

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Pete Brungardt at 10:45 a.m. on Tuesday, January 11, 2005, in Room 231-N of the Capitol.

Committee members absent: Senator Barnett (E)

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Dee Woodson, Committee Secretary

Others attending: See attached list.

Conferees appearing before the committee: Bob Groneman, Director of ABC

Chairman Brungardt opened the meeting by welcoming committee members and staff. The Chair introduced new committee members, Senators Anthony Hensley, Roger Reitz, and Ralph Ostmeyer. He also introduced members of assigned staff: Athena Andaya and Dennis Hodgins of the Kansas Legislative Research Department, Mary Ann Torrence from the Revisor of Statutes Office. The Chair introduced new Committee Secretary Dee Woodson.

Chairman Brungardt made several general announcements regarding meeting dates, time, and subject matter that comes before the Senate Fed and State Committee. He called upon the Committee's Revisor, Mary Ann Torrence, to give an update on recent legislation relating to alcoholic beverages. She covered the Uniformity of the Kansas Liquor Control Act, and the ability of cities to opt out of its provisions; Sunday sales of alcoholic beverages, the issue which precipitated the uniformity debate; and the prohibition against purchasing wines from outside the state and shipping them into the state. (Attachment 1)

Dennis Hodgins, Legislative Research Department, was asked by the Chairman to give an overview of background information on Kansas liquor Laws. His presentation of Kansas Liquor Law history ranged from 1880 through 2000, and was detailed in his written review. (Attachment 2) The presentation included various tables regarding Liquor Licensee, Their Suppliers, and Their Markets, Businesses Licensed To Sell Beer and CMB (Cereal Malt Beverage) for Off-Premise Consumption, Licensee Qualifications, and Business Types Eligible for License. Mr. Hodgins also provided a map of the counties in Kansas depicting whether the counties have or do not have liquor-by-the-drink. He explained Table 8 which covered how state liquor and fees are distributed.

General discussion and questions followed the presentation regarding clarification of definition between CMB (less than 3.2 beer) and alcoholic beer (greater than 3.2).

Chairman Brungardt called upon Bob Groneman, Director, Alcoholic Beverage Control (ABC) Division, to give an overview of the ABC 2004 Budget. Mr. Groneman introduced ABC's new Assistant Attorney General, Brad Burke, and ABC Operations Manager, Jackson Armbrister.

Mr. Groneman stated that the number one priority of the ABC was to fairly administer and enforce the liquor laws in Kansas to ensure compliance, and to maintain a level playing field among all licensees. He added that as a part of the Department of Revenue, it was their duty to see that all applicable taxes due and owing are collected. He explained that the division was divided into three organizational units: licensing, administration, and enforcement. He gave a brief description of each unit's responsibilities and organization.

Mr. Groneman talked about the division's 2004 budget of \$1,829,779 vs 2005's projected budget of \$2,207,490 including the breakdown between salaries and operating expenses for each year. He outlined the various types of licenses issued in 2004 by type and number as depicted in his written testimony. A comparison of 2003/2004 taxes collected and where those taxes are distributed also was shared by the Director. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs at 10:45 a.m. on Tuesday, January 11, 2005, in Room 231-N of the Capitol.

Committee questions followed Mr. Groneman's presentation.

Chairman Brungardt summarized the challenges and responsibilities of updating liquor laws due to changing times. He stated that the Committee's charge was to be mindful of the situation as it exists since it was the Legislature that created the current laws governing liquor, but also to look at moving ahead toward making the laws a little more rational in the future.

The meeting adjourned at 11:35 a.m. The next meeting is scheduled for January 12, 2005, at 10:30 a.m.

Office of Revisor of Statutes

Statehouse, Suite 322-S
300 S.W. 10th Avenue
Topeka, Kansas 66612-1592
Telephone: 785-296-2321 FAX: 785-296-6668
email: maryt@rs.state.ks.us

MEMORANDUM

To: Senate Committee on Federal and State Affairs
From: Mary Torrence, Senior Assistant Revisor of Statutes
Date: January 11, 2005
Subject: Recent Legislation relating to Alcoholic Beverages

The Legislature considered several issues related to alcoholic beverages in the 2003 and 2004 legislative sessions. Among those were: (1) Uniformity of the Kansas Liquor Control Act and the ability of cities to opt out of its provisions; (2) Sunday sales of alcoholic beverages, the issue which precipitated the uniformity debate; and (3) the prohibition against purchasing wines from outside the state and shipping it into the state.

