

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: Trade Practice Working Group Comments

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 17, 2018 at 3:34 PM

For the rule record

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: Halpert, Benjamin (Legal) <benjamin.halpert@anheuser-busch.com>
Date: Fri, Aug 17, 2018 at 2:52 PM
Subject: Trade Practice Working Group Comments
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>
Cc: "Canizales, Gilbert" <gilbert.canizales@anheuser-busch.com>, "Adam Stapen" (astapen@dillanddill.com) <astapen@dillanddill.com>, "garin@lobby4co.com" <garin@lobby4co.com>

Patrick, hope you are doing well. Gilbert Canizales and Adam Stapen provided me with a copy of the Draft Rules coming out of the Trade Practices and Delivery Subgroups (attached). I also understand that you have asked for comments and reactions from suppliers by today. Below you will see collective comments from AB. Please let me know if you have any questions. Thanks, Ben

- We believe that the "merchandising" and "stocking" sections of the rules should remain separate. That is, section 47-316(B) should not be combined with section 47-322(L). My understanding is that this was discussed by the Trade Practices Sub-Group on July 9 and there was a consensus that these two sections should not be combined.
- We are opposed to the proposed changes regarding days of service and delivery (limit of 4 days). Distributors already have established service levels for their accounts that the retailer is informed of and that is based on market conditions, size of store, volume sold at store, etc. The practice of delivery and merchandising retailers by a distributor should remain a market driven function.
- For consistency, we would propose that 47-322(L)(3) be modified when it comes to how the cost of labor is defined. Our preference would be that the cost of labor be set at either "fair market value" or the "prevailing rate"

for such services. Concern here is that each wholesaler likely pays their employees differently.

- We are opposed to the proposed changes within section 47-322(B)(2)(e) as far as the removal of “who” may provide samples. We would like a supplier’s “representative” or “authorized agent” to be able to provide samples to consumers in addition to the supplier itself. We simply want to keep the status quo.



ANHEUSER-BUSCH

Benjamin A. Halpert
Associate General Counsel

P (314) 577-0605

M (314) 401-5240

E benjamin.halpert@anheuser-busch.com



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 **Trade Practice and Delivery Redline Drafts 08.01.2018.pdf**
32K

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:46 AM

[Quoted text hidden]

 **Trade Practice and Delivery Redline Drafts 08.01.2018.pdf**
32K

DEPARTMENT OF REVENUE

Liquor Enforcement Division

Colorado Liquor Rules

1 C.C.R. 203-2

(Draft – August 1, 2018 – Trade Practice/Delivery)

Regulation 47-322. Unfair Trade Practices and Competition.

Suppliers and their agents or employees may not attempt to control a retail licensee's product purchase selection by engaging in unfair trade practices or competition.

Nothing in this regulation shall apply to non-profit, charitable, or other qualifying organizations, when such organization conducts licensed events pursuant to the requirements contained in article 48 of title 12 and related regulations, and such organization does not otherwise hold a retail license pursuant to article 46 or 47 of title 12. However, nothing herein shall authorize any financial assistance for the purpose of altering or influencing an organization's product selection for said events.

Retailers may not accept any prohibited financial assistance as described herein, and suppliers are prohibited from directly or indirectly engaging in the following unfair practices:

B. On-site sales promotions

2. ~~Supplier-sponsored~~ A SUPPLIER-SPONSORED consumer sampling of alcohol beverages that is ~~MAY BE held in establishments licensed for on-premises consumption AT A RETAILER'S LICENSED PREMISES for the purpose of product sales promotion, are permitted~~ under the following conditions:
 - a. Product used for sampling must be invoiced by a supplier, who is authorized to sell alcohol beverages to licensed retailers pursuant to article 46 or 47 of title 12, as if sold to the retailer.
 - b. A retailer may not impose any charge to the consumer to enter or participate in the sampling.
 - c. If all product listed in the sales invoice is consumed as permitted herein, the supplier may issue the retailer a credit against the entire amount of the original invoice.
 - d. Any remaining product must be returned to the wholesaler, or sold to the retailer at a minimum of the seller's cost.
 - e. THE SUPPLIER MUST BE PRESENT AND SHALL BE THE PERSON WHO SERVES THE SAMPLE TO THE CONSUMER. ~~Supplier representatives or their authorized agents may provide alcohol beverage samples directly to the consumer, if the product has been delivered to the retail premises pursuant to the conditions described herein, and the retailer has so consented.~~ THE SUPPLIER MUST VERIFY THAT EACH CONSUMER IS OF LAWFUL AGE PRIOR TO SERVING THE SAMPLE.

- f. Suppliers may provide or pay for any media announcement of a supplier sponsored consumer sampling that primarily advertises the product, the location, and the date and time of the sampling. The name of the retail outlet may also be mentioned.
 - G. A SUPPLIER-SPONSORED CONSUMER SAMPLING HELD AT THE LICENSED PREMISES OF A RETAILER LICENSED FOR OFF-PREMISES CONSUMPTION IS LIMITED TO EITHER FERMENTED MALT BEVERAGES OR MALT LIQUOR, WHICHEVER THE RETAILER IS LICENSED TO SELL. A SUPPLIER-SPONSORED CONSUMER SAMPLING HELD AT THE LICENSED PREMISES OF A RETAILER LICENSED FOR ON-PREMISES CONSUMPTION MAY INCLUDE ANY ALCOHOL BEVERAGES THE RETAILER IS LICENSED TO SELL.
 - H. EACH CONSUMER SHALL BE LIMITED TO ONE (1) ALCOHOL BEVERAGE SAMPLE PER PRODUCT. THE MAXIMUM VOLUME OF AN ALCOHOL BEVERAGE SAMPLE SHALL NOT EXCEED:
 - I. TWENTY-FOUR (24) OUNCES OF EITHER FERMENTED MALT BEVERAGES OR MALT LIQUOR FOR A SAMPLING HELD AT THE LICENSED PREMISES OF A RETAILER LICENSED FOR OFF-PREMISES CONSUMPTION, OR
 - II. ONE (1) OUNCE OF EITHER FERMENTED MALT BEVERAGES OR MALT LIQUOR, ONE (1) OUNCE OF VINOUS LIQUOR, AND ONE HALF OF ONE (1/2) OUNCE OF SPIRITUOUS LIQUOR FOR A SAMPLING HELD AT THE LICENSED PREMISES OF A RETAILER LICENSED FOR ON-PREMISES CONSUMPTION.
3. ~~A supplier sponsored consumer give a way of malt liquors held in retail establishments licensed for off-premises consumption for the purpose of product sales promotion, are permitted under the following conditions:~~
- a. ~~The supplier must purchase the malt liquors from the retailer at the retail price of the product to be given away, including sales tax.~~
 - b. ~~A retailer/supplier may not impose any charge to the consumer to enter or participate in the give a way.~~
 - c. ~~The product purchased must be of the supplier's brands and currently offered by the supplier.~~
 - d. ~~The supplier must be present and shall be the person who gives the product to consumers. The supplier representative must verify that each consumer is of lawful age prior to giving the item to them.~~
 - e. ~~The supplier and retailer must keep records of all items purchased from a retail liquor store to be used as a free give a way to consumers. The records must include the date, retailer/supplier name, amount paid, and name of products purchased.~~
 - f. ~~Supplier representatives or their authorized agents may give a way sealed malt liquor products directly to the consumer (for off-premises consumption only), if the product has been purchased in accordance to this regulation and the retailer has so consented. The retail licensee or their employee(s) are not eligible to receive free malt liquor samples.~~

- ~~g. The maximum amount of malt liquor beverages given to each consumer is limited to twenty-four (24) ounces.~~
- ~~h. Suppliers may provide or pay for any media announcement of a supplier sponsored consumer give a way that primarily advertises the product, the location, and the date and time of the give a way. The name of the retail outlet may also be mentioned.~~
- ~~i. All items purchased by the supplier representative for the give a way must be given away to the consumer or the retailer must purchase back any remaining items not given away at the original purchase price.~~

J. Other goods

Suppliers may not provide a retailer with any other goods below a supplier's cost FAIR MARKET VALUE except those items expressly permitted by articles 46, 47, or 48 of title 12, C.R.S. and related regulations.

