



**State of Arizona
Department of Liquor Licenses and Control**

Industry Alert

September 26, 2011

Promotional Displays and Items of Value

The Department of Liquor Licenses and Control receives frequent questions and comments regarding promotional displays and the acceptance or solicitation of items of value. These activities are governed by Arizona Revised Statutes (law) and Arizona Administrative Code (rule).

With few exceptions, these provisions make the solicitation of anything of value by a licensed retailer from a licensed wholesaler, or the providing anything of value by a licensed wholesaler to a licensed retailer, a violation subject to disciplinary action.

Arizona liquor-licensed wholesale and retail businesses can expect enforcement of the laws as written. The intent of these laws is to ensure that no advantage is given to any one liquor licensed business in Arizona's open, competitive market.

When a wholesale or retail licensee is found operating outside of these provisions, they will be cited.

For your convenience, A.R.S. §4-243 and supporting A.A.C. R19-1-226, 228, and 230 are attached.

As Arizona's tourist season quickly approaches, may this be a safe and prosperous time for liquor association members, licensees, and their employees.

Sincerely Yours,

Alan Everett
Director

Attachments

Attachment B Current Law

A.R.S. §4-242. Sale of liquor on credit prohibited; exceptions

It is unlawful for a licensee, or an employee or agent of a licensee, to sell or offer to sell, directly or indirectly, or to sanction the sale on credit of spirituous liquor, or to give, lend or advance money or anything of value for the purpose of purchasing or bartering for spirituous liquor, except that sales of spirituous liquor consumed on the licensed premises may be included on bills rendered to registered guests in hotels and motels, and spirituous liquor sales for on or off premises consumption may be made with credit cards approved by the director, and sales of spirituous liquor consumed on the premises of private clubs may be included on bills rendered to bona fide members.

A.R.S. §4-243. Commercial coercion or bribery unlawful; exceptions

A. It is unlawful for a person engaged in the business of distiller, vintner, brewer, rectifier, blender or any other producer or wholesaler of any spirituous liquor, directly or indirectly, or through an affiliate:

1. To require that a retailer purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.
2. To induce a retailer by any form of commercial bribery to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.
3. To acquire an interest in property owned, occupied or used by the retailer in the retailer's business, or in a license with respect to the premises of the retailer.
4. To furnish, give, rent, lend or sell to the retailer equipment, fixtures, signs, supplies, money, services or other things of value, subject to such exception as the rules adopted pursuant to this title may prescribe, having regard for established trade customs and the purposes of this subsection.
5. To pay or credit the retailer for advertising, display or distribution service, except that the director may adopt rules regarding advertising in conjunction with seasonal sporting events.
6. To guarantee a loan or repayment of a financial obligation of the retailer.
7. To extend credit to the retailer on a sale of spirituous liquor.
8. To require the retailer to take and dispose of a certain quota of spirituous liquor.

9. To offer or give a bonus, a premium or compensation to the retailer or any of the retailer's officers, employees or representatives.

B. This section does not prohibit any distiller, vintner, brewer, rectifier, blender or other producer or wholesaler of any spirituous liquor from:

1. Giving financial and other forms of event sponsorship assistance to nonprofit or charitable organizations for purposes of charitable fund-raising which are issued special event licenses by the department. This section does not prohibit such suppliers from advertising their sponsorship at such special events.
2. Providing samples to retail consumers at on-sale premises establishments according to the following procedures:
 - (a) Sampling operations shall be conducted under the supervision of an employee of the sponsoring producer or wholesaler.
 - (b) Sampling shall be limited to twelve ounces of beer or cooler products, six ounces of wine or two ounces of distilled spirits per person per brand.
 - (c) If requesting the on-sale retailer to prepare a drink for the consumer, the producer's or wholesaler's representative shall pay the retailer for the sample drink.
 - (d) The producer or wholesaler may not buy the on-sale retailer or the retailer's employees a drink during their working hours or while they are engaged in waiting on or serving customers.
 - (e) The producer or wholesaler may not give a keg of beer or any spirituous liquor or any other gifts or benefits to the on-sale retailer.
 - (f) All sampling procedures shall comply with federal sampling laws and regulations.
3. Providing samples to retail consumers on an off-sale retailer's premises according to the following procedures:
 - (a) Sampling shall be conducted by an employee of the sponsoring producer or wholesaler.
 - (b) The producer or wholesaler shall notify the department in writing or by electronic means not less than ten days before the sampling of the date, time and location of the sampling.
 - (c) Sampling shall be limited to three ounces of beer, one and one-half ounces of wine or one-half ounce of distilled spirits per person per day.
 - (d) An off-sale retailer shall not permit sampling to be conducted on a licensed premises on more than twelve days in any calendar year.
 - (e) Sampling shall be limited to one wholesaler or producer at any one off-sale retailer's premises on any day and shall not exceed three hours on any day.
 - (f) A producer conducting sampling shall buy the sampled product from a wholesaler.
 - (g) The producer or wholesaler shall not provide samples to any person who is under the legal drinking age.
 - (h) The producer or wholesaler shall designate an area in which sampling is conducted that is in the portion of the licensed premises where spirituous liquor is primarily displayed and separated from the remainder of the off-sale retailer's premises by a wall, rope, door, cable, cord, chain, fence or other barrier. The producer or wholesaler shall not permit persons under the legal drinking age from entering the area in which sampling is conducted.
 - (i) The producer or wholesaler may not provide samples to the retailer or the retailer's employees.
 - (j) Sampling shall not be conducted in retail premises with a total of under five thousand square feet of retail space unless at least seventy-five per cent of the retailer's shelf space is dedicated to the sale of spirituous liquor.

