

3 AAC is amended by adding new sections to read:

Chapter 305. Alcoholic Beverage Control Board.

Article

5. Trade Practices (3 AAC 305.500 – 3 AAC 305.590)

Article 5. Trade Practices.

Section

500. Trade practices prohibitions

510. Tied house prohibitions

515. Exceptions to tied house prohibitions

520. Exclusive outlet prohibitions

525. Practices that do not amount to commercial bribery

530. Exceptions to consignment sales prohibitions

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550. Adulteration, misbranding, and false advertising of alcoholic beverages

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590. Definitions

3 AAC 305.500. Trade practices prohibitions. (a) Except as provided in 3 AAC 305.500 - 3 AAC 305.590, a person holding a brewery manufacturer license under AS 04.09.020, a person holding a winery manufacturer license under AS 04.09.030, a person holding a distillery manufacturer license under AS 04.09.040, a person holding a general wholesale license under AS 04.09.100, a person holding a limited wholesale brewed beverage and wine license under AS 04.09.110, a person engaged in the alcoholic beverage industry in another state or country as a brewer, vintner, distiller, wholesaler, or importer, or a person engaged in the alcoholic beverage

industry in another state or country as an agent of a brewer, vintner, distiller, wholesaler, or importer may not induce a person holding a license under AS 04.09 to

- (1) operate a tied house;
- (2) operate as an exclusive outlet;
- (3) engage in commercial bribery; or
- (4) engage in consignment sales.

(b) In this section, "commercial bribery," "consignment sales," "exclusive outlet," and "tied house" have the meaning set out in AS 04.16.017(d). (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.16.017

3 AAC 305.510. Tied house prohibitions. In addition to the prohibitions set out under AS 04.16.017(a)(1), a person described in 3 AAC 305.500(a) may not induce a person holding a retail license under AS 04.09.200 - 04.09.370 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) providing, purchasing, or supplying the retailer with advertising services, including all forms of print, media, or Internet advertising;
- (2) paying or crediting the retailer for an advertising, display, or distribution service;
- (3) requiring the retailer to condition the purchase of product by requiring the purchase of any other product or a minimum quantity of any brand;
- (4) building, constructing, or otherwise erecting permanent or semi-permanent shelving, refrigeration, or other fixtures for stocking and displaying alcohol beverages at the retailer's premises, or moving retailer fixtures in a manner that obscures or hides other alcoholic

beverage products from view;

(5) serving alcohol to the general public on a retailer's premises; or

(6) rearranging or resetting the alcoholic beverages of a competing manufacturer or wholesaler or resetting the retailer's premises. (Eff. ____ / ____ / _____, Register _____)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.515. Exceptions to tied house prohibitions. (a) The practices set out in this section are exceptions to the practices listed under AS 04.16.017(a)(1) or 3 AAC 305.510.

(b) The practices prohibited under AS 04.16.017(a)(1) or 3 AAC 305.510 do not apply to

(1) an entity that holds both a brewery manufacturer license under AS 04.09.020 and a brewery retail license under AS 04.09.320;

(2) an entity that holds both a winery manufacturer license under AS 04.09.030 and a winery retail license under AS 04.09.330; or

(3) an entity that holds both a distillery manufacturer license under AS 04.09.040 and a distillery retail license under AS 04.09.340.

(c) Under this section, an entity may

(1) furnish equipment, inside signage, supplies, services, or other things of value to a person holding a retail license under AS 04.09.200 - 04.09.370 if the entity furnishing those items maintains records, including commercial records or invoices, of all items furnished to the person holding the retail license, for a three-year period; the entity's records must show

(A) the retailer's name and address;

(B) the date the item was furnished to the retailer;

(C) a description of the item furnished to the retailer;

(D) the entity's cost of the furnished item, calculated at the invoice price

and landed price to the entity's licensed premises in the state; and

(E) charges to the retailer for the furnished item;

(2) give a product display to the person holding a retail license under

AS 04.09.200 - 04.09.370, if

(A) the total value of the product display given by the entity to the retailer does not exceed \$800 per brand at any one time in any single licensed premises or \$4,800 per brand if the retailer has six or more licensed premises, excluding installation costs; under this subparagraph, entities may not pool or combine dollar limitations to provide a retailer a product display valued at more than \$800 per brand;

(B) the product display identifies the featured product or information about the product's manufacturer in a manner that is conspicuous, identifiable, and securely affixed; the name and address of the retailer may also appear on the product display; and

