

Approved: 4-9-97  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on February 21, 1997 in Room 254-E of the Capitol.

All members were present except:  
Senator Nancey Harrington, Excused  
Senator Sherman Jones, Excused

Committee staff present: Mary Galligan, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Midge Donohue, Committee Secretary

Conferees appearing before the committee:  
Mr. Bernie Norwood, Director, Division of Alcoholic Beverage Control

Others attending: See attached list

A memo from Mr. Bernie Norwood, Director of the Division of Alcoholic Beverage Control, was distributed to committee members (Attachment #1). The memo addressed concerns expressed by the committee during Mr. Norwood's presentation yesterday; specifically, in regard to the Kansas Drug Tax Program.

Mr. Norwood recalled Senator Harrington's inquiry about the number of drug stamps purchased and referenced the memo in that regard. Discussion continued on distribution of drug tax monies.

Senator Gooch inquired if an individual with a drug stamp who is in the business of selling drugs would claim the income realized on his tax return. Mr. Norwood replied that information concerning the identity of the purchaser of a drug stamp is confidential and cannot be matched with income tax records.

Senator Becker raised a question about the distribution of seized drug monies. Senator Oleen noted it depended on the various entities involved in the seizure and prosecution of the case. She indicated she had not wanted to dedicate staff efforts to researching this issue during the Session, but she said hoped it could be done sometime later because others had expressed a similar interest.

Senator Oleen advised that next week the committee would be considering several liquor bills and all dealt with changing current law. She noted the importance of knowing current law before considering those changes and pointed out that regulating liquor in the state has long been convoluted. With that in mind, she said she asked staff to research current laws and prepare a reference paper for the committee (Attachment #2).

Staff reviewed the document that was prepared and explained the evolution of Kansas policy regarding the regulation of alcohol. The types of alcoholic beverages available in Kansas were discussed. It was explained also that the Division of Alcoholic Beverage Control of the Department of Revenue, the state agency responsible for regulating the liquor industry in Kansas, was created by enactment of the Liquor Control Act to license and regulate the liquor industry and enforce liquor laws, and that the Division has broad rule-making authority under statute. Staff advised who can legally buy and sell liquor and explained the liquor distribution system in Kansas which, the committee was told, is referred to as a three-tier system. Exemptions in the three-tier system were also discussed.

Senator Oleen then directed the committee's attention to **SB 71**, an act concerning the treatment of inmates. She recalled discussion with the Secretary of Corrections concerning health and dental care and opened the meeting for discussion on the bill.

Senator Biggs indicated he favored moving the bill forward to expedite matters for the Department of Correction.

Senator Biggs moved to amend p. 2, line 20, adding "or the secretary's designee" regarding administering oaths in the conduct of investigations and disciplinary proceedings. Senator Bleeker seconded the motion, and

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E of the Capitol, at 11:00 a.m. on February 21, 1997.

the motion carried.

Senator Biggs moved that current language, beginning in (c), lines 41 and 42, be retained allowing the Secretary to adopt rules and regulations establishing and prescribing standards for health, medical and dental services for each institution. Senator Schraad seconded the motion, and the motion carried.

Senator Biggs moved that the bill, as amended, be reported favorably to the full Senate. Senator Gooch seconded the motion. The motion carried.

Senator Oleen reminded committee members of the Firearms Training Simulator demonstration scheduled for next Monday at the Police Department. She encouraged them to attend and assured them it would be a demonstration with no "editorial comment".

The meeting adjourned at 11:55 a.m. The next meeting is scheduled for February 24, 1997.



STATE OF KANSAS

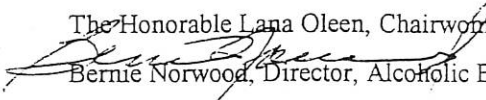


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Department of Revenue  
*Division of Alcoholic Beverage Control*

MEMORANDUM

TO: The Honorable Lana Oleen, Chairwoman, Senate Federal and State Affairs Committee  
FROM:  Bernie Norwood, Director, Alcoholic Beverage Control Division  
DATE: February 21, 1997  
SUBJECT: Background on the Tax on Illegal Drugs

As you requested yesterday, what follows is a brief discussion of the tax on illegal drugs.

**WHY TAX ILLEGAL DRUGS?**

Placing a tax on the business of dealing illegal drugs provides the following benefits:

- 1) **Allows Kansas to tax a portion of the underground economy.** The fact that the business of dealing drugs is illegal should not exempt it from taxation. Drug dealers, like other entrepreneurs, are in the drug business to make a profit. Allowing profits to go untaxed is unfair to legitimate businesses.
- 2) **Allows law enforcement agencies to obtain additional resources to enforce state drug laws.** The tax on illegal drugs has become a very valuable weapon in the battle against the drug problem. Seventy-five percent of drug tax collections made by the Kansas Department of Revenue is distributed to the law enforcement agency that conducted the drug investigation. This revenue has been used by local law enforcement agencies to purchase such things as surveillance equipment, vehicles, drug dogs, and to attend special training on drug investigations. Attached to this memorandum is a spreadsheet for drug tax distributions made during FY 1996 and for the first two quarters of FY 1997. During the past three fiscal years, we have collected between \$900,000 and \$1 million. Collections this fiscal year through the first seven months are up 69 percent over last year for the same time period.
- 3) **Provides a source of revenue for the state.** Twenty-five percent of drug tax collections are allocated to the state general fund.

**HOW EFFECTIVE IS KANSAS' DRUG TAX PROGRAM?**

The drug tax program is very popular in the law enforcement community. There are approximately 20 states that tax the business of dealing illegal drugs. Kansas ranks second in total drug tax collections. Several states have surveyed our drug tax program in an effort to improve theirs.

**IS THE TAX ON ILLEGAL DRUGS CONSTITUTIONAL?**

The tax on illegal drugs has withstood several constitutional challenges. The Kansas Supreme Court has ruled that the drug tax laws do not violate the protection against double jeopardy (because it is a tax on a business) or the right to due process (because of the hearing process).

**WHY IS ABC RESPONSIBLE FOR ENFORCING THE TAX ON ILLEGAL DRUGS?**

The Secretary of Revenue assigned drug tax enforcement responsibility to ABC in 1991 in order to leverage our law enforcement resources. Effective enforcement requires partnering with local law enforcement agencies.

I hope this answers the committee's questions. Please let me know if I can be of further assistance.

Sen. Federal & State Affairs Comm.  
Date: 2-21-97  
Attachment: #1



FY'96 Drug Tax Distributions

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Counties	Cities	1st Q-'96	2nd Q-'96	3rd Q-'96	4th Q-'96	Total for 96 Fiscal Year
Allen		\$3,281.54	\$380.25	\$0.00	\$1,538.38	\$5,200.17
Anderson	Garnett	0.00	17.55	115.39	0.00	132.94
Anderson		0.00	0.00	0.00	0.00	0.00
Barber		0.00	0.00	3,347.40	0.00	3,347.40
Barton	Great Bend	357.46	381.75	37.50	127.84	904.55
Bourbon		22.50	15.00	52.50	75.00	165.00
Brown	Hiawatha	0.00	123.73	761.25	343.18	1,228.16
Butler	El Dorado	0.00	0.00	0.00	0.00	0.00
Butler		4,903.65	4,164.99	2,049.00	1,195.29	12,312.93
Chase		0.00	682.50	0.00	0.00	682.50
Cherokee	Baxter Springs	300.00	10,696.05	142.50	1,291.63	12,430.18
Cherokee	Galena	0.00	0.00	591.91	304.50	896.41
Cherokee	Weir	0.00	0.00	0.00	567.56	567.56
Cherokee		0.00	0.00	0.00	797.56	797.56
Cowley	Udall	0.00	0.00	0.00	46.69	46.69
Cowley		614.03	0.00	237.09	30.30	881.42
Crawford	Pittsburg	48.00	725.62	0.00	833.12	1,606.74
Crawford		105.96	530.63	0.00	2,789.08	3,425.67
Dickinson		0.00	0.00	0.00	716.89	716.89
Douglas	Lawrence	164.25	16.88	0.00	683.13	864.26
Douglas		9,829.82	10,917.84	0.00	6,590.51	27,338.17
Edwards	Kinsley	157.50	0.00	9,352.50	4,788.00	14,298.00
Elk		0.00	23.96	0.00	0.00	23.96
Ellis	Hays	0.00	0.00	225.00	56.25	281.25
Ellis		1,041.11	262.50	225.00	1,966.53	3,495.14
Ellsworth		1,875.38	6,000.00	3,000.00	55.40	10,930.78
Finney	Garden City	22,381.70	6,181.80	3,864.81	305.35	32,733.66
Finney		2,609.50	2,250.08	3,427.88	3,067.37	11,354.83
Ford	Dodge City	832.35	0.00	0.00	878.25	1,710.60
Ford		4,709.12	11,551.13	665.63	1,553.05	18,478.93
Franklin	Ottawa	0.00	0.00	0.00	0.00	0.00
Franklin		944.25	937.50	1,800.00	3,467.03	7,148.78
Geary	Junction city	0.00	0.00	226.69	0.00	226.69

