

3 AAC is amended by adding a new article to chapter 305 to read:

Chapter 305. Alcoholic Beverage Control Board.

Article

5. Trade Practices (3 AAC 305.500 – 3 AAC 305.560)

Article 5. Trade Practices.

Section

500. Trade practices prohibitions

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560. Definitions

3 AAC 305.500. Trade practices prohibitions. (a) A person holding a brewery manufacturer license under AS 04.09.020, a winery manufacturer license under 04.09.030, a distillery manufacturer license under 04.09.040, a general wholesaler license under 04.09.100, or a limited wholesaler brewed beverages and wine license under 04.09.110 or a person engaged in the alcoholic beverage industry in another state or country as a brewer, vintner, distiller, wholesaler, or importer, or as an agent of a brewer, vintner, distiller, wholesaler, or importer, may not, except as provided in this article, induce a person holding a license under AS 04.09 through operating a tied house, operating as an exclusive outlet, commercial bribery, or consignment sales. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.505. Tied house prohibitions. (a) It is prohibited under AS.04 to induce a retailer engaged in the sale of alcoholic beverages to purchase products from an entity to the exclusion, in whole or in part, of products sold or offered for sale by other entities by

(1) furnishing, giving, renting, lending, installing, maintaining, or selling to the retailer, equipment, fixtures, signs, supplies, money, services, storage, or other things of value, except those excluded in regulation and determined to be not contrary to the public interest or contrary to the intent of this subsection;

(2) providing, purchasing, or supplying advertising services including all forms of print, media, or internet advertising. Paying or crediting the retailer for an advertising, display, or distribution service;

(3) guaranteeing a loan or the repayment of a financial obligation of the retailer;

(4) extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions;

(5) requiring the retailer to take and dispose of a certain quota of the products, conditioning the purchase of a product by requiring the purchase of any other product or a minimum quantity of any brand;

(6) building, constructing, or otherwise erecting permanent or semi-permanent shelves, refrigeration, or any other fixtures for stocking and displaying alcohol beverages, or moving retailer fixtures in a manner that obscures or hides other products from view;

(7) serving alcohol to the general public on a retailer's premises; and

(8) rearranging or resetting all or part of the alcoholic beverages of a competing manufacturer or wholesaler, or reset all or part of the premises of a retailer. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.515. Exceptions to tied house prohibitions. (a) The following practices are exceptions to the practices listed under 3 AAC 305.500 of this section and thus are not violations of AS 04.16.017. The holder of a license under AS 04.09.020, AS 04.09.030, AS 04.09.40, AS 04.09.100, and AS 04.09.110 may

(b) furnish to a retailer equipment, inside signs, supplies, services, or other things of value, if the holder of a license under AS 04.09.020, AS 04.09.030, AS 04.09.40, AS 04.09.100, and AS 04.09.110;

(1) keeps and maintains records, for a three-year period, of all items furnished to retailers. Commercial records or invoices may be used to satisfy this recordkeeping requirement if all the required information is shown. These records must show:

- (A) the name and address of the retailer receiving the item;
- (B) the date furnished;
- (C) the item furnished;
- (D) the industry member's cost of the item furnished, determined by the manufacturer's invoice price, and landed price to the wholesaler's or manufacturer's licensed premise in Alaska; and
- (E) charges to the retailer for any item;

(b) give or sell product displays, provided

(1) The total value of all product displays given or sold by the licensee does not exceed \$400 per brand at any one time in any one retail establishment, and not to exceed \$1600 total per entity. Suppliers may not pool or combine dollar limitations to provide a retailer a

product display valued more than \$400 per brand. The value of a product display is the actual cost to the supplier who initially purchased it. Installation costs are excluded;

(2) All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product displays; and

(3) The giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display;

(c) give, sell, or loan advertising materials and consumer advertising materials to a retailer, provided:

(1) all point-of-sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point-of-sale advertising materials; and

(2) The licensee may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use;

(3) For the purposes of this section, advertising materials are defined as signs, indoor posters, table tents, place mats, menus, pamphlets, writing utensils, product description sheets, light fixtures and other non-consumable, similar items.