When a supplier also deals in items of commerce that are not regulated by articles 46, 47, or 48 of title 12, only the following restrictions shall apply:

1. The unregulated item(s) may not be on the same invoice as the alcohol beverages sold.
2. The unregulated item(s) may not be provided as an inducement, or require purchase of alcohol beverages.
3. Any equipment or other goods provided free of charge (e.g. energy drink refrigerated coolers) shall not be provided in conjunction with alcohol sales or promotions.

L. Value of labor

- ~~1. Suppliers may provide labor at no cost as it relates to product delivery, price stamping, rotation and stocking. The cleaning of beverage dispensing equipment and supplier provided displays may also be provided at no cost.~~
- ~~2. Suppliers may, upon retail premises, organize, construct, and maintain displays of those alcohol beverages that they sell. Such supplier constructed displays shall be accessible by the consumer.~~
- ~~3. Cost of labor provided to a retailer for services such as the installation of dispensing systems and the pouring or serving of alcohol beverages (except as allowed by regulation 47-322(B)(2)) shall be at least at a minimum of that employee's hourly wage.~~

1. FOR PURPOSES OF THIS SUBSECTION (L):

- A. "STOCK" OR "STOCKING" IS THE ACT OF A SUPPLIER PLACING OR REPLENISHING ITS ALCOHOL BEVERAGE PRODUCT ON ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION, THAT IS ACCESSIBLE TO CONSUMERS WITHIN THE RETAILER'S LICENSED PREMISES.
- B. "ROTATE" OR "ROTATING" IS THE ACT OF A SUPPLIER MOVING ITS ALCOHOL BEVERAGE PRODUCT FROM THE REAR TO THE FRONT OF ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION, THAT IS ACCESSIBLE TO CONSUMERS WITHIN THE RETAILER'S LICENSED PREMISES, SO THAT OLDER ALCOHOL BEVERAGE PRODUCT WILL SELL FIRST.

- C. "PRICE STAMP" OR "PRICE STAMPING" IS THE ACT OF A SUPPLIER AFFIXING THE RETAIL PRICE OF ITS ALCOHOL BEVERAGE PRODUCT TO ITS RESPECTIVE CONTAINER, SHELF, REFRIGERATOR, OR ANY OTHER SIMILAR LOCATION, THAT IS ACCESSIBLE TO CONSUMERS WITHIN THE RETAILER'S LICENSED PREMISES.
 - D. "MERCHANDISE" OR "MERCHANDISING" IS THE ACT OF A SUPPLIER ORGANIZING, CONSTRUCTING, OR MAINTAINING A TEMPORARY DISPLAY OF ALCOHOL BEVERAGE PRODUCT INCLUDING A SIGN, INTERIOR DISPLAY, CONSUMER ADVERTISING SPECIALTY, OR POINT-OF-SALE ADVERTISING, THAT IS ACCESSIBLE TO CONSUMERS WITHIN THE RETAILER'S LICENSED PREMISES.
2. EXCEPT AS OTHERWISE PROVIDED BY THIS SUBSECTION (L)(2), THE COLORADO LIQUOR CODE, THE COLORADO BEER CODE, OR THE COLORADO LIQUOR RULES, A SUPPLIER IS PROHIBITED FROM PROVIDING ANY LABOR TO A RETAILER AT NO COST. A RETAILER IS PROHIBITED FROM REQUIRING A SUPPLIER TO PROVIDE ANY LABOR AT NO COST TO THE RETAILER AS AN EXPRESS OR IMPLIED CONDITION OF THE DELIVERY, PURCHASE, OR FUTURE PURCHASES BETWEEN THE SUPPLIER AND THE RETAILER.
- A. A WHOLESALER MAY UNLOAD ITS ALCOHOL BEVERAGE PRODUCT FROM ITS DELIVERY VEHICLE ONTO THE RETAILER'S LICENSED PREMISES OR PERMITTED RETAIL STORAGE LOCATION AT NO COST TO THE RETAILER. A WHOLESALER IS PROHIBITED FROM DELIVERING ALCOHOL BEVERAGE PRODUCTS TO A RETAILER'S LICENSED PREMISES MORE THAN FOUR (4) DAYS PER CALENDAR WEEK.
 - B. IN A SUPPLIER'S SOLE DISCRETION, A SUPPLIER MAY STOCK, ROTATE, PRICE STAMP, AND MERCHANDISE ITS ALCOHOL BEVERAGE PRODUCT ON THE RETAILER'S LICENSED PREMISES AT NO COST TO THE RETAILER. A SUPPLIER IS PROHIBITED FROM DISTURBING ANOTHER SUPPLIER'S ALCOHOL BEVERAGE PRODUCT WHILE STOCKING, ROTATING, PRICE STAMPING, AND MERCHANDISING. FOR PURPOSES OF THIS SUBSECTION (L)(2)(B), THE RETAILER'S LICENSED PREMISES SHALL NOT INCLUDE A PERMITTED RETAIL STORAGE LOCATION.
 - C. A SUPPLIER MAY CLEAN THE RETAILER'S ALCOHOL BEVERAGE DISPENSING EQUIPMENT AT NO COST TO THE RETAILER.
3. A RETAILER MUST PAY A SUPPLIER FOR ANY OTHER LABOR PROVIDED BY THE SUPPLIER TO THE RETAILER AT THE SUPPLIER'S COST OF LABOR. A SUPPLIER'S COST OF LABOR SHALL BE, AT A MINIMUM, THE HOURLY WAGE OF THE SUPPLIER'S EMPLOYEE OR EMPLOYEES WHO PROVIDED THE LABOR. EXAMPLES OF LABOR REQUIRING PAYMENT INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:
- A. INSTALLING OR REPAIRING THE RETAILER'S ALCOHOL BEVERAGE DISPENSING EQUIPMENT.
 - B. CLEANING OR MAINTAINING THE RETAILER'S LICENSED PREMISES.

Regulation 47-426. Delivery of Alcohol Beverages.

Basis and Purpose. The statutory authority for this regulation is located at subsections 12-46-107(1)(c), 12-47-202(1)(b), 12-47-202(2)(a)(1)(A), 12-47-407(3), and 12-47-408(3), AND 44-4-107(6), C.R.S. The purpose of this regulation is to permit fermented malt beverage ~~on-off-premises~~ OFF-PREMISES licensees, retail liquor stores, and liquor licensed drug stores to deliver alcohol beverage products to consumers within the requirements, restrictions, and limitations outlined in the regulation in accordance with the statutory provisions under which limited retail delivery activities are authorized.

~~A. Delivery Prohibited.~~

~~No retail liquor licensee, licensed to sell malt, vinous, and spirituous liquor for off-premises consumption or fermented malt beverages for on and off-premises consumption, shall conduct a delivery-only business, or permit the delivery of such alcohol beverages beyond the customary parking area for the customers of the retail outlet except as permitted in paragraph B of this regulation.~~

BA. Delivery Permitted.

~~A retail liquor licensee, licensed to sell malt, vinous, and spirituous liquor, for off-premises consumption or fermented malt beverages for on and off-premises consumption, may,~~ LICENSEE LICENSED PURSUANT TO SECTION 44-3-409 OR 44-3-410, OR SUBSECTION 44-4-107(1)(A), C.R.S., MAY deliver such alcohol beverages AUTHORIZED BY ITS LICENSE to any location off the licensed premises, pursuant to the following restrictions:

1. ORDER.

- A. The order for the alcohol beverages which are to be delivered, must be taken by the licensee or an ordering service acting as an agent of the licensee pursuant to a written agreement entered into with the licensee. Licensee shall provide a copy of said agreement to the ~~Liquor Enforcement~~ Division prior to any orders being accepted by licensee's agent.
- B. The order may be taken by written order, by telephone, in person, or via internet communication with the licensee or its agent.
- C. The person placing the order must provide the licensee with their name, address, date of birth and a valid form of identification, including the identification number. Under no circumstances shall a person under TWENTY-ONE (21) years of age ~~be permitted to place an order for alcohol beverages.~~

2. DELIVERY.

- A. Delivery of alcohol beverages shall only be made to a person TWENTY-ONE (21) years of age or older at the address specified in the order.
- B. ~~Delivery must be made by the licensee, an employee of the licensee, or a delivery service acting as an agent of the licensee pursuant to a written agreement entered into with the licensee. A copy of said agreement shall be maintained by the licensee.~~ THE LICENSEE'S EMPLOYEE WHO IS AT LEAST TWENTY-ONE (21) YEARS OF AGE AND IS USING A VEHICLE OWNED OR LEASED BY THE LICENSEE TO MAKE THE DELIVERY.
- C. The licensee or ~~his~~ THE LICENSEE'S employee, ~~or a representative of a delivery service~~ who delivers the alcohol beverages shall note and log, at the time of delivery; the name, address, date of birth and the valid form of identification, including the identification number, of the person the alcohol beverages are delivered to. ~~Under no circumstances shall a person under 21 years of age be permitted to receive a delivery of alcohol beverages.~~
- D. A LICENSEE MUST DERIVE NO MORE THAN FIFTY (50) PERCENT OF ITS GROSS ANNUAL REVENUES FROM TOTAL SALES OF ALCOHOL BEVERAGES THAT THE LICENSEE DELIVERS.

