happy hours”. [Subsection (c)(2) of K.S.A. 41-2640]

**Prohibited Activities (also see section on "Selling and Serving of Alcoholic Beverages")**

Unqualified employees.

A temporary permit holder shall not knowingly employ any person who does not meet the qualifications set forth in K.S.A. 41-2610 and K.A. R. 14-23-7.

Purchases of liquor stock.

A temporary permit holder shall not purchase alcoholic liquor from any person other than a retail liquor store possessing a federal wholesaler's basic permit or a licensed farm winery. Also see the section on “Purchasing, transporting, and paying for alcoholic beverages”. [Subsection (a) of K.A.R. 14-23-8]

Removal of alcoholic liquor from premises.

A temporary permit holder shall not allow a customer to remove alcoholic liquor purchased from the permit holder from the permitted premises, except that alcoholic liquor may be removed to a drinking establishment which has extended its premises into to permitted area of a special event, as defined by K.S.A. 41-719. [Subsection (a) of K.A.R. 14-23-10 and subsection (c)(6) of K.A.R. 14-23-5]

Cereal malt beverage.

A temporary permit holder shall not sell or serve any cereal malt beverage at an event. [Subsection (c)(5) of K.A.R. 14-23-5]

Event on licensed premise.

A temporary permit holder shall not conduct an event upon premises already licensed under the Liquor Control Act or Club and Drinking Establishment Act. [Subsection (c)(1) of K.A.R. 14-23-5]

Refilling original containers.

A temporary permit holder shall not refill any original container with alcoholic liquor or any other substance. [Subsection (c)(7) of K.A.R. 14-23-5]

Illegal consumption of alcoholic liquor.

Allowing any person to consume alcoholic liquor on the event premises contrary to the provisions of the Club and Drinking Establishment Act is a criminal offense, subject to fine and imprisonment, in addition to possible administrative action by the director. [K.S.A. 41-2604]

Selling alcoholic liquor or cereal malt beverage below cost.

A temporary permit holder shall not sell any individual drink at a price less than the acquisition cost of the drink to the permit holder, plus liquor drink tax. [Subsection (a)(2) of K.S.A. 41-2640]

### Serving free alcoholic liquor.

A temporary permit holder shall not serve any free alcoholic liquor or cereal malt beverage in any form to any person. [Subsection (a)(1) of K.S.A. 41-2640]

### Sale of powdered alcohol.

A licensee shall not sell, offer to sell, or serve free of charge any powdered alcohol. [Subsection (a)(5) of K.S.A. 41-2640]

### Offering 2-for-1 or buy-one-get-one-free specials.

A temporary permit holder shall not offer or sell any drink special which implies or indicates that a drink is free. [Subsections (a)(1) and (a)(5) of K.S.A. 41-2640]

### Allowing a drinking game.

A temporary permit holder shall not encourage or permit any game or contest that involves the consumption of alcoholic liquor or cereal malt beverage on the permitted premises. [Subsection (a)(4) of K.S.A. 41-2640] This does not include “water pong” or any other game in which participants consume only water or other non-alcoholic liquid. It **does** include any game advertised or promoted as including only water or other non-alcoholic liquid but during which the participants consume alcoholic liquor or cereal malt beverage. [Ruling by the director on July 30, 2012]

### Illegal possession or consumption of alcoholic liquor or cereal malt beverage by a minor.

Knowingly or unknowingly permitting any minor to possess or consume alcoholic liquor or cereal malt beverage on the licensed premises is a criminal offense, subject to fine and imprisonment, in addition to possible administrative action by the director. [K.S.A. 41-2615] Exceptions or defenses:

- An exception is made for a minor that is an employee of the licensee and is serving alcoholic liquor or cereal malt beverage under the supervision of another employee of the licensee who is at least 21 years of age. [Subsection (a) of K.S.A. 41-2615]
- It is a defense to criminal prosecution if the minor exhibited a driver's license, Kansas non-driver's ID card, or other official or apparently official document, containing a photograph that reasonably appears to be the minor and purporting to establish that such minor was 21 years of age or more, and the licensee had reasonable cause to believe that the minor was 21 years of age or older. [Subsection (c) of K.S.A. 41-2615]

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

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

If a law enforcement officer from any other law enforcement agency observes a violation of the state liquor statutes, the law enforcement officer may prepare a notice of the violation (Form ABC-60) and serve the notice on the licensee or person in charge of the licensed premise. The law enforcement

officer shall then submit a report of the violation to ABC for review to determine if administrative action should be taken against the licensee. If ABC decides to take action, then an administrative citation and notice of administrative action is sent to the licensee by U.S. mail within 30 days after the date of the violation. [Subsection (b) of K.S.A. 41-106]

