

Policy & Research  
915 SW Harrison St  
Topeka KS 66612-1588  
Nick Jordan, Secretary  
Richard Cram, Director



Proposed

Phone: 785-296-3081  
FAX: 785-296-7928  
www.ksrevenue.org

Sam Brownback, Governor

**State of Kansas  
Department of Revenue  
Notice of Hearing on Proposed Administrative Regulation**

Proposed revisions have been made to alcoholic beverage control regulations in response to public comments received at the public hearing held March 21, 2011. Therefore, additional rulemaking proceedings are being initiated pursuant to K.S.A. 2010 Supp. 77-421(c). This serves as formal notice of our intent to adopt the proposed regulations as revised subsequent to the public hearing. A public hearing will be conducted by the Department of Revenue at 1:30 p.m. on Wednesday, December 7, 2011, in Room 230, Secretary's Conference Room on the second floor of the Docking State Office Building, 915 SW Harrison, Topeka to consider the adoption of alcoholic beverage control regulations. Copies of these proposed regulations may be found at [www.ksrevenue.org](http://www.ksrevenue.org).

This 30-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written comments from the public on the proposed regulations. All interested parties may submit written public comments on the proposed regulations prior to the hearing to Kathleen Smith, Tax Specialist, Office of Policy and Research, Room 230, Docking State Office Building, 915 SW Harrison, Topeka, Kansas 66612 or through e-mail at [kathleen.smith@kdor.ks.gov](mailto:kathleen.smith@kdor.ks.gov).

All interested parties will be given a reasonable opportunity to present their views, either orally or in writing or both, concerning the adoption of the proposed regulations. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Kathleen Smith at (785) 296-3081 or TTY (785) 296-6461. Disabled parking is located in State Parking Lot No. 2, south of the Docking Building facing Harrison Street. The east entrance to the Docking Building is accessible.

These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and the economic impacts follow:

**Kansas Department of Revenue  
Division of Alcoholic Beverage Control**

**Article 10.-Trade Practices**

**Amendments to K.A.R. 14-10-6.** This amendment revises out-dated language and clarifies the Agency's position on the application of interpretive memoranda issued by the federal government concerning trade practices across the liquor industry.



**Economic Impact:**

The Department of Revenue does not anticipate any impact on the department, other government agencies, or private businesses or individuals.

**Amendments to K.A.R. 14-10-12.** This regulation requires each liquor industry member to maintain records of all equipment, services, supplies and advertising products the industry member provides to a retailer, club, drinking establishment or caterer. The records must contain certain information and be retained by the industry member for a period of three years.

**Economic Impact:**

The Department of Revenue does not anticipate any impact on the department or other government agencies.

**Amendments to K.A.R. 14-10-16.** This amendment authorizes an industry member to retrieve damaged liquor containers from a retailer and exchange the damaged liquor for undamaged product.

**Economic Impact:**

The Department of Revenue does not anticipate any impact on the department, other government agencies, or private businesses or individuals.

**Adoption of K.A.R. 14-10-17. Trade practices.** This new regulation adopts many of the trade practice regulations promulgated by the federal alcohol and tobacco tax and trade bureau ("TTB") as the trade practice regulations of Kansas.

**Economic Impact:**

The Department of Revenue does not anticipate any impact on the department or other government agencies. Industry members may see cost savings due to streamlined practices since they now have only one rule to follow on many issues.

**Adoption of K.A.R. 14-10-18. Repurchase by distributor; when allowed.** This new regulation authorizes a distributor to buy back alcoholic liquor when: required by the supplier; when that brand of liquor is being closed out; when the licensee to whom the liquor was sold quits business; when beer is close to its expiration date; when the product is damaged; or when cereal malt beverage was not used for a temporary event.

The regulation specifies that a product may not be returned simply because it is overstocked or slow-moving.

**Economic Impact:**

The Department of Revenue does not anticipate any impact on the department or other government agencies. Industry members may incur minimal costs through the return of these products.

A copy of these regulations and the economic impact statement may be obtained from the Kansas Department of Revenue, Office of Policy and Research, Room 230, Docking State Office Building, 915 SW Harrison, Topeka, Kansas 66612-1588 or via our website: [www.ksrevenue.org](http://www.ksrevenue.org).



