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# Kansas Legislator Briefing Book 2015

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## **Alcohol, Drugs, and Gaming**

### **C-1 Liquor Laws**

Kansas Laws concerning intoxicating liquor are included in the Liquor Control Act, the Cereal Malt Beverage Act, the Club and Drinking Establishment Act, the Nonalcoholic Malt Beverages Act, the Flavored Malt Beverages Act, the Beer and Cereal Malt Beverages Keg Registration Act, the farm winery statutes, the microbrewery statutes, and the microdistillery statutes.

### **State and Local Regulatory Authority**

The Division of Alcoholic Beverage Control (ABC) and the ABC Director, Kansas Department of Revenue (KDOR), have the primary responsibility for overseeing and enforcing Kansas intoxicating liquor laws. As part of its regulatory authority under the different liquor acts, ABC issues 17 different licenses and 5 different permits for the manufacture, distribution, and sale of alcoholic liquor.

County and city governments also have considerable regulatory authority over the sale of intoxicating and alcoholic liquors and cereal malt beverages in the State of Kansas. Article 15 § 10 of the *Kansas Constitution* allows the Legislature to regulate intoxicating liquor. Cities and counties have the option to remain “dry” and, therefore, exempt themselves from liquor laws passed by the state, or local units of government can submit a referendum to voters proposing the legalization of liquor in the local jurisdiction. If such a referendum is passed by a majority of the locality’s voters, alcoholic liquor becomes legal in the city or county and will be subject to state, county, and city laws, ordinances, and regulations.

### ***The Liquor Control Act***

The Liquor Control Act grants the State its regulatory power to control the manufacture, distribution, sale, possession, and transportation of alcoholic liquor and the manufacturing of beer. Cities and counties are able to regulate certain aspects, such as the time and days for the sale of alcoholic liquor, but local governments cannot adopt laws that conflict with the provisions of the Liquor Control Act.

Farm wineries, farm winery outlets, microbreweries, microbrewery packaging and warehousing facilities, and microdistilleries also are regulated by the Liquor Control Act.

### ***The Cereal Malt Beverage Act***

Local governments have additional authority under the Cereal Malt Beverage Act. According to statute, applications for cereal malt beverage licenses are made either to the city or county government, depending on where the business is located.

As long as any local regulations and ordinances adopted are consistent with the Cereal Malt Beverage Act, the board of county commissioners or the governing body of a city may set hours and days of operation, closing time, standards of conduct, and adopt rules and regulations concerning the moral, sanitary, and health conditions of licensed premises. If the local government does not set hours and days of operation, the default hours and days provided in the Cereal Malt Beverage Act govern the sale of cereal malt beverages. Counties and cities also can establish zoning requirements that regulate establishments selling cereal malt beverages and that may limit them to certain locations.

The Cereal Malt Beverage Act also allows local governments some discretion in revoking licenses and actually requires such action by local governments in specific situations.

### ***The Club and Drinking Establishment Act***

In Kansas, the sale of alcoholic liquor by the drink is controlled by the Club and Drinking Establishment Act.

The board of county commissioners may submit a proposition to voters to (1) prohibit the sale of individual alcoholic drinks in the country, (2) permit the sale of individual alcoholic drinks only if an establishment receives 30 percent of its gross receipts from food sales, or (3) permit the sale of individual alcoholic drinks only if an establishment receives some portion of gross receipts from food sales. If a majority of voters in the county vote in favor of the proposition, the ABC Director must respect the local results when issuing or denying licenses in that county.

Additionally, the county commissioners are required to submit a proposition to the voters upon receiving a petition if the petition is signed by at

least 10 percent of voters who voted in the election for the Secretary of State the last time that office was on the ballot in a general election. The petition must contain the required language in KSA 41-2646(3)(b), and the petition must be filed with the county election officer.

### ***The Nonalcoholic Malt Beverages Act***

Retail sales of nonalcoholic malt beverages are controlled by the Liquor Control Act, the Club and Drinking Establishment Act, or the Cereal Malt Beverage Act, depending on which act the retailer is licensed under for selling or providing the nonalcoholic malt beverage.

### ***The Flavored Malt Beverage Act***

Kansas adopted the federal definitions of flavored malt beverages (FMB). However, the federal government does not offer FMB licenses or impose penalties in Kansas. The ABC is responsible for FMBs regulation and penalties associated with FMBs in the state. Because FMBs are cereal malt beverages, they are regulated under the Cereal Malt Beverage Act.