(d) furnish things of value to a temporary retailer. For purposes of this subsection a temporary retailer is a person who is not engaged in business as a retailer for more than four consecutive days per event, and for not more than five events in a calendar year;

(e) provide equipment, consumable supplies, or service ware to a retailer provided the materials are;

(1) sold at a price not less than the cost to the supplier who initially purchased them and the landed price to the industry member's registered address in Alaska, and if the price is collected within 30 days of the date of delivery or installation.

(f) provide installation, maintenance, and cleaning of alcohol beverage dispensing systems, if;

(1) the cost of the original installation is billed to the retailer at a price not less than the cost to the supplier who initially purchased them and the landed price to the industry member's registered address in Alaska, and if the price is collected within 30 days of the date of delivery or installation;

(2) cleaning and maintenance services are not conditioned on the exclusion, in part or whole of other entities products.

(g) provide newspaper cuts, mats, engraved blocks, or digital artwork for use in retailers' advertisements featuring the industry member's products;

(h) package and distribute brewed beverages, wine, or distilled spirits in combination with other (non-alcoholic) items for sale to consumers;

(i) give or sponsor educational seminars for employees of retailers either at the supplier's facility, a third-party location, or at the retail establishment, provided the supplier does not pay the retailer's expenses for attending (such as travel and lodging). Providing nominal hospitality during the event is permissible;

(j) be present to describe products or for sampling activities or provide presentations for the general public at a retail establishment;

(k) furnish to consumers coupons which are redeemable at a retail establishment, provided;

(1) all retailers within the market where the coupon offer is made may redeem such coupons; and

(2) the supplier does not reimburse a retailer for more than the face value of all coupons redeemed:

(3) the coupons are only created and provided by a manufacturer of distilled spirits, wine, or brewed beverages;

(4) coupons are only offered for products sold for off-premise consumption.

(l) list the names and addresses of two or more unaffiliated retailers selling the products of an industry member in an advertisement of the supplier, provided:

(1) the advertisement does not also contain the retail price of the product;

(2) the listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and

(3) the advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer.

(m) on a nondiscriminatory basis at a retailer's premises, manage their retailer-assigned display space. Such product management may include;

(1) product rotation of alcoholic beverages on retail shelves or in displays and from storage areas to retail shelves and display;

(2) storage area, retail shelf, and display stocking;

(3) display construction for freestanding, special, and nonpermanent floor displays;

(4) delivery and placement of products to the retailer-designated storage areas.

(n) recommend shelf plan or shelf schematic for distilled spirits, wine, or brewed beverages;

(o) reset all or part of the premises of a retailer, only if the retailer or sends notice, by certified mail, to all of its alcohol suppliers of the date and time of the contemplated movement of alcoholic beverages or reset, no less than two (2) weeks before the contemplated date, and only if;

(1) Employees of holder of a license under AS 04.09.020, AS 04.09.030, AS 04.09.40, AS 04.09.100, and AS 04.09.110 are not to be used as employees of, or required to provide services to, the retailer or dealer on any basis

(2) The resultant movement of products and reset, does not, in fact, exclude a competing primary source of supply or wholesaler from the premises

(3) All suppliers are allowed to participate in the reset

(p) extend credit to a retailer by allowing the purchase on credit with a line of credit provided by a third-party financial institution, of brewed beverages, wine, or distilled spirits at standard market price, which must also include any financial charges and processing fees;

(q) if also in business as a bona fide producer or vendor of other merchandise (for example, groceries or pharmaceuticals), sell that merchandise to a retailer, provided

(1) the merchandise is sold at manufacturer's invoice price and if applicable, landed price to the wholesaler's or manufacturer's licensed premise in Alaska

(2) the merchandise is not sold in combination with distilled spirits, wines, or malt beverages, except for packaging and distributing distilled spirits, wine, or malt beverages in combination with other (non-alcoholic) items for sale to consumers;