FY'96 Drug Tax Distributions

Counties	Cities	1st Q-'96	2nd Q-'96	3rd Q-'96	4th Q-'96	Total for 96 Fiscal Year
Geary		52.50	15.00	15.00	15.00	97.50
Gove		0.00	0.00	0.00	4.36	4.36
Ulysses		0.00	388.65	0.00	0.00	388.65
Graham		0.00	0.00	0.00	382.57	382.57
Grant		0.00	388.66	0.00	0.00	388.66
Gray		0.00	0.00	7.50	29.01	36.51
Greenwood		0.00	0.00	0.00	872.40	872.40
Harper		0.00	0.00	3,610.58	37.50	3,648.08
Harvey		0.00	0.00	0.00	29.78	29.78
Haskell		0.00	0.00	515.25	0.00	515.25
Jackson		2,400.00	0.00	0.00	0.00	2,400.00
Johnson	Edgerton	0.00	3,447.47	0.00	0.00	3,447.47
Johnson	Fairway	0.00	0.00	1,064.25	0.00	1,064.25
Johnson	Leawood	0.00	0.00	0.00	7,577.59	7,577.59
Johnson	Lenexa	450.00	812.81	450.00	17,059.07	18,771.88
Johnson	Olathe	0.00	59.06	0.00	0.00	59.06
Johnson	Overland Park	0.00	0.00	0.00	0.00	0.00
Johnson	Roeland Park	0.00	1,206.60	0.00	0.00	1,206.60
Johnson	Shawnee	1,561.92	825.00	0.00	0.00	2,386.92
Johnson		0.00	0.00	250.62	7,116.17	7,366.79
KBI		6,462.76	14,826.26	6,702.51	3,988.19	31,979.72
Kearny		225.00	225.00	501.90	192.56	1,144.46
KHP		1,500.83	2,509.80	898.11	5,022.88	9,931.62
Kingman		0.00	0.00	3,347.40	0.00	3,347.40
Labette	Chetopa	0.00	0.00	0.00	4.53	4.53
Labette	Parsons	380.12	155.79	0.00	72.80	608.71
Labette		0.00	1,255.05	615.49	8,301.34	10,171.88
Leavenworth	Leavenworth	22.50	11.25	288.41	97.50	419.66
Leavenworth	Tonganoxie	56.25	18.75	0.00	0.00	75.00
Leavenworth		0.00	0.00	0.00	2,806.95	2,806.95
Lin		0.00	0.00	0.00	0.00	0.00
Lyon	Emporia	354.37	5,877.22	246.75	12.08	6,490.42
Lyon		225.00	225.00	225.00	243.50	918.50

FY'96 Drug Tax Distributions

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Counties	Cities	1st Q-'96	2nd Q-'96	3rd Q-'96	4th Q-'96	Total for 96 Fiscal Year
Marshall	Marysville	0.00	75.00	75.00	75.00	225.00
Marshall		1,200.00	0.00	0.00	18.68	1,218.68
McPherson	McPherson	0.00	0.00	0.00	167.28	167.28
McPherson		0.00	0.00	0.00	0.00	0.00
Meade		0.00	9.00	0.00	2,126.71	2,135.71
Miami	Paola	825.00	0.00	114.54	156.87	1,096.41
Miami		281.25	102.75	0.00	0.00	384.00
Montgomery	Caney	213.44	4,988.33	273.00	269.30	5,744.07
Montgomery	Cherryvale	0.00	0.00	259.04	35.33	294.37
Montgomery	Coffeyville	0.00	0.00	0.00	370.50	370.50
Montgomery		2,264.62	870.83	0.00	33.90	3,169.35
Morris		1,910.87	0.00	0.00	41.09	1,951.96
Nemaha	Sabetha	45.00	45.00	45.00	54.96	189.96
Nemaha		75.00	225.00	225.00	0.00	525.00
Neosho		0.00	0.00	0.00	0.00	0.00
Norton		0.00	0.00	0.00	0.00	0.00
Osage	Lyndon	565.74	0.00	0.00	0.00	565.74
Osage		1,404.29	2,221.16	16,280.63	3,829.57	23,735.65
Osborne		0.00	0.00	0.00	247.52	247.52
Pottawatomie		0.00	0.00	0.00	45.76	45.76
Pratt		0.00	0.00	3,579.90	261.80	3,841.70
Reno	Haven	0.00	0.00	0.00	1,267.93	1,267.93
Reno	Hutchinson	224.87	0.00	0.00	0.00	224.87
Reno		6,896.59	10,521.56	4,182.68	2,988.05	24,588.88
Republic		0.00	0.00	0.00	5.60	5.60
Rice		545.25	2,297.25	1,744.71	2,494.63	7,081.84
Riley		431.25	439.02	843.75	501.69	2,215.71
Rooks		0.00	0.00	264.00	187.06	451.06
Russell		0.00	0.00	0.00	155.63	155.63
Saline	Salina	0.00	2,330.99	0.00	0.00	2,330.99
Saline		12,691.62	9,526.50	193.65	1,201.74	23,613.51
Scott		3,798.26	0.00	0.00	0.00	3,798.26
Sedgwick	Derby	3,673.51	0.00	0.00	28.01	3,701.52

FY'96 Drug Tax Distributions

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Counties	Cities	1st Q-'96	2nd Q-'96	3rd Q-'96	4th Q-'96	Total for 96 Fiscal Year
Sedgwick	Park City	0.00	0.00	0.00	192.35	192.35
Sedgwick	Valley Center	0.00	0.00	0.00	388.50	388.50
Sedgwick	Wichita	6,089.22	13,995.97	21,129.59	16,366.61	57,581.39
Sedgwick		0.00	0.00	0.00	7,246.23	7,246.23
Seward	Liberal	2,082.47	3,311.14	1,483.11	183.20	7,059.92
Seward		387.37	375.00	460.43	462.99	1,685.79
Shawnee	Topeka	7,658.30	8,220.37	3,978.35	13,419.96	33,276.98
Shawnee		3,782.80	1,986.79	1,081.00	2,457.44	9,308.03
Sherman		56.25	75.00	42.04	37.50	210.79
Sumner	Caldwell	2,257.50	0.00	0.00	0.00	2,257.50
Sumner	Wellington	498.75	528.75	525.00	2,049.83	3,602.33
Sumner		840.00	1,796.25	321.75	86.25	3,044.25
Washington		0.00	0.00	0.00	106.34	106.34
Wabaunsee		523.50	0.00	0.00	0.00	523.50
Wichita		0.00	0.00	0.00	59.01	59.01
Wilson		0.00	0.00	0.00	397.75	397.75
Wilson	Fredonia	0.00	0.00	2,462.89	196.62	2,659.51
Wilson	Neodsha	0.00	2,737.48	0.00	196.62	2,934.10
Woodson		0.00	416.64	0.00	0.00	416.64
Wyandotte	Bonner Spring	0.00	0.00	217.50	384.38	601.88
Wyandotte	Edwardsville	0.00	0.00	217.50	384.37	601.87
Wyandotte	Kansas City	5,683.50	50,123.39	43,231.72	18,908.39	117,947.00
Wyandotte		396.56	0.00	0.00	114.35	510.91
		\$135,172.15	\$205,326.30	\$152,092.60	\$168,136.97	\$660,728.02