Uniformity of the Kansas Liquor Control Act

In late 2002 the governing bodies of the Unified Government of Wyandotte County and the city of Edwardsville adopted charter ordinances exempting their respective jurisdictions from the prohibition against Sunday sales of alcoholic liquor under the Kansas Liquor Control Act. The state filed an action challenging the cities' authority to charter out of the provisions of the Act. The issue in the case was whether provisions of the Liquor Control Act which are not uniformly applicable to all cities allow cities to exert their home rule powers under Article 12, Section 5, of the Kansas Constitution to charter out of the provisions of the act or whether the authority to regulate alcoholic liquor is exclusively reserved to the state under Article 15, Section 10, of the Constitution. On appeal, the Kansas Supreme Court held that the Liquor Control Act is does not apply uniformly to all cities and that cities may charter out of the Act. See *State ex rel. Kline v. Board of Comm'rs of Unified Gov't of Wyandotte Co/KC*, 277 Kan. 516 (2004).

Senate Federal & State Affairs
Committee

1-11-05

Attachment 1

The Legislature attempted to address the issue of nonuniformity of the Liquor Control Act during the 2003 session in House Substitute for Senate Bill No. 2. Because the House and Senate could not agree on how to resolve the issue, the bill died in conference committee.

During the interim between the 2003 and 2004 sessions, the Special Committee on Judiciary was charged with review of the liquor and cereal malt beverage laws and the need for uniformity in those laws. The Committee introduced 2004 Senate Bill No. 305, which would have made the Liquor Control Act uniform and would have amended or repealed various provisions of the liquor and cereal malt beverage laws which the Committee determined were out of date or unenforceable. The Committee discussed but did not make recommendations regarding holiday sales, single-strength beer, elimination of the distinction between alcoholic liquor and cereal malt beverage and a number of other issues. The Committee did recommend that the Legislature further consider the issue of hours of sale of cereal malt beverages and alcoholic liquor.

In the 2004 session, Senate Bill No. 305 was referred to the Senate Committee on Federal and State Affairs. The Committee adopted various amendments to the bill, including a provision that would have allowed cities and counties to adopt alcoholic beverage regulations which were more stringent than or supplementary to state law. This provision was deleted by the Senate Committee of the Whole. The Committee on Federal and State Affairs also amended the bill in other ways, including a provision increasing increase gallonage taxes which was also deleted by Senate Committee of the Whole. The bill then went to the House where it died in the House Committee on Federal and State Affairs.

Also during the 2004 session, the House Committee on Federal and State Affairs introduced House Substitute for Senate Bill No. 295, which would have made the Liquor Control Act uniform. This bill died on House General Orders.

Sunday and Holiday Sales of Alcoholic Beverages

The issue of Sunday sales of alcoholic liquor was central to legislative consideration of the uniformity issue. In 2003 the House Committee of the Whole amended House Substitute for Senate Bill No. 2 to provide for Sunday sales of alcoholic liquor on a county-option basis. Similarly, 2004 Senate Bill No. 305, as introduced, would have allowed any city to provide for Sunday sales within the city and any county to allow Sunday sales within the unincorporated area of the county. On the House side, 2004 House Substitute for Senate Bill No. 295, as it came out of House

committee, would have prohibited all Sunday liquor sales. As previously noted, these bills died at various stages of the legislative process.

Purchase and Shipment of Wines from Outside the State

Another issue which surfaced repeatedly during the last two legislative sessions is whether out-of-state wine sellers should be allowed to sell and ship wines to buyers in this state. In 2003, the House of Representatives passed House Concurrent Resolution No. 5016, which called for a study of the issue. The concurrent resolution died in Senate Committee on Federal and State Affairs. However, 2003 House Substitute for Senate Bill No. 2 was amended by House Committee of the whole to include a provision allowing the sale and shipment of out-of-state wines to Kansans. The introduced version of 2003 Senate Bill No. 305 included a similar provision which was deleted by the Senate Committee of the Whole. In addition, 2003 House Bill No. 2637, sponsored by a number of House members, would have enacted the same provision. That bill died in House committee. To enforce collection of liquor taxes and the age for consumption of liquor, all the bills dealing with this subject have required the wine to be shipped to a licensed Kansas liquor store, where the buyer must pick up the wine.

December 28, 2004

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.