(3) the normal manufacturer's invoice price of the merchandise appears on the licensee's purchase invoices or other records; and

(4) the individual selling prices of merchandise and distilled spirits, wines, or brewed beverages sold in a single transaction can be determined from commercial documents covering the sales transaction. The act of providing equipment, fixtures, signs, glassware, supplies, services, and advertising specialties to retailers are treated as described in other sections of this paragraph; and

(r) give or sell outside signs to a retailer provided that:

(1) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;

(2) The retailer is not compensated, directly or indirectly such as through a sign company, for displaying the signs; and

(3) the cost of the signs may not exceed \$400 per location with no more than \$1600 total for any entity. (Eff. ___ / ___ / ___, Register ___)

Authority:

3 AAC 305.515. Exclusive outlet prohibitions. (a) It is prohibited under AS.04 to induce a retailer to operate as an exclusive outlet by requiring that a retailer engaged in the sale of alcoholic beverages purchase products from an entity to the exclusion, in whole or in part, of alcoholic beverages sold or offered for sale by other entities by;

(b) contract, either written, unwritten, or implied which requires a retailer or wholesaler to purchase products in whole or part to the exclusion of products for sale by other entities;

(c) requiring a retailer to purchase specific or minimum quantity during the period of the contract: or

(d) third party arrangements, wherein a non-licensed entity, under contract from an entity licensed under AS 04.09.020, AS 04.09.030, AS 04.09.40, AS 04.09.100, and AS 04.09.110, compels a licensee to purchase products in whole or part to the exclusion of products for sale by other licensed entities. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.520. Exceptions to exclusive outlet prohibitions. (a)The following practices are exceptions to the practices listed under 3 AAC 305.515 of this section and thus are not violations of AS 04.16.017. The holder of a license under AS 04.09.020, AS 04.09.030, AS 04.09.40, AS 04.09.100, and AS 04.09.110 may;

(b) enter into an agreement for one year or less with a retailer under which the industry member agrees to sell distilled spirits, wine, or malt beverages to the retailer on an “as needed” basis. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.525. Commercial bribery prohibitions. (a) It is prohibited to induce the purchaser of alcohol products from an entity to the exclusion, in whole or part, of products sold or offered for sale by other entities by

(1) commercial bribery; or

(2) offering or giving any bonus, premium, or compensation to an officer, employee, or representative of a retailer, wholesaler, or importer. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.530. Exceptions to commercial bribery prohibitions. (a) The following practices are exceptions to the practices listed under 3 AAC 305.525 of this section and thus are not violations of AS 04.16.017. The holder of a license under AS 04.09.020, AS 04.09.030, AS 04.09.40, AS 04.09.100, and AS 04.09.110 may;

(b) participate in the following retailer association activities by;

(1) displaying its products at a convention or trade show;

(2) renting display booth space if the rental fee is the same as paid by all exhibitors at the event;

(3) providing its own hospitality which is independent from association sponsored activities;

(4) purchasing tickets to functions and paying registration fees if the payments or fees are the same as paid by all attendees, participants, or exhibitors at the event; and

(5) making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show if the total payments made by an industry member for all such advertisements do not exceed \$5000 per year for any retailer association.

(c) furnish or give a sample of distilled spirits, wine, or malt beverages, provided the supplier does not give more than 1 gallons of any brand of brewed beverage, not more than 1 liters of any brand of wine, and not more than 1 liters of distilled spirits. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next larger size.

