

April 26, 2010

POLICY MEMORANDUM 2001 - 3 (Revised)

Subject: Age Restrictions and Allowable Duties for Liquor Industry Employees under 21 Years of Age.

1. **Purpose:** The purpose of this memorandum is to provide clarification of the statutes and regulations as they pertain to restrictions and allowable duties for employees under 21 years of age.
2. **Applicability:** All Retail Liquor Stores, Farm Wineries, Microbreweries, Drinking Establishments, Clubs, Caterers, Hotels, Temporary Permit Holders, Cereal Malt Beverage Retailers and Salespersons.
3. **Discussion:** One of the most frequently asked questions ABC receives from liquor licensees is how old an employee must be and what duties an employee may perform if he is less than 21 years of age. The answer varies depending on the type of license involved.
 - a. **Employees of licensees with licenses or permits issued under the Liquor Control Act.** (Retail liquor stores, Farm wineries, Microbreweries and Salespersons)
 1. Retail Liquor Stores. Pursuant to K.S.A. 41-713 and K.A.R. 14-13-5(c)(2), liquor retailers are prohibited from employing anyone under the age of 21 years old, in any capacity whatsoever connected with operations of the retail establishment. In other words, even a clerk, stocker, or janitor must be at least 21 years old in order to work in a retail liquor store.
 2. Farm Wineries and Microbreweries. Pursuant to K.S.A 41-308a (Farm Wineries) and 41-308b (Microbreweries) it is unlawful for these licensees to:
 - o employ any person *under 18* years of age in connection with the *manufacture, sale or serving* of alcoholic liquor;
 - o permit any employee of the licensee or permit holder who is *under 21* years of age to *work* on premises at any time when *not under the on-premises supervision of the licensee or a registered employee who is 21 years of age or over*;
 - o employ any person *under 21* years of age in connection with the *mixing or dispensing* of drinks containing alcoholic liquor.
 3. Salespersons. Pursuant to K.S.A. 41-334, a person also must be at least 21 years old in order to apply to the ABC director for a salesperson's permit.
 - b. **Employees of licensees with licenses or permits issued under the Club and Drinking Establishment Act.** (Drinking Establishments, Clubs, Caterers, Hotels and Temporary Permit Holders)
 1. Pursuant to K.S.A. 41-2610 [and K.A.R. 14-19-24(b)(1)-(3) (Class A clubs), 14-20-26(b)(1)-(3) (Class B clubs), 14-21-9(b)(1)-(3) (drinking establishments), 14-22-9(b)(1)-(3) (caterers), and 14-23-7(a)-(c) (temporary permit holders)] it is unlawful for those licensed under the club and drinking establishment act to:
 - o employ any person *under 18* years of age in connection with the *selling* of alcoholic liquor;

Policy Memorandum 2001 – 3 (Revised).

Subject: Age Restrictions and Allowable Duties for Liquor Industry Employees under 21 years of age

- permit any employee of the licensee or permit holder who is *under 21* years of age to *work* on premises where alcoholic liquor is sold by such licensee or permit holder at any time *when not under the on-premises supervision of the licensee or permit holder, or a registered employee who is 21 years of age or over*; or
- employ any person *under 21* years of age in connection with the *mixing or dispensing* of drinks containing alcoholic liquor.

2. In other words, an “on premise” licensee **cannot** employ anyone **less than 18** years of age in the capacity of **servicing** alcohol. Employees who are at least **18 – but not yet 21** – may **serve** alcoholic beverages, but they **cannot mix or dispense** alcoholic beverages (i.e. tend bar); in order to **mix or dispense** alcoholic beverages, employees must be **at least 21** years of age.

Any time a licensee or permit holder has an employee **younger than 21** years of age working on the premises – **in any capacity** – the licensee or permit holder must also have on the premises a supervisor who is at least 21 years of age. The supervisor must be either the licensee or a registered employee of the licensee.

3. Employees must be at least 21 years of age to perform any of the following functions:

- Tend bar;
- Mix or dispense drinks containing alcoholic liquor;
- Sell and serve beer off of carts at country clubs and golf courses or other large areas;
- Order alcoholic liquor for the licensee or sign for delivery of alcoholic liquor; or

4. Employees must be at least 18 years of age to perform any of the following functions:

- deliver alcoholic beverages; or
- verify the age of a purchaser of alcoholic beverages
- “bar back” (stock, rotate, tap kegs, and clean behind the bar area)

5. Employees under 18 years of age may perform any of the following functions:

- cook;
- janitor;
- dishwasher;
- table busser (which may include removing leftover glasses and bottles containing alcoholic liquor);
- host or hostess;
- kitchen manager (as long as the person has NO responsibility for managing any staff involved in mixing, dispensing or serving alcoholic beverages);
- sales clerk or cashier (as long as the person is *exclusively* ringing up sales, and isn’t also serving liquor to patrons at their tables, and then ringing up the sales); or
- any other capacity that does not involve any activity associated with **mixing, dispensing or serving** alcoholic beverages.

c. Employees of licensees under the Cereal Malt Beverage Act. (CMB Retailers and Taverns)

1. Pursuant to K.S.A. 41-2704(e), it is unlawful for those licensed under the CMB Act to:

- employ any person *under the age of 18* to dispense or sell CMB in any circumstances whatsoever; or
- employ any person *who is at least 18 – but not yet 21* – years of age to sell or dispense CMB, unless:
 - The licensee is licensed only to sell *CMB in original and unopened containers*, for consumption off the licensed premises, or
 - The licensee operates a licensed food service establishment, as defined by K.S.A. 36-501, and *derives at least 50% of its gross receipts from the sale of food* for consumption on the licensed premises.

Policy Memorandum 2001 – 3 (Revised).

Subject: Age Restrictions and Allowable Duties for Liquor Industry Employees under 21 years of age

2. On-premise CMB licensees who operate a licensed food service establishment and derive at least 50% of their gross receipts from the sale of food for consumption on the licensed premises must ensure employees who verify the purchaser's age and deliver the CMB are at least 18 years of age. Employees of licensees *who are less than 18 years of age may take orders and collect payment* for CMB **so long as they are not responsible for verifying the purchaser's age or actually delivering the drink.**

On-premise CMB licensees who do **not** operate a food service establishment, or those who operate a food service establishment that does not derive at least 50% of their gross receipts from the sale of food for consumption on the licensed premises must ensure employees who verify the purchaser's age and deliver the CMB are at least 21 years of age. Employees of licensees *who are less than 21 years of age may take orders and collect payment* for CMB **so long as they are not responsible for verifying the purchaser's age or actually delivering the drink.**

Off-premise CMB licensees must ensure employees who verify the purchaser's age and ring up sales of CMB are at least 18 years of age. CMB licensee employees *who are less than 18 years of age may handle the product and collect payment* for CMB **so long as they are not responsible for verifying the purchaser's age or ringing up or entering the CMB sale into the point-of-sale system.**

4. Additional Comments:

Failure to comply with the applicable statutes, regulations and/or this policy memorandum, may result in administrative action for violation of the liquor laws.

Alcoholic Beverage Control Agents will verify compliance with the provisions of the applicable statutes, regulations and this policy memorandum.

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

6. Effective Date of this policy: This revised policy becomes effective August 1, 2010.

Original Signed and On File

Thomas W. Groneman

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