

Article 26. On-Premises Cereal Malt Beverage Retailers

14-26-1. Definitions. As used in this article of the division's regulations, unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

- (a) "Alcoholic liquor" has the meaning specified in K.S.A. 41-102, and amendments thereto.
- (b) "Beer" has the meaning specified in K.S.A. 41-102, and amendments thereto.
- (c) "Cereal malt beverage" has the meaning specified in K.S.A. 41-2701, and amendments thereto.
- (d) "Director" means the director of the division of alcoholic beverage control in the department of revenue.
- (e) "Distributor" has the meaning specified in K.S.A. 41-102, and amendments thereto.
- (f) "Food establishment" has the meaning specified in K.S.A. 65-656, and amendments thereto.
- (g) "Inventory" means a retailer's entire or partial stock of cereal malt beverage or beer containing not more than six percent alcohol by volume.
- (h) "Licensed premises" means those areas described in an application for a cereal malt beverage retailer license issued pursuant to K.S.A. 41-2702, and amendments thereto, that are under the control of the applicant and that are intended as the area in which cereal malt beverage or beer containing not more than six percent alcohol by volume is to be served pursuant to the applicant's license.
- (i) "Person" means any natural person, corporation, partnership, trust, or association.

(j) “Retailer” means any person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer containing not more than six percent alcohol by volume for use or consumption on the licensed premises. For the purposes of this article of the division’s regulations, this term shall not include any cereal malt beverage retailer also licensed as a drinking establishment, pursuant to the Kansas club and drinking establishment act. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective P-_____.)

14-26-2. Trade practices; applicability. (a) Each action taken by an industry member or retailer in accordance with interpretive memoranda issued by the alcohol and tobacco tax and trade bureau of the department of the treasury shall be considered good faith compliance with this article of the division's regulations, unless the director has issued a contrary interpretation pertaining to the subject of the memoranda.

(b) The trade practice regulations of the alcohol and tobacco tax and trade bureau of the department of the treasury, as adopted by reference in K.A.R. 14-10-17, shall apply to each retailer, as defined in K.A.R. 14-26-1. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective P-_____.)

14-26-3. Retailer's responsibility for conduct of business and employees. Each retailer shall be responsible for the conduct of the retailer's business. Each retailer shall be responsible for all violations of the cereal malt beverage act and this article of the division's regulations by the following people while on the licensed premises:

- (a) Any employee of the retailer;
- (b) the employee of any person contracting with the retailer to provide services or food; and
- (c) any individual mixing, serving, selling, or dispensing cereal malt beverage or beer containing not more than six percent alcohol by volume. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective P-_____.)

14-26-4. Refusal of right to enter or inspect licensed premises prohibited. No retailer shall refuse to permit the director, any agent or employee of the director, or any law enforcement officer to perform the following:

(a) Enter or inspect the licensed premises; and

(b) inspect any cereal malt beverage or beer containing not more than six percent alcohol by volume in the retailer's possession or under the retailer's control on the licensed premises or on any other premises where the retailer has stored any cereal malt beverage or beer containing not more than six percent alcohol by volume. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective P-_____.)

14-26-5. Minimum prices for drinks; acquisition cost. (a) A retailer shall not sell any drink to any person for less than the acquisition cost of that drink to the retailer.

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

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

(1) All cereal malt beverage or beer containing not more than six percent alcohol by volume; and

(2) any nonalcoholic liquid. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective P-_____.)

14-26-6. Recordkeeping. (a) Each retailer purchasing cereal malt beverage or beer containing not more than six percent 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 six percent 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 for the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume made to a customer.

(c) The retailer shall keep a copy of each invoice, purchase order, or sales ticket required by this regulation for at least three years from the date on which the cereal malt beverage or beer containing not more than six percent 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 a 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 this 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 P-_____.)

14-26-7. Storage of cereal malt beverage or beer containing not more than six percent alcohol by volume; removal from licensed premises. (a) Each retailer shall store its cereal malt beverage and beer containing not more than six percent alcohol by volume only on the licensed premises of the retailer, unless the retailer has received prior approval in writing from the director to do otherwise.

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

(c) No cereal malt beverage or beer containing not more than six percent alcohol by volume that has been purchased on the licensed premises and has been opened and sold for consumption on the licensed premises shall be removed from the licensed premises. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective P-_____.)

14-26-8. Transfer of retailer's inventory; application for permission; seizure and sale of abandoned inventory. (a) If 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 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 six percent alcohol by volume to be transferred.

(c) No cereal malt beverage or beer containing not more than six percent 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 either of the following:

- (1) Any applicable tax; or
- (2) any 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 no longer occupies the building and has left 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 the licensee's 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 to 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 specified in subsection (e) shall be deposited into the state general fund. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective P-_____.)