Senate Federal & State Affairs

Committee

1-11-05

Attachment 2

- 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.
- 1968 Consumption of alcoholic liquor authorized on property leased by a city to others which is used as a hotel or motel.
- 1969 Consumption of alcoholic liquor authorized on city property in any city larger than 200,000 when approved by the city ordinance.
- 1970 Blood alcohol level at which a driver was presumed to be under the influence of alcohol was lowered from 0.15 percent to 0.1 percent.
- Proposition to remove "open saloon" prohibition from *Constitution* rejected by voters 335,094 to 346,423.
- 1971 Consumption of alcoholic liquor authorized on county property in any county larger than 150,000 when approved by county resolution.
- 1975 Consumption of alcoholic liquor authorized on state-owned premises which are furnished to and occupied by any state employee as a residence.
- 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:

- one-third to the general fund;
- one-third to a special parks and recreation fund; and
- 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 ABC Board of Review.

Consumption of alcoholic liquor authorized on property owned or operated by an airport authority pursuant to chapter 27 of KSA.

1981 Consumption of alcoholic liquor authorized in a licensed club on property owned or operated by an airport authority established by a city larger than 200,000 population.

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 0.1 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 ABC 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 0.1 percent or greater) was made a misdemeanor.

Consumption of alcoholic liquor authorized on: the premises of a microbrewery or farm winery; the State Fairgrounds on the day of a parimutuel race; and on property under the control of the State Board of Regents or the Washburn University Board of Regents which is not used for classroom instruction.

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

Consumption of alcoholic liquor authorized on the State Fairgrounds if such liquor is domestic wine and is used for judging competitions.

- 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 (NAMB) were subject to the same taxes as CMB.

Consumption of alcoholic liquor authorized at the State Historical Museum and other buildings on the premises.

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

Consumption of alcoholic liquor authorized by cities which have a lease agreement with a National Guard armory.

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.

Consumption of alcoholic liquor authorized on the premises of any state-owned historic site under the jurisdiction of the State Historical Society.

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 0.1 percent to 0.08 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 on election days 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.

Consumption of alcoholic liquor authorized at the Mulvane Art Center and the Bradbury Thompson Alumni Center on the campus of Washburn University.

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.

Driving Under the Influence (DUI) law amended to make it unlawful for any person under 21 years of age to operate a motor vehicle with a blood or breath alcohol concentration of .02 or greater.

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.

1998 City residents authorized to vote on the question of whether to allow retail liquor stores to operate in the city limits at any regular general city election (every two years). Prior law allowed such a vote only once every four years.

Licensed farm wineries allowed to produce and sell "domestic fortified wine" (which contains between 14 percent and 20 percent alcohol by volume) under the same conditions as they sell domestic table wine.

The Hiram Price Dillon House and surrounding property exempted from the general prohibition against consuming liquor on public property. Policies regarding the consumption of liquor in the Dillon House will be established by the Legislative Coordinating Council.

Consumption of alcoholic beverages at lake resorts at state parks allowed, should any such lake resorts be developed.

- 1999 Consumption of alcoholic liquor authorized: (1) at the Kansas National Guard Regional Training Center in Salina pursuant to rules and regulations adopted by the Adjutant General; (2) in the State Capitol Building and on the Capitol grounds on 12-31-99 and 1-1-2000 under policies adopted by the Secretary of Administration; and (3) at the Sternberg Museum at Fort Hays State University under policies adopted by the Kansas Board of Regents.

The Attorney General is required to appoint a Statewide Drug Abuse Resistance Education (DARE) coordinator.

Boating Under the Influence (BUI) laws amended to be more consistent with the Driving Under the Influence (DUI) laws.

- 2000 Retail liquor store licenses may be issued in any township having a population of more than 5,000 (previous law set the population at more than 11,000).

Consumption of alcoholic liquor authorized on community college property, subject to policies adopted by the community college board of trustees.

Procedures are established for "sting" operations in which a person under 21 years of age attempts to purchase alcoholic liquor or CMB in violation of the law.

Citations for violations of certain liquor laws must be delivered to the alleged violator at the time of the violation, and mailed to the licensee within 30 days.

- 2001 The Liquor Control Act is amended to delete the residency requirement for liquor and beer distributors.

CMB and alcoholic liquor statutes, as they apply to a minor in possession of such beverages or liquor, are combined into one law. The crimes of furnishing alcoholic liquor and CMB to minors are combined.

The residency requirements for the Director and all employees of the Division of Alcoholic Beverage Control is revised to require that these individuals be United States citizens and residents of Kansas.

The issuance of a license for liquor or CMB to a license applicant is prohibited if the applicant's spouse has been convicted of a felony or other crime which was committed during the time that the spouse held a license.

DUI laws are amended to increase criminal fines and penalties, to increase driver's license lengths of suspensions and reinstatement fees, to provide for lifetime driver's license revocations, to amend the zero tolerance laws regarding driver's license suspensions, and to amend the underage drinking and possession statute to require driver's license suspensions of 30 days for violations.

