

# Helpful Information For Producers & Wholesalers' 3<sup>rd</sup>-party Promoters updated 4-10/14

This document covers a few areas that will relate to liquor-licensed producer or wholesale promotions held on liquor-licensed retail businesses in Arizona.

## **Section 1: Responsibility**

As provided by R19-1-105 (shown immediately below), it is the responsibility of the licensed producer or wholesaler and their employees to know Arizona law and regulations. A.R.S. §4-101 defines the 3<sup>rd</sup> party promoter as an employee of the producer or wholesaler hosting the promotional event.

### **R19-1-105. Knowledge of Law and Regulations**

All licensees and their employees whose duties require or permit the handling of spirituous liquors shall be familiar with the liquor laws and the rules and regulations of the Director and of the State Liquor Board. It is the responsibility of the licensee to ensure that all employees acquire the aforementioned knowledge.

### **A.R.S. §4-101. Definitions**

In this title, unless the context otherwise requires:

16. "Employee" means any person who performs any service on licensed premises on a full-time, part-time or contract basis with consent of the licensee, whether or not the person is denominated an employee, independent contractor or otherwise. Employee does not include a person exclusively on the premises for musical or vocal performances, for repair or maintenance of the premises or for the delivery of goods to the licensee.

## **Section 2: Coupons**

R19-1-314(A) applies to promotions for carry-out and on-site liquor consumption. Under section A. the rule specifies "on-sale" as the locations where inducements are restricted. This means that businesses licensed for on-site liquor consumption may not offer coupons that require the purchase of liquor to receive the benefit. An off-sale or "carry-out" license may offer inducements.

Rules reference: R19-1-314

Instant rebate coupons (IRCs), frequently paired with non alcoholic items, are permitted in Arizona as long as they're offered at an off-sale establishment. If presented at on-sale premises (bar or restaurant) it would be considered an inducement.

Many times it IRCs are offered as a cross-promotion or cross-merchandising. The thing to remember is that if one of these is used, it is unlawful to place the "cross-promotion" item on the shelf, rack or bin.

Please review Rule R19-1-112 which specifies items of value that may be given to patrons by wholesalers and producers.

Rules reference: R19-1-112

### **R19-1-206. Inducements, Prohibited**

No on-sale retail licensee (where liquor is sold to be consumed on the premises) shall directly or indirectly offer or furnish any gifts, prizes, coupons, premiums, rebates or assumption of any excise, transaction privilege tax or

similar inducements wherein the purchase or consumption of any spirituous liquors, including beer and wine, is required to become eligible to receive such gifts, prizes, coupons, premiums, rebates or assumption of any excise, transaction privilege tax or similar inducements. It is provided, however, that nothing herein contained shall prohibit on-sale retail licensees from furnishing advertising novelties of nominal value or services which are customarily trade practices, so long as such furnishing is not contingent upon the purchase or consumption of spirituous liquors or any other alcoholic beverage.

**R19-1-112. Exceptions to General Rule**

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.

**R19-1-314. Prohibited Inducement to Purchase or Consume Spirituous Liquor**

- A. Except as specified in subsection (B), an on-sale retailer shall not offer or furnish to a customer an inducement such as a gift, prize, coupon, premium, or rebate, including assumption of an excise or transaction privilege tax, if receipt of the inducement is contingent on the purchase or consumption of spirituous liquor.
- B. A bar or beer and wine bar licensee may offer or furnish a coupon to a customer if the coupon can be used only for an off-sale purchase.
- C. An on-sale retailer may furnish to a customer an advertising novelty of nominal value or a service that is a customary trade practice if receipt of the novelty or service is not contingent on the purchase or consumption of spirituous liquor.
- D. This Section is authorized by A.R.S. § 4-112(B)(1).

**Section 3: Promotional Items for Consumers Provided by Retail Licensee**

**R19-1-314. Prohibited Inducement to Purchase or Consume Spirituous Liquor**

- E. Except as specified in subsection (B), an on-sale retailer shall not offer or furnish to a customer an inducement such as a gift, prize, coupon, premium, or rebate, including assumption of an excise or transaction privilege tax, if receipt of the inducement is contingent on the purchase or consumption of spirituous liquor.
- F. A bar or beer and wine bar licensee may offer or furnish a coupon to a customer if the coupon can be used only for an off-sale purchase.
- G. An on-sale retailer may furnish to a customer an advertising novelty of nominal value or a service that is a customary trade practice if receipt of the novelty or service is not contingent on the purchase or consumption of spirituous liquor.
- H. This Section is authorized by A.R.S. § 4-112(B)(1).

**R19-1-112. Exceptions to General Rule**

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.

**IMPORTANT NOTE:** Producers and wholesalers, please review and apply these forms of commercial coercion and bribery prior to launching your promotion.

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

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.