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

The director may suspend or revoke any permit issued by the Division of Alcoholic Beverage Control for a violation of any relevant provisions of the Club and Drinking Establishment Act or any administrative regulations adopted pursuant thereto after the issuance of a citation to the permit holder and a hearing. [K.S.A. 41-106 and K.S.A. 41-2611, K.A.R. 14-16-15 and K.A.R. 14-23-15]

The director may also impose a fine not to exceed \$1,000 on a licensee for each violation of the Club and Drinking Establishment Act. The order imposing the fine is appealable in accordance with provisions of the Kansas Administrative Procedures Act (K.S.A. 77-501 et seq.). [K.S.A. 41-2633a]

## **Liquor Drink Tax**

Sales of alcoholic liquor by temporary permit holders are subject to the 10 percent liquor drink tax pursuant to K.S.A. 79-41a01 et seq. The tax is paid by the consumer and computed on the full purchase price of the drink, including any mandatory gratuity charged by the permit holder. The permit holder must file a return of taxes collected and submit the return and the taxes to the department by the 25<sup>th</sup> day of the following month in which the taxes were collected.

The liquor drink tax is imposed as an alternative to the Kansas retail sales tax. Therefore, alcoholic drinks subject to the liquor drink tax are exempt from the Kansas retail sales tax. [Subsection (a) of K.S.A. 79-3606]

Any permit holder that becomes delinquent in the filing of returns and/or payment of its liquor drink taxes is subject to being fined or having its permit revoked by the director. [Subsection (b) of K.S.A. 79-41a07]

## **Temporary Permits Issued Under K.S.A. 41-347 of the Liquor Control Act**

### **Qualifications for a Temporary Permit**

Subsection (a) of K.S.A. 41-347 authorizes the director to issue temporary permits in either of the following two situations:

- To one or more charitable organizations, as defined below, for the sale of alcoholic liquor at an auction.
- To an individual for the sale of one or more limited issue porcelain containers of alcoholic liquor.

Other restrictions in K.S.A. 41-347:

- No more than one temporary permit shall be issued to any organization or individual in a calendar year. [Subsection (d)]
- The director may refuse to issue a temporary permit to any organization or individual which has violated any provision of the Kansas Liquor Control Act. [Subsection (g)]

No regulations have been promulgated specifically for this type of temporary permit. Consequently, ABC is temporarily applying the qualifications for temporary permits issued under K.S.A. 41-2645, which are listed in K.A.R. 14-23-3.

The term "charitable organization" is not defined in K.S.A. 41-347. Therefore, we must look at legislative intent. The only other place within the Liquor Control Act where this term is used is subsection (h) of K.S.A. 41-401, passed by the Legislature in 2007. This statute adopts the definition found in subsection (a) of K.S.A. 17-1760 of the "Kansas Charitable Organizations and Solicitations Act", as follows:

(a) "Charitable organization" means any person who engages in the activity of soliciting funds or donations for, or purported to be for, any fraternal, benevolent, social, educational, alumni, historical, humane, public health or other charitable purpose.

An organization claiming this status should be able to produce a copy of the ruling letter issued to it by Internal Revenue Service, stating that it is tax exempt under a specific IRS code subsection (see list below). The name of the organization on the letter should match the name of the organization sponsoring the fundraising event. Local organizations which are part of a national organization should have a copy of the tax exempt ruling issued by the IRS to the national organization which states that the ruling covers its local units.



The following is a list of the IRS tax code subsections associated with the various classifications of "charitable organizations" listed in subsection (a) of K.S.A. 17-1760:

fraternal	501(c)(8) or 501(c)(10)
social	501(c)(4)
educational	501(c)(3)
alumni	501(c)(3)
historical	501(c)(3)
humane (prevention of cruelty to children or animals)	501(c)(3)
public health	501(c)(3)
other charitable purpose	501(c)(3)

Refer to IRS Publication 557 at [www.irs.gov/publications/p557/](http://www.irs.gov/publications/p557/).

### **Process for Obtaining a Temporary Permit**

Subsections (b) through (e) of K.S.A. 41-347 describe the process for obtaining a temporary permit:

- File an application (form ABC-830) with the director at least 14 days before the event unless the 14 days is waived by the director for good cause. [Subsection (b)]
- A temporary permit shall be issued for a period of three consecutive days or less. The dates and hours that the temporary permit is valid shall be specified on the permit. [Subsection (d)]
- Permits shall only be issued for premises where the city, county or township zoning codes allow the use for which the permit is issued. The temporary permit shall specify the premises for which the permit has been issued. [Subsection (c)]
- The application must state the purposes for which the proceeds from the event will be used and the proceeds shall only be used for that purpose. [Subsections (b) and (e)]
- The application must be accompanied by a fee of \$25 for each day of the event that a permit is needed. The fee must be paid by either a cashier's or certified check from a Kansas bank, US postal money order, or cash. [Subsection (b)]

