



August 5, 2020

POLICY MEMORANDUM 2003-4 (Revised August 5, 2020)

Subject: Use of Automated Teller Machines (ATMs) by Retailer Liquor Stores

1. **Purpose:** The purpose of this memorandum is to provide guidance to retailer liquor stores on the acceptable placement and usage of ATMs.
2. **Applicability:** All retail liquor stores.
3. **Discussion:** Retailer liquor stores and companies that sell or lease ATMs have contacted ABC requesting permission to place an ATM in or at the retail store premises.
 - a. Statutory Authority.
 - Effective April 1, 2019, K.S.A. 41-308(c)(6) provides that, in addition to normal sales of alcoholic liquor, a retail liquor store may also sell any other good or service, provided the gross sales of those other goods and services (excluding cereal malt beverage, cigarette, tobacco and lottery sales) do not exceed 20% of the retail liquor store's total gross sales.
 - K.S.A. 41-711 prohibits the sale at retail of alcoholic liquor in premises that have an opening into another place of business.
 - K.A.R. 14-13-13(k) prohibits a retail liquor store from allowing any other person to use the licensed premises for any business activity other than the sale of alcoholic liquor.
 - b. Kansas Attorney General Opinions.
 - Opinion 2002-35 specifically addressed ATMs in retail liquor stores. The Attorney General found that state law prohibits the placement of an operable ATM in a licensed retail liquor store.
 - The basis for this opinion relied upon the language of K.S.A. 41-308(b) at the time, which prohibited a retail liquor store from selling or providing "any service or thing of value whatsoever except alcoholic liquor in the original package," with limited exceptions provided for lottery tickets and goods included in packaging by a manufacturer.
 - Since K.S.A. 41-308 was amended, effective in 2019, to allow the sale of "any other good or service," this opinion has been rendered inaccurate.
 - c. Placement of Automated Teller Machines.
 - ATMs may be placed **inside** the retail liquor store premises if the following conditions are met:
 - The licensee personally owns or holds a valid lease over the machine itself; and
 - Any revenue derived from the operation of the ATM shall be separately recorded for tax purposes, and shall be counted towards the retail liquor store's 20% threshold for "other goods or services."
 - If the retail liquor store licensee does **not** own or lease the ATM, then it is owned by another "person" and its operation would constitute a violation of K.A.R. 14-13-13(k). In these instances, an ATM may be located on an **exterior** wall of the retail liquor store, and all access to the ATM for maintenance and stocking shall be conducted only by its owner.
 - Any retail liquor store licensee who has prior written permission from the ABC to install an ATM outside the guidelines of this policy memorandum may retain the machine in its approved configuration.

- Any retail liquor store whose licensed premises hosts an ATM contrary to the guidelines of this policy memorandum is required to remove the ATM immediately, or be subject to a violation of K.A.R. 14-13-13(k) or K.S.A. 41-711.

4. Additional Comments:

- a. Failure to comply with the applicable statutes, regulations and/or this policy memorandum, may result in administrative action for violation of the liquor laws.
- b. Alcoholic Beverage Control Enforcement Agents will verify compliance with the provisions of the applicable statutes, regulations and this policy memorandum.

5. Clarification of Policy: All clarification requests to this policy should be directed in writing to this office via mail, fax, or submitted to the agency's email at KDOR_ABC.Email@ks.gov.

6. Effective Date of this policy: This policy is effective from the date of signature until further notice.



Debbi Beavers
Director, Alcoholic Beverage Control

cc: Assistant Attorney General
Chief of Enforcement
Licensing Supervisor
Enforcement Agents