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Amendment To Section 2.28(4) Gifts and Services to Retailers

Prohibited. That the manufacturer or wholesaler gave an article or articles away of any value or use whatsoever, or provided any services for the use or benefit of any person holding a permit to sell controlled beverages at retail. It is specifically provided that the practice of pricing alcoholic beverages for a retail permit holder by a manufacturer or wholesaler is not considered a prohibited service under this Regulation.

In addition, the following practices are not prohibited gifts or services under this Regulation: manufacturers and wholesalers may provide point of sale advertising items and related services to retailers in conformity with current federal regulations as long as the furnished item does not constitute a real or secondary gift to the retailer receiving it; notwithstanding any other Regulation to the contrary, wholesalers may as a permitted service deliver product, provide keg-tapping and cooling equipment, delivery lines, and keg hook-up service to holders of temporary beer permits and temporary restaurant wine permits on any day such permits are in effect; wholesalers may provide keg-tapping and cooling equipment, delivery lines, and keg hook-up service to consumers at the request of and as a permitted service to retail permit holders in any area where the sale of alcoholic beverages is legal. ***Provided,*** a wholesaler may not deliver any alcoholic beverages to a consumer, and a wholesaler's employees may not be involved in any way with the dispensing of alcoholic beverages and serving such beverages to consumers.

Product Display means any alcoholic beverage racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products.

A wholesaler may give or sell a "product display" to a retailer so long as:

- (1) the total value of all product displays provided by the wholesaler does not exceed three hundred dollars (\$300.00) per brand at any one time in any one retail outlet;
- (2) the display bears conspicuous and substantial advertising matter on the product. The name and address of the retailer may appear on the displays;
- (3) the giving or selling 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 wholesaler on the retailer in order for the retailer to receive or obtain the product display.

A wholesaler may give or sell the following to a retailer:

Point of Sale Advertising Materials are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electrical, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

Beer wholesalers may give, loan or sell inside signs (electrical, mechanical, or otherwise). Inside signs for spirits, wines or malt liquors shall not be loaned.

Consumer Advertising Specialties are items designed to be carried away by the consumer, such as trading stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, and pencils. Umbrellas, caps, shirts, and visors shall be sold, not given, by the wholesalers to the retailer. The minimum value of umbrellas, caps, shirts and visors shall be the price paid by the industry member who first acquired the merchandise.

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, logo, address and web site of the retailer may appear on the point of sale advertising material. Any non-promotional item that the business would buy in the normal course of business must be sold, not given, by a wholesaler to a retailer.

A wholesaler may, without violating the provisions of these Regulations, and subject to approval by the Director on such form provided by the Agency, no less than five (5) working days prior to the qualified event, rent for fifty dollars (\$50.00) per tap and associated cooling equipment or fair market value, whichever is greater, cooling and keg-tapping equipment, keg hook-up service and delivery lines to a retail permit holder for a special purpose. These provisions shall apply only to events outside of the normal course of the retail permit holder's ordinary course of business, not to exceed ten (10) days in duration.

It is specifically provided that if a manufacturer or wholesaler provides any of the services for a retailer allowable under this Section, he must provide the same service upon request to any other retailer who purchases the product; (Amended 8-16-11)

High Alcoholic Content Beverages – Stocking, Pricing, and Rotating
A. Persons holding valid Arkansas wholesale alcoholic beverage permits, their agents, servants or employees, manufacturers' agents, importers

and brokers may price, stock and rotate merchandise at retail premises only to the following extent:

- (1) Wholesale dealers in spirituous and vinous beverages and malt beverages of more than five (5%) percent alcohol by weight may build stock displays of their product on the premises of retail dealers. Displays may in no way be part of the dealer's regular shelving. Wholesaler dealers may restock displays for a maximum period of one month after the initial display has been installed. They may not price the displays and are prohibited from pricing and stocking shelves on the premises of retail dealers and from affixing security tags. Industry members are granted authority to maintain the quality of their product on retail shelves, provided, that products purchased from other industry members are not altered or disturbed. The act of picking up alcoholic beverages in excess of five (5%) percent alcohol by weight for credit or exchange from a retail dealer by a wholesale dealer is considered a consignment sale and is therefore specifically prohibited.
- (2) No wholesale dealer of spirituous and vinous beverages and malt beverages that are more than five (5%) percent alcohol by weight shall handle or move any alcoholic beverages delivered to the premises of a retail dealer by a competing wholesale dealer, nor shall a wholesale dealer reset all or any part of the alcoholic beverages situated on the premises of a retail dealer. A wholesale dealer may engage in the initial setting of products into a new store, previous to the new store opening for business.
- (3) A wholesale dealer whose products are situated on the premises of a retail dealer must be given the opportunity to participate in any movement or reset of these products, and no retail dealer shall, under any circumstances, exclude a wholesale dealer from such participation. The reset of all or any part of the alcoholic beverages situated on the premises of a retail dealer may not occur more than twice during any calendar year. The stocking of cold boxes by a wholesale dealer in a retail dealer's premises is permitted.
- (4) The stocking of shelves by a wholesale dealer of spirituous and vinous beverages in a retail dealer's premises is prohibited. The act of manually entering delivery or invoice information into the retail dealer's computer system at the time of delivery is prohibited.
- (5) Except as authorized herein, employees of a wholesale dealer shall not, in connection with the sale or delivery of alcoholic beverages to a retail dealer, provide any services whatsoever to a retail dealer.

B. The Director of the Alcohol Beverage Control Division may suspend or revoke the permit or permits of a violator and may impose such other penalties or administrative remedies as are prescribed by law for violations of the Alcoholic Beverage Control Law.

Slotting Allowance Prohibited. Slotting allowances, defined as allowances paid by a manufacturer to a grocery store for making room for a product on the grocery store's shelves, are prohibited.

SUMMARY

Act 508 of 2017 prohibits slotting allowances, i.e. allowances paid by a manufacturer to a grocery store for making room for a product on the grocery store's shelves. ABC Rules and Regulations have always prohibited, with narrow exceptions, wholesalers providing gifts and services to retailers. This rule is being amended to clarify certain gifts and services that may not be provided to retailers concerning the stocking of shelves.