



KANSAS ADMINISTRATIVE REGULATIONS

ARTICLE 26

ON-PREMISE CEREAL MALT BEVERAGE RETAILERS

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Article 26 – ON-PREMISE CEREAL MALT BEVERAGE RETAILERS

14-26-1. Definitions.

As used in this article, unless the context clearly requires otherwise, the following terms shall have the meanings specified in this regulation:

(a) "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. Alcoholic liquor shall not include any cereal malt beverage.

(b) "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. The term beer includes beer, ale, stout, lager beer, porter and similar beverages having such an alcoholic content.

(c) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any liquor which is more than 3.2% alcohol by weight.

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

(e) "Distributor" means those persons licensed by the director, pursuant to K.S.A. 1991 Supp. 41306, 41-306a, and 41-307, to sell or offer for sale alcoholic liquor, spirits, wine, beer or cereal malt beverage to any person authorized by law to sell alcoholic liquor, spirits, wine, beer or cereal malt beverage at retail.

(f) "Food service establishment" has the meaning provided by K.S.A. 36-501 and amendments thereto.

(g) "Inventory" means a retailer's entire or partial stock of cereal malt beverage or beer containing not more than 6% alcohol by volume.

(h) "Licensed premises" means those areas described in an application for a cereal malt beverage retailer license issued pursuant to K.S.A. 41-2702 that are under the control of the applicant and that are intended as the area in which cereal malt beverage or beer containing not more than 6% alcohol by volume are to be served pursuant to the applicant's license.

(i) "Person" means any natural person, corporation, partnership, trust or association.

(j) "Retailer" means any person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer containing not more than 6% alcohol by volume for use or consumption on the licensed premises. For the purposes of this article, retailer shall not include any cereal malt beverage retailer also licensed as a drinking establishment, pursuant to the Kansas club and drinking establishment act.

(Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-2. Trade Practices; applicability.

(a) Except as otherwise provided, action taken by an industry member or retailer in accordance with interpretive memoranda issued by the alcohol and tobacco tax and trade bureau, department of the treasury, shall be considered good faith compliance with this article unless the director has communicated a contrary interpretation pertaining to the subject of the memoranda.

(b) Except as otherwise provided, the trade practice regulations of the alcohol and tobacco tax and trade bureau of the department of the treasury, adopted by reference in K.A.R. 14-10-17, shall be made applicable to any retailer as defined under this article.

(Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-3. Retailer's responsibility for conduct of business and employees.

Each retailer shall be responsible for the conduct of its business. Each retailer shall be responsible for all violations of the cereal malt beverage act or these regulations by the following people while on the licensed premises:

- (a) An employee of the retailer;
- (b) an employee of any person contracting with the retailer to provide services or food; and
- (c) any individual mixing, serving, selling or dispensing cereal malt beverage or beer containing not more than 6% alcohol by volume.

(Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-4. Refusal of right to enter or inspect licensed premises prohibited.

No retailer shall refuse to permit the director, any agent or employee of the director, or any law enforcement officer to enter or inspect the licensed premises and any cereal malt beverage or beer containing not more than 6% alcohol by volume in the retailer's possession or under the retailer's control upon the licensed premises or upon any other premises where the retailer has stored any cereal malt beverage or beer containing not more than 6% alcohol by volume.

(Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-5. Minimum prices for drinks; how determined.

(a) A licensed retailer shall not sell any drink to any person for less than the acquisition cost of that drink to the retailer.

(b) In determining the minimum price, a retailer shall not include any applicable tax. Any tax shall be collected in addition to the minimum price for the drink itself.

(c) The cost of each of the following items shall be included in the acquisition cost of a drink:

- (1) All cereal malt beverage or beer containing not more than 6% alcohol by volume; and
- (2) Any liquid of a non-alcoholic nature contained in the drink.

(Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-6. Recordkeeping requirements.