### ***The Beer and Cereal Malt Beverage Keg Registration Act***

Retailers selling kegs are regulated under the Liquor Control Act or the Cereal Malt Beverage Act, depending on the type of alcoholic beverage(s) the retailer is selling.

Although local governments have delegated authority under the Cereal Malt Beverage Act, city and county ordinances that conflict with the Beer and Cereal Malt Beverage Keg and Registration Act are void.

### ***Liquor Taxes***

Currently, Kansas imposes three levels of liquor taxes. For more information, see article U-2, Liquor Taxes.

## Recent Changes to Liquor Laws

For a more comprehensive list of changes made to liquor laws in recent years, see the memorandum entitled “Recent Changes to Liquor Laws” located on the KLRD website.

### **Senate Sub. for HB 2199, L. 2013 Ch. 130**

**Administrative Notice and Orders.** The legislation required issuance of any written administrative notice or order imposing a fine or other penalty for an alleged violation of the Liquor Control Act or the Club and Drinking Establishment Act to be issued within 90 days after issuance of the citation.

**Nonprofit Art Events.** The legislation allowed complimentary alcoholic liquor or cereal malt beverages to be served on unlicensed premises at events sponsored by a nonprofit organization promoting the arts if approved by ordinance or resolution of the governing body of the city, county, or township where the event will take place.

**Rules and Regulations.** The legislation directed that all rules and regulations adopted between July 1, 2012, and July 1, 2013, to implement provisions of certain alcoholic liquor laws remain effective until revised, revoked, or nullified by law.

**Mixing of Samples.** The legislation authorized the preparing or mixing of samples at licensed retail premises for the purpose of conducting wine, beer, or distilled spirit tastings.

**Employees.** The legislation made it unlawful for licensees to knowingly employ any person dispensing or serving alcoholic liquor or mixing drinks containing alcoholic liquor who has been adjudicated guilty of two or more violations of furnishing alcoholic beverages to minors or similar laws from other states or has been adjudicated guilty of three or more of any state’s intoxicating liquor law.

**Pitchers.** The legislation allowed the sale or serving of certain mixed alcoholic beverages in pitchers containing not more than 64 fluid ounces each.

**Hotel Coupons.** The legislation allowed a hotel licensed as a drinking establishment to distribute coupons to its guests, redeemable on the hotel premises for drinks containing alcoholic liquor; required those licensed hotels to remit liquor drink tax on each drink served based on a price not less than the acquisition cost of the drink; allowed other hotels not licensed as drinking establishments to distribute coupons to their guests redeemable at clubs and drinking establishments, in accordance with rules and regulations adopted by the Department of Revenue; and required each club or drinking establishment redeeming hotel coupons to remit liquor tax on each drink served based on a price not less than the acquisition cost of the alcohol in the drink.

**Price Lists.** The legislation deleted the requirement that clubs and drinking establishments provide price lists.

**Free Samples.** The legislation defined “sample” as a serving of alcoholic liquor containing not more than one-half ounce of distilled spirits, one ounce of wine, two ounces of beer or cereal malt beverage, or a mixed drink not containing more than one-half ounce of spirits; allowed serving of free samples on premises of licensed Class A and Class B clubs, licensed drinking establishments, and licensed public venue clubs; allowed Class A and B clubs to serve the samples free of charge to their members and their members’ families and guests; prohibited licensees from serving more than five samples to any individual per visit and prohibited samples from being removed from the premises; prohibited licensees from collecting a cover charge or an entry fee at any time that free samples are provided for anyone; required that samples come from the licensee’s inventory; and required the licensee to pay all associated excise and drink taxes for any alcoholic liquor served in free samples.

### **Sub. for HB 2223, L. 2014 Ch. 75**

**Homemade Fermented Beverages.** The legislation allowed a homemade fermented beverage to be provided to guests and judges at a contest or competition, so long as no compensation is provided to the maker either for producing the beverage or allowing its consumption. The term

“guest” is defined as a natural person known to the host and who received a private invitation to the event conducted by the host.

**Microbrewery Gallonage.** The legislation raised from 15,000 to 30,000, the allowable number of domestic barrels of domestic beer that may be produced in a calendar year by a Kansas microbrewery licensee.

**Licensee Citizenship.** The legislation modified the current citizenship requirement for licensees pursuant to the Liquor Control Act to only require U.S. citizenship.

**Farm Wineries Free Samples.** The legislation allowed farm winery licensees to participate in free tastings at retail liquor stores.

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