(C) a conditioned purchase of the alcoholic beverage on the product display does not exceed the quantity necessary for the initial completion of that display; under this subparagraph, the entity may not impose any other condition on the retailer for the retailer to receive or get the product display;

(3) give, sell, or loan indoor signage, indoor posters, table tents, place mats, menus, pamphlets, writing utensils, product description sheets, light fixtures, and other non-consumable similar items to a person holding a retail license under AS 04.09.200 - 04.09.370 if

(A) the item identifies the featured product or information about the product's manufacturer in a manner that is conspicuous, identifiable, and securely affixed; the name and address of the retailer may also appear on the item; and

(B) the entity does not directly or indirectly pay or credit the retailer for

using or distributing the item or for an expense incidental to the item's use;

(4) give or sell outside signage to a person holding a retail license under

AS 04.09.200 - 04.09.370 if

(A) the sign bears information about a featured product or the product's manufacturer in a manner that is conspicuous, identifiable, and securely affixed;

(B) the retailer is not compensated, directly or indirectly, for displaying the sign; and

(C) the cost of an exterior single sign does not exceed \$400 per location;

(5) furnish things of value to a temporary retailer;

(6) except as provided in (7) of this subsection, provide equipment, consumable supplies, or service ware to a person holding a retail license under AS 04.09.200 - 04.09.370 if

(A) the equipment, supplies, or service ware are sold at a price not less than the cost to the entity who initially purchased them and the landed price to the entity's registered address in the state; and

(B) the purchase cost is collected from the retailer not later than 30 days after the date of delivery or installation of the equipment, supplies, or service ware;

(7) provide or install an alcoholic beverage dispensing system, including alcoholic beverage taps or drafting equipment, to a person holding a retail license under AS 04.09.200 - 04.09.370, if

(A) the cost of the original purchase or installation is billed to the retailer at a price not less than the cost to the entity who initially purchased them and the landed price to the entity's registered address in the state;

(B) the purchase or installation cost is collected from the retailer not later than 30 days after the date of the purchase or installation; and

(C) the purchase or installation is not conditioned on the exclusion, in part or whole, of other entities' products;

(8) provide for the maintenance or cleaning of an alcoholic beverage dispensing system, including alcoholic beverage taps or drafting equipment, to a person holding a retail license under AS 04.09.200 - 04.09.370; maintenance costs exceeding \$50 shall be billed to the retailer and collected not later than 30 days after the date of performance of the service; cleaning may be provided free of cost to the retailer;

(9) provide traditional or digital artwork to a person holding a retail license under AS 04.09.200 - 04.09.370 for use in advertising that features the entity's products;

(10) package and distribute alcoholic beverages in combination with other non-alcoholic items for sale to consumers at a retailer's premises;

(11) give or sponsor educational seminars for employees of a person holding a retail license holder under AS 04.09.200 – 04.09.370; seminars may be held at the entity's facility, a third-party location, or the retailer's facility; the entity may not pay the retailer's expenses for attendance, including travel and lodging costs; an entity may provide nominal hospitality during the event, including non-alcoholic beverages or hors d'oeuvres;

(12) provide a presentation to the general public on the licensed premises of a person holding a retail license under AS 04.09.200 - 04.09.370, including describing featured products during consumer-sampling activities;

(13) furnish coupons at the licensed premises of a person holding a retail license under AS 04.09.200 - 04.09.370 to consumers to redeem for alcoholic beverages or related accessories, if

(A) all licensed retailers within the market where the coupon offer is made may redeem those coupons;

(B) the entity does not reimburse a retailer for more than the face value of all coupons redeemed;

(C) the coupons are only created and provided by a manufacturer of an alcoholic beverage; and

(D) the coupons are only offered for products sold for off-premises consumption;

(14) list the names and addresses of two or more unaffiliated retailers licensed under AS 04.09.200 - 04.09.370 that are selling the products of an entity in an advertisement of the entity if

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

(B) 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

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

(15) manage display space at the licensed premises of a person holding a retail license under AS 04.09.200 - 04.09.370 on a nondiscriminatory basis; that display-space management may include

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

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

(C) construction of freestanding, special, and nonpermanent floor displays; and

(D) delivery and placement of products to the retailer-designated storage areas;

(16) recommend a shelf plan or shelf schematic for alcoholic beverages to a person holding a retail license under AS 04.09.200 - 04.09.370, if the final decision of the placement of product is made by the retailer;

(17) reset the licensed premises of a person holding retail license under AS 04.09.200 - 04.09.370 if