FY'97 Drug Tax Distributions

County 1	City 1	1st Q-'97	2nd Q-'97	TOTAL
ALLEN		\$0.00	\$16.19	\$16.19
ATCHISON		0.00	3,137.25	3,137.25
ATCHISON	ATCHISON	426.88	1,373.97	1,800.85
BARTON	GREAT BEND	56.25	252.56	308.81
BOURBON		75.00	30.00	105.00
BROWN	HIAWATHA	375.00	1,425.00	1,800.00
BUTLER		1,609.45	1,022.24	2,631.69
CHEROKEE	GALENA	2,577.33	548.10	3,125.43
Cherokee	Weir	572.67	0.00	572.67
Cherokee		572.67	0.00	572.67
CLAY		0.00	1,661.85	1,661.85
COWLEY		865.85	587.25	1,453.10
CRAWFORD		1,088.81	375.00	1,463.81
CRAWFORD	PITTSBURG	0.00	1,500.00	1,500.00
DICKINSON		63.33	450.00	513.33
Doniphan	Elwood	400.00	200.00	600.00
Doniphan	Wathena	400.00	200.00	600.00
DONIPHAN		400.00	200.00	600.00
DOUGLAS	LAWRENCE	804.77	1,300.23	2,105.00
DOUGLAS		10,606.87	7,764.78	18,371.65
ELLIS		501.50	162.34	663.84
ELLIS	HAYS	0.00	719.55	719.55
ELLSWORTH		7,522.50	0.00	7,522.50
FINNEY	GARDEN CITY	2,550.47	594.02	3,144.49
FINNEY		271.69	1,266.75	1,538.44
FORD		702.41	1,398.26	2,100.67
FRANKLIN		860.02	3,006.23	3,866.25
GEARY	JUNCTION CITY	21.23	15.00	36.23
GEARY		836.18	30.00	866.18
GRAHAM		97.50	97.50	195.00
GREENWOOD		0.00	874.82	874.82
HARPER		75.00	56.25	131.25
JEFFERSON		1,437.08	0.00	1,437.08
JOHNSON	MERRIAM	0.00	2,400.00	2,400.00
JOHNSON	OLATHE	327.68	1,582.66	1,910.34
JOHNSON	OVERLAND PARK	0.00	48.56	48.56
JOHNSON	PRAIRIE VLLG	0.00	2,004.00	2,004.00
JOHNSON	ROELAND PARK	0.00	3,590.75	3,590.75
JOHNSON	SHAWNEE	0.00	135.08	135.08
JOHNSON		3,654.69	696.51	4,351.20
KBI		11,421.40	8,455.89	19,877.29
KEARNY		890.99	22.50	913.49
KHP		988.90	10,470.77	11,459.67



FY'97 Drug Tax Distributions

County 1	City 1	1st Q-'97	2nd Q-'97	TOTAL
Labette	Chetopa	635.79	560.62	1,196.41
LABETTE		4,386.23	1,320.52	5,706.75
LEAVENWORTH	LEAVENWORTH	493.86	22.50	516.36
LEAVENWORTH	TONGANOXIE	37.50	67.50	105.00
LEAVENWORTH		202.54	0.00	202.54
LYON	EMPORIA	693.08	0.00	693.08
LYON		262.50	337.50	600.00
MARSHALL	MARYSVILLE	0.00	75.00	75.00
MARSHALL		322.04	0.00	322.04
MCPHERSON		35.48	653.44	688.92
MIAMI		5,150.37	0.00	5,150.37
MITCHELL		85.91	0.00	85.91
MONTGOMERY	CANEY	617.18	16.88	634.06
MONTGOMERY	CHERRYVALE	112.50	0.00	112.50
MONTGOMERY	COFFEYVILLE	1,012.50	37.50	1,050.00
MORTON		10.58	0.00	10.58
NEMAHA	SABETHA	45.00	45.00	90.00
NORTON	NORTON	0.00	842.63	842.63
OSAGE		2,606.54	2,248.14	4,854.68
OSBORNE		4,009.13	0.00	4,009.13
PAWNEE	LARNED	0.00	923.22	923.22
POTTAWATOMIE		1,579.52	540.05	2,119.57
PRATT		243.75	262.50	506.25
RENO		635.97	2,803.84	3,439.81
REPUBLIC		249.62	0.00	249.62
RICE		159.38	112.50	271.88
RILEY		6,861.49	115.47	6,976.96
ROOKS		233.67	127.52	361.19
SALINE	SALINA	120.77	0.00	120.77
SALINE		1,156.43	1,182.77	2,339.20
SEDGWICK	WICHITA	13,246.89	32,356.43	45,603.32
SEDGWICK		6,389.39	32,060.03	38,449.42
SEWARD	LIBERAL	103.96	0.00	103.96
SEWARD		1,980.00	18.75	1,998.75
SHAWNEE	TOPEKA	11,426.74	32,329.28	43,756.02
SHAWNEE		22,811.46	1,263.68	24,075.14
SHERMAN		37.50	18.75	56.25
SUMNER	WELLINGTON	6,131.34	37.50	6,168.84
SUMNER		71.25	181.90	253.15
WILSON	FREDONIA	531.86	385.35	917.21
Wilson	Neodesha	197.92	0.00	197.92
Wilson		197.92	56.17	254.09
Wyandotte	Bonner Springs	593.53	0.00	593.53

FY'97 Drug Tax Distributions

County 1	City 1	1st Q-'97	2nd Q-'97	TOTAL
WYANDOTTE	EDWARDSVILLE	593.55	0.00	593.55
WYANDOTTE	KANSAS CITY	32,515.35	63,538.47	96,053.82
WYANDOTTE		37.50	233.10	270.60
TOTAL				\$416,325.98

February 17, 1997

**To:** Senate Committee on Federal and State Affairs  
**From:** Mary Galligan, Principal Analyst  
**Re:** Kansas Liquor Laws

## How Has Kansas Policy Regarding Regulation of Alcohol Evolved?

Some major events in the evolution of liquor policy in Kansas are listed below.

- 1880 Voters approved (92,302 to 84,304) an amendment to the *Kansas Constitution* prohibiting the manufacture and sale of intoxicating liquors (Article 15, §10).
- 1934 Voters rejected (347,644 to 436,688) a proposed constitutional amendment to authorize the Legislature to regulate and tax liquor.
- 1937 The Legislature enacted the law that categorizes beer with an alcohol content of 3.2 percent or less alcohol by weight as cereal malt beverage (CMB) which was excluded from the definition of intoxicating liquor. The law authorized sale of CMB for both on- and off-premise consumption throughout the state.
- 1948 Voters approved (422,294 to 358,310) an amendment to the *Kansas Constitution* that authorized the Legislature to “. . . regulate, license and tax the manufacture and sale of intoxicating liquor . . . regulate the possession and transportation of intoxicating liquor.” (Art. 15, §10) The amendment also “forever prohibited” the open saloon. The amendment meant that package liquor sales could be authorized and regulated, but that sale of liquor by the drink in public places was prohibited.
- 1949 The Legislature enacted the Liquor Control Act. The Act authorized package sale of liquor in counties in which the 1948 amendment had been approved. The Act created a system of regulating, licensing, and taxing those package sales. The Division of Alcoholic Beverage Control (ABC) was created to enforce the Act.
- 1959 The Legislature enacted the “minimum price law” which required manufacturers and suppliers to sell liquor to distributors in Kansas at the same price and without discrimination. Manufacturers' price lists were to be filed with the Director of ABC. Manufacturers also were required to file suggested wholesale and retail price lists with the Director. Distributors were required to file current price lists with the Director and were prohibited from selling liquor to retailers at any price other than that posted with the Director. The Director of ABC was authorized to promulgate rules and regulations prohibiting distributors and retailers from selling liquor below manufacturers' suggested case and bottle prices filed with the Director of ABC.

Prior to enactment of statutes regulating liquor pricing, prices were controlled by regulation. The regulation was overturned by the courts in 1958.

- 1961 Amendment of the minimum price law established guidelines for the ABC Board of Review to use to set minimum wholesale and retail liquor prices.
- 1965 The Legislature enacted laws providing for licensure and regulation of liquor sales in private clubs. Such clubs were allowed under the constitutional prohibition because they were not open to the public.
- 1970 Blood alcohol level at which a driver was presumed to be under the influence of alcohol was lowered from .15 percent to .1 percent.

Proposition to remove "open saloon" prohibition from *Constitution* rejected by voters 335,094 to 346,423.

- 1978 Restaurants were authorized to sell liquor if they derived at least 50 percent of gross receipts from the sale of food and are located in counties that approved such sales at the 1978 general election. These establishments were not subject to the ten-day waiting period and membership dues requirements of the private club law. (Law struck down by court.)
- 1979 Private clubs were statutorily authorized to sell liquor by the drink to members and guests. The law eliminated "liquor pools" and permitted class B clubs that derived a minimum of 50 percent of their gross receipts from the sale of food to establish reciprocal relationships with other similar clubs. Those agreements provided members of one participating club with access to all participating clubs. Class A clubs also were authorized to enter into reciprocal agreements

The 10 percent "drink tax" was imposed in lieu of the retail sales tax on sales of liquor by clubs. Revenue from the tax was credited to the Local Alcoholic Liquor Fund from which allocations were made to cities and counties based on the amount collected from clubs located in that jurisdiction. A city or county receiving an allocation must credit moneys as follows:

- o one-third to the general fund
- o one-third to a special parks and recreation fund
- o one-third to a special alcohol programs fund

An exclusive territorial franchise system for liquor wholesalers was established. Under the system, each liquor wholesaler was required to file with the ABC the territory agreed upon by the wholesaler and the manufacturer, within which the wholesaler will sell the manufacturer's products to retailers. A manufacturer cannot grant a franchise for a particular territory to more than one wholesaler.

Minimum wholesale prices were no longer established by the state. Minimum price mark-ups for retailers were to be determined by the Alcoholic Beverage Control Board of Review.

- 1982 Private clubs were authorized to sell CMB for on-premise consumption only at any time liquor is sold (prior law provided for different hours of sale for liquor and CMB at clubs). Authority for clubs to sell CMB for off-premise consumption was repealed.