Proposed

**14-10-6. General.** (a) ~~The use of~~ Action taken by an industry member, retailer, club, drinking establishment, or caterer in accordance with interpretive memorandums memoranda issued by the bureau of alcohol, tobacco and firearms of the United States treasury alcohol and tobacco tax and trade bureau, department of the treasury shall be considered good faith compliance with this article ~~of these regulations~~ unless the director has communicated a contrary interpretation pertaining to the subject of the ~~memorandums~~ memoranda.

(b) Subject to the exceptions provided in this article, industry members ~~are~~ shall be prohibited from inducing the purchases of a retailer, club, drinking establishment, or caterer by furnishing, giving, renting, lending, or selling to the retailer, club, drinking establishment, or caterer any equipment, fixtures, signs, supplies, money, services, or any other things of value.

(c) ~~This regulation shall take effect on or after October 1, 1988.~~

(Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended P-\_\_\_\_\_.)



ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

OCT 05 2011

SEP 29 2011

APPROVED BY *R*

APPROVED

Proposed

**14-10-12.** (Authorized by and implementing K.S.A. 1991 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; revoked P-\_\_\_\_\_.)

RECEIVED  
SEP 07 2011  
DEPT. OF ADMINISTRATION

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

SEP 19 2011

JUL 08 2011

APPROVED BY *[Signature]*

APPROVED

Proposed

**14-10-16. Defective liquor containers; repurchase by distributor;**

~~when allowed.~~ (a) Liquor ~~No industry member shall knowingly sell any liquor~~ containers; ~~except beer containers;~~ that leak, contain foreign matter in the bottle, are short-filled, have broken ~~federal~~ seals, have badly soiled or stained labels, or are ~~not~~ otherwise not fit for resale to the general public, ~~shall not be knowingly sold by distributors.~~ Suppliers' representatives Industry members shall not arrange to have retailers accept such merchandise.

(b) ~~Any distributor may:~~

(1) ~~Buy back any item of alcoholic liquor or cereal malt beverage when required by the supplier;~~

(2) ~~buy back any item alcoholic liquor or cereal malt beverage from a club, drinking establishment, caterer or retailer that has obtained the approval of the director to close out; and~~

(3) ~~buy back or exchange any item of alcoholic liquor or cereal malt beverage which is damaged, as described in subsection (a), above.~~

(c) ~~Any alcoholic liquor or cereal malt beverage that is damaged as described in subsection (a), above shall not be knowingly sold by suppliers to distributors and any~~ Each industry member that sells such damaged merchandise ~~sold by a supplier to a distributor shall be retrieved by the supplier and exchanged~~ take the following action:



ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

SEP 19 2011

JUL 15 2011

APPROVED BY [Signature]

APPROVED

Proposed

14-10-16  
Page 2

(1) Retrieve the damaged merchandise and exchange for merchandise fit for sale; or

(2) the supplier may authorize its the destruction of the damaged merchandise and refund to the distributor or retailer the purchase price thereof.

~~(d) A product shall not be returned or exchanged because it is overstocked or slow-moving.~~

~~(e) Products for which there is only a limited or seasonal demand, including holiday decanters and certain distinctive bottles, shall not be returned or exchanged.~~

~~(f) This regulation shall take effect on or after October 1, 1988.~~

~~(Authorized by K.S.A. 1987 Supp. 41-703; and implementing K.S.A. 1987 Supp. 41-703, 41-728 41-210 and K.S.A. 41-211; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended P-\_\_\_\_\_.)~~



ATTORNEY GENERAL DEPT. OF ADMINISTRATION

SEP 19 2011

JUL 15 2011

APPROVED [Signature]

APPROVED



Proposed

**14-10-17. Trade practices.** (a) To the extent not otherwise prevented by statute or regulation, the trade practice regulations of the alcohol and tobacco tax and trade bureau, department of the treasury in 27 C.F.R. Part 6, subpart B, subpart C, and subpart D, as in effect on April 1, 2010, excluding the following portions, are hereby adopted by reference and shall be the authorized trade practices under the liquor control act:

- (1) The first four paragraphs in section 6.11;
- (2) subsections (a) and (f) of section 6.21;
- (3) sections 6.25, 6.26, 6.27, 6.31, 6.32, 6.33, 6.34, 6.35, 6.41, 6.44, 6.45, 6.51, 6.52, 6.53, 6.54, 6.55, 6.56, 6.61, 6.65, 6.66, 6.67, 6.71, 6.72, 6.85, and 6.98;
- (4) the first two sentences in section 6.81(a); and
- (5) the phrases “within the meaning of the Act” and “within the meaning of section 105(b)(3) of the Act” in sections 6.42(a), 6.43, 6.83(a), 6.84(a), 6.88(a), 6.91, 6.93, 6.96(a), 6.99(b), 6.100, 6.101(a)(b), and 6.102.

