



# **KANSAS ADMINISTRATIVE REGULATIONS**

## **ARTICLE 25**

### **OFF-PREMISE CEREAL MALT BEVERAGE RETAILERS**

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## **Article 25 – OFF-PREMISE CEREAL MALT BEVERAGE RETAILERS**

### **14-25-1. Definitions.**

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

(a) “Alcoholic liquor” means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor shall not include any cereal malt beverage.

(b) “Beer” means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water. The term “beer” includes ale, stout, lager beer, porter or other similar beverages having such an alcoholic content.

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

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

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

(f) “Inventory” means a retailer’s entire or partial stock of cereal malt beverage or beer containing not more than 6% alcohol by volume.

(g) “Licensed premises” means those areas described in an application for a retailer’s license that are under the control of the applicant and are intended as the area in which cereal malt beverage or beer containing not more than 6% alcohol by volume is to be sold for consumption off the licensed premises or stored for later sale.

(h) “Person” means any natural person, corporation, partnership, trust or association.

(i) “Retailer” means any person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer containing not more than 6% alcohol by volume for use or consumption off the licensed premises.

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

### **14-25-2. Trade Practices; applicability.**

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

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

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

### **14-25-3. Retailer's responsibility for conduct of business and employees.**

Each retailer shall be responsible for the conduct of its business. Each retailer shall be responsible for all violations of the cereal malt beverage act or these regulations by any person selling cereal malt beverage or beer containing not more than 6% alcohol by volume.

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

#### **14-25-4. Recordkeeping requirements.**

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

- (1) The date of purchase;
- (2) the name, address, and license number of the retailer;
- (3) the name, address, and license number of the distributor;
- (4) the name of the individual making the purchase for the retailer;
- (5) the brand, size, and amount of each brand purchased;
- (6) the unit cost and total price for each brand and size; and

(7) the subtotal of the cost of the cereal malt beverage or beer containing not more than 6% alcohol by volume purchased and the total cost of the order including delivery charge, if any.

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

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

(d) The retailer shall keep a copy of the diagram of the licensed premises, as submitted with the initial application, on the licensed premises and shall make such copy available for inspection upon request.

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

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

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

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

#### **14-25-5. Transfer of retailer's inventory; application for permission; seizure and sale of abandoned inventory.**

(a) When a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's inventory to another licensee.

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

- (1) The retailer's name and license number;
- (2) the purchaser's name and license number;
- (3) the gross sale price of the transferred inventory; and

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

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

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

- (1) Any applicable tax;

(2) Fines imposed pursuant to applicable law.

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

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

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

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

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

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

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

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

#### **14-25-6. Prohibited conduct of retailer.**

(a) A retailer shall not permit gambling or the possession of a gambling or gaming device of any kind or character on or in the licensed premises.

(b) A retailer shall not, as a condition for the sale of cereal malt beverage or beer containing not more than 6% alcohol by volume to a customer, require that the customer purchase or contract to purchase cereal malt beverage or beer containing not more than 6% alcohol by volume of another form, quantity, or brand in addition to or partially in lieu of that specifically desired by the customer.

(c) A retailer shall not sell or deliver cereal malt beverage or beer containing not more than 6% alcohol by volume of a particular form or brand to a customer under any arrangement, agreement, or understanding, direct or implied, such that the sale will be made only if the customer also buys a quantity of cereal malt beverage or beer containing not more than 6% alcohol by volume of another form or brand.

(d) A retailer shall not refuse to permit the director, any agent or employee of the director, or any law enforcement officer to inspect the licensed premises and any cereal malt beverage or beer containing not more than 6% alcohol by volume in the retailer's possession or under the retailer's control upon the licensed premises or upon any other premises where the retailer has stored any cereal malt beverage or beer containing not more than 6% alcohol by volume.

(e) A retailer shall not make any false or misleading representations with respect to any cereal malt beverage or beer containing not more than 6% alcohol by volume on the licensed premises or in connection with a sales transaction relating to brand, type, proof, or age of any cereal malt beverage or beer containing not more than 6% alcohol by volume. A retailer shall not deceive or attempt to deceive a customer by removing or changing any label or sanitation cover from a container or package of cereal malt beverage or beer containing not more than 6% alcohol by volume.

(f) A retailer shall not sell or remove any cereal malt beverage or beer containing not more than 6% alcohol by volume from the licensed premises on any day other than a legal day for the sale of cereal malt beverage or beer containing not more than 6% alcohol by volume at retail, after the legal closing hour or before the legal opening hour.