(d) offer contest prizes, premium offers, and like items to consumers, provided officers, employees and representatives of suppliers or retailers are excluded from participation:

(1) to a maximum of \$400 per licensee location, per event and no more than \$1600 total for an entity with multiple locations. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.535. Consignment sales prohibitions. (a) It is prohibited to enter into an agreement for consignment sales, or to purchase, offer to purchase, or contract to purchase products on consignment, under conditional sale, or with the privilege of return on any basis other than a bona fide sale, or where part of the transaction involves, directly or indirectly, the

acquisition by an entity from the licensee, or the entity's agreement to acquire from the licensee, other alcoholic beverages. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.540. Exceptions to consignment sales prohibitions. (a) The following practices are exceptions to the practices listed under 3 AAC 305.535 of this section and thus are not violations of AS 04.16.017. The holder of a license under AS 04.09.020, AS 04.09.030, AS 04.09.40, AS 04.09.100, and AS 04.09.110 may;

(b) accept returned merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold, including return of products, which are:

(1) unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness, except if the products were damaged after delivery to the retailer;

(2) in error, because of a discrepancy between products ordered and products delivered, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness;

(3) no longer lawfully sold, including due to change in regulation or administrative procedure, which may be returned for cash or credit against outstanding indebtedness;

(4) on hand at the time a retailer terminates operations, excluding seasonal shutdowns, for cash or credit against outstanding indebtedness;

(5) on hand when a retailer has sold products for cash or credit to a licensee and the distributorship arrangement is subsequently terminated, for cash or credit against outstanding indebtedness;

(6) changed in formula, proof, label, or container (subject to [§ 11.46](#)) for equal quantities of the new version of that product;

(7) from a discontinued production or importation of a product for cash or credit against outstanding indebtedness; or

(8) from a retailer that operates only seasonally, for cash or for credit against outstanding indebtedness;

(9) from a permittee, who is not otherwise licensed under AS 04, who does not conduct sales of alcohol beverages outside of a timeframe allowed exclusively by approval of AMCO and may not store alcohol beverages year-round. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.545. Administrative penalties. (a) The board establishes the following administrative penalties for a violation of this section

(b) penalties for violations of trade practice regulations may be levied against all parties involved, including; suppliers, retailers, permittees, and third parties not licensed under this title;

(c) penalties must be levied at no less than two times the value of the inducement, including the value that is considered excepted under this regulation, and not to exceed ten times the value of the inducement;

(d) value of inducement may include the identifiable market value of the inducement or comparable market value, or reasonable estimated market value;

(e) penalties will be levied in addition to any other fines imposed by any other governmental entity of the United States;

(f) the ABC Board, at its discretion, may assign a penalty based on the nature of the violation and history of violations of this article by the parties involved;

(g) The board establishes the following administrative penalties for a violation of this section. (Eff. ___ / ___ / ___, Register ___)

Authority:

3 AAC 305.550. (old 304.405) Adulteration, misbranding and false advertising of alcoholic beverages. (a) If a licensee or the licensee's employee or agent sells or serves an alcoholic beverage made with a wine product rather than a distilled beverage, the licensee shall disclose that the alcoholic beverage is "wine based" in all advertising, labeling or descriptions of

the mixed alcoholic beverage drink made with a wine product. Advertising, labeling, or making any representation, written or oral, about an alcoholic beverage containing wine in a manner that does or could cause confusion that the beverage contains a distilled beverage when it does not is prohibited. (Eff. ___/___/___, Register ___) (is this still needed?)

Authority:

3 AAC 305.555. (old 304.440) Pricing and marketing of alcoholic beverages. (a) For the purpose of AS 04.16.015, a licensee or licensee's agent or employee may not set a period of time during a day that an alcoholic beverage drink or a brand of alcoholic beverage is sold or delivered that is less than the hours that the licensed premises is open to the general public. (Eff. ___/___/___, Register ___)

Authority:

3 AAC 305.560. Definitions. For purposes of this article:

- (a) "Product" means any alcohol beverage.
- (b) "Account" means a retail sales entity
- (c) "Supplier" means any manufacturer of alcoholic beverages licensed under AS.04 of licensed in any other state or country, any wholesaler or importer licensed under AS.04 or licensed in any other state or country.
- (d) "Licensee" is any entity licensed to manufacture, store, or sell beverage alcohol under AS.04 or licensed in any other state or country.
- (e) "Retailer" is an entity licensed or permitted under AS.04 to provide alcohol service to

the general public or members of a private club. (Eff. ___/___/___, Register ___)

Authority:

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