(A) the retailer sends notice by mail or electronic mail to all entities from which the retailer received alcoholic beverages within the past 12 months or distributors of those entities; notice under this subparagraph must

(i) include the date and time of the contemplated movement or reset; and

(ii) be sent not less than two weeks before the contemplated reset date;

(B) employees of an entity are not used as employees of, or required to provide services to, the retailer on any basis;

(C) the resultant movement of products or reset does not exclude a competing entity from the premises; and

(D) all entities are allowed to participate in the reset;

(18) extend credit to a person holding a retail license under AS 04.09.200 - 04.09.370 for the purchase of alcoholic beverages at standard market price on credit with a line of credit provided by a third-party financial institution, including finance charges and processing fees; and

(19) sell other merchandise, including groceries or pharmaceuticals, to a person holding a retail license under AS 04.09.200 - 04.09.370, if the entity is also in business as a bona fide producer or vendor of that merchandise and

(A) the merchandise is sold at the manufacturer's invoice price and if applicable, landed price to the entity in the state;

(B) the merchandise is not sold in combination with alcoholic beverages, except for packaging and distributing alcoholic beverages in combination with other non-alcoholic items for sale to consumers;

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

(D) the individual selling prices of merchandise and alcoholic beverages sold in a single transaction can be determined from commercial documents covering the sales transaction.

(d) For the purposes of this section,

(1) "product display" means custom fixtures or special presentations that are used to attract and entice the buying public;

(2) "temporary retailer" means a person who does not hold a retail license under AS 04.09.200 - 04.09.370, but who is supplied with an alcoholic beverage permit not more than five times in a calendar year and where each event does not exceed four days. (Eff.

_____/_____/_____, Register _____)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.520. Exclusive outlet prohibitions. For the purposes of AS 04.16.017(a)(2), an entity may not induce a person holding a retail license under AS 04.09.200 - 04.09.370 to operate as an exclusive outlet for an entity by requiring the retailer to purchase alcoholic beverages from an entity to the exclusion, in whole or in part, of alcoholic beverages sold or offered for sale from other entities, where a required transaction operates by one or more of the

following:

- (1) an oral promise or written contract;
- (2) requiring the retailer to purchase a specific or minimum quantity during the term of an oral promise or written contract; or
- (3) a third-party arrangement that does not directly involve the entity, which compels a retailer to purchase alcoholic beverages, in whole or in part, to the exclusion of products for sale by other entities. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.16.017

3 AAC 305.525. Practices that do not amount to commercial bribery. The practices set out in this section do not constitute commercial bribery under AS 04.16.017(a)(3). Under this section, an entity may

- (1) participate in an association activity of a person holding a retail license under AS 04.09.200 - 04.09.370 by
 - (A) displaying the entity's products at a convention or trade show;
 - (B) renting display booth space, if the rental fee is the same as that charged and paid for by all exhibitors at the event;
 - (C) providing hospitality independent from an association-sponsored activity;
 - (D) purchasing tickets to a function;
 - (E) paying registration fees for an entity's participation in a conference, event, or tradeshow, if the payment or fee is the same as those paid by all attendees, participants, or exhibitors at the event; or
 - (F) paying for an advertisement in a program or brochure issued by the

association at a convention or trade show, if the total payments made by an entity for all such advertising do not exceed \$25,000 per year for any retailer association;

(2) provide a sample of alcoholic beverages to a person holding a retail license under AS 04.09.200 - 04.09.370, in not more than the following sizes:

(A) one gallon per brand of brewed beverage;

(B) one liter per brand of wine; and

(C) one liter per brand of distilled spirits;

(3) if a brand of brewed beverage, wine, or distilled spirits is not available in the sample size set out in (2) of this subsection, furnish the next larger size of that brand to a retailer as a sample;

(4) offer a contest prize, premium offer, or like item not more than 12 times per year, per brand, to the consumers of a person holding a retail license under AS 04.09.200 - 04.09.370 if

(A) the event at which the prize, premium offer, or like item is featured does not exceed 30 days in length;

(B) the contest prize, premium offer, or like item does not exceed \$400 in value on any single licensed premises and that dollar value may not be pooled or combined across multiple licensed premises;

(C) officers, employees, or representatives of the entity and the retailer are excluded from participation;

(D) the entity determines the winner of the contest prize, premium offer, or like item and the name of the winner is posted on the licensed premises of the retailer where the event occurred for a period of 30 days; and