- 2002 The new Beer and Cereal Malt Beverage Keg Registration Act requires retailers to register all beer kegs having a capacity of four gallons or more with an identification number to establish the identity of the purchaser. Violations by retailers could result in fines and suspensions or revocation of their licenses. A class B misdemeanor crime is created for possession of an unregistered keg or removal or defacing of the identification number.

DUI fund expenditures by Kansas Department of Health and Environment are broadened to include laboratory enhancements and other purposes related to preservation of evidence, such as travel. Current DUI expenditures include blood or breath alcohol equipment and driving programs.

Procedural changes are made to the driving under the DUI law relating to offenders convicted of fourth and subsequent offenses.

The State Fair Board is authorized to allow the consumption of alcoholic liquor on nonfair days in conjunction with bona fide scheduled events involving 75 or more invited guests.

The Liquor Control Act is amended to delete the requirement that the Division of Alcoholic Beverage Control (ABC) issue permits for common carriers to transport liquor in Kansas, and to delete the requirement that common carriers submit duplicate bills of lading to the ABC.

The furnishing of alcoholic liquor to a minor law is amended to clarify that all cereal malt beverage and alcoholic liquor defendants are entitled to the defense that they had reasonable cause to believe the minor was 21 years old.

- 2003 A non-prison sanction of up to 60 days for those offenders who are condition violators of the new drug and alcohol abuse treatment programs was enacted in KSA 22-3716. The non-prison sanctions could include county jail, fines, community service, intensified treatment, house arrest or electronic monitoring. If these methods prove ineffective, the offender may be sent to prison to serve the term of the sentence.

- 2004 In March of 2004, the Kansas Supreme Court, in *State ex rel. Kline v. Unified Bd. of Comm'rs of Wyandotte County/Kansas City*, 277 Kan. 516 (2004), unanimously upheld the exemption of cities from the provision of the State Liquor Control Act that prohibited the sale of liquor on Sunday, because the provisions of the Act are not uniformly applied to all cities. A number of cities subsequently allowed the sale of liquor on Sundays. The Legislature attempted to address the uniformity issue, but the bill died in conference committee.

A new crime was created of unlawfully hosting minors consuming alcoholic liquor or cereal malt beverages. The new crime is a class B misdemeanor with a fine of \$200.

The Director of Alcoholic Beverage Control is authorized to revoke or suspend the liquor license of any licensee found in violation of the prohibition against the use of pyrotechnics (fireworks), pyrotechnic devices and pyrotechnic materials in any building which includes liquor establishments.

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 NAMB) is beer containing 0.5 percent or less alcohol by weight.
- *Domestic Table Wine* contains 14 percent or less alcohol by volume and is manufactured by farm wineries from Kansas-grown agricultural products.
- *Domestic Fortified Wine* contains between 14 percent and 20 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.

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-premises 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

<u>Licensee/Permittee</u>	<u>Buys From</u>	<u>Sells To</u>
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 in the same or adjacent counties)
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)

2-11

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"> • 10 year U.S. Citizen¹ • 4 year Kansas Resident² • No felons; no persons convicted of prostitution, gambling/morals violations • No prior license revocations³ • 21 years of age • May not be, appoint, or supervise any law enforcement official⁴ or be employed by ABC • May be a licensed CMB retailer⁵ • Must own premises or have a valid lease for at least 3/4 of license period • Upon initial application, the applicant's spouse also must meet qualifications for licensure other than citizenship, residency, and age 	<ul style="list-style-type: none"> • Same • Same • Same • Same • Same • Same • Cannot have CMB License • Same • Same 	<ul style="list-style-type: none"> • U.S. Citizen • 1 year Kansas Resident • 6 months resident of county where business is located; good character reputation in community where resident • No felony conviction in preceding 2 years; no conviction for moral turpitude, drunkenness, DUI, or any liquor violation • N/A • Same • N/A • N/A • N/A • Same
Business Arrangements Eligible for License	<u>Partnerships</u> -- All partners qualify as individuals	Same	<u>Partnerships</u> , if all partners qualify as individuals
	<u>Corporations</u> -- Not eligible for licensure	<u>Corporations</u> , Stockholder owning aggregate 50% must be fully qualified as individuals, all others must be fully qualified except for citizenship or residency	<u>Corporations</u> , if all officers, managers, directors, and stockholders with >25% of stock would qualify as individuals ⁶
	<u>Trust</u> -- All grantors, beneficiaries, and trustees must meet qualifications, except for age of beneficiary, as individuals	Same	Business may be operated by an agent if the agent qualifies as an individual
License and Application Fees	License Fee: \$250, annually	Same	License Fee: \$25-50, annually
	Application Fee: \$50, initial; \$10, renewal Local License Tax: \$100-300, annually	Same N/A	Application Fee: \$25, annually State Stamp: \$25