(g) A retailer shall not, directly or indirectly, offer or furnish any gifts, prizes, premiums, rebates, or similar inducements with the sale of any cereal malt beverage or beer containing not more than 6% alcohol by volume, nor shall any retailer directly or indirectly offer, furnish, or sell any cereal malt beverage or beer containing not more than 6% alcohol by volume at less than its cost plus applicable tax, except according to the following:

(1) Any retailer may include in the sale of cereal malt beverage or beer containing not more than 6% alcohol by volume any goods included by the manufacturer in packaging with the cereal malt beverage or beer containing not more than 6% alcohol by volume. Goods included by the manufacturer shall be packaged with one or more original packages of cereal malt beverage or beer containing not more than 6% alcohol by volume in such a manner as to be delivered to the consumer as a single unit. A retailer shall not sell or give away goods included by a manufacturer that are not packaged as a single unit with the original package of cereal malt beverage or beer containing not more than 6% alcohol by volume as shipped by the manufacturer.

(2) Any retailer may distribute consumer advertising specialty items, subject to the limitations imposed by this regulation. For the purposes of this regulation, consumer advertising specialty items shall be limited to the following: ashtrays, bottle or can openers, corkscrews, matches, printed recipes, informational pamphlets, cards and leaflets, blotters, post cards, posters, printed sports schedules, pens, pencils, and other items of minimal value as approved by the director. Each consumer advertising specialty item shall contain advertising material relating to a brand name of cereal malt beverage or beer containing not more than 6% alcohol by volume or to the operation of the retailer distributing the consumer advertising specialty item. No charge may be made for any consumer advertising specialty item or any purchase required in order to receive any consumer advertising specialty item.

(h) A retailer shall not open or permit to be opened, on the licensed premises, any container or original package containing cereal malt beverage or beer containing not more than 6% alcohol by volume, unless such retailer is also licensed as an on-premise retailer.

(i) A retailer shall not permit the drinking of alcoholic liquors or cereal malt beverage in, on, or about the licensed premises, unless such retailer is also licensed as an on-premise retailer.

(j) A retailer shall not allow an intoxicated person to frequent, loiter, or be employed upon the licensed premises. A retailer's employee shall not be intoxicated while on duty for the retailer.

(k) A retailer shall not accept or receive from any agent or employee of any licensed distributor any cash rebate or thing of value, or enter into or be a party to any agreement or transaction with any licensed distributor, directly or indirectly, that would result in, or have as its purpose, the purchase of any cereal malt beverage or beer containing not more than 6% alcohol by volume by the retailer at a price less than the listed price that has been filed by the distributor in the office of the director.

(l) A retailer shall not sell, give, or deliver any cereal malt beverage or beer containing not more than 6% alcohol by volume to any person under 21 years of age. A retailer shall not sell, give, or deliver any cereal malt beverage or beer containing not more than 6% alcohol by volume to any person if the retailer knows or has reason to know that the cereal malt beverage or beer containing not more than 6% alcohol by volume is being obtained for a person under 21 years of age.

(m) A retailer shall not purchase or sell any cereal malt beverage or beer containing not more than 6% alcohol by volume on credit. A retailer shall not enter into any transaction or scheme the purpose of which is to buy or sell cereal malt beverage or beer containing not more than 6% alcohol by volume on credit. The following transactions shall be considered to be buying or selling cereal malt beverage or beer containing not more than 6% alcohol by volume on credit:

- (1) Taking or giving a postdated check;
- (2) giving an insufficient funds check;
- (3) taking a check with knowledge that there are insufficient funds to pay the check upon

presentment;

(4) accepting delivery from a distributor without making payment for the cereal malt beverage or beer containing not more than 6% alcohol by volume when delivered or before delivery; and

(5) allowing any cereal malt beverage or beer containing not more than 6% alcohol by volume to be removed from the licensed premises without receiving payment for the cereal malt beverage or beer containing not more than 6% alcohol by volume.

(n) A retailer shall not fail to make the reports or keep the records required by these regulations. A retailer shall not do anything that is otherwise prohibited by any other provision of these regulations.

(o) A retailer shall not refill a package of cereal malt beverage or beer containing not more than 6% alcohol by volume and shall not sell cereal malt beverage or beer containing not more than 6% alcohol by volume in anything other than the original package.

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