(E) the entity keeps records of prize, offer, or like item winners for a

period of three years. (Eff. ____ / ____ / ____, Register _____)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.530. Exceptions to consignment sales prohibitions. Notwithstanding the practices set out in AS 04.16.017(a)(4), an entity may accept returned merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold, including return of products that are

(1) unmarketable because of product deterioration, leaking containers, damaged labels, or missing or mutilated tamper evident closures; under this paragraph, products 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 if the return of products occurs within a reasonable period after delivery, not to exceed 30 days; under this paragraph, delivered products may be exchanged for products that were originally ordered or returned for cash or credit against outstanding indebtedness;

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

(4) in inventory stock on the licensed premises when a retailer terminates operations, excluding seasonal shutdowns; under this paragraph, products may be returned for cash or credit against outstanding indebtedness;

(5) in inventory stock on the licensed premises when a retailer's distribution agreement with an entity has terminated; under this paragraph, products may be returned for cash

or credit against outstanding indebtedness;

(6) subject to 27 C.F.R. 11.46 (seasonal products), changed in formula, proof, label, or container; under this paragraph, products may be exchanged for equal quantities of the new version of that product;

(7) from a discontinued production or importation of a product; under this paragraph, products may be returned for cash or credit against outstanding indebtedness;

(8) on the licensed premises of a retailer that operates only seasonally; under this paragraph, products may be returned for cash or for credit against outstanding indebtedness; or

(9) from a permittee approved by the Alcohol and Marijuana Control Office, who is not also licensed under AS 04. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.540. Administrative penalties. (a) The board may levy administrative penalties for violation of this section against all participants in an unlawful trade practice at not less than two times the value of the inducement. The penalty imposed may be joint or severable against one or more participants. If applicable,

(1) the value of the inducement permitted under this section may be included in the calculation of the value of the administrative penalty; and

(2) the value of the inducement may include the identifiable market value of the inducement or comparable market value, or reasonable estimated market value.

(b) Administrative penalties will be levied in addition to any other fines levied by another governmental entity of the United States.

(c) The board may calculate the penalty allowed under (a) of this section by considering the severity of the violation and the prior violations of 3 AAC 305.500 - 3 AAC 305.590. by the

parties involved in the inducement. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.550. Adulteration, misbranding, and false advertising of alcoholic beverages. (a) Adulteration, misbranding, or false advertising of alcoholic beverages is prohibited.

(b) If a person holding a retail license under AS 04.09.200 - 04.09.370 or the retailer's employee or agent sells or serves a mixed alcoholic beverage made with a wine product instead of a distilled spirit, the entity or retailer that furnished the product shall disclose that the alcoholic beverage is "wine based" in all advertising, labeling, or descriptions of the mixed alcoholic beverage made with a wine product. It is prohibited to advertise, label, or make any written or oral representation, about an alcoholic beverage containing wine in a manner that may imply that the alcoholic beverage contains a distilled spirit. (Eff. ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.16.017

3 AAC 305.560. Pricing and marketing of alcoholic beverages. For the purpose of AS 04.16.015, except as provided for the holder of a package store sampling endorsement under AS 04.09.490, a person holding a retail license under AS 04.09.200 - 04.09.370 or the retailer's employee or agent 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: AS 04.06.090 AS 04.16.015 AS 04.16.017
AS 04.06.100

3 AAC 305.590. Definitions. For the purposes of 3 AAC 305.500 – 3 AAC 305.590,

(1) "brand" means a type of product manufactured by a particular company under a particular name;

(2) "entity" means

(A) a person holding a

(i) brewery manufacturer license under AS 04.09.020;

(ii) winery manufacturer license under AS 04.09.030;

(iii) distillery manufacturer license under AS 04.09.040;

(iv) general wholesale license under AS 04.09.100; or

(v) limited wholesale brewed beverage and wine license under AS

04.09.110;

(B) a brewer, vintner, distiller, wholesaler, or importer that is located outside of the state; or

(C) an agent of a brewer, vintner, distiller, wholesaler, or importer that is located outside of the state;

(3) "product" means any alcoholic beverage;

(4) "retailer" means an entity licensed under AS 04.09.200 - 04.09.370. (Eff.

_____/_____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.16.017

3 AAC is amended by adding a new section to read:

3 AAC 305.880. Fines for trade practice prohibition violations. In addition to administrative penalties, civil fines for violations of 3 AAC 305.500 - 3 AAC 305.590 will be

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determined by the board on a case-by-case basis. (Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.16.017