### **Section 3: Promotional Items for Retail Customers Provided by Producer or Wholesaler**

#### **R19-1-112. Exceptions to General Rule**

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 1:00 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.

### **Section 4: Sampling Limits Per Brand, Per Individual**

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

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

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 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.

## **Section 5: Items of Value for Retail Licensee & Retail Staff by Producer or Wholesaler**

### **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 or 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.

### **R19-1-319. Commercial Coercion or Bribery Prohibited**

A. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not directly or indirectly or through an affiliate engage in any of the following activities unless specifically authorized under A.R.S. Title 4 or this Chapter:

1. Furnishing, giving, renting, lending, or selling to a licensed retailer an article of primary utilitarian value in the conduct of the business;
2. Selling food or food products to a licensed retailer at less than the cost that the producer or wholesaler paid for the food or food products;
3. Selling non-alcoholic malt beverage, non-alcoholic wine, or other non-alcoholic beverage or cocktail mixer to a licensed retailer at less than the cost that the producer or wholesaler paid for the non-alcoholic malt beverage, non-alcoholic wine, or cocktail mixer.
4. Extending credit or furnishing financing to a licensed retailer through the licensed retailer's purchase of spirituous liquor or other products;
5. Providing a service to a licensed retailer, including stocking, resetting, or pricing merchandise;

6. Paying or crediting a licensed retailer for a promotion, advertising, display, public relations effort, or distribution service;
  7. Sharing with a licensed retailer the cost of a promotion or advertising through any medium;
  8. Guaranteeing a loan to or repayment of a financial obligation of a licensed retailer;
  9. Providing financial assistance to a licensed retailer;
  10. Engaging in a practice that requires a licensed retailer to take and dispose of a quota of spirituous liquor;
  11. Offering or giving a meal, local ground transportation, or event ticket to a licensed retailer unless the item is deductible as a business entertainment expense under the Internal Revenue Code;
  12. Offering a product to an on-sale licensee at a price not available to all on-sale licensees. A price based on the volume delivered within a 24-hour period is permitted if the volume-based price is available to all on-sale licensees; or
  13. Offering a product to an off-sale licensee at a price not available to all off-sale licensees. A price based on the volume delivered within a 24-hour period is permitted if the volume-based price is available to all off-sale licensees.
- B. A licensed retailer shall not require that a producer or wholesaler provide stocking or resetting services as a condition for being allocated shelf, cold box, or product display space.
- C. A licensed retailer shall not solicit from a distiller, vintner, brewer, rectified, blender, or other producer or wholesaler any activity outlined in subsections (A)(1) through (A)(13) unless specifically authorized under A.R.S. Title 4 or this Chapter.
- D. This Section is authorized by A.R.S. § 4-243(A).

#### **R19-1-112. 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 1:00 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 (Q).

- 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 R19-1-241 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.

## **Section 6: Market Research**

### **R19-1-112. Exceptions to General Rule**

- 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.

## **Section 7: 3<sup>rd</sup>-Party Promotion Company Employee Training**

3<sup>rd</sup>-party promotion company employees age 21 or older may not drink until after their shift is complete.  
3<sup>rd</sup>-party promotion company employees under age 21 may not consume liquor.

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### Checking IDs

A.R.S. §4-241

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You have the right to refuse service to anyone, and you have the responsibility to ensure each person you serve is of legal drinking age (21). The responsibility to not provide liquor to persons under age 21 is critical to compliance with Arizona liquor law. You may adopt "refusal of service/sale" and "mandatory ID checking" policies and procedures for staff to follow to ensure compliance.

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### Intoxicated Patrons

A.R.S. §4-244(14)

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"**Obviously intoxicated**" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

It is unlawful for a person to:

- serve, sell or furnish liquor to a obviously intoxicated person,
- to allow or permit a disorderly or obviously intoxicated person to come into or remain on or about the premises,

Exception: you may allow an obviously intoxicated person to remain on the premises for a maximum of thirty minutes after the state of obvious intoxication is known or should be known to arrange for safe transportation from the premises.

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## Disorderly Patrons

A.R.S. §4-244(14) and A.R.S. §13-2904

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It is unlawful for a person to:

- serve, sell or furnish liquor to a disorderly person ,
- to allow or permit a disorderly or obviously intoxicated person to come into or remain on or about the premises,

Exception: you may allow an obviously intoxicated person to remain on the premises for a maximum of thirty minutes after the state of obvious intoxication is known or should be known to arrange for safe transportation from the premises.

A person commits **disorderly conduct** if, with intent or in knowledge of doing so, disturbs the peace or quiet of a neighborhood, a family, a person by doing one or more of the following:

Class 1 misdemeanors:

- Engages in fighting, violent or seriously disruptive behavior; or
- Makes unreasonable noise; or
- Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or
- Makes any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or
- Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency; or

Class 6 felony:

- Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.