3. Licensees who deliver alcohol beverages shall maintain as a part of their required records, pursuant to 12-47-701 C.R.S., all records of delivery including: ~~delivery agreements,~~ delivery orders, receipt logs and journals. These records shall be maintained by the licensee for the current and three prior calendar years. Failure to maintain accurate or complete records shall be a violation of this regulation.
4. Have a licensed premises with the following conditions:
 - AA. Open to the public a minimum of three (3) days a week; and
 - Bb. Open to the public a minimum of five (5) hours each day the business is open; and
 - Gc. Have signage viewable from a public road.
5. PERMIT REQUIRED.
 - A. EFFECTIVE JULY 1, 2019, THE STATE LICENSING AUTHORITY WILL ACCEPT COMPLETE DELIVERY PERMIT APPLICATIONS FROM ANY APPLICANT OF OR LICENSEE LICENSED PURSUANT TO SECTION 44-3-409 OR 44-3-410, OR SUBSECTION 44-4-107(1)(A), C.R.S.
 - B. EFFECTIVE JULY 1, 2020, ANY PERSON LICENSED PURSUANT TO SECTION 44-3-409 OR 44-3-410, OR SUBSECTION 44-4-107(1)(A), C.R.S., MUST HOLD A VALID DELIVERY PERMIT ISSUED BY THE STATE LICENSING AUTHORITY TO DELIVER ALCOHOL BEVERAGES PURSUANT TO THE COLORADO LIQUOR CODE, THE COLORADO BEER CODE, AND THIS REGULATION.
 - C. THE APPLICANT MUST AFFIRM ON ITS DELIVERY PERMIT APPLICATION THAT THE APPLICANT DERIVES OR WILL DERIVE NO MORE THAN FIFTY (50) PERCENT OF ITS GROSS ANNUAL REVENUES FROM TOTAL SALES OF ALCOHOL BEVERAGES THAT THE APPLICANT DELIVERS. HOWEVER, NOTHING WITHIN THIS SUBSECTION (A)(5)(C) SHALL LIMIT THE AUTHORITY OF THE STATE LICENSING AUTHORITY TO INSPECT BOOKS AND RECORDS PURSUANT TO REGULATION 47-700, 1 C.C.R. 203-2, TO VERIFY THIS AFFIRMATION OR COMPLIANCE WITH THIS STATUTORY REQUIREMENT.
 - D. A DELIVERY PERMITTEE SHALL DISPLAY ITS DELIVERY PERMIT AT ALL TIMES IN A PROMINENT PLACE ON ITS LICENSED PREMISES. A DELIVERY PERMITTEE SHALL NOT BE REQUIRED TO HOLD OR CARRY A COPY OF ITS DELIVERY PERMIT IN THE DELIVERY VEHICLE.
 - E. A DELIVERY PERMIT SHALL NOT BE REQUIRED FOR A RETAILER TO DELIVER ALCOHOL BEVERAGES WITHIN ITS CUSTOMARY PARKING AREA.

CB. ~~Suspension/Revocation~~-SUSPENSION OR REVOCATION.

Any delivery made in violation of Title 12, Articles 46 and Article 47, or in violation of this regulation may be grounds for suspension or revocation OF THE LICENSEE'S LICENSE AND/OR DELIVERY PERMIT by the ~~State Licensing Authority~~ STATE LICENSING AUTHORITY as provided for in section 12-47-601 C.R.S.

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: comments, observations and suggestions

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 16, 2018 at 11:49 AM

For the rule record.

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: Jim Shpall <JShpall@applejack.com>
Date: Wed, Aug 15, 2018 at 3:32 PM
Subject: comments, observations and suggestions
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>

Patrick

Following the meetings over the last several weeks, I have several comments, observations and suggestions for your consideration relative to the proposed rules and regulations. Keep in mind, that I am trying to fairly approach the issues keeping in mind questions of enforceability and the practicalities of operating a business as a liquor store owner and operator, not just for Applejack but for all liquor store owners.

1. I agree with the definitions for labor set forth by the Division. I also agree with the suggested changes made by Micki Hackenberger. However, I strongly disagree with her suggestion that the Division should add a definition of what forms of labor are not permitted. By defining permitted labor you have effectively established the guardrails. Anything that is not specifically permitted is disallowed. To try to define what is not allowed is reminiscent of trying to define what types of non-alcohol products could be sold prior to the enactment of SB-197.
2. I would ask that there not be a frequency limit imposed on the defined labor that can be performed. The definitions, themselves, place a limit on the type of labor that can be performed. A limitation on how often the permitted types of labor are performed is impracticable and unworkable. In addition, and to be blunt, I do not believe the Division has the statutory authority to place the proposed restrictions on the number and frequency of deliveries or even the permitted labor. How often delivery or stocking occurs is a function of the amount of business a retailer does and a wholesaler believes is justified based on many business factors -- velocity and volume of sales, brand development. At some point the wholesalers need to run their own businesses and not rely on the State to impose relatively

random rules that may not relate to the business. To create artificial limitations on stocking or merchandising is also antithetical to the goal of reducing government regulation especially in this situation where it does not impact community safety. Further, while there may be anecdotal violations such as requiring mopping of floors, now that there are new definitions we should see if these stop abuses. It is incumbent on all parties to abide by the definitions.

3. With respect to delivery issues, I believe, and virtually all if not all merchants agree, that it is not realistic to obtain dates of birth and other personal information such as driver's license at the time a customer places an order. Placing an order does not mean that a sale will occur, let alone a delivery. The critical time at which one needs to verify that the recipient is 21 years of age and older and not visibly intoxicated is at the time of delivery, before the alcohol beverages are transferred. Further, I agree that at the time of delivery the delivery person, who is an employee of the licensee, must verify that the recipient is 21 years of age and not intoxicated. I do not think the regulations should require that information obtained from the recipient necessary to verify age requirements be retained. First, retention of the information is beyond what is required if the customer consummated the purchase in the store. Second, the State can effectively monitor compliance by conducting checks on the efficacy of the delivery protocols. Third, a requirement that a retailer maintain certain information can lead to real liability if the information is stolen or otherwise hacked. None of this negates the duty of the retailer to insure that the person to whom the delivery is made is 21 years of age or older and not visibly intoxicated.
4. As a point of clarification with respect to delivery, the law requires that the delivery be done with vehicles owned or leased by the retail liquor store. I assume an employee can use his or her own vehicle for deliveries too? Employees would need to be reimbursed for mileage etc. We should also have a discussion about who is an employee. I recently read that 7-Eleven bought a delivery service. The regulations need to clarify that employees performing deliveries are employees of the licensee and not employees of the delivery company, even if the delivery company is a wholly owned subsidiary.
5. With respect to loyalty programs, I believe the comments from retailers at the meeting on August 13, 2018 are generally correct that a bona fide loyalty program that allows reward points for discounts is consistent with the law's intent. I do believe that the reward should not vest for a period of time until after the reward is earned, perhaps the next business day. What the law prohibits is a promotion that specifically allows the retailer to sell a specified item below cost. A loyalty program, properly fashioned, will leave the decision as to what can be bought to the consumer and not the retailer. Importantly, the consumer is actually being charged the retail amount which is presumably above cost. The reward discount must be applied to the purchase after the consumer is charged the full price for the item or items. Tax is paid on the full amount before any reward discount is applied. The State looks at the pricing for tax purposes as the price that would be paid before any reward discount. Similarly, when one uses a gift card the consumer using the gift card still pays tax as if the gift card tender (and in my example the reward discount) was the same as a regular payment toward the cost. Finally, if the loyalty program were restricted as set forth in the draft provided at the August 13th meeting, the retail liquor stores would be placed at a real disadvantage compared to liquor licensed drug stores ("LLDS") that the legislature never intended. The LLDS could still give cash discounts and simply not apply it to alcohol beverages because LLDS sell so many other goods to which discounts could be applied. This would give the LLDS a significant advantage over retail liquor stores.
6. I strongly suggest that defining licensed premises from which stocking can occur should include licensed warehouses that are within a specified limited distance from the actual retail space. Many retailers are denied by economics the ability to have a retail licensed space that is large enough to include adequate storage. This is especially true as wholesalers are requiring larger and larger deal sizes to obtain competitive prices. Also, the need to use

warehouse space will increase as it becomes more and more difficult to move to larger retail spaces do to the 1500 radius restriction.