TABLE 2 (CONTINUED)

Statutory Provision	Retail Liquor Store	Microbrewery	CMB Retailer (off-premise)
Products	Total: \$400-600, initial \$360-560, renewal Beer, wine, spirits, NAMB	Total: \$350, initial \$260, renewal Domestic beer	Total: \$75-100, annually CMB, NAMB
Days of Sale	No sales on: Sunday, certain holidays ⁷	Any days	No sales on Sundays
Hours	No sales between 11:00 p.m. and 9:00 a.m. ⁸	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 ⁹	N/A	Same as retail liquor stores
Credit Card Sales	Yes ¹⁰	Same	Same
Advertising	No hand bills, bill boards ¹¹ , 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"> • Consumers, clubs, drinking establishments, caterers, and holders of temporary permits • May deliver product to clubs, drinking establishments, and caterers in the same or adjacent counties 	<ul style="list-style-type: none"> • Consumers, beer distributors 	Consumers
Location of Licensed Premises	<ul style="list-style-type: none"> • Must be in areas zoned for commercial use if jurisdiction is zoned • Cannot be in city that does not permit retail liquor stores • Cannot be within 200 feet of school, college, or church • Cannot have inside entrance or opening that connects with another business 	<ul style="list-style-type: none"> • Must be zoned for agricultural, commercial, or business purposes • Cannot be within 200 feet of a school, college, or church 	<ul style="list-style-type: none"> • City or county may establish zones in which CMB retailers may not be located

TABLE 2 (CONTINUED)

2-13

Statutory Provision	Retail Liquor Store	Microbrewery	CMB Retailer (off-premise)
Other Sales	<ul style="list-style-type: none"> ● 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 ● May give away advertising specialties ● May charge a delivery fee ● May <u>not</u> provide entertainment nor have pinball machines, or games of skill or chance on the premises 	<ul style="list-style-type: none"> ● No limitations regarding sale of nonalcoholic products 	<ul style="list-style-type: none"> ● Same
<ol style="list-style-type: none"> 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 (KSA 1992 Supp. 41-714) is so vague as to be unenforceable. 			

**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 ⁴	No felony, prostitution, gambling, or morals conviction. No license revocation ²	21	May not be, appoint, or supervise any law enforcement official ³ 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 ²	21	May not be, appoint, or supervise any law enforcement official ³ 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	N/A ^{6,7}	No felony, prostitution, gambling, or morals conviction. No license revocation ²	21	May not be, appoint, or supervise any law enforcement official ³ 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	N/A ^{6,7}	No felony, prostitution, gambling, or morals conviction. No license revocation ²	21	May not be, appoint, or supervise any law enforcement official ³ 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	N/A ^{6,7}	No felony, prostitution, gambling, or morals conviction. No license revocation ²	21	May not be, appoint, or supervise any law enforcement official ³ 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 ⁴	No felony, prostitution, gambling, or morals conviction. No license revocation ²	21	May not be, appoint, or supervise any law enforcement official ³ 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 ⁴	No felony, prostitution, gambling, or morals conviction. No license revocation ²	21	May not be, appoint, or supervise any law enforcement official ³ 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 ¹	4 year ⁴	No felony, prostitution, gambling, or morals conviction. No license revocation ²	21	May not be, appoint, or supervise any law enforcement official ³ 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 ²	21	May not be, appoint, or supervise any law enforcement official ³ 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. ⁵
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 ²	21	May not be, appoint, or supervise any law enforcement official ³ 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 ²	21	May not be, appoint, or supervise any law enforcement official ³ 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.

Nonresidents are required to submit to a national criminal history check, provide a set of fingerprints, disclose substantial financial interests, and allow the Director to review applicant's financial record before any application is granted.

Nonresident applicants applying for a license or permit are required to file a written consent giving the State court jurisdiction over the applicant in any court action.

SOURCE: Division of Alcoholic Beverage Control
as formatted and updated 12/04/01 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 ¹	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 (nonprofit 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.