- (k) The producer or wholesaler may not give spirituous liquor or any other gifts or benefits to the off-sale retailer.
- (l) All sampling procedures shall comply with federal sampling laws and regulations.

C. Notwithstanding subsection A, paragraph 4, any wholesaler of any spirituous liquor may sell tobacco products or foodstuffs to a retailer at a price not less than the cost to the wholesaler.

D. Notwithstanding subsection A, paragraph 4, and subsection B, paragraph 2, subdivision (e), any wholesaler may furnish without cost promotional items to an on-sale retailer, except that the total market value of the promotional items furnished by that wholesaler to that retailer in any calendar year shall not exceed five hundred dollars. For the purposes of this subsection, "promotional items" means items of equipment, supplies, novelties or other advertising specialties that conspicuously display the brand name of a spirituous liquor product. Promotional items do not include signs.

E. It is unlawful for a retailer to request and knowingly receive anything of value that a distiller, vintner, brewer, rectifier or blender or any other producer or wholesaler is prohibited by subsection A or D from furnishing to a retailer, except that this subsection shall not prohibit special discounts provided to retailers and based on quantity purchases.

A.R.S. §4-243.01. Purchasing from other than primary source of supply unlawful; definitions

A. It is unlawful:

1. For any supplier to solicit, accept or fill any order for any spirituous liquor from any wholesaler in this state unless the supplier is the primary source of supply for the brand of spirituous liquor sold or sought to be sold and is duly licensed by the board.
2. For any wholesaler or any other licensee in this state to order, purchase or receive any spirituous liquor from any supplier unless the supplier is the primary source of supply for the brand ordered, purchased or received.
3. Except as provided by section 4-243.02 for a retailer to order, purchase or receive any spirituous liquor from any source other than any of the following:
 - (a) A wholesaler who has purchased the brand from the primary source of supply.
 - (b) A wholesaler who is the designated representative of the primary source of supply in this state and who has purchased such spirituous liquor from the designated representative of the primary source of supply within or without this state.
 - (c) A registered retail agent pursuant to section 4-101.
 - (d) A domestic farm winery licensed under section 4-205.04 and subject to the limitations prescribed in section 4-205.04, subsection C, paragraph 7.
 - (e) A licensed domestic microbrewery licensed under section 4-205.08.

B. All spirituous liquor shipped into this state shall be invoiced to the wholesaler by the primary source of supply. All spirituous liquor shall be unloaded and remain at the wholesaler's premises for at least twenty-four hours. A copy of each invoice shall be transmitted by the wholesaler and the primary source of supply to the department of revenue.

- C. The director may suspend for a period of one year the license of any wholesaler or retailer who violates this section.
- D. Upon determination by the department of revenue that a primary source of supply has violated this section, no wholesaler may accept any shipment of spirituous liquor from such primary source of supply for a period of one year.
- E. For the purposes of this section:
 - 1. "Primary source of supply" means the distiller, producer, owner of the commodity at the time it becomes a marketable product, bottler or exclusive agent of any such distributor or owner. In the case of imported products, the primary source of supply means either the foreign producer, owner, bottler or agent or the prime importer from, or the exclusive agent in, the United States of the foreign distiller, producer, bottler or owner.
 - 2. "Wholesaler" means any person, firm or corporation that is licensed in this state to sell to retailers and that is engaged in the business of warehousing and distributing brands of various suppliers to retailers generally in the marketing area in which the wholesaler is located.