Thanks for your consideration. I am, of course, available to discuss further and answer any questions you or your team may have.

All the best

Jim

JIM SHPALL

Chief Executive Officer

Applejack Wine & Spirits

applejack.com || 303.233.3331

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:47 AM

[Quoted text hidden]



Fwd: CLBA comments

1 message

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 24, 2018 at 9:19 AM

For the rule record. Please add this to the folder.

Patrick Maroney
Director
Liquor Enforcement Division

1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

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From: **Jeanne McEvoy** <jeanne@myclba.com>
Date: Thu, Aug 23, 2018 at 11:54 AM
Subject: CLBA comments
To: Patrick Maroney <patrick.maroney@state.co.us>

Please find attached our comments regarding proposed regulation on bona fide loyalty or rewards programs.

--
Jeanne M. McEvoy, Pres/CEO
Colorado Licensed Beverage Association
1600 Broadway, Suite 1350, Denver, CO 80202
720-299-7398 www.myclba.com jeanne@myclba.com

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2 attachments

-  **CLBA Comments on Bonafide Loyalty Programs.pdf**
121K
-  **CLBA Comments on Bonafide Loyalty Programs.docx**
90K

COLORADO



LICENSED BEVERAGE ASSOCIATION

August 21, 2018

Patrick Maroney
Director – Liquor Enforcement Division
1881 Pierce Street
Suite 108
Lakewood, CO 80214

RE: August 13, 2018 Draft Regulation Regarding Bona Fide Loyalty or Reward Programs

Dear Patrick:

As you know, the Colorado Licensed Beverage Association represents over 1,600 independently-owned Colorado liquor stores. We and our members appreciate all of the hard work and consideration you and your department have invested in developing the draft regulations to implement SB 18-243. However, we believe the proposed regulation regarding loyalty and rewards programs as currently drafted would unnecessarily “throw out the baby with the bathwater” in a manner that was not intended by the legislature and that is not necessary to prevent abuses of the rule against below-cost sales. Accordingly, we respectfully ask that you consider the points detailed in this letter as well as the alternative approaches we recommend on this issue.

Legislative Background

Following the enactment of SB 16-197, the legislature was tasked with establishing an implementation process for 3.2 Beer licensees to apply for a license to sell full-strength beer starting January 1, 2019. That process was established in SB 18-243. As the legislature was creating the framework to allow grocery and convenience stores (which are, as you know, predominantly large chains owned by out-of-state corporations) to sell products they have not legally been able to sell since prior to Prohibition, the legislature was keenly aware that this change will have enormous, negative ramifications for Colorado’s family-owned, independent liquor stores. Accordingly, the legislature chose to include a variety of provisions in SB 18-243 that were specifically intended to mitigate the negative impacts on smaller liquor stores and prevent unfair competition by out-of-state chains.

One of the most significant of those provisions is the prohibition on below-cost sales. Because grocery and convenience stores are primarily in the business of selling other products (groceries, gasoline, etc.) and only sell alcoholic beverages as an accessory use to their primary business, there is a risk these businesses would use alcohol as a “loss leader” to generate sales for their other products. Additionally, well-capitalized chains might be tempted to use predatory pricing tactics, including below-cost sales, to drive smaller, less well-capitalized family-owned stores out of business, thereby reducing competition and

eventually cornering the market. In addition to the devastating impacts these practices would have on locally-owned retail liquor stores, consumers and the state economy, the wide availability of artificially cheap alcohol could compromise public safety by encouraging more alcohol abuse and binge drinking.

Accordingly, the legislature wisely chose to prohibit the retail sale of alcohol below-cost. However, the legislature also expressly communicated its intent that this new prohibition on below-cost sales would not “prohibit a retail liquor store from operating a bona fide loyalty or rewards program” In light of the fact that many retail liquor stores are already operating bona fide loyalty and rewards programs, the legislature’s intent was clearly not to prohibit those programs while at the same time not creating a loophole regarding below-cost sales.

Current Loyalty and Rewards Programs in Colorado Liquor Stores

Many retail liquor stores, whether small, medium or large, operate some type of customer loyalty or rewards program. While there is no one single model, the most common programs are some variation of the following:

The customer signs up for a store account, providing their name and contact information. Thereafter, purchases made at that store are associated in the store’s records with that customer’s account, and a record is maintained by the store of the customer’s purchases over time. At some interval (quarterly, semi-annually, annually, etc.), the customer is given the opportunity to redeem a reward based on the aggregate value of their purchases over the period in question. Typically, the reward is given in the form of a store credit for a percentage of the customer’s aggregated purchases over the time period in question. Most typically, the percentage is somewhere between 2 and 5 percent. So, a customer who has spent \$500 over a year might be entitled to a \$15 store credit if the rewards percentage for that store was 3%.

In general, an average gross profit margin for retail liquor stores is approximately 25%. So, in the example given above, the store’s cost for the \$500 of products purchased by the customer would be approximately \$375. The gross profit would be approximately \$125. In giving the customer a loyalty/rewards credit of \$15, the store would effectively reduce its gross profit for that customer for the period in question to \$110. Obviously, taken in the aggregate, this does not come anywhere close to resulting in below-cost selling by that store.

However, at the time the customer redeems the reward, it is often the case that the customer may purchase only a small amount more than their reward credit. So, in using the \$15 credit, the customer might only make a \$16 purchase. The store’s cost for that \$16 of product would be approximately \$12, meaning that the customer would only need to pay \$1 plus their credit. It is important to note that this transaction is typically done as a “tender” transaction, meaning that the store does not discount the cost of the purchase to \$1; rather, the store pays \$15 and the customer pays \$1. Sales tax is computed and paid on the full \$16 transaction. The loyalty/rewards account is effectively a piggybank for the customer—the \$15 reward credit is the customer’s money that has accumulated in the bank over a period of time, and at the time of redemption, the customer is just getting to use what has been saved for them. This type of program has proven to be highly effective in generating customer loyalty and incentivizing customers to return to the store to redeem their rewards.

Clearly, this is not the kind of general below-cost selling the legislature was concerned with. There are no “loss leaders” or predatory pricing involved in this approach. Rather, a store is simply able to reward a good customer for their sustained business over time and incentivize them to return to the store by crediting back some of the profit earned over the rewards period. Taken in the aggregate, the customer’s purchases are well above the store’s costs, and this type of transaction does not negatively impact competition nor result in the community being flooded with cheap alcohol.

The legislature was concerned, however, that an unscrupulous retailer might attempt to use the loyalty and rewards program exception as a loophole that would allow them to sell their products below-cost anyway. For example, a retailer might advertise multiple products well below-cost but include the language “with card” or “only with loyalty membership” below those products as a way to try insulate itself from the general prohibition on below-cost sales.

The legislature wisely foresaw this risk and eliminated it in two ways. First, the legislature specifically included the language “bona fide” before loyalty or rewards programs to ensure that a retailer could not use a bogus loyalty or rewards program simply as a pretext to sell below-cost. Second, the legislature included the phrase, “so long as the price for the product is not below the retail liquor store’s costs as listed on the invoice” as a proviso regarding loyalty and rewards programs. The legislatures specifically directed the state licensing authority to adopt rules to implement that section.