Blood alcohol content of .1 percent becomes *prima facie* evidence that a driver is under the influence of alcohol to a degree that renders the person incapable of driving safely.

One-fourth of receipts from "drink tax" to be allocated to the State General Fund.

- 1983 Farm wineries were permitted to manufacture and sell table wine containing 14 percent or less alcohol made from Kansas-grown products. Farm wineries were authorized to sell their products to wholesalers and to consumers for off-premise consumption.

Liquor enforcement tax rate increased from 4 percent to 8 percent of the retail sales price of liquor sold for off-premise consumption.

- 1985 The minimum legal age for possession and consumption of CMB was raised to 21 for persons born after July 1, 1966.

CMB sold in private clubs was subject to the 10 percent "drink tax." Five percent of "drink tax" receipts credited to the Community Alcoholism and Intoxication Programs Fund administered by SRS. The amendment reduced the amount allocated directly to cities and counties.

"Happy hour ban" enacted. Certain promotional practices by clubs and CMB retailers were prohibited (see Table 5).

Hotels were permitted to enter into agreements with class B clubs whereby hotel guests could be issued temporary memberships in the club.

The Legislature approved the resolution proposing to amend the *Constitution* to permit the sale of liquor by the drink in public places.

The Liquor Law Review Commission was appointed by Governor Carlin to conduct a comprehensive review of Kansas' liquor laws and to make recommendations for amendments.

- 1986 Voters approved (489,646 to 325,505) the constitutional amendment permitting sale of liquor by the drink in establishments open to the public.

The Liquor Law Review Commission issued its report with recommendations for changes in statutes and rules and regulations.

- 1987 Drinking establishments were created as a category of licensee permitted to sell liquor by the drink. The bill also provided for sale of liquor by the drink on unlicensed premises by licensed caterers and by persons holding temporary permits.



Liquor and beer wholesalers were permitted to sell bulk wine directly to caterers, clubs, and drinking establishments. Beer distributors were permitted to sell beer directly to caterers, clubs, and drinking establishments. Liquor retailers were permitted to deliver products to caterers, clubs, and drinking establishments located in the same or adjacent counties.

The Attorney General issued an opinion that minimum price mark-ups are illegal.

Retail sale of liquor at less than acquisition cost was prohibited by statute.

Microbreweries were created as a category of licensee. Microbreweries manufacture beer with 8 percent or less alcohol content and have capacities of 5,000 or fewer barrels per year.

The Alcoholic Beverage Board of Review was abolished.

Price and brand advertising of liquor was permitted.

Sunday sale of CMB was permitted in restaurants that derive 30 percent or more of gross receipts from sale of food if they were located in a city or county that authorized such sales by ordinance or resolution.

Boating under the influence of alcohol (blood alcohol content of .1 percent or greater) was made a misdemeanor.

1988 Farm wineries were permitted to sell directly to clubs, drinking establishments, and retailers.

1990 The 10 percent "drink tax" was imposed on sale of liquor by the drink by persons holding temporary permits.

The Nonalcoholic Malt Beverages Act authorized distribution, sale, and taxation of malt beverages containing less than one-half of 1 percent alcohol. Those beverages may be sold by liquor retailers, clubs, drinking establishments, and CMB retailers. Nonalcoholic malt beverages were subject to the same taxes as CMB.

1991 Required periodic price posting by suppliers and wholesalers was replaced by registration.

1992 Farm wineries were permitted to operate a maximum of two licensed outlets for off-premise sale of domestic wine and for wine tasting if the outlet is located in a county where liquor can be sold by the drink.

Microbrewery licensees were authorized to obtain caterer licenses.

Liquor retailers were authorized to sell nonalcohol items included by manufacturers in packages of liquor. Retailers also were authorized to distribute free advertising specialties.

- 1993 The blood alcohol content at which a person is found to be driving or operating a boat under the influence of alcohol was lowered from .1 percent to .08 percent.

Minimum liquor container size law was repealed.

- 1994 Election day sales of liquor and CMB for off-premise consumption legalized.

On-premise consumption of CMB in taverns legalized.

Class A clubs and Class B clubs that are restaurants permitted to enter into reciprocal agreements.

- 1995 The maximum number of barrels of beer that can be produced by a microbrewery increased from 5,000 to 15,000.

State residency requirement for a beer distributor's license reduced from five years to one year.

Distributors prohibited from selling CMB at a discount for multiple case lots.

ABC authorized to issue temporary permits to charitable organizations to sell liquor at auction.

ABC authorized to issue temporary permits to individuals to sell limited issue porcelain containers of alcohol.

Consumption of CMB in or on the grounds of the Capitol Building prohibited.

CMB retailers permitted to employ persons to sell, serve, or dispense CMB who become convicted of a felony or violation of liquor laws more than two years prior to employment.

Hotels licensed as drinking establishments or caterers authorized to have minibars in guest rooms.

Liquor and CMB retailers, microbreweries, and farm wineries authorized to accept certain credit cards for the sale of alcoholic beverages.

- 1996 Liquor, wine, and beer distributors authorized to use the warehouses of another licensed distributor for storage and delivery of liquor to retailers.

Liquor, wine, and beer distributors authorized to use products from their inventories as samples in the course of business or at industry seminars.

The spouse of a retail liquor license permitted to have a license for a separate retail liquor establishment.

Beer manufacturers in Kansas prohibited from selling beer directly to liquor retailers.

Price or service discrimination between CMB retailers by CMB wholesalers prohibited.

Off-premise CMB retailers prohibited from selling CMB at less than acquisition cost.

### ✓ **What Types of Alcoholic Beverages are Available in Kansas?**

*Alcoholic liquor* in Kansas law includes spirits, wine, and beer containing over 3.2 percent alcohol by weight. Spirits are defined in statute to be any distilled alcoholic beverage including brandy, rum, whiskey, and gin, among others.

*Cereal Malt Beverage* (CMB or 3.2 beer) is beer containing 3.2 percent or less alcohol by weight.

*Nonalcoholic Malt Beverage* (nonalcohol beer or NAB) is beer containing .5 percent or less alcohol by weight.

*Domestic Wine* contains not more than 14 percent alcohol by volume and is manufactured by farm wineries from Kansas-grown agricultural products.

*Domestic Beer* contains 8 percent or less alcohol by weight and is manufactured by microbreweries from Kansas-grown agricultural products.

### **What State Agency is Responsible for Regulating the Liquor Industry in Kansas?**

✓ The Division of Alcoholic Beverage Control of the Department of Revenue was created by enactment of the Liquor Control Act to license and regulate the liquor industry and enforce liquor laws. The Division has broad rule-making authority under statute.

### **Who Can Legally Buy and Sell Liquor in Kansas?**

The *Kansas Constitution* authorizes the Legislature to prohibit intoxicating liquor in certain areas. The Legislature also is authorized by the *Constitution* to regulate, license, and tax the manufacture and sale of liquor and to regulate the possession and transportation of liquor. The Legislature has done so through enactment of the Liquor Control Act and the Club and Drinking Establishment Act.

The liquor distribution system in Kansas is referred to as a "three tier system" because by statute liquor and CMB are distributed from manufacturer to distributor (commonly called wholesaler) to retailer. There are exceptions to that generalization. ✓

- Farm wineries may sell directly to retailers, clubs, drinking establishments, caterers, and consumers.
- Microbreweries also may sell their products directly to consumers but must sell to retailers, clubs, and drinking establishments through licensed distributors.
- Farm wineries and microbreweries also may be licensed as clubs or drinking establishments and microbreweries may be licensed as caterers for sale of liquor by the drink to consumers.
- Clubs, drinking establishments, and caterers may purchase beer and bulk wine directly from wholesalers, but must purchase all other liquor from a liquor retailer.

Table 1 displays current categories of liquor licensees and the market niche occupied by each. Table 2 displays major statutory provisions that govern the sale of beer and CMB for off-premise consumption. Tables 3 and 4 display qualifications individuals and businesses must meet to obtain a liquor license.