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 initiate the referendum 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 12/04**

**Counties where Liquor by the Drink
Has Been Approved as of 12/04**

		<u>With 30% Food Sales Requirement</u>		<u>No Food Sales Requirement</u>
Barber	Kiowa	Allen	Miami	Barton
Chautauqua	Lane	Anderson	Mitchell	Brown
Cherokee	Logan	Atchison	Morris	Cowley
Clark	Meade	Bourbon	Nemaha	Crawford
Clay	Morton	Butler	Neosho	Douglas
Commanche	Osborne	Chase	Ness	Ellis
Doniphan	Ottawa	Cheyenne	Norton	Geary
Elk	Rice	Cloud	Osage	Graham
Gove	Scott	Coffey	Pawnee	Lyon
Grant	Sheridan	Decatur	Phillips	Montgomery
Gray	Stafford	Dickinson	Pottawatomie	Riley
Greeley	Stanton	Edwards	Pratt	Saline
Hamilton	Stevens	Ellsworth	Rawlins	Sedgwick
Harper	Wallace	Finney	Reno	Shawnee
Haskell	Wichita	Ford	Republic	Wyandotte
Jewell	Woodson	Franklin	Rooks	
		Greenwood	Rush	TOTAL:
		Harvey	Russell	15 Counties
		Hodgeman	Seward	
		Jackson	Sherman	
		Jefferson	Smith	
		Johnson	Sumner	
		Kearny	Thomas	
		Kingman	Trego	
		Leavenworth	Wabaunsee	
		Labette	Washington	
		Lincoln	Wilson	
		Linn		
		Marion		
		Marshall	TOTAL:	
		McPherson	58 Counties	
TOTAL:				
32 Counties				

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
PACKAGE SALES							
Retail Liquor Stores	Beer ¹ , wine, spirits, non-alcohol beer (NAMB) ²	No sales on: Sunday, certain holidays ³ .	No sales between 11 p.m. and 9 a.m. ⁴	No sales at less than cost. ⁵	Permitted	No handbills, billboards ⁶ , or window displays of liquor.	Must be 21 or older.
CMB Retailers (off-premise)	CMB, NAMB	No sales on Sunday.	No sales between midnight and 6 a.m. ⁷	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.
BY THE DRINK							
Clubs & Drinking Establishments Microbreweries and Farm Wineries ⁸	Beer, wine, spirits, NAMB, CMB ⁹	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, NAMB	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."

- Malt beverage containing more than 3.2 percent alcohol by weight.
- Malt beverage containing not more than 0.5 percent alcohol by weight.
- Holidays on which liquor stores must be closed: Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.
- By ordinance, a city may require liquor stores to close prior to 11:00 p.m., but not before 8:00 p.m.
- 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.
- In a 1992 opinion (92-14), the Attorney General stated that the statute that prohibits liquor retailers from advertising by means of billboards (KSA 1992 Supp. 41-714) is so vague as to be unenforceable.
- 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.
- 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.
- 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.

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 principal place of business in a county that permits liquor by the drink;
- notify the ABC Division a minimum of ten days prior to an event at which liquor will be sold; and
- 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 the 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 the 10 percent drink tax on sales of liquor.

ATTACHMENT 3

TEMPORARY PERMITS FOR LIQUOR BY THE DRINK SALES

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; and
- 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. 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

<u>Licensee/Employer</u>	<u>Minimum Age</u>	<u>Supervision Required</u>	<u>Other</u>
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.

What Fees are Charged to Obtain and Renew Liquor and CMB Licenses?

TABLE 7

Licensee	License Fee	Application/Registration Fee	Local License Tax
CLUB			
<u>Class A</u> Fraternal or War Veterans Social Club ≤ 500 members	\$250	\$50 initial application \$10 renewal application	Optional annual tax: \$100-\$250 (no other tax or license fee authorized)
Social Club > 500 members	\$500		
	\$1,000		
<u>Class B</u>	\$1,000		
Drinking Establishment	\$1,000		
Hotel (entire premises)	\$3,000		
Caterer	\$500		N/A
Temporary Permittee	\$25/day	N/A	N/A
Manufacturer		\$50 initial application \$10 renewal application	Optional annual tax not to exceed amount of state license fee
Spirits	\$2,500		
Wine	\$500		
Beer	\$200-\$1,600		
Distributor			
Spirits	\$1,000		
Wine			
Beer			
Microbrewery	\$250		N/A
Farm Winery			
Outlet	\$50		
Liquor Retailer	\$250		Mandatory annual license tax \$100-\$300
CMB Retailer	\$25-\$50	\$25 ^a	N/A
Off Premise			
CMB Retailer	\$25-\$200		N/A
On Premise			
<p>a) Applicants for new and renewal of 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)	0.30
Wine (over 14% alcohol)	0.75
Beer and CMB	0.18

Gallonage tax is paid by the Kansas manufacturer or by the first person in the state who receives the product.