When the legislature included the language “so long as the price for the product is not below the retail liquor store’s costs as listed on the invoice,” the intent was not to outlaw the existing loyalty and rewards programs that work in the manner described above. Rather, the intent was to eliminate a potential loophole regarding the prohibition on below-cost sales. When taken in the aggregate, redemptions under the existing loyalty and rewards programs do not constitute below-cost sales and do not implicate any of the legitimate public policy considerations the legislature was attempting to address.

It is noteworthy that the legislature used the plural word “costs” rather than the single word “cost” in saying “so long as the price for the product is not below the retail liquor store’s costs as listed on the invoice.” The plural use of the word supports the interpretation that, for purposes of a bona fide loyalty or rewards program, the below-costs test should be based on an aggregate calculation of multiple products over the rewards period rather than looking only at the one transaction when the customer is redeeming their reward.

Unintended Consequences of Proposed Rule

As noted above, one of the key goals of the legislature in enacting SB 18-243 was to protect locally-owned liquor stores from unfair competition and to ensure that the new privileges being granted to out-of-state grocery and convenience store chains would not be abused to the detriment of Colorado businesses. However, the regulation proposed regarding loyalty and rewards programs would do just the opposite.

As noted above, grocery and convenience stores are primarily engaged in businesses other than the sale of alcohol, and alcohol sales for them are simply a mechanism to increase profits. Nothing in the proposed rule will prevent a grocery store from giving “fuel points” to its customers for malt liquor sales. Other grocery stores might give discounts or cash credits against the price of groceries, and convenience stores might give discounts or credits on gas, soda or other items. There would be no limit on the amount of these rewards that are given in the form of something other than alcohol. In short, nothing in the proposed regulation will upset the existing loyalty and rewards programs of the out-of-state chains.

Conversely, the proposed regulation will effectively outlaw the existing loyalty and rewards programs of Colorado's independently-owned liquor stores. Because a typical liquor store's sales are comprised of more than 95% alcoholic beverages, it is not feasible for them to give their customers rewards in a way other than a credit toward the purchase of alcoholic beverages. Prohibiting these existing loyalty and rewards programs would put liquor stores at a competitive disadvantage with the out-of-state chains, likely speeding the demise of hundreds of family-owned small businesses. This would be an absurd result that would directly contradict the intent and will of the legislature.

Summary

Accordingly, we respectfully ask that the proposed regulation be modified in a manner that will not prohibit Colorado's independent, family-owned liquor stores from continuing their existing loyalty and rewards programs along the lines described in this letter. We are open to discussions about creating additional regulatory boundaries to ensure that loyalty and rewards programs are bona fide and that an unscrupulous retailer will not be able to abuse the loyalty/rewards exception to sell below-cost. These might include a maximum period to accumulate purchases toward a reward, a maximum percentage of credit that may be given as a reward, a dollar amount maximum credit, a maximum number of times per year a reward could be redeemed or other limits of a similar nature. And we certainly agree that the aggregated purchases, after taking into account the reward redemption, cannot result in a sale below the retailer's costs as reflected on its invoices.

We greatly appreciate your consideration of these comments and will be happy to have further discussions about this important issue.

Very truly yours,



Jeanne M McEvoy
Executive Director

Colorado Licensed Beverage Association
1600 Broadway, Suite 1350
Denver, CO 80202
720-299-7398



Fwd: CBDA Suggested Language - Value of Labor

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 17, 2018 at 3:34 PM

For the rule record

Patrick Maroney
Director
Liquor Enforcement Division

1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----
From: Cory Tipton <corytipton@thetiptonlawfirm.com>
Date: Fri, Aug 17, 2018 at 2:21 PM
Subject: CBDA Suggested Language - Value of Labor
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>
Cc: Steve Findley <beerdist@ix.netcom.com>

Patrick,

I hope this e-mail finds you well and enjoying this beautiful late summer weather. I have missed seeing you at the last few meetings.

Steve is traveling today, so he asked me to send you the CBDA's final draft recommendations for the Value of Labor language.

Please don't hesitate to let me know if you need anything else in Steve's absence.

Have a great weekend.

Cory

The Tipton Law Firm, P.C.

By: Cory Tipton, Esq., Vice-President

Cory Tipton

The Tipton Law Firm, P.C.

5445 DTC Parkway, Penthouse 4

Greenwood Village, Colorado 80112

T. (303) 220-8428

F. (888) 792-5294

Email: corytipton@thetiptonlawfirm.com

Linked In Profile: <http://www.linkedin.com/in/denverbusinesslawyer>

You can also find The Tipton Law Firm on Twitter and Facebook

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 **20180817 CBDA Value of Labor Proposals.docx**
19K

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:47 AM

[Quoted text hidden]

 **20180817 CBDA Value of Labor Proposals.docx**
19K

L. Value of labor

1. FOR PURPOSES OF THIS SUBSECTION (L):

A. "STOCK" OR "STOCKING" IS THE ACT OF A SUPPLIER PLACING OR REPLENISHING ALCOHOL BEVERAGE PRODUCT, DELIVERED BY THAT LICENSEE, ON ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION, WITHIN THE RETAILER'S LICENSED PREMISES. AT THE TIME AND PLACE THIS ACT IS BEING PERFORMED, A SUPPLIER MAY REMOVE ALCOHOLIC BEVERAGES FROM THE RETAIL LICENSEES' STORAGE AREA FOR THE SOLE PURPOSE OF STOCKING THOSE ITEMS FOR SALE TO THE CONSUMER.

B. "ROTATE" OR "ROTATING" IS THE ACT OF A SUPPLIER MOVING ITS ALCOHOL BEVERAGE PRODUCT FROM THE REAR TO THE FRONT OF ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION, WITHIN THE RETAILER'S LICENSED PREMISES, SO THAT OLDER ALCOHOL BEVERAGE PRODUCT WILL SELL FIRST.

C. "RESET," "RESETS" OR "RESETTING" ARE THE ACT OF A LARGE-SCALE REARRANGEMENT OF A RETAILER'S ALCOHOL BEVERAGE PRODUCTS ACCORDING TO A NEW PLAN PUT TOGETHER BY THE RETAILER. A RESET MAY NECESSITATE TEARING DOWN AND REBUILDING WHOLE SECTIONS OF THE RETAIL LICENSEES DISPLAYS AND ALCOHOL BEVERAGE PRODUCTS.

D. "MERCHANDISE" OR "MERCHANDISING" IS THE ACT OF A SUPPLIER ORGANIZING, CONSTRUCTING, OR MAINTAINING A TEMPORARY DISPLAY OF ALCOHOL BEVERAGE PRODUCT FOR THE PURPOSE OF SALE AND INCREASING PRODUCT VISIBILITY TO THE CONSUMER. FOR PURPOSES OF THIS DEFINITION, A TEMPORARY DISPLAY MAY INCLUDE A SIGN, INTERIOR DISPLAY, CONSUMER ADVERTISING SPECIALTY, OR POINT-OF-SALE ADVERTISING WITHIN THE RETAILER'S LICENSED PREMISES. AS PART OF THIS DEFINED ACT, A SUPPLIER MAY REMOVE ALCOHOLIC BEVERAGES FROM THE RETAIL LICENSEES' STORAGE AREA FOR THE SOLE PURPOSE OF PLACING THOSE ITEMS IN THE DISPLAY AREA TO BE USED IN THE CREATION OF THE DISPLAY.

E. "DELIVERY" IS DEFINED VERY SIMPLY AS THE ACT OF THE WHOLESALER UNLOADING ITS ALCOHOL BEVERAGE PRODUCT FROM ITS DELIVERY VEHICLE ONTO THE RETAILER'S LICENSED PREMISES. DELIVERY DOES NOT INCLUDE ANY OTHER ACTS OR ACTIVITIES PERFORMED BY THE SUPPLIER, INCLUDING BUT NOT LIMITED TO STOCKING, ROTATING, MERCHANDISING AND/OR MOVING THE PRODUCT FOR ANY REASON; INCLUDING, BUT NOT LIMITED TO UNLOADING PALLETS FOR ORDER VERIFICATION PURPOSES.