TABLE 1

Liquor Licensees, Their Suppliers, and Their Markets

Licensee/Permittee	Buys From	Sells To
Manufacturer	N/A	Distributors and nonbeverage users
Distributor (wholesalers)	Manufacturer	Retail liquor stores; other distributors; beer and bulk wine only to clubs, drinking establishments, and caterers
Retail Liquor Store	Distributor	Consumers (off-premise), clubs, drinking establishments, caterers, and temporary permit holders (may deliver to clubs and drinking establishments)
Farm Winery	N/A	Wine distributors, retail liquor stores, clubs, drinking establishments, caterers, and consumers (off-premise)
Microbrewery	N/A	Beer distributors and consumers (off-premise)
Club	Distributor (beer and bulk wine only) retail liquor store, farm winery	Members, their families and guests (on-premise only)
Drinking Establishment	Distributor (beer and bulk wine only) retail liquor store, farm winery	General public (on-premise only)
Caterer	Distributor (beer and bulk wine only) retail liquor store, farm winery	General public (by the drink only)
CMB Retailer Off-Premise On-Premise	Beer distributor Beer distributor	General public (off-premise only) General public (on-premise only)



TABLE 2

BUSINESSES LICENSED TO SELL BEER AND CMB FOR OFF-PREMISE CONSUMPTION

Statutory Provision	Retail Liquor Store	Microbrewery	CMB Retailer (off-premise)
License Issued By	State	• Same	City or County
Licensee Qualification	<ul style="list-style-type: none"> <li>• 10 year U.S. Citizen<sup>1</sup></li> <li>• 4 year Kansas Resident<sup>2</sup></li>   <li>• No felons; no persons convicted of prostitution, gambling/morals violations</li>   <li>• No prior license revocations<sup>3</sup></li> <li>• 21 years of age</li> <li>• May not be, appoint, or supervise any law enforcement official<sup>4</sup> or be employed by ABC</li> <li>• May be a licensed CMB retailer<sup>5</sup></li> <li>• Must own premises or have a valid lease for at least 3/4 of license period</li> <li>• Upon initial application, the applicant's spouse also must meet qualifications for licensure other than citizenship, residency, and age</li> </ul>	<ul style="list-style-type: none"> <li>• Same</li> <li>• Same</li>   <li>• Same</li>   <li>• Same</li> <li>• Same</li> <li>• Same</li> <li>• Cannot have CMB License</li> <li>• Same</li>   <li>• Same</li> </ul>	<ul style="list-style-type: none"> <li>• U.S. Citizen</li> <li>• 1 year Kansas Resident</li> <li>• 6 months resident of county where business is located; good character reputation in community where resident</li> <li>• No felony conviction in preceding 2 years; no conviction for moral turpitude, drunkenness, DUI, or any liquor violation</li> <li>• N/A</li> <li>• Same</li> <li>• N/A</li>   <li>• N/A</li> <li>• N/A</li>   <li>• Same</li> </ul>
Business Arrangements Eligible for License	<p><u>Partnerships</u> -- All partners qualify as individuals</p> <p><u>Corporations</u> -- Not eligible for licensure</p> <p><u>Trust</u> -- All grantors, beneficiaries, and trustees must meet qualifications, except for age of beneficiary, as individuals</p>	<p>Same</p> <p><u>Corporations</u>, Stockholder owning aggregate 50% must be fully qualified as individuals, all others must be fully qualified except for citizenship or residency</p> <p>Same</p>	<p><u>Partnerships</u>, if all partners qualify as individuals</p> <p><u>Corporations</u>, if all officers, managers, directors, and stockholders with &gt;25% of stock would qualify as individuals<sup>6</sup></p> <p>Business may be operated by an agent if the agent qualifies as an individual</p>

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TABLE 2 (CONTINUED)

Statutory Provision	Retail Liquor Store	Microbrewery	CMB Retailer (off-premise)
License and Application Fees	License Fee: \$250, annually Application Fee: \$50, initial; \$10, renewal Local License Tax: \$100-300, annually Total: \$400-600, initial \$360-560, renewal	Same Same N/A Total: \$350, initial \$260, renewal	License Fee: \$25-50, annually Application Fee: \$25, annually State Stamp: \$25 Total: \$75-100, annually
Products	Beer, wine, spirits, NAB	Domestic beer	CMB, NAB
Days of Sale	No sales on: Sunday, certain holidays <sup>7</sup>	Any days	No sales on Sundays
Hours	No sales between 11:00 p.m. and 9:00 a.m. <sup>8</sup>	No sales between midnight and 6:00 a.m., Sunday sales permitted between noon and 6:00 p.m.	No sales between midnight and 6:00 a.m.
Discounts	No sales at less than cost <sup>9</sup>	N/A	May sell at less than cost (may not receive a quantity discount from wholesaler)
Credit Card Sales	Yes <sup>10</sup>	Same	Same
Advertising	No hand bills, bill boards <sup>11</sup> , or window displays of liquor	All advertising subject to approval by ABC	No restrictions
Employee Age	Must be 21 or older	Must be 18 to manufacture, sell, or serve with supervision of someone 21 or older	Must be 18 or older
Buys From	Licensed wholesalers No credit purchases	N/A	Same
Sells To	<ul style="list-style-type: none"> <li>Consumers, clubs, drinking establishments, caterers, and holders of temporary permits</li> <li>May deliver product to clubs, drinking establishments, and caterers</li> </ul>	<ul style="list-style-type: none"> <li>Consumers, beer distributors</li> </ul>	Consumers
Location of Licensed Premises	<ul style="list-style-type: none"> <li>Must be in areas zoned for commercial use if jurisdiction is zoned</li> </ul>	<ul style="list-style-type: none"> <li>Must be zoned for agricultural, commercial, or business purposes</li> </ul>	<ul style="list-style-type: none"> <li>City or county may establish zones in which CMB retailers may not be located</li> </ul>

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Statutory Provision	Retail Liquor Store	Microbrewery	CMB Retailer (off-premise)
	<ul style="list-style-type: none"> <li>● Cannot be in city that does not permit retail liquor stores</li> <li>● Cannot be within 200 feet of school, college, or church</li> <li>● Cannot have inside entrance or opening that connects with another business</li> </ul>	<ul style="list-style-type: none"> <li>● Cannot be within 200 feet of a school, college, or church</li> </ul>	
Other Sales	<ul style="list-style-type: none"> <li>● May <u>not</u> sell any products other than liquor, products or materials included by the manufacturer in the package, and nonalcoholic beer, except lottery tickets</li> <li>● May give away advertising specialties</li> <li>● May charge a delivery fee</li> <li>● May <u>not</u> provide entertainment nor have pinball machines, or games of skill or chance on the premises</li> </ul>	<ul style="list-style-type: none"> <li>● No limitations regarding sale of non-alcoholic products</li> </ul>	<ul style="list-style-type: none"> <li>● Same</li> </ul>

- 1) Spouse of deceased licensee may be licensed if a U.S. citizen for less than ten years or if that person becomes a citizen within one year of the licensee's death.
- 2) The requirement does not apply upon the tenth and subsequent renewals if a resident agent has been appointed.
- 3) A license may be issued after ten years from revocation if the previous license was revoked for conviction of a misdemeanor.
- 4) An exception to the supervision provision is provided for members of a city or county governing body.
- 5) CMB and liquor cannot be sold for off-premise consumption at the same location.
- 6) If any manager, officer, director, or stockholder owning more than 25% of the corporate stock has had a CMB license revoked or has been convicted of a violation of the Kansas Drinking Establishment Act or CMB laws, the corporation could not receive a CMB retailer license.
- 7) Holidays on which liquor stores must be closed: Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.
- 8) By ordinance, a city may require liquor stores to close prior to 11:00 p.m., but not before 8:00 p.m.
- 9) Wholesalers cannot grant retailers quantity discounts. Sales at less than cost are permitted when a retailer is closing out stock, selling damaged or deteriorated stock, or selling under court order.
- 10) Credit card sales are permitted if the credit card entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the credit card.
- 11) In a 1992 opinion (92-14) the Attorney General stated that the statute that attempts to prohibit liquor retailers from advertising by means of billboards (K.S.A. 1992 Supp. 41-714) is so vague as to be unenforceable.

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TABLE 3

## Licensee Qualifications -- Individual Applicant

	U.S. Citizen	Kansas Resident	Record	Age	Other Employment	Hold 3.2 License?	Control of Premise?	Spouse	Beneficial Interests
Manufacturer	10 year	5 year <sup>4</sup>	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	no	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	N/A
Nonbeverage User	10 year	N/A	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	no	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	N/A
Spirits Distributor	10 year	10 year <sup>4</sup>	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	no	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	May hold more than one distributor's license. No other interest allowed.
Wine Distributor	10 year	10 year <sup>4</sup>	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	no	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	May hold more than one distributor's license. No other interest allowed.
Beer Distributor	10 year	1 year <sup>4</sup>	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	no	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	May hold more than one distributor's license. No other interest allowed.
Farm Winery	10 year	4 year <sup>4</sup>	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	no	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	May hold club or D.E. license. No other interest allowed.
Microbrewery	10 year	4 year <sup>4</sup>	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	no	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	May hold club, D.E., or caterer license. No other interest allowed.
Retailer	10 year <sup>1</sup>	4 year <sup>4</sup>	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	yes	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	No beneficial interest in any other state license except that spouses may each hold licenses for separate retail establishments.
Class A Club	10 year	1 year + current resident of county	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	yes	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	May hold caterer license or other club/D.E. license if restaurants or in hotels. No other interest allowed. <sup>5</sup>
CMB Retailer (local license)	Yes	1 year/6 months county	No felony in 2 years; no conviction for moral turpitude, drunkenness, DUI, or any liquor violation	21	N/A	N/A	N/A	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	N/A
Class B Club	10 year	1 year + current resident of county	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	yes	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	May hold caterer license or other club/D.E. license if restaurants or in hotels. No other interest allowed.
Drinking Estab. Caterer Hotel	10 year	1 year + current resident of county	No felony, prostitution, gambling, or morals conviction. No license revocation <sup>2</sup>	21	May not be, appoint, or supervise any law enforcement official <sup>3</sup> or be employed by the director of ABC.	yes	Proof of ownership or valid lease for at least 3/4 of license period	Initial application: must be fully qualified other than citizenship, residency, and age. Renewal: N/A	May hold caterer license or other club/D.E. license if restaurants or in hotels. No other interest allowed.