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 NAMB purchased from licensed liquor retailers, farm wineries, and microbreweries. The tax also is 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 5.3 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 2002.

TABLE 8

How State Liquor Taxes and Fees are Distributed
Fiscal Year 2004

Source	Total Receipts	Refunds	Net of Refunds	Distribution of Fees and Taxes		
				State General Fund	Amount	Other Funds Fund
Taxes						
Gallonege Tax (Beer, CMB, Wine)	\$ 11,063,786	\$ 0	\$ 11,063,786	\$ 11,063,786		
Gallonege Tax (Spirits)	7,715,839	0	7,715,839	6,944,256	771,583	Community, Alcoholism and Intoxication Pgm. (10%)
Enforcement Tax	40,272,868	16,403	40,256,466	40,256,466		
Drink Tax	\$ 28,672,690	\$ 54,946	\$ 28,617,744	\$ 7,153,502	1,430,700	Community, Alcoholism and Intoxication Pgm. (5%)
Retailers' Sales Tax	(Tax paid by retailers on cereal malt beverages sold by non-liquor licensees)				20,033,542	Local Alcoholic Liquor (70%)
City and Township License Tax on Liquor Retailers	(Local taxes assessed on liquor retailers)					State tax to SGF & Highway Fund, local tax to local general fund
						Estimated to generate \$90,000- \$230,000 annually
Fees						
Club, Drinking Establishment, and Caterer Annual Licenses	\$ 2,083,843	\$ 58,400	\$ 2,025,444	\$ 1,012,722	\$ 1,012,722	Alcoholism Treatment
Club, Drinking Establishment, and Caterer Applications, Temporary Permits	350,115	7,699	342,415	342,415		
CMB Retailer Applications	82,950	--	82,950	82,950		
Other Fees and Fines	<u>456,399</u>	<u>--</u>	<u>456,399</u>	<u>456,399</u>		
TOTAL	\$ 90,698,491	\$ 137,447	\$ 90,561,043	\$ 67,312,496	\$ 23,248,547	

The Community, Alcoholism, and Intoxication Program 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 Rainbow Mental Health Facility may not receive support from this fund.

The Alcoholism Treatment 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.

The Local Alcoholic Liquor Fund is distributed to counties and cities. For counties and cities with a population greater than 6,000, the funds must be divided equally between their general funds, parks and recreation funds, and special alcohol and drug program funds. Small cities must divide their receipts their receipts equally between the 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 program funds. Butler County and it's cities have a special distribution and usage requirement.

Source: Department of Revenue Comparative Statement of Taxes and Fees Received, Fiscal Year 2004 dated July 31, 2003

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

Local governments have some statutory power to regulate cereal malt beverage and liquor sales in their jurisdictions. In addition, cities under their constitutional home rule authority and counties under their statutory home rule power also may adopt regulations in this area. The most extensive statutory authority for local units of government in regulating sale of alcoholic beverages is in the licensure and regulation of the sale of CMB. Cities and counties are the sole issuers of CMB licenses. 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, by statute, also have some role in the process of granting retail liquor store licenses. City or township governing bodies by statute 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. Since the Liquor Control Act is nonuniform, cities may, by charter ordinance, regulate other aspects of retail liquor sales.

As outlined in *Kansas Local Government Law*, 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;
- prohibit licensure under the Drinking Establishment Act only if the premises are located in an inappropriately zoned area.

Approximately 100 cities have enacted ordinances under their constitutional home rule authority that require local licensure of establishments that sell liquor. For example, the city of Lawrence requires a local license for each caterer, Class A Club, Class B Club, drinking establishment, alcoholic liquor retailer and temporary alcoholic liquor permit holder. The local ordinance also prohibits nudity in licensed premises. The City of Wichita under its home rule authority as part of its licensing scheme, prohibits minors to be on the premises of establishments that sell liquor by the drink unless 30 percent of the gross revenues of the establishment is derived from food sales.

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 legalize retail liquor sales in

Kansas unless voters subsequently authorized such sales in that locality. Currently, retail liquor sales are permitted in 101 counties in Kansas.

Retail liquor stores cannot be located in cities in Haskell, Kiowa, Linn, and Stanton counties. (Voters in 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, 39 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.



K A N S A S

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

To: Senate Federal and State Affairs Committee
Honorable Pete Brundgardt, Chairman

From: Tom Groneman, Director
Alcoholic Beverage Control

Date: January 11, 2005

Subject: Kansas Department of Revenue
Alcoholic Beverage Control Division Overview

Mr. Chairman, Members of the Committee, it is my pleasure to appear before you today to present a brief overview of the Alcoholic Beverage Control Division and introduce our new Assistant Attorney General and ABC Operations Manager.