2. EXCEPT AS OTHERWISE PROVIDED BY THIS SUBSECTION (L)(2), THE COLORADO LIQUOR CODE, THE COLORADO BEER CODE, OR THE COLORADO LIQUOR

RULES, A SUPPLIER IS PROHIBITED FROM PROVIDING ANY LABOR TO A RETAILER. ADDITIONALLY, A RETAILER IS PROHIBITED FROM REQUESTING OR REQUIRING A SUPPLIER TO PROVIDE ANY LABOR TO THE RETAILER AT ANY TIME. MOREOVER, A SUPPLIER IS PROHIBITED FROM MAKING THE ACTS OF STOCKING, ROTATING AND/OR MERCHANDISING AN EXPRESS OR IMPLIED CONDITION OF THE DELIVERY, PURCHASE, OR FUTURE PURCHASES BETWEEN THE SUPPLIER AND THE RETAILER.

A. A SUPPLIER MAY DELIVER TO THE RETAILER.

B. IN A SUPPLIER'S SOLE DISCRETION, A SUPPLIER MAY STOCK, ROTATE, AND/OR MERCHANDISE ITS ALCOHOL BEVERAGE PRODUCT ON THE RETAILER'S LICENSED PREMISES AT A TIME, AND FOR A DURATION OF TIME, SOLELY WITHIN THE DISCRETION OF THE SUPPLIER, BUT NO MORE THAN THREE (3) DAYS PER WEEK. WHILE STOCKING, ROTATING AND/OR MERCHANDISING, IT IS UNLAWFUL FOR A SUPPLIER TO DISTURB ALCOHOL BEVERAGE PRODUCT NOT DELIVERED BY THAT LICENSEE. NONE OF THESE ACTS: STOCKING, ROTATING AND/OR MERCHANDISE MAY OCCUR AT THE TIME OF A SALES CALL TO THE RETAIL LICENSEE. FOR PURPOSES OF THIS SECTION (L)(2)(B), A RETAILER IS SPECIFICALLY PROHIBITED FROM REQUESTING OR REQUIRING A SUPPLIER TO PERFORM THESE ACTS ON SPECIFIC DAYS, FOR SPECIFIC LENGTHS OF TIME AND/OR AT SPECIFIC TIMES OF DAY.

C. SUPPLIERS ARE PERMITTED TO PARTICIPATE IN RESETS CONDUCTED AT RETAIL ESTABLISHMENTS NO MORE THAN TWO (2) TIMES PER CALENDAR YEAR PER LICENSED PREMISES. RESETS CALLED BY RETAILERS MORE OFTEN THAN TWO (2) TIMES A YEAR WILL BE CONSIDERED TO BE AN UNFAIR BURDEN ON THE PROVIDER OF THE GOODS TO THE RETAILERS. WHETHER INITIATED BY THE SUPPLIER OR RETAILER, WHERE A RESET IS CALLED IT SHALL BE THE DUTY OF THE RETAILER TO NOTIFY IN WRITING ALL AFFECTED SUPPLIERS OF THE RESET NO LESS THAN TWO (2) WEEKS PRIOR TO THE DATE SCHEDULED FOR THE RESET. THE RETAILER MUST MAKE ALL REASONABLE EFFORTS TO SCHEDULE THE RESET FOR A TIME MOST CONVENIENT FOR THE MAJORITY OF SUPPLIERS INVOLVED. DURING THE RESET, PARTICIPANTS ARE LIMITED TO THE MOVEMENT OF THEIR OWN PRODUCTS ONLY, UNLESS ANOTHER SUPPLIER WHICH HAS BEEN PROPERLY NOTIFIED IS NOT ATTENDING. IN SUCH CASE, THE PARTICIPANTS MAY ASSIST THE RETAILER IN MOVING THE GOODS OF THE NON-ATTENDING SUPPLIER. THE POINT IS THAT THE RETAILER CAN RESET THE PRODUCT, ON HIS OWN, WHENEVER HE WANTS, AND A SUPPLIER CAN RESET ITS PRODUCT SO LONG AS IT DOES NOT TOUCH A COMPETITOR'S.

D. A SUPPLIER MAY CLEAN THE ALCOHOL BEVERAGE DISPENSING EQUIPMENT AT AN ON PREMISE RETAIL ACCOUNT. FOR PURPOSES OF THIS SECTION (L)(2)(C), ALCOHOL BEVERAGE DISPENSING EQUIPMENT SHALL MEAN ANY EQUIPMENT OR SYSTEM THAT DISPENSES OR POURS ALCOHOL BEVERAGES

FOR CONSUMER SALE AND/OR CONSUMPTION. IT IS UNLAWFUL FOR ANY SUPPLIER TO CLEAN ALCOHOL BEVERAGE DISPENSING EQUIPMENT THAT DISPENSE PRODUCTS NOT SOLD BY THAT SUPPLIER.

E. A RETAILER IS PROHIBITED FROM REQUESTING OR REQUIRING AND A SUPPLIER IS PROHIBITED FROM PERFORMING ANY ADDITIONAL ACTS OF LABOR, OTHER THAN THOSE ACTIVITIES SPECIFICALLY SET FORTH IN (L)(2)(B). ADDITIONAL ACTS OF LABOR SHALL INCLUDE, BUT NOT BE LIMITED TO THOSE ACTIVITIES THAT DO NOT PROMOTE THE SALES OF SUPPLIER'S PRODUCT SUCH AS THE SWEEPING AND/OR MOPPING OF FLOORS, CLEANING SHELVES AND COOLER DOORS, OPERATING RETAILER'S MECHANICAL EQUIPMENT, USING LADDERS OR STEP STOOLS TO MOVE PRODUCTS, PERFORMING INVENTORY FOR STORE LEVEL RECORDS, PERFORMING ACTIVITIES REQUIRING THE USE OF RETAILER'S CLIMBING AND STACKING EQUIPMENT (WHETHER ELECTRONIC OR MANUAL), ETC.

F. FOR PURPOSES OF THIS SECTION (L)(2), THE RETAILER'S LICENSED PREMISES SHALL NOT INCLUDE A PERMITTED OR LICENSED RETAIL STORAGE LOCATION.

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: CBG Comments - Unfair Trade Practices

1 message

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:45 AM

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor----- Forwarded message -----
From: **LED - DOR, DOR_** <dor_led@state.co.us>
Date: Mon, Aug 20, 2018 at 12:44 PM
Subject: Fwd: CBG Comments - Unfair Trade Practices
To: "Maroney, Patrick" <patrick.maroney@state.co.us>----- Forwarded message -----
From: **Andres Gil Zaldana** <andres@coloradobeer.org>
Date: Fri, Aug 17, 2018 at 1:13 PM
Subject: CBG Comments - Unfair Trade Practices
To: dor_led@state.co.us
Cc: **Robert Runco** <rrunco@runprolaw.com>, **Laura Long** <laura@weistcapitol.com>, **Chris Labbe** <chris@periodicbrewery.com>, **Daniel Bewley** <daniel@crookedstave.com>, **Chris Wright** <chris@pikespeakbrewing.com>, **Tommy Bibliowicz** <tommy@4nosesbrewing.com>

Dear Director Maroney,

On behalf of the Colorado Brewers Guild, please find attached our comments to the recently discussed rules on unfair trade practices. If you have any questions, please do not hesitate to reach out.

Best regards,

Andres

Andres Gil Zaldana
Executive Director
Colorado Brewers Guild

8/23/2018

State.co.us Executive Branch Mail - Fwd: CBG Comments - Unfair Trade Practices

202.905.5240

andres@coloradobeer.org



FINAL - CBG Redlines To Unfair Trade Practices Rules.docx

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Friday, August 17, 2018

RE: Redline Changes to Draft Unfair Trade Practices Rules

Dear Director Maroney and Members of the Liquor Rules Working Group,

The Colorado Brewers Guild (the "Guild") submits the following comments for consideration by the Liquor Enforcement Division and members of the Liquor Rules Working Group. The Guild strongly believes that, as Colorado transitions into a marketplace where beer will be purchased at a variety of different retailers, there is a need for clear, enforceable, and easily understood rules to govern the delivery, stocking, rotating, and merchandising of beer. In addition, the ultimate goal of these rules should be to ensure a level playing field for all beer manufacturers and manufacturers choosing to "self-distribute" through their wholesaler's license.