- 1) Spouse of deceased retail licensee may be licensed if U.S. citizen or becomes U.S. citizen within one year of licensee's death.
- 2) License may be issued after lapse of ten years from date of revocation if license was revoked for conviction of a misdemeanor
- 3) Except as member of city or county governing body.
- 4) Does not apply upon tenth and subsequent renewals if resident agent has been appointed.
- 5) Class A club officer, director, or board member may be a distributor or retailer if they do not sell to the club.

SOURCE: Division of Alcoholic Beverage Control  
as formatted and updated 2/17/97 by Kansas Legislative Research Department

TABLE 4

BUSINESS TYPES ELIGIBLE FOR LICENSE

	Individual	Partnership	Corporation	Trust
Manufacturer	fully qualified as described in Table 3	all partners fully qualified as individuals	all officers and directors, or stockholders holding more than 25% must be fully qualified as individuals except for citizenship or residence	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Nonbeverage User	fully qualified as described in Table 3	all partners fully qualified as individuals	all officers and directors, or stockholders holding more than 25% must be fully qualified as individuals except for citizenship or residence	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Spirits Distributor	fully qualified as described in Table 3	all partners fully qualified as individuals	all officers, directors, and stockholders must be fully qualified as individuals	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Wine Distributor	fully qualified as described in Table 3	all partners fully qualified as individuals	all officers, directors, and stockholders must be fully qualified as individuals	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Beer Distributor	fully qualified as described in Table 3	all partners fully qualified as individuals	all officers, directors, and stockholders must be fully qualified as individuals	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Farm Winery	fully qualified as described in Table 3	all partners fully qualified as individuals	stockholders owning aggregate 50% must be fully qualified as individuals, all others must be fully qualified except for citizenship or residency	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Microbrewery	fully qualified as described in Table 3	all partners fully qualified as individuals	stockholders owning aggregate 50% must be fully qualified as individuals, all others must be fully qualified except for citizenship or residency	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Retailer	fully qualified as described in Table 3	all partners fully qualified as individuals	may not hold retail liquor license <sup>1</sup>	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
CMB Retailer	fully qualified as described in Table 3; manager or agent conducting business must also be fully qualified	all partners fully qualified as individuals	all managers, officers, and directors and any stockholders owning more than 25% of the corporate stock must be fully qualified except for citizenship and residency requirements, none may have had a CMB license revoked or have been convicted of a violation of the drinking establishment or CMB laws of Kansas	NA
Class A Club (non-profit social, fraternal, or veterans)	may not hold Class A club license	all partners fully qualified as individuals	all officers, managers and directors, or stockholders holding more than 5% must be fully qualified as individuals except for citizenship or residence; must be a Kansas corporation	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Class B Club	fully qualified as described in Table 3	all partners fully qualified as individuals	all officers, managers and directors, or stockholders holding more than 5% must be fully qualified as individuals except for citizenship or residence; must be a Kansas corporation	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary
Drinking Estab. Caterer Hotel	fully qualified as described in Table 3	all partners fully qualified as individuals	all officers, managers and directors, or stockholders holding more than 5% must be fully qualified as individuals except for citizenship or residence; must be a Kansas corporation	all grantors, beneficiaries and trustees must be fully qualified as individuals except for age of beneficiary

Source: Division of Alcoholic Beverage Control, as edited by the Kansas Legislative Research Department

1) Attorney General Opinion No. 94-90 (July 20, 1994) holds that limited liability companies are not corporations under Kansas law, so may hold a retail liquor license.

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## Where Can Consumers Legally Purchase Alcoholic Beverages in Kansas?

Beer, wine, and spirits for off-premise consumption (package sales) must be purchased at a retail liquor store. Retail liquor stores also may sell NAB. Farm wineries and microbreweries may sell their products, domestic wine and domestic beer, to the public for off-premise consumption. CMB may be purchased from any locally licensed CMB retailer. In the case of off-premise sales, licensed CMB retailers are commonly grocery and convenience stores. State law requires that CMB and alcoholic liquor be sold at retail for off-premise consumption in separate places. In 1995 the Legislature authorized issuance of temporary permits to charitable organizations to sell liquor at an auction and to individuals to sell limited issue porcelain containers of alcohol.

Liquor may be purchased for consumption on the licensed premises of Class A or B clubs, and drinking establishments. CMB may be purchased for on-premise consumption at locally licensed bars and restaurants and in clubs and drinking establishments that also hold a local CMB license. Farm wineries and microbreweries may serve samples of their products on the licensed premises if they are located in a county that has approved liquor by the drink. Farm wineries and microbreweries also may be licensed as clubs or drinking establishments in which case they can sell liquor by the drink in accordance with those licenses. Licensed caterers and temporary permit holders may sell liquor by the drink in public places that are not licensed premises.

Except in clubs, liquor by the drink is specifically prohibited except where voters have approved its sale. A 1986 amendment of the *Kansas Constitution* authorized the Legislature to provide for liquor by the drink in establishments that derive 30 percent or more of gross receipts from the sale of all food and beverages from food. The amendment also authorized the Legislature to provide for temporary permits to serve liquor by the drink at public places. Temporary permits can only be issued in those counties that have approved liquor by the drink. Finally, the amendment authorized the Legislature to provide for a subsequent county referendum in which voters may:

- prohibit liquor by the drink in that county;
- remove the minimum food sale requirement; or
- permit liquor by the drink in places that meet the 30 percent minimum food sale requirement

The statute that provides for exercise of the county option permits a county commission to place the question on the ballot by resolution. Alternatively, the question may be placed on the ballot in response to an initiative petition signed by a number of electors equal to at least 10 percent of the voters who voted for the office of Secretary of State at the last preceding general election for that office.

Attachments 1 and 1a display counties in which liquor by the drink is legal in Kansas. Table 5 displays some restrictions that apply to package and by-the-drink sales of liquor and CMB by licensees that have permanent premises. Attachments 2 and 3 summarize rights and restrictions that apply to licensed caterers and temporary permit holders.



**ATTACHMENT 1a**  
**LIQUOR BY THE DRINK**

**Counties Where Liquor by the Drink  
Has Not Been Approved as of 11/96**

**Counties where Liquor by the Drink  
Has Been Approved as of 11/96**

		<u>With 30% Food Sales Requirement</u>		<u>No Food Sales Requirement</u>
Allen	Kiowa	Anderson	Nemaha	Cowley
Barber	Lane	Atchison	Norton	Crawford
Brown	Linn	Barton	Osage	Douglas
Chautauqua	Logan	Bourbon	Pawnee	Ellis
Cherokee	Marion	Butler	Phillips	Geary
Cheyenne	Meade	Chase	Pottawatomie	Graham
Clark	Montgomery	Dickinson	Reno	Lyon
Clay	Morton	Edwards	Republic	Saline
Cloud	Neosho	Ellworth	Riley	Sedgwick
Coffey	Ness	Finney	Rush	Shawnee
Comanche	Osborne	Ford	Russell	Wyandotte
Decatur	Ottawa	Franklin	Seward	
Doniphan	Pratt	Greenwood	Sherman	
Elk	Rawlins	Harvey	Smith	
Gove	Rice	Jefferson	Sumner	
Grant	Rooks	Johnson	Thomas	
Gray	Scott	Kearny	Trego	
Greenley	Sheridan	Leavenworth	Wabaunsee	
Hamilton	Stafford	Labette	Washington	
Harper	Stanton	Lincoln		
Haskell	Stevens	Marshall		
Hodgeman	Wallace	McPherson		
Jackson	Wichita	Miami		
Jewell	Wilson	Mitchell		
Kingman	Woodson	Morris		

**Source:** Department of Revenue, Division of Alcoholic Beverage Control

TABLE 5

WHERE, WHEN, AND HOW IS LIQUOR SOLD TO THE PUBLIC?