A temporary permit is not transferable or assignable to another organization or individual. [Subsection (f)]

## Appendix A - Statutes

### **41-347. Temporary permit, charitable auction or limited issue decanter sale.**

(a) The director may issue, in accordance with rules and regulations of the secretary: (1) To one or more charitable organizations a temporary permit authorizing the sale of alcoholic liquor at an auction; or (2) to an individual a temporary permit authorizing the sale of one or more limited issue porcelain containers containing alcoholic liquor. The permit shall be issued in the names of the charitable organizations or individual to which it is issued.

(b) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application for a permit authorizing an auction shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued. Such fee shall be paid in full by a certified or cashier's check of a bank within this state, United States post office money order or cash. All permit fees collected by the director pursuant to this section shall be remitted 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.

(c) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises which comply with all applicable zoning regulations.

(d) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. Not more than one temporary permit may be issued to any one applicant in a calendar year.

(e) All proceeds from an auction for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(f) A temporary permit shall not be transferable or assignable.

(g) The director may refuse to issue a temporary permit to any charitable organization or individual which has violated any provision of the Kansas liquor control act.

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

**History:** L. 1995, ch. 258, § 4; L. 2001, ch. 5, § 128; L. 2005, ch. 201, § 6; Nov. 15.

### **41-2645. Temporary permit; authorization of certain sales.**

(a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of such permit.

(b) The director may issue a temporary permit to any one or more persons or organizations applying for such a permit, in accordance with rules and regulations of the secretary. The permit shall be issued in the names of the persons or organizations to which it is issued.

(c) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued, which fee shall be paid by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount thereof. All permit fees collected by the director pursuant to this section shall be remitted 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.

(d) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises where the city, county or township zoning code allows use for which the permit is issued. No temporary permit shall be issued for premises which are not located in a county where the qualified electors of the county:

(1) (A) Approved, by a majority vote of those voting thereon, to adopt the proposition amending section 10 of article 15 of the constitution of the state of Kansas at the general election in November, 1986; or (B) have approved a proposition to allow the sale of liquor by the individual drink in public places within the county at an election pursuant to K.S.A. 41-2646, and amendments thereto; and

(2) have not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.

(e) (1) A temporary permit may be issued for the consumption of alcoholic liquor on a city, county or township street, alley, road, sidewalk or highway for a special event; provided, that such street, alley, road, sidewalk or highway is closed to motor vehicle traffic by the governing body of such city, county or township for such special event, a written request for such consumption and possession of such alcoholic liquor has been made to the local governing body and the special event is approved by the governing body of such city, county or township by ordinance or resolution. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(2) Drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event.

(3) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(4) For the purposes of this section, "special event" shall have the same meaning given that term in K.S.A. 41-719, and amendments thereto.

(f) (1) Except as otherwise provided in this subsection, a temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. Not more than four temporary permits may be issued to any one applicant in a calendar year.

(2) (A) On or before June 30, 2016, the director may issue one temporary permit, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of only wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose;

(B) On and after July 1, 2016, the director may issue a sufficient number of temporary permits as required by the state fair board, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose subject to the conditions imposed by the state fair board. Nothing in this subsection (f)(2)(B) shall be construed to limit the number of temporary permits the director may issue for the sale of wine or beer, or both, on the state fairgrounds consistent with the requirements of the state fair board.

(3) The director may issue a temporary permit for a special event approved by the governing body of a city, county or township pursuant to subsection (e)(1), which may, at the director's discretion, be valid for the entire period of such special event, but in no event shall such permit be issued for a period of time that exceeds 30 consecutive days.

(g) All proceeds from an event for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(h) Upon written permission from the director and within three business days after the end of an event conducted pursuant to a temporary permit, the holder of a temporary permit may sell back to the licensee from whom alcoholic liquor was purchased any alcoholic liquor sold to the holder of the temporary permit for such event.

(i) A temporary permit shall not be transferable or assignable.

(j) The director may refuse to issue a temporary permit to any person or organization which has violated any provision of the Kansas liquor control act, the drinking establishment act or K.S.A. 79-41a01 et seq., and amendments thereto.

**History:** L. 1987, ch. 182, § 91; L. 1990, ch. 179, § 8; L. 2001, ch. 5, § 132; L. 2006, ch. 206, § 2; L. 2008, ch. 126, § 3; L. 2009, ch. 114, § 10; L. 2012, ch. 144, § 42; L. 2015, ch. 82, § 28; July 1.