Attachment B Current Rule

R19-1-226. Commercial Coercion and Bribery

A. It shall be unlawful for a wholesaler, distiller, vintner, brewer, or importer to induce a retailer to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons through any of the following means:

1. By furnishing, giving, renting, lending, or selling to a retail licensee, articles of primary utilitarian value including, but not limited to, the following: clocks, service lamps, ash trays, coasters, napkins, beer mats, book matches, menu cards, folders, meal checks, container mats, back bar mats, thermometers, jiggers, stirring spoons, pouring spoons, glasses, glassware, or any other item potentially useful to the retailer in the conduct of his or her business except as provided elsewhere in these rules.
2. By furnishing financing or credit for the retail licensee to acquire or provide any part of the cost of equipment used or useful to a retail licensee through the sale of a product or otherwise.
3. By providing any service, including the stocking and pricing of merchandise, to a retail licensee; provided, however, that the practices set forth in subsection (B) of this rule shall not be unlawful.
4. By paying or crediting a retail licensee for any promotion, advertising, displaying, public relations, or distribution services or by participating or sharing with a retail licensee any promotion or advertising costs through any media.
5. By directly or indirectly guaranteeing a loan or repayment of a financial obligation to a retail licensee or by providing any monetary assistance in any form as an aid to a retail licensee.
6. By directly or indirectly entering into any form of credit transaction with a retail licensee.
7. By directly or indirectly engaging in any practice requiring a retail licensee to take and dispose of a quota of spirituous liquors.
8. By directly or indirectly engaging in practices promising or granting a retail licensee a bonus, premium or other compensation by a distillery, vintner, brewery, rectifier, blender, or other producer or the wholesaler.

B. The following practices are not unlawful inducements as defined by A.R.S. § 4-243(2)(b) [correction needs to be completed through the rulemaking process to change to read 4-243 to agree with statute]:

1. Stocking a limited supply of spirituous liquors in what is commonly known as "cold box."

2. Rotating spirituous liquors.
3. Furnishing advertising novelties of nominal value, such as key chains, sports schedules, recreation guides, cocktail specialty books, or other items which are not directly utilized in the operation of a retail licensee's business by the wholesaler to the retailer.
4. Furnishing on-sale retail licensees with equipment necessary to operate a draft box and servicing and repairing those items of equipment to retain the quality of the product.

R19-1-228. Exceptions to General Rule

A. The following are exceptions in which producers/wholesalers may furnish to the retailer something of value, as long as the retailer is not induced to purchase spirituous liquor from the producer/wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.

B. Licensed special events

1. A producer/wholesaler may participate in an event at which liquor is sold by furnishing advertising, sponsorship, services, or other things of value as long as:
 - a. The event has been issued a special event license.
 - b. The special event license was issued to a civic, religious, or fraternal group, but not a political group.
 - c. If the event is being held at a location that is a licensed retail location nothing of value is left at the location or given to the retailer or retail employees at or following the event.
2. A producer/wholesaler may donate, but not sell directly to the group issued the special event license as long as it is not a political group. If the special event licensee is buying spirituous liquor at retail to resell, the wholesaler may invoice the sale through a retailer following completion of the event.
3. At a location issued a special event license spirituous liquor sales may be handled in the following ways:
 - a. In the case of an otherwise unlicensed location the nonprofit group is responsible for sales of spirituous liquor.
 - b. In case of a licensed retail location one of the following may occur:
 - i. During the special event the regular licensee ceases all sales of spirituous liquor and the nonprofit group is responsible for all sales of spirituous liquor.
 - ii. During the special event the regular licensee conducts all dispensing/serving under the regular retail license and the nonprofit group does none. The regular licensee is responsible for proper service. The liquor dispensed is that purchased by the retailer from the wholesaler.
 - iii. During the special event the regular licensee conducts all dispensing/serving under the special event license and the nonprofit group does none. The regular licensee and the special event licensee are responsible. The spirituous liquor dispensed is that purchased/donated by/to the special event licensee.
 - iv. During the special event the licensed location is split into an area in which the regular licensee exclusively dispenses and is responsible for all spirituous liquor sales and another separate area in which the nonprofit group exclusively dispenses and is responsible for all spirituous liquor sales.