TYPE OF SALES	PRODUCTS	DAYS	HOURS	DISCOUNTS	CREDIT CARD SALES	ADVERTISING	EMPLOYEE AGE
<b>PACKAGE SALES</b>							
Retail Liquor Stores	Beer <sup>1</sup> , wine, spirits, non-alcohol beer (NAB) <sup>2</sup>	No sales on: Sunday, certain holidays <sup>3</sup> .	No sales between 11 p.m. and 9 a.m. <sup>4</sup>	No sales at less than cost. <sup>5</sup>	Permitted	No handbills, billboards <sup>6</sup> , or window displays of liquor.	Must be 21 or older.
CMB Retailers (off-premise)	CMB, NAB	No sales on Sunday.	No sales between midnight and 6 a.m. <sup>7</sup>	May sell at less than cost.	Permitted	No restrictions.	Must be 18 or older to sell CMB.
Farm Wineries, outlets, and Microbreweries	Domestic wine (farm wineries) Domestic beer (microbreweries)	Any days. Limited Sunday hours.	No sales between midnight and 6 a.m. Sunday sales permitted between noon and 6 p.m.	NA	Permitted	Advertising is subject to approval by the Director of ABC.	Persons employed in manufacture, sale, or serving must be 18 or older. Those under 21 must be supervised by someone 21 or older.
<b>BY THE DRINK</b>							
Clubs & Drinking Establishments Microbreweries and Farm Wineries <sup>8</sup>	Beer, wine, spirits, NAB, CMB <sup>9</sup>	Any days.	No sales between 2 and 9 a.m.	No free drinks. No sales at less than cost. No public "all you can drink" for one price promotions. No sales at price less than that charged the general public. Cannot offer drinks as prizes. No "happy hour" promotions. Increased alcohol content in drink must result in proportional increase in price. Free food and entertainment permitted at any time.	Permitted	No advertising of prohibited promotions (see "Discounts").	Must be 21 or older to mix and dispense drinks. Must be 18 or older to serve drinks.
CMB retailers (on-premise)	CMB, NAB	No sales on Sunday in bars. Restaurants may sell on Sunday if authorized by local governing body. No election day sales.	No sales between midnight and 6 a.m. except in clubs and drinking establishments.		Permitted		Must be 18 or older to serve and dispense CMB in restaurants must be 21 in "taverns".

1. Malt beverage containing more than 3.2 percent alcohol by weight.
2. Malt beverage containing not more than .5 percent alcohol by weight.
3. Holidays on which liquor stores must be closed: Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.
4. By ordinance, a city may require liquor stores to close prior to 11:00 p.m., but not before 8:00 p.m.
5. Wholesalers cannot grant retailers quantity discounts. Sales at less than cost are permitted when a retailer is closing out stock, selling damaged or deteriorated stock, or selling under court order.
6. In a 1992 opinion (92-14), the Attorney General stated that the statute that prohibits liquor retailers from advertising by means of billboards (K.S.A. 1992 Supp. 41-714) is so vague as to be unenforceable.
7. City or county governing bodies may, by ordinance or resolution, prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary, and health conditions of CMB licensees and may establish zones within which CMB retailers may not be located.
8. Microbreweries and farm wineries located in counties that permit liquor by the drink may offer free samples of their product. In order to sell liquor by the drink, microbreweries and farm wineries must be licensed as clubs or drinking establishments, in which case they must adhere to requirements for those licenses. Microbreweries also may be licensed as caterers and, if so, would follow those statutes.
9. Clubs and drinking establishments may also have a locally issued license to sell CMB. Microbreweries and farm wineries must be licensed as a drinking establishment in order to sell liquor by the drink.

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## ATTACHMENT 2

### CATERERS

Caterers are authorized to sell liquor by the drink on unlicensed premises that may be open to the public. Caterers may only sell liquor by the drink in counties where those sales have been approved by voters.

Caterers must:

- meet the minimum food sales requirement that applies to drinking establishments in the county
- maintain a principle place of business in a county that permits liquor by the drink
- notify the Alcoholic Beverage Control a minimum of ten days prior to an event at which liquor will be sold
- notify the police chief or county sheriff with jurisdiction over the location of the catered event

Caterers may share a portion of their receipts with person who hires them.

Prohibitions against special promotions, such as "happy hour," that apply to on-premise licensees also apply to caterers (see "Discounts" on Table 5).

License requirements are the same as for clubs and drinking establishments except for the requirement to conduct business only on licensed premises (see Tables 3 and 4).

Retailers may deliver liquor to caterers.

Caterers must collect drink tax on sales of liquor.

**ATTACHMENT 3**

**TEMPORARY PERMITS**

The Secretary of Revenue is authorized to issue temporary permits which allow permit holders to sell liquor by the drink in public, unlicensed places in counties where voters have approved liquor by the drink. Holders of temporary permits need not be caterers and caterers do not need to secure temporary permits for catered events.

Applicants for temporary permits must:

- make application for the permit at least 14 days prior to the event
- use proceeds from sale of liquor only for purposes stated in the permit application
- sell liquor only on premises located where city and county zoning permit the sale of liquor by the drink
- limit liquor sale activity to three consecutive days

Applicants are limited to four temporary permits per year.

Prohibitions against special promotions, such as "happy hour," that apply to on-premise licensees and caterers also apply to holders of temporary permits (see "Discounts" on Table 5).

Employees of temporary permit holders must meet the same requirements as employees of licensees in regard to age and criminal background.

Temporary permit holders must purchase liquor from licensed retailers.

Liquor sold by holders of temporary permits is subject to the 10 percent drink tax.

## Who Can Work in Licensed Liquor Establishments in Kansas?

Individuals who sell and dispense alcoholic liquor generally must be 18 years of age or older. Persons under 21 must, in most cases be under the supervision of someone who is 21 or older. Felons generally cannot work in licensed establishments for a specified period of time following conviction. Table 6 summarizes statutory restrictions on employment by various types of licensees.

Statutes do not impose any restrictions on employees of liquor manufacturers or distributors.

TABLE 6

### QUALIFICATIONS FOR EMPLOYMENT

Licensee/Employer	Minimum Age	Supervision Required	Other
Liquor Retailer	21	N/A	No convicted felons
CMB Off-Premise Retailer	18	N/A	No person can be employed to sell, serve, or dispense CMB if, within the preceding two years, the person was found guilty of a felony or violation of a liquor law.
CMB On-Premise Retailer	18 in restaurants (> = 50% food sales) 21 in bars	N/A	
Clubs and Drinking Establishments	18 for serving of liquor 21 for mixing or dispensing	Licensee, permit holder, or employee who is 21 or older	No convicted felons, or perpetrators of morals violations; no persons found guilty of violation of liquor laws for 2 years after adjudication
Microbrewery and Farm Winery	18 for manufacture, sale, or serving  21 for mixing or dispensing	Licensee or employee 21 or older	No convicted felons employed in connection with manufacture or sale of alcohol.



TABLE 7

WHAT FEES ARE CHARGED TO OBTAIN AND RENEW LIQUOR AND CMB LICENSES?

Licensee	License Fee	Application/Registration Fee	Local License Tax
<b>CLUB</b>			
<u>Class A</u> Fraternal or War Veterans Social Club < 500 members Social Club > 500 members	\$250 500 1,000 1,000	\$50 initial application \$10 renewal application	Optional annual tax \$100 - \$250
<u>Class B</u>			
<b>Drinking Establishment</b>	\$1,000		
<b>Caterer</b>	\$500		N/A
<b>Temporary Permittee</b>	\$25/day	N/A	N/A
<b>Manufacturer</b> Spirits Wine Beer	\$2,500 500 \$200- \$1,600	\$50 initial application \$10 renewal application	Optional annual tax not to exceed amount of state license fee
<b>Distributor</b> Spirits Wine Beer	\$1,000		
<b>Microbrewery Farm Winery Outlet</b>	\$250 50		
<b>Liquor Retailer</b>	\$250		
<b>CMB Retailer Off Premise</b>	\$25 - \$50		
<b>CMB Retailer On Premise</b>	\$25 - \$200	\$25 <sup>1</sup>	N/A
Mandatory annual license tax \$100-\$300			
<p>1) Applicants for new and renewal CMB retailer licenses must submit the application and \$25 to the Director of ABC as well as to the local licensing entity. Upon receipt of the application and fee, the Director must authorize a state stamp be placed on the license. No license may be issued or renewed without a state stamp. The statute does not give the Director of ABC any authority to approve or reject applications for licensure.</p>			

## How is Liquor Taxed in Kansas?

### Gallonage Tax

Spirits	\$2.50
Wine (14% alcohol or less)	.30
Wine (over 14% alcohol)	.75
Beer and CMB	.18

Gallonage tax is paid by the Kansas manufacturer or by the first person in the state who receives the product. Since there currently are no licensed manufacturers in Kansas, the gallonage tax is paid by farm wineries, microbreweries, and by distributors.