The number one priority of the Alcoholic Beverage Control Division of the Department of Revenue is to fairly administer and enforce the liquor laws in Kansas to ensure compliance and to maintain a level playing field among all licensees. Also, as part of the Department of Revenue, it is our duty to see that all applicable taxes due and owing are collected. The division is divided into three organizational units: licensing, administration and enforcement.

In 2004, licensing processed in excess of 3,800 renewal and new license applications for retail liquor stores, distributors, manufacturers, farm wineries, microbreweries, on-premise establishments (class "A" clubs, class "B" clubs and Drinking Establishments), caterers, suppliers and temporary permit holders. Licensing serves as the first point of contact for businesses desiring to sell alcohol products in Kansas. Licensing answered over 32,700 phone calls and helped over 2,100 walk-in customers with alcohol related questions during the last year.

In addition, licensing monitors brand registrations (currently 21,636) and collects gallonage taxes, liquor drink taxes, liquor excise taxes, sales tax, withholding tax and administrative fines levied by the Director of ABC or his Designee. Licensing is functionally part of the Customer Relations Bureau within the Division of Tax Operations, but under the authority of the Director of ABC for issues related to liquor licenses. Licenses are issued and renewed on an annual basis.

The administrative unit performs general staff support for the Director and Chief Enforcement Officer and related work such as budget preparation, personnel record keeping, property management, records management and coordination of the divisions activities. Included in administration is the Legal/Licensee Administrative Actions (LAA) section.

The Legal/Licensee Administrative Action (LAA) section is staffed by the Assistant Attorney General assigned to the ABC, who administratively prosecutes violations of the liquor laws before the Director or his designee. The Director and the Assistant Attorney General are responsible for the disposition of all liquor related administrative citations brought forth by the investigative activities of the Enforcement section and other law enforcement agencies. Citations are issued for violations such as: sale of liquor to a minor, minor in possession, furnishing, open after hours, failure to timely pay liquor taxes and numerous other violations of state laws, rules and regulations. Also, the Assistant Attorney General represents the division at all appellant levels, assists in drafting administrative regulations, reviews agreements and provides legal counsel.

The Enforcement unit provides investigative support for the ABC Director and Chief Enforcement Officer. Enforcement agents are certified law enforcement officers. They conduct criminal and administrative investigations to determine compliance with liquor laws. Field agents provide training to licensees and local law enforcement officers; conduct controlled buy operations and bar checks; investigate complaints and hidden ownerships; and perform routine compliance checks. Enforcement works closely with local, state and federal law enforcement agencies as well as the Division of Taxation in carrying out these activities. Investigations resulting in violations are presented to the County or District Attorney for criminal prosecution, and/or the ABC Assistant Attorney General for administrative action.

Over the years the ABC has been assigned other programs to administer, including the enforcement of laws prohibiting the sale of cigarettes to minors, enforcement of the cigarette tax laws and enforcement of the tax on illegal drugs.

In 2004, The Division of Alcoholic Beverage Control had 39 total positions, 5 of which were vacant. Currently, three of the vacant agent positions are in the process of being filled and the new agents should be onboard by the end of this month.

The 2004 budget for the Alcoholic Beverage Control Division was \$1,829,779 comprised of \$1,635,545 in salary and \$ 194,234 in other operating expenses.

The 2005 projected budget is \$ 2,207,490 comprised of \$ 1,938,347 in salary and \$ 269,143 in other operating expenses.

There were 3,807 licenses issued in 2004 as follows:

Retail liquor stores	717
Class "A" clubs	317
Class "B" clubs	158
Drinking Establishments	1,509
Caterers	111
Beer Distributors	44
Spirits Distributors	7
Wine Distributors	10
Microbreweries	9
Farm Wineries/Outlets	19
Manufacturers	5
Temporary Permits	338
Supplier Permits	556

Comparison of 2003/2004 Taxes Collected:

	2003	2004	% +/-
Gallonage	\$15,487,785.91	\$16,614,792.35*	7.0 +
Liquor Enforcement	\$38,833,089.51	\$40,256,465.86	3.6 +
Liquor Excise	\$27,387,241.14	\$28,614,009.98**	4.4 +

*10% of gallonage tax goes to SRS Community Alcoholism and Intoxication Program.the remainder to the state general fund.

** 70% of Liquor Excise Tax goes to Local Alcoholic Liquor fund, 5% goes to the SRS Community Intoxication Program and 25% to the state general fund.