

Kansas Administrative Regulations

Kansas Department of Revenue—Division of Alcoholic Beverage Control

Article 14.—Manufacturers; Distributors; Nonbeverage Users; Farm Wineries; Microbreweries

14-14-5. Franchises.

(a) Definitions. As used in this regulation, the following terms shall have the meanings ascribed to them:

- (1) "Sale or distribution" includes the act of leasing, renting or consigning.
- (2) "Goods" means any personal property, real property, or any combination thereof.
- (3) "Other property" means a franchise, license, distributorship or other similar right, privilege or interest.
- (4) "Franchise" means a written arrangement in which a supplier grants to a distributor a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement or otherwise, including a commercial relationship subject to termination pursuant to K.S.A. 1989 Supp. 41-410. The arrangement grants the distributor the right to offer, sell and distribute within this state or any designated area, the supplier's brands of alcoholic liquors, cereal malt beverages, non-alcoholic malt beverages or all of them as may be specified.

(b) Franchise discrimination is prohibited.

(1) If more than one franchise for the same brand or brands of alcoholic liquor, cereal malt beverage or non-alcoholic malt beverages is granted to different distributors in this state, the supplier shall not discriminate in regard to price or availability of alcoholic liquor, cereal malt beverage or non-alcoholic malt beverages between distributors.

(2) A supplier shall not encourage, solicit, cause or conspire with a distributor to circumvent any laws or regulations of the state of Kansas relating to intoxicating liquor. A supplier shall not directly or indirectly threaten to remove or remove a line or brand

from a distributor because of the refusal or failure of the distributor to evade or disobey any laws or regulations of the state of Kansas relating to intoxicating liquor. A supplier shall not, directly or indirectly, threaten to change distributors in retaliation against a distributor who refuses to circumvent any laws or regulations of the state of Kansas relating to intoxicating liquor.

(c) All ownership interest in a distributor's business shall be disclosed to the director.

(1) No person shall have, own or enjoy any ownership interest in, share in the profits from or otherwise participate in the business of any distributor in Kansas unless a full description of the interest is furnished to the director at the time the interest arises. The distributor shall report to the director within 20 days, any change in any interest in the distributor's business including:

(A) Any division of the profits;

(B) any division of net or gross sales for any purpose whatsoever;

(C) any change in the payment of rents;

(D) any change in the ownership of any lease or building;

(E) any change in the ownership of any corporation that has any interest in the business or the change of management of that corporation; or

(F) any loss or damage to goods which results in a claim against an insurance policy.

(2) If there is common ownership or financial interest in wholesale businesses licensed to distribute spirits or wine, either directly or indirectly, all of these businesses shall be deemed a controlled ownership group.

(3) The statement of disclosure required by this regulation shall be on a form provided by the director, shall be signed under oath and notarized and shall be an amendment to the licensee's permanent license application on file with the director.

(4) Each license issued by the director shall be valid as long as the licensee is actively engaged in business. If the licensee ceases to be actively engaged in business, the license shall be invalid and the licensee shall immediately notify the director and return the license.

(d) Each supplier and distributor shall file a summary of any franchise agreement with the director. The summary shall contain:

(1) A statement identifying each party entering into the agreement by name, address and license number;

(2) a statement describing each geographic territory agreed upon between the distributor and supplier for which the distributor is to sell to retailers one or more brands of the supplier's alcoholic liquor, cereal malt beverages or non-alcoholic malt beverages;

(3) a map outlining each geographical territory agreed to; and

(4) a statement listing all brands to be covered by the agreement.

(e) No manufacturer, vintner, importer, or other supplier shall grant a franchise for the distribution of a brand to more than one distributor for all or part of any designated territory. For purposes of identification and recognition, multiple franchises for the distribution of spirits or wine issued to one or more persons or to two or more corporations where an interlocking directorate exists or the same individuals are officers or stockholders in more than one of the corporations, shall be considered one franchise.

(f) Each spirits distributor's franchise agreement shall describe the franchise territory by naming each county unit encompassed. A territory shall not be smaller than a single county, but may encompass as few as one or as many as all 105 Kansas counties. Agreements for distribution throughout the entire state shall not name each county by name.

(g) Each wine and beer distributors' franchise agreement shall describe the franchise territory using readily identifiable geographic boundaries.

(h) The terms, conditions and requirements of this regulation are expressly made a part of the terms of each authority to do business in Kansas granted by the director to suppliers, distillers, manufacturers, importers, producers, shippers, or brokers.

(i)(1) Each supplier, importing into this state to a licensed distributor, shall apply to the director not later than 45 days in advance for a permit to import alcoholic liquor, cereal malt beverage or non-alcoholic malt beverages for which the distributor does not have a franchise to sell.

(2) Each request for a permit shall specifically identify the brand, type and quantity of the alcoholic liquor, cereal malt beverage or non-alcoholic malt beverages to be imported into the state. Alcoholic liquor, cereal malt beverage and non-alcoholic malt beverages imported in accordance with this permit shall not be resold by the distributor.

(3) A copy of the permit issued by the director shall be attached to all records and reports required by K.A.R. 14-14-8 and 14-14-10.

(Authorized by K.S.A. 1989 Supp. 41-210; implementing K.S.A. 1989 Supp. 41-306a, 41-332, 41-409, 41-410, and 41-1101; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Jan. 2, 1989; amended July 1, 1991.)

***** Authenticated Kansas Administrative Regulation *****