Gallonage tax is not applied to amounts of a gallon or less brought into the country by a private citizen for personal use. Other exceptions include sacramental wine and alcohol sold to nonbeverage user licensees.

### Liquor Enforcement

This 8 percent tax is paid by the consumer in lieu of retail sales tax on liquor and NAB purchased from licensed liquor retailers, farm wineries, and microbreweries. The tax is also paid by clubs and drinking establishments on purchases they make from retail liquor stores and from wholesalers.

Since 1987, the enforcement tax has been collected on sales of CMB by wholesalers directly to clubs, drinking establishments, and caterers. Prior to that, the enforcement tax was not applied to any CMB sales. The enforcement tax rate was increased from 4 percent to the current 8 percent in 1983.

### Drink Tax

The drink tax at the rate of 10 percent of gross receipts is imposed on sales of liquor and CMB by clubs, drinking establishments, caterers, and holders of temporary permits. The tax is paid by the consumer to the licensee or permit holder. Like the enforcement tax, this tax is paid in lieu of retail sales tax. Drink tax is collected on sales of CMB only by on-premise CMB licensees who are also liquor licensees.

### Retail Sales Tax

The state retail sales tax of 4.9 percent, plus applicable local sales tax, is collected on CMB sales by CMB licensees who are not also liquor licensees, *e.g.*, CMB taverns, restaurants, and grocery stores. Sale of CMB by clubs was subject to retail sales tax until 1985 when those sales became subject to the drink tax.

Table 8 displays the allocation of state taxes and fees levied on liquor and liquor licensees. The table also includes amounts credited to each state fund during FY 1996.

TABLE 8

HOW ARE STATE LIQUOR TAXES AND FEES DISTRIBUTED?

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Tax/Fee	SGF	Community Alcoholism & Intoxication Programs Fund <sup>1</sup>	Alcoholism Treatment Fund <sup>2</sup>	Local Alcoholic Liquor Fund <sup>3</sup>	Local Unit General Fund
<b>TAXES</b>					
Gallonage Tax (Beer, CMB, Wine)	100%	--	--	--	--
FY 1996 Receipts	\$ 9,580,839				
Gallonage Tax (Spirits)	90%	10%	--	--	--
FY 1996 Receipts	\$ 5,419,662	\$ 602,185			
Enforcement Tax (in lieu of sales tax on retail liquor sales)	100%	--	--	--	
FY 1996 Receipts	\$ 26,210,240				
Drink Tax (in lieu of sales tax on sales by clubs, drinking establishments, and caterers)	25%	5%	--	70%	
FY 1996 Receipts	\$ 4,804,083	\$ 960,817	--	\$ 13,451,431	
Retailer Sales Tax (on CMB sales by retailers who are not also liquor licensees)	100% (state rate 4.9%)	--	--	--	100% of local option sales tax
City & Township License Tax on Liquor Retailers (required by state law)	--	--	--	--	\$72,500 to \$217,500
<b>FEES</b>					
Club, Drinking Establishment, and Caterer Annual License Fees	50%	--	50%	--	
FY 1996 Receipts	\$ 800,676		\$ 800,676		
Club, Drinking Establishment, and Caterer Application Fees; Temporary Permit Fee; Manufacturer, Wholesaler, Retailer, etc. Registration and License Fees	100%	--	--	--	
FY 1996 Receipts	\$ 327,470				
CMB Retailer Application Fee (state stamp)	100%	--	--	--	
FY 1996 Receipts	\$ 91,675				
Other Fees and Fines	\$ 320,995				

- Revenue to the fund is expended by the Secretary of SRS to provide financial assistance to community-based alcoholism and intoxication treatment programs. Funds may be used to: match federal Title XX funds to purchase treatment services; provide start-up or expansion grants for halfway houses or rehabilitation centers; purchase services from treatment facilities for low-income persons who are not eligible for Medicare or Medicaid assistance; and assist with development programs for prevention, education, early identification, and facility assistance and review team. Alcohol treatment programs at Topeka, Osawatomie, and Larned State Hospitals and programs at Rainbow Mental Health Facility may not receive support from this fund.
- Revenue to the fund is to be used by the Secretary of SRS to implement the Secretary's responsibilities to establish, coordinate, and fund programs for prevention and treatment of alcohol abuse.
- Each city with a population of over 6,000 and each county receives 70 percent of the amount of drink tax collected in that jurisdiction. In addition counties receive 23 1/3 percent of the amount collected in cities with populations under 6,000. Counties and the larger cities must divide their receipts equally between their general funds, parks and recreation funds, and special alcohol and drug programs funds. Small cities must divide their receipts equally between their general funds and parks and recreation funds. Counties receiving receipts attributable to taxes collected in smaller cities must credit those moneys to the county's special alcohol and drug programs fund. The statute (K.S.A. 79-41a04) contains special provisions for use of drink tax revenue received by Butler County and cities in that county. Half of the revenue distributed to cities in Butler County and one-third of revenue to the county may be used for establishment and operation of a domestic violence program operated by a private nonprofit organization.

Source: Kansas Department of Revenue, Alcoholic Beverage Control.

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## What is the Role of Local Units of Government in Regard to Liquor Sales in Their Jurisdictions?

The most extensive authority for local units of government in regulating sale of alcoholic beverages is in the licensure and regulation of the sale of CMB. CMB licenses are issued by cities and counties. City and county governing bodies have authority to dictate hours of closing, standards of conduct, and rules and regulations regarding the moral, sanitary and health conditions of CMB retailers and to establish zones in which CMB may not be sold. CMB-only retail establishments are regulated by and their license requirements are enforced by localities, not by the ABC.

Local units of government also have some role in the process of granting retail liquor store licenses. City or township governing bodies may make advisory recommendations to the Secretary of Revenue relative to the granting or refusal to grant a retail liquor license. The Secretary is not bound to follow those recommendations.

As outlined in *Kansas Local Government Law: 1994 Supplement*, cities may:

- provide more stringent closing hours for private clubs than state law requires;
- prohibit open containers of cereal malt beverages;
- adopt city ordinances which declare as unlawful or prohibit the same acts that are proscribed under the Kansas Liquor Control Act;
- authorize liquor consumption on the premises of municipally-owned buildings;
- hold a drinking establishment license under certain circumstances;
- regulate conduct and entertainment where cereal malt beverages are sold;
- exempt themselves from statutory limits on cereal malt beverage license fees;
- prohibit licensure under the Drinking Establishment Act only if the premises are located in an inappropriately zoned area.

Sunday sale of liquor and CMB may not be authorized by home rule, nor may a city authorize consumption of alcohol on state-owned property.

Voters in Kansas have some ability to limit liquor, but not CMB, sales in localities. By statute, retail liquor store licenses cannot be issued for stores located in first or second class cities or in third class cities located in a township where the voters did not approve the 1948 constitutional amendment that permitted the Legislature to regulate, license, and tax the manufacture and sale of liquor and regulate possession and transportation of liquor, unless voters subsequently authorized retail sales in that locality. Currently, retail liquor sales are permitted in 101 counties in Kansas. Retail liquor stores cannot be located in Haskell, Kiowa, Linn, and Stanton counties. (Those four counties also have not approved the sale of liquor by the drink.) The *Constitution* prohibits sale of liquor by the drink in public places in counties where voters did not approve the 1986 constitutional amendment, unless voters subsequently voted to permit liquor by the drink. Currently, 50 counties in Kansas do not permit sale of liquor by the drink in public (sale of liquor by the drink in clubs is legal in those counties). The *Constitution* also permits voters to remove or impose a 30 percent food sales requirement on public places that sell liquor by the drink in their county.

As indicated in Table 7, above, cities and townships may levy an annual occupation or license tax on manufacturers and distributors at a rate that does not exceed the annual state license fee. Cities and townships are required to levy an annual \$100 to \$300 occupation or license tax on liquor retailers. Other local license and occupation taxes on these licensees are prohibited by statute. Cities and counties are authorized to levy an annual \$100 to \$250 occupation or license tax on clubs and drinking establishments.

Licensed liquor establishments and events at which liquor is sold under the authority of a temporary permit must be in locations that are properly zoned for those businesses, if they are located in a jurisdiction that is zoned. Liquor retailers, farm wineries, and microbreweries cannot be established within 200 feet of any existing public or parochial school or college or church. Those businesses must be in buildings that conform to local building ordinances. Licensees also must conform to local ordinances and resolutions regarding signs and outdoor advertising of their businesses. Cities may require retail liquor stores to close prior to 11:00 p.m., but cannot require closing prior to 8:00 p.m.

Cities are prohibited from enacting ordinances that conflict with the Club and Drinking Establishment Act. Cities may enact ordinances that conform with the Act, but the minimum penalty imposed by those ordinances cannot exceed the minimum penalty imposed by the Act. Cities and counties may enact local ordinances and resolutions that impose penalties that are more stringent than state law for possession and consumption of liquor by minors.