

# Advisory Notice

Alcohol Advisory (3 AAC 305.850)

Date: 6/24/24

Case Number: AM 24-1404

Licensee: All Alcoholic Beverage Licensees

DBA:

License #/Type:

Address:

This is a notice to you as to the status of current law and requesting your attention. **Note: This is not an accusation or a criminal complaint.**

Effective January 1, 2024 AS 04.16.017 – Trade Practice Prohibitions – became effective as part of the Title 4 Rewrite. This statute expressly prohibits wholesalers and alcoholic beverage manufacturers -- including breweries, wineries, and distilleries -- from engaging in trade practices that would encourage alcoholic beverage retailers -- such as bars, package stores, and restaurant or eating places -- to purchase certain alcoholic beverage products over other products sold by another manufacturer or wholesaler. Manufacturers and wholesalers are expressly prohibited from requiring retailers to operate as a tied house or an exclusive outlet. They also may not encourage retailers to purchase products by offering a bonus or other premium or by entering into prohibited contracts.

As part of the Title 4 Rewrite, the Alaska State legislature authorized the ABC Board to make regulatory exceptions to these broad statutory prohibitions that would permit reasonable commercial practices to continue to occur as they have for decades in Alaska. The Board did so and approved regulatory exceptions as final on April 16, 2024. However, those regulations are not effective until 30 days after the Lieutenant Governor's Office signs those regulations. This approval is currently delayed. While we hope that review will be completed in the coming month, we cannot ignore a statute that came into effect over six months ago.

Until the regulatory exceptions are effective and absent a federal exception that would preempt these broad state prohibitions, wholesalers and manufacturers violate AS 04.16.017 if they induce a person a retailer to purchase products to the exclusion of other products by:

- furnishing equipment, inside signage, supplies, services, or other things of value
- giving product displays
- giving, selling, or loaning indoor signage, indoor posters, table tents, place mats, menus, pamphlets, writing utensils, product description sheets, light fixtures, and other non-consumable similar items
- giving or selling outside signage to a person holding a retail license under AS 04.09.200 - 04.09.370
- providing other equipment, consumable supplies, or service
- providing or installing an alcoholic beverage dispensing system, including alcoholic beverage taps or drafting equipment
- providing for the maintenance or cleaning of an alcoholic beverage dispensing system, including alcoholic beverage taps or drafting equipment
- providing 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
- packaging and distributing alcoholic beverages in combination with other non-alcoholic items for sale to consumers at a retailer's premises
- giving or sponsoring educational seminars for employees of a person holding a retail license holder under AS 04.09.200 - 04.09.370
- providing a presentation to the general public on the licensed premises of a retailer
- furnishing coupons redeemable at the licensed premises of retailer
- listing the names and addresses of two or more unaffiliated retailers in an advertisement
- managing display space at the licensed premises of a retailer
- recommending shelf plans or shelf schematics
- resetting the licensed premises of a person holding retail license under AS 04.09.200 - 04.09.370
- extending credit
- selling other merchandise, including groceries or pharmaceuticals, to a person holding a retail license

Until the regulatory exceptions are effective, impacted manufacturers and retailers also may not

- require the retailer to condition the purchase of product by requiring the purchase of any other product or a minimum quantity of any brand
- build, construct, or otherwise erecting permanent or semi-permanent shelving, refrigeration, or other fixtures for stocking and displaying alcohol beverages at the retailer's premises
- move retailer fixtures in a manner that obscures or hides other alcoholic beverage products from view;
- serve alcohol to the general public on a retailer's premises;
- provide a sample of alcoholic beverages to a person holding a retail license; or
- offer a contest prize, premium offer, or like item on the premises of a retail license.

We hope the final review of the Board's approved regulation is completed soon. However, please proceed with caution until the regulatory exceptions are finally effective. For example, if you have the opportunity to hold off on engaging in certain practices that will be permitted once the regulations are effective, we recommend you do so. We also recommend that you consult with legal counsel or other industry experts regarding any defensible argument of federal preemption of these broad state prohibitions. Last, please know that whenever a state statute dictates our enforcement activities, our mandate here at AMCO is to follow it.

SIGNATURE: *Joan M. Wilson*

Delivered VIA: Email