C. Resets; rotations; displays

1. The producer/wholesaler may stock, reset, and rotate at the retail establishment any product that he or she sells to the retailer. Such stocking may include pricing, cleaning shelves,

furnishing point of sale written advertising that includes pricing data (as long as it complies with sign limitations), rotating product, cleaning product, or otherwise preparing the product for sale at the point of sale, but may not perform these functions in warm or cold storage areas from which the consumers may not purchase product. Retailers shall not require stock reset or rotation as a condition of shelf space, cold box space, or product display space.

2. A producer/wholesaler may furnish reset services as long as a representative of each affected wholesaler is invited to attend such reset by the retailer with reasonable notice not less than 2 working days before the reset and the retailer consents to the reset. As part of the reset the producer/wholesaler may move his or her own product or that of a competitor.
3. A producer/wholesaler may set up a display of his or her product and may with the consent of the retailer move a competitor's product and may move nonalcoholic products or items as necessary to set up the display.
4. No retail display may consist of an item of potential utilitarian value to the retailer or any person after March 1, 1987, facsimiles are acceptable.

D. Furnishing retail customers with items of value

1. A producer/wholesaler may furnish to retail customers advertising novelties which are not directly utilized in the operation of the retail business. Each novelty must be of a value less than \$5.00. In addition, a producer/wholesaler may also furnish to retail customers of any retail establishment items greater than \$5.00 in value but not to exceed a total of \$100.00 in value during any 6:00 a.m. to 2:00 a.m. period per establishment. The items must be given to the customer by the producer/wholesaler employee for each retail establishment and may not pass through the retailer's hands. None of the items may be given to the retailer or the retailer's employees or be left at the retail establishment.
2. Sports schedules that list events at a licensed establishment are permitted.

E. Refrigerated vehicles. A producer/wholesaler may furnish a refrigerated vehicle for an event at a licensed or unlicensed location if a special event license has been obtained (excluding political events) for the event. If there is no special event license no approval is granted. The vehicle may be used for storage and dispensing, but no producer/wholesaler personnel may dispense.

F. Print advertising. Furnishing advertising copy (ad slicks) of nominal value is permissible.

G. Sporting events. A producer/wholesaler may provide to a licensed retailer financial or other forms of event sponsorship, including advertising, if it is in conjunction with a sporting event and no item of utilitarian value remains with the retailer or at the retail location following the conclusion of the sporting event. Signs in connection with sporting events are not subject to value limitations.

H. Tradeshows and convention. A producer/wholesaler may participate by sampling, sponsorship, advertising, or otherwise in tradeshows and conventions at licensed or unlicensed establishments in which there is no special event license as long as no regular licensee benefits other than by the promotion of the event itself. Sampling limitations apply, see subsection (R).

I. Concerts. A producer/wholesaler may participate by sponsorship, advertising, or otherwise in a concert at a licensed location with the capacity in excess of 500 persons as long as the regular licensee does not benefit other than by the promotion of the event itself.

- J. Wine or drink menus. A producer/wholesaler may furnish to a retailer wine or drink menus if the menus have no utilitarian value beyond that of a wine or drink menu and are made available to all retail accounts utilizing such menus.
- K. Tapping equipment. All items authorized by R19-1-230 are permitted for all alcoholic beverages.
- L. Driver sales. All alcoholic beverages may be sold without prior order from the retailer to the wholesaler, commonly called "driver sales".
- M. Coupons and rebates. Coupons and rebates may be distributed by any method including via point of sale, except a producer/ wholesaler may not list specific retailers or participate in a retailer's advertisement.
- N. Incentive programs between producers and wholesalers. Arizona law does not regulate incentive programs involving only producers and wholesalers.
- O. Participation at events without alcoholic beverages. The Department does not regulate the participation by producers/ wholesalers in events at which spirituous liquor is not sold, offered or served.
- P. Delivery to chain stores/co-ops. Quantity purchases of volume discounted products must be entirely delivered to the approved storage facility of the chain store or retail cooperative.
- Q. Malt Beverage Product returns. At the wholesaler's discretion, malt beverage products of a retail establishment that will be closed for thirty days or more may be exchanged, credited, or refunded. With permission of the director, a wholesaler may exchange, credit or refund malt beverage product that the retailer is discontinuing.
- R. Sampling by producers/wholesalers. Approved sampling procedures are:
1. Sampling operations must be conducted under the supervision of an employee of the sponsoring distiller, vintner, brewer, or wholesaler and accurate records of all sampling procedures and products must be retained.
 2. Sampling at on-premises events or wholesaler's premises must be limited to 12 ounces of beer or "cooler" products, 6 ounces of wine, and 2 ounces of distilled spirits per person per brand.
 3. Sampling at off-sale events must be limited to 72 ounces of beer, "cooler" or wine products, and 750 milliliters of distilled spirits per person per brand.
 4. Sampling from a package with a broken seal may be conducted on on-sale and wholesaler's premises only. No package may be broken or contents consumed on off-sale premises.
 5. The wholesaler's representative, when requesting a retail on-sale licensee to prepare a drink for the customer, must pay the retail on-sale licensee for the sample drink.
 6. When sampling is conducted on off-sale premises, sampling wares must be distributed to the customer in sealed original packages only.
 7. The producer/wholesaler may not buy the retail licensee, or his or her employees, a drink during their working hours or while they are engaged in waiting on or serving customers.