(a) Each retailer purchasing cereal malt beverage or beer containing not more than 6% alcohol by volume from a licensed distributor shall obtain a numbered invoice, or purchase order that contains the following information:

- (1) The date of purchase;
- (2) the name, address, and license number of the retailer;
- (3) the name, address, and license number of the distributor;
- (4) the name of the individual making the purchase for the retailer;
- (5) the brand, size, and amount of each brand purchased;
- (6) the unit cost and total price for each brand and size; and
- (7) the subtotal of the cost of the cereal malt beverage or beer containing not more than 6% alcohol by volume purchased and the total cost of the order including delivery charge, if any.

(b) The retailer shall keep a copy of each sales receipt involving the sale of cereal malt beverage or beer containing not more than 6% alcohol by volume made to a customer.

(c) The retailer shall keep a copy of each invoice, purchase order, or sales ticket required by this regulation for at least three years from the date the cereal malt beverage or beer containing not more than 6% alcohol by volume was sold.

(d) The retailer shall keep a copy of the diagram of the licensed premises, as submitted with the

initial application, on the licensed premises and shall make such copy available for inspection upon request.

(e) The records required by this regulation shall be available for inspection by the director, any agent or employee of the director, the secretary, or any law enforcement officer upon request.

(1) Each record required by the regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format and shall be capable of being printed immediately upon request.

(2) After 90 days, all records required by this regulation may be stored and maintained off the licensed premises and shall be provided in electronic or paper format upon request.

(Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-7. Storage of cereal malt beverage or beer containing not more than 6% alcohol by volume; removal from licensed premises.

(a) Each retailer shall store its cereal malt beverage and beer containing not more than 6% alcohol by volume only on the licensed premises of the retailer unless the retailer has received prior approval in writing from the director to do otherwise.

(b) No retailer, and no owner, employee, or agent of the retailer, shall make any sales of cereal malt beverage or beer containing not more than 6% alcohol by volume for consumption off the licensed premises, unless such retailer also has a valid license to sell or offer for sale cereal malt beverage and beer containing not more than 6% alcohol by volume for consumption off the licensed premises.

(c) No cereal malt beverage or beer containing not more than 6% alcohol by volume purchased on the licensed premises which has been opened and sold for consumption on the licensed premises shall be removed from the licensed premises.

(Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-8. Transfer of retailer's inventory; application for permission; seizure and sale of abandoned inventory. (a) When a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's inventory to another licensee.

(b) The application to transfer the retailer's inventory shall be submitted on forms prescribed by the director and shall contain all of the following:

(1) The retailer's name and license number;

(2) the purchaser's name and license number;

(3) the gross sale price of the transferred inventory; and

(4) the quantity, brand, and type of each container or package of cereal malt beverage or beer containing not more than 6% alcohol by volume to be transferred.

(c) No cereal malt beverage or beer containing not more than 6% alcohol by volume in the possession of a retailer shall be transferred under the provisions of subsection (a) unless the director has granted written permission.

(d) The director may deny an application to transfer inventory under the provisions of subsection (a) if the retailer owes any of the following:

(1) Any applicable tax; or

(2) Fines imposed pursuant to applicable law.

(e) The director or any employee or agent of the director may seize and sell any inventory located on the premises subject to a retailer's license if the director determines that the inventory has been abandoned by the licensee. The director may consider any of the following criteria in

making a determination that the inventory has been abandoned:

(1) The licensee has quit its occupation of the building, leaving inventory in the building.

(2) The licensee has been evicted and has made no attempt to collect the inventory.

(3) Attempts to contact the licensee to determine its plans for the inventory have been unsuccessful.

(4) The presence of the inventory in the building poses a threat to the public health, safety, and welfare or the orderly regulation of the market.

(f) Upon the director's determination that the inventory has been abandoned, the director shall notify the retailer, in writing, of the director's intent to seize and sell the inventory. If, within seven calendar days after the date of the director's notice, the retailer has not notified the director that the retailer intends to maintain possession of the inventory, the director may seize and sell the inventory.

(g) The proceeds from the sale of any inventory under subsection (e) shall be deposited into the state general fund.

(Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)