Our suggested changes include the following:

1. Frequency limitations on delivering, stocking, rotating, and merchandising beer equal to three days per week;
2. Exceptions to the above in cases of major holidays, where beer demand is expected to exceed traditional consumer purchasing habits;
3. Elimination of price stamping as an allowed activity;
4. Prohibitions on activities not related to delivering, stocking, rotating, and merchandising, such as sweeping and mopping;
5. Prohibitions on allowing more than one supplier to deliver, stock, rotate, or merchandise a given alcohol product, or allowing a supplier to perform such activities more than once a day, in an attempt to evade the frequency limitations listed above;
6. Prohibitions on requiring activities to be performed on specific days or times of days.

With respect to on-premise samples, the Guild also suggests that the one-ounce limitation on samples provided at on-premises locations be raised to sixteen ounces in accordance with consumer expectation and current marketplace standards.

If you have any questions, please do not hesitate to contact me.

Best regards,

/s/ Andres Gil Zaldana

Andres Gil Zaldana



1. Value of Labor

L. Value of labor

1. FOR PURPOSES OF THIS SUBSECTION (L):

A. "STOCK" OR "STOCKING" IS THE ACT OF A SUPPLIER PLACING OR REPLENISHING ITS ALCOHOL BEVERAGE PRODUCT ON ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION, THAT IS ACCESSIBLE TO CONSUMERS WITHIN THE RETAILER'S LICENSED PREMISES.

B. "ROTATE" OR "ROTATING" IS THE ACT OF A SUPPLIER MOVING ITS ALCOHOL BEVERAGE PRODUCT FROM THE REAR TO THE FRONT OF ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION, THAT IS ACCESSIBLE TO CONSUMERS WITHIN THE RETAILER'S LICENSED PREMISES, SO THAT OLDER ALCOHOL BEVERAGE PRODUCT WILL SELL FIRST.

~~C. "PRICE STAMP" OR "PRICE STAMPING" IS THE ACT OF A SUPPLIER AFFIXING THE RETAIL PRICE OF ITS ALCOHOL BEVERAGE PRODUCT TO ITS RESPECTIVE CONTAINER, SHELF, REFRIGERATOR, OR ANY OTHER SIMILAR LOCATION, THAT IS ACCESSIBLE TO CONSUMERS WITHIN THE RETAILER'S LICENSED PREMISES.~~

D. "MERCHANDISE" OR "MERCHANDISING" IS THE ACT OF A SUPPLIER ORGANIZING, CONSTRUCTING, OR MAINTAINING A TEMPORARY DISPLAY OF ALCOHOL BEVERAGE PRODUCT FOR THE PURPOSE OF SALE AND INCREASING PRODUCT VISIBILITY TO THE CONSUMER, INCLUDING A SIGN, INTERIOR DISPLAY, CONSUMER ADVERTISING SPECIALTY, OR POINT-OF-SALE ADVERTISING, THAT IS ACCESSIBLE TO CONSUMERS WITHIN THE RETAILER'S LICENSED PREMISES.

2. EXCEPT AS OTHERWISE PROVIDED BY THIS SUBSECTION (L)(2), THE COLORADO LIQUOR CODE, THE COLORADO BEER CODE, OR THE COLORADO LIQUOR RULES, A SUPPLIER IS PROHIBITED FROM PROVIDING ANY LABOR TO A RETAILER AT NO COST. A RETAILER IS PROHIBITED FROM REQUIRING A SUPPLIER TO PROVIDE ANY LABOR AT NO COST TO THE RETAILER AS AN EXPRESS OR IMPLIED CONDITION OF THE DELIVERY, PURCHASE, OR FUTURE PURCHASES BETWEEN THE SUPPLIER AND THE RETAILER.

~~A. A WHOLESALER MAY UNLOAD ITS ALCOHOL BEVERAGE PRODUCT FROM ITS DELIVERY VEHICLE ONTO THE RETAILER'S LICENSED PREMISES OR PERMITTED RETAIL STORAGE LOCATION AT NO COST TO THE RETAILER. A WHOLESALER IS PROHIBITED FROM DELIVERING ALCOHOL BEVERAGE PRODUCTS TO A RETAILER'S LICENSED PREMISES MORE THAN FOUR (4)~~



THREE (3) DAYS PER CALENDAR WEEK, IN A WHOLESALER'S SOLE DISCRETION.

L. NOTWITHSTANDING THE ABOVE, A SUPPLIER MAY DELIVER ITS ALCOHOL BEVERAGE PRODUCT EACH OF THE SIX CALENDAR DAYS PRECEDING THE FOLLOWING SPECIAL DAYS:

a. NEW YEAR'S DAY

b. SUPER BOWL

c. MEMORIAL DAY

d. JULY 4

e. LABOR DAY

f. THANKSGIVING

g. CHRISTMAS DAY

B. IN A SUPPLIER'S SOLE DISCRETION, A SUPPLIER MAY STOCK, ROTATE, ~~PRICE STAMP~~ AND MERCHANDISE ITS ALCOHOL BEVERAGE PRODUCT ON THE RETAILERS LICENSED PREMISES NO MORE THAN THREE (3) DAYS PER CALENDAR WEEK, IN A WHOLESALER'S SOLE DISCRETION, AT NO COST TO THE RETAILER. A SUPPLIER IS PROHIBITED FROM DISTURBING ANOTHER SUPPLIER'S ALCOHOL BEVERAGE PRODUCT WHILE STOCKING, ROTATING, ~~PRICE STAMPING~~ AND MERCHANDISING. FOR PURPOSES OF THIS SUBSECTION (L)(2)(B), THE RETAILER'S LICENSED PREMISES SHALL NOT INCLUDE A PERMITTED RETAIL STORAGE LOCATION.

L. NOTWITHSTANDING THE ABOVE, A SUPPLIER MAY STOCK, ROTATE, AND MERCHANDISE ITS ALCOHOL BEVERAGE PRODUCT EACH OF THE SIX CALENDAR DAYS PRECEDING THE FOLLOWING SPECIAL DAYS:

a. NEW YEAR'S DAY

b. SUPER BOWL

c. MEMORIAL DAY

d. JULY 4



e. LABOR DAY

f. THANKSGIVING

g. CHRISTMAS DAY

~~C. A SUPPLIER MAY CLEAN THE RETAILER'S ALCOHOL BEVERAGE DISPENSING EQUIPMENT AT NO COST TO THE RETAILER.~~

~~D. A SUPPLIER IS PROHIBITED FROM PERFORMING ACTIVITIES IN A RETAIL LICENSE THAT DO NOT PROMOTE THE SALE OF A SUPPLIER'S PRODUCT, INCLUDING, BUT NOT LIMITED TO, THE SWEEPING AND/OR MOPPING OF FLOORS, CLEANING SHELVES AND COOLER DOORS, OPERATING RETAILER'S MECHANICAL EQUIPMENT, USING LADDERS OR STEP STOOLS TO MOVE PRODUCTS, PERFORMING INVENTORY FOR STORE LEVEL RECORDS, PERFORMING ACTIVITIES REQUIRING THE USE OF RETAILER'S CLIMBING AND STACKING EQUIPMENT (WHETHER ELECTRONIC OR MANUAL), ETC.~~

~~E. IN NO CIRCUMSTANCE SHALL AN ALCOHOL BEVERAGE PRODUCT ON A RETAIL LICENSED PREMISES BE STOCKED, ROTATED OR MERCHANDISED BY ANY SUPPLIER MORE THAN THREE TIMES PER CALENDAR WEEK.~~

~~F. IN NO CIRCUMSTANCE SHALL A SUPPLIER DELIVER, STOCK, ROTATE, OR MERCHANDISE ALCOHOL PRODUCT MULTIPLE TIMES ON ONE GIVEN CALENDAR DAY IN ORDER TO EXCEED THE WEEKLY LIMIT ON SUCH ACTIVITIES SET BY THIS REGULATION.~~

~~G. FOR PURPOSES OF THIS SECTION (L)(2)(A) and (L)(2)(B), A RETAILER IS SPECIFICALLY PROHIBITED FROM REQUIRING A SUPPLIER TO PERFORM THESE ACTS ON SPECIFIC DAYS, FOR SPECIFIC LENGTHS OF TIME AND/OR AT SPECIFIC TIMES OF DAY.~~