8. The producer/wholesaler may not give a keg of beer, or any spirituous liquor, or other gifts or benefits to a retail licensee.
9. All sampling procedures must conform to federal sampling laws and rules.

S. Market research programs. Bona fide market research via personal or mail intercept is authorized if:

1. The products being distributed are shipped through or obtained from an authorized licensed wholesaler.
2. People handling the products are 19 years old or older.
3. Participants are of legal drinking age.
4. The total amount of product being tested does not exceed 72 ounces of beer, "cooler", or wine product or 750 milliliters of distilled spirits.

T. Registration of salespersons or solicitors A.R.S. § 4-222, which required the registration of producer/wholesaler salespersons and solicitors has been repealed. Registration applies to agents of retail cooperatives only.

U. Holiday Decorations. A distiller, vintner, brewer, importer, producer, or wholesaler may give a retailer brand-identified, holiday decorations that have no utilitarian value to the retailer other than as a decoration.

R19-1-230. Tapping Equipment, Furnishing, Selling, and Servicing

A. Beer manufacturers may sell to beer wholesalers and beer wholesalers may furnish to on-sale retail licensees the following items of equipment in the case of either an initial installation for a new account or a change over of equipment from one tapping system to another. Such equipment shall remain the property of the wholesaler.

1. Approved equipment systems:

<p><i>Peerless</i></p> <ol style="list-style-type: none"> a. Tap Rod b. Valve c. Beer Hose d. CO₂ Hose e. Washers f. Couplings g. Clamps 	<p><i>Golden Gate</i></p> <ol style="list-style-type: none"> a. CO₂ Hose b. Beer Hose c. Couplings d. Vent e. Taps f. Valves (Golden Gate) g. Clamps h. Washers
<p><i>Jet Western</i></p> <ol style="list-style-type: none"> a. Jet Tap Assembly b. Draw Tube c. Beer Hose d. CO₂ Hose e. Tail Pieces 	<p><i>Hoff-Stevens</i></p> <ol style="list-style-type: none"> a. CO₂ Hose b. Beer Hose c. Couplings d. Vent e. Clamps or Wire

f. Shut-off Valve f. Washers

g. Washers

h. Clamps

2. Other equipment systems -- Manufacturers may qualify other tapping systems by submitting the trade name and collateral apparatus to the Department for approval.

B. Beer wholesalers may sell to on-sale licensees for cash only the following items of equipment at a price not less than the cost for which the wholesaler purchased the equipment:

1. CO₂ Gas;

2. CO₂ Regulators;

3. Facets;

4. Shanks or Bent Tubes;

5. Air Distributors;

6. Blower assembly, beer switches, complete faucet standard, drip pan, P.V.C. pipe, or any item that is necessary to prepare a draught system for proper operation.

C. A wholesaler may replace, at no charge to the retailer, bonnet washers, friction rings, valve stems, and coupling gaskets.

D. If 1 wholesaler is splitting an account with another wholesaler, the wholesaler initiating the split will supply, if necessary, the inline regulator which will remain the wholesaler's property and will be removed if the account is discontinued.

E. The wholesaler may maintain periodic cleaning schedules of on-sale retailers' draught equipment and may sell to the retailer any sanitizing materials utilized in the cleaning of draught beer equipment, at not less than cost.