(b) For the purpose of this regulation, the terms “retailer” and “industry member” shall have the meaning specified in 27 C.F.R. Part 6, subpart B, section 6.11. (Authorized by and implementing K.S.A. 41-703; effective P-  
\_\_\_\_\_.)




ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

OCT 05 2011

SEP 29 2011

APPROVED BY 

APPROVED

**14-10-18. Repurchase by distributor; when allowed.** (a) Any distributor may perform any of the following:

(1) Buy back any item of alcoholic liquor or cereal malt beverage when required by the supplier;

(2) buy back any item of alcoholic liquor or cereal malt beverage from a club, drinking establishment, caterer, or retailer that has obtained the approval of the director to close out;

(3) buy back, with approval of the director, any unopened item of alcoholic liquor or cereal malt beverage for which the distributor has a franchise agreement to sell from a club, drinking establishment, caterer, or retailer who is quitting business;

(4) buy back or exchange, at the original sales price, any item of beer or cereal malt beverage that is within 14 days of its expiration date;


(5) buy back or exchange, within 24 hours after delivery, any item of alcoholic liquor that is broken, leaking, or short-filled, contains foreign material, has a soiled or stained label, or is otherwise not fit for resale to the general public;  
or

(6) buy back, with written permission from the director and within three business days after the end of an event conducted under a special event retailer's permit issued under K.S.A. 41-2703 and amendments thereto, any cereal malt beverage sold to the holder of the special event retailer's permit.



ATTORNEY GENERAL

OCT 05 2011

APPROVED BY 

DEPT. OF ADMINISTRATION

JUL 15 2011

APPROVED



Proposed

14-10-18  
Page 2

(b) A product shall not be returned or exchanged because it is overstocked or slow-moving.

(c) Products for which there is only a seasonal demand, including holiday decanters and certain distinctive bottles, shall not be returned or exchanged.

(Authorized by and implementing K.S.A. 41-210 and K.S.A. 41-211; effective P-  
\_\_\_\_\_.)



ATTORNEY GENERAL

OCT 05 2011

APPROVED BY *[Signature]*

DEPT. OF ADMINISTRATION

JUL 15 2011

APPROVED

KANSAS DEPARTMENT OF REVENUE

**ECONOMIC IMPACT STATEMENT**

**K.A.R. 14-10-6**

**I. Summary of amendment to the existing regulation.**

This amendment revises out-dated language and clarifies the Agency's position on the application of interpretive memoranda issued by the federal government concerning trade practices across the liquor industry.

**II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.**

The federal alcohol and tobacco tax and trade bureau ("TTB") defines trade practice restrictions, allowances and terms. State trade practice regulations closely follow the federal regulations. This regulation clarifies the agency's position that good-faith compliance by an industry member with interpretive memoranda issued by the TTB is considered to be compliance with the state trade practice regulations.

Section (c) is being removed as it is no longer relevant.

The regulation is not mandated by federal law.

**III. Anticipated economic impact upon the Kansas Department of Revenue.**

None.

**IV. Anticipated economic impact upon other government agencies and upon private business or individuals.**

This regulation creates no economic impact on other government agencies or on private business or individuals.

**V. Description of any less costly or less intrusive methods that were considered by the Department of Revenue for achieving the state purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation.**

Considered simply revoking the regulation, but industry representatives felt it important to clarify that good faith compliance with memoranda issued by the TTB would provide a safe harbor from prosecutions by the state.



Nick Jordan, Secretary  
Doug Jorgensen, Director

Sam Brownback, Governor

KANSAS DEPARTMENT OF REVENUE

**ECONOMIC IMPACT STATEMENT**

**K.A.R. 14-10-12**

**I. Summary of existing regulation.**

This regulation requires each liquor industry member to maintain records of all equipment, services, supplies and advertising products the industry member provides to a retailer, club, drinking establishment or caterer. The records must contain certain information and be retained by the industry member for a period of three years.

**II. Reason or reasons the proposed regulation is being revoked, including whether or not the regulation is mandated by federal law.**

The federal alcohol and tobacco tax and trade bureau ("TTB") defines trade practice restrictions, allowances and terms. The ABC and KDOR have determined that KS should follow the TTB regulations concerning trade practices, and have submitted a new regulation adopting the TTB regulations as the trade practice regulations for Kansas, with certain modifications. One of the federal regulations being adopted by reference addresses records retention. There is no compelling reason for duplicate regulations.

The regulation is not mandated by federal law.

**III. Anticipated economic impact upon the Kansas Department of Revenue.**

None.

**IV. Anticipated economic impact upon other government agencies and upon private business or individuals.**

This regulation creates no economic impact on other government agencies or on private business or individuals.

**V. Description of any less costly or less intrusive methods that were considered by the Department of Revenue for achieving the state purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation.**

None.



Nick Jordan, Secretary  
Doug Jorgensen, Director

Sam Brownback, Governor

KANSAS DEPARTMENT OF REVENUE

ECONOMIC IMPACT STATEMENT

K.A.R. 14-10-16

- I. **Summary of amendment to the existing regulation.**  
This amendment authorizes an industry member to retrieve damaged liquor containers from a retailer and exchange the damaged liquor for undamaged product.
  
- II. **Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.**  
K.S.A. 41-210 grants the Director of ABC broad discretionary powers to regulate the traffic of alcoholic liquor in such a manner as will promote the public health and welfare. This regulation prohibits an industry member from knowingly selling liquor in containers that are not fit for sale, through damage or contamination. The regulation also creates a mechanism by which industry members may exchange any damaged containers that are unfit for sale that were inadvertently delivered to a retailer.  
  
The regulation is not mandated by federal law.
  
- III. **Anticipated economic impact upon the Kansas Department of Revenue.**  
None.
  
- IV. **Anticipated economic impact upon other government agencies and upon private business or individuals.**  
This regulation creates no economic impact on other government agencies or on private business or individuals.
  
- V. **Description of any less costly or less intrusive methods that were considered by the Department of Revenue for achieving the state purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation.**  
None.



Nick Jordan, Secretary  
Doug Jorgensen, Director

Sam Brownback, Governor

KANSAS DEPARTMENT OF REVENUE

**ECONOMIC IMPACT STATEMENT**

**K.A.R. 14-10-17**

**I. Summary of proposed regulation.**

This new regulation adopts many of the trade practice regulations promulgated by the federal alcohol and tobacco tax and trade bureau ("TTB") as the trade practice regulations of Kansas.

**II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.**

The federal alcohol and tobacco tax and trade bureau ("TTB") defines trade practice restrictions and allowances. In response to industry requests, the ABC and KDOR have determined that KS should follow the TTB regulations concerning trade practices, with some minor modifications addressed elsewhere in these regulations.

The regulation is not mandated by federal law.

**III. Anticipated economic impact upon the Kansas Department of Revenue.**

None

**IV. Anticipated economic impact upon other government agencies and upon private business or individuals.**

This regulation creates no economic impact on other government agencies. Industry members may see cost savings due to streamlined practices since they now only have one rule to follow on many issues.

**V. Description of any less costly or less intrusive methods that were considered by the Department of Revenue for achieving the state purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation.**

None.



KANSAS DEPARTMENT OF REVENUE

**ECONOMIC IMPACT STATEMENT**

**K.A.R. 14-10-18**

**I. Summary of proposed regulation.**

This new regulation authorizes a distributor to buy back alcoholic liquor when: required by the supplier; when that brand of liquor is being closed out; when the licensee to whom the liquor was sold quits business; when beer is close to its expiration date; when the product is damaged; or when cereal malt beverage was not used for a temporary event.

The regulation specifies that a product may not be returned simply because it is overstocked or slow-moving.

**II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.**

K.S.A. 41-210 grants the Director of ABC broad discretionary powers to regulate the traffic of alcoholic liquor in such a manner as will promote the public health and welfare. Unattended alcoholic liquor which is damaged or aged constitutes a threat to the public health and safety.

This regulation allows a distributor to buy back product that is damaged or may spoil or become tainted, or may be thrown out, resulting in lost revenues for both licensee and the state. Also, it will prevent licensees from consuming or giving the alcohol away just to get rid of it. The regulation also discourages stockpiling of liquor by prohibiting the return of overstocked or slow-moving items.

The regulation is not mandated by federal law.

**III. Anticipated economic impact upon the Kansas Department of Revenue.**

None

**IV. Anticipated economic impact upon other government agencies and upon private business or individuals.**

This regulation creates no economic impact on other government agencies. Industry members may incur minimal costs through the return of these products.

**V. Description of any less costly or less intrusive methods that were considered by the Department of Revenue for achieving the state purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation.**

None.