~~H. A RETAILER MUST PAY A SUPPLIER FOR ANY OTHER LABOR PROVIDED BY THE SUPPLIER TO THE RETAILER AT THE SUPPLIER'S COST OF LABOR. A SUPPLIER'S COST OF LABOR SHALL BE, AT A MINIMUM, THE HOURLY WAGE OF THE SUPPLIER'S EMPLOYEE OR EMPLOYEES WHO PROVIDED THE LABOR. EXAMPLES OF LABOR REQUIRING PAYMENT INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:~~

~~A. INSTALLING OR REPAIRING THE RETAILER'S ALCOHOL BEVERAGE DISPENSING EQUIPMENT.~~



~~B. CLEANING OR MAINTAINING THE RETAILER'S LICENSED PREMISES.~~



2. Off- and On-Premise Samples

~~H. EACH CONSUMER SHALL BE LIMITED TO ONE (1) ALCOHOL BEVERAGE SAMPLE PER PRODUCT. THE MAXIMUM VOLUME OF AN ALCOHOL BEVERAGE SAMPLE SHALL NOT EXCEED:~~

~~TWENTY-FOUR (24) OUNCES OF EITHER FERMENTED MALT BEVERAGES OR MALT LIQUOR FOR A SAMPLING HELD AT THE LICENSED PREMISES OF A RETAILER LICENSED FOR OFF-PREMISES CONSUMPTION, OR~~

~~SEVENTEEN (17) OUNCES OF EITHER FERMENTED MALT BEVERAGES OR MALT LIQUOR, ONE (1) OUNCE OF VINOUS LIQUOR, AND ONE HALF OF ONE (1/2) OUNCE OF SPIRITUOUS LIQUOR FOR A SAMPLING HELD AT THE LICENSED PREMISES OF A RETAILER LICENSED FOR ON-PREMISES CONSUMPTION.~~

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: CRA Comments on LED Trade Practice Draft Proposed Rule Changes

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 17, 2018 at 3:37 PM

For the rule record

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: **Nicholas Hoover** <NHoover@corerestaurant.org>
Date: Fri, Aug 17, 2018 at 3:36 PM
Subject: CRA Comments on LED Trade Practice Draft Proposed Rule Changes
To: Patrick Maroney - DOR <patrick.maroney@state.co.us>

Patrick,

First, I looked in my spam and didn't see any emails from the division. Not sure where else it would have gone.

Second, please find attached the CRA comments on the proposed rule changes for Trade Practices. I looked for another document on the website to submit comments on and the only one I could find was for proposed rule change form. I didn't think you wanted these comments on that document, but if you do or if you want them on another document please let me know and I will transfer them over. Also, if there is another email address this is supposed to be submitted to, please let me know and I will submit our comments to that email address.

If you have any questions about our comments, please feel free to give me a call. Cell is usually the best for me and I am sure you already know.

If I don't speak to you today, have a good weekend!

Very respectfully,

** Please note new email and website addresses!***

Nick Hoover, Manager of Government Affairs

Colorado Restaurant Association

430 E. 7th Ave. | Denver, CO 80203
P: 303.830.2972 x 119

C: 720.369.0343

F: 303.830.2973

E: nhoover@corestaurant.org

Impact Fact: Colorado restaurants generate \$12 billion in sales and \$300 million in local taxes, while employing 275,000 workers in 11,500 establishments!



Confidential: This electronic message transmission contains information from the Colorado Restaurant Association, which may be confidential or privileged. This information is intended to be for the use of the recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify us by telephone at 800-522-2972 immediately. *If you would like to unsubscribe to emails from me, please reply to this email with unsubscribe in the subject line and your email address will be removed from my list.* (10/2017)

 **CRA Comments on LED Trade Practice.docx**
17K

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:46 AM

[Quoted text hidden]

 **CRA Comments on LED Trade Practice.docx**
17K

CRA Comments on LED Trade Practice/Delivery Draft Rules

(Draft – August 1, 2018 – Trade Practice/Delivery)

Regulation 47-322

The CRA understands the Division's desire to consolidate the rules whenever it is necessary, however, consolidating the rules for on-site sales promotions isn't a place where this needs to happen.

There are significant differences in how on and off premises establishments are supposed to operate. The major and most obvious difference is the fact that off premises establishments like liquor stores and liquor licensed drug stores are not supposed to be locations where people can consume alcohol for on premises consumption. The General Assembly has allowed for tastings to happen in off premises locations to allow for suppliers and retailers to influence customers to purchase specific products or to try new products. However, because these types of licenses are for off premises consumption, rules on tastings or samplings need to be very different than rules for on premises consumption licenses.

The CRA would simply request that you separate out the two different types of retail locations in these rules so that there is less confusion for each of the business types.

Regulations 47-322 (B)(2)(H)(II)

The Colorado Restaurant Association strongly opposes the new limits on supplier sponsored consumer samplings in on premises retail establishments. The way that retailers and suppliers are currently handling these types of promotions is working and to date there has not been a problem that has actually happened.

At the August 8th meeting of the Trade Practice sub group, LED expressed that their desire for these limits were for two reasons:

1. There are limits for off premises licenses and how much can be sampled so it makes sense that there are limits for on premises locations.

"It's the same in essence concept if you have a supplier providing free on premises consumption of alcohol".

2. LED mentioned conversations they have had with industry members who asked if they had the ability to use the sampling provisions in an on premises location to provide a large amount of free alcohol to the public. Implying that this is some kind of an attempt for the supplier/retailer to get around the "selling below laid in cost" restrictions.

"Whether it happens or not I know it is a conversation I have had with industry members in the past, to where suppliers want to provide a large amount of alcohol to consumers there and I have been asked if they can use that avenue to do it. To have a

party and provide free alcohol, they can't donate alcohol to an on premises location, but they can do sampling all day long."

Addressing LED's first comment, there are limits in statute on how much alcohol can be consumed "on premises" in an off premises license because those licenses are not supposed to be on premises consumption locations. If there weren't limits on how much can be consumed in an off premises location, then they would have the ability to not only sell for off premises consumption, but also open a bar in the store. Because the legislature decided that off premises licenses should be allowed to provide samples, with the intent of enticing customers to purchase specific products, there needs to be a limit established in order to keep them from becoming an on/off premises consumption license. The same logic does not apply to a business that is licensed for on premises consumption. A supplier sponsoring a sampling to consumers in an on premises location doesn't threaten the intent of an on premises consumption license like unlimited samplings at an off premises license would.

Addressing LED's second comment, it would seem like LED was able to prevent this concept from happening under the current rules. We have spoken to many of our members about this concept since it was brought up in the August 8th meeting and each time we discuss this with a members we get the same answer "that is never how a supplier sponsored consumer sampling is done." Additionally, all of the members we have spoken to about this have said they haven't even heard of this happening in the industry.

If LED is worried that a supplier is going to throw one of these "parties" where they provide a significant amount of product to the public with the intent of getting around selling below laid in cost, we would believe that this is already a violation of unlawful financial assistance rules and law in Colorado. We believe that LED already has the tools and regulations in place to prevent this type of thing from happening or to go after a supplier/retailer for allowing this type of event to happen. LED's own statements on the matter are evident that the current rules allow them to prevent these events from happening.

As was stated in the August 8th meeting, there are already industry established limitations on supplier sponsored samplings. No restaurant or bar is willing to allow a supplier to provide unlimited amounts of alcohol to their customers because of the fear of getting hit with a service to visibly intoxicated violation. Furthermore, they fear the chance that the supplier will unintentionally over serve someone and that person will get hurt or hurt someone when they leave. Now the restaurant or bar is looking at a very expensive lawsuit and public relations problem. Also, suppliers are in the business of selling their product and don't have a desire to give the product away to the consumer on their own dime unless it is in a sampling/tasting manner that may help to drive up sales of their products.

For all of the purposes stated above and in the meeting on August 8th, the CRA is strongly opposed to the proposed limitations on supplier provided consumer samplings in an on

premises location. We would like to see this entire concept removed from the proposed regulation changes for 2018.

Regulation 47-322 (L)(2)(A)

The CRA is opposed to putting a limit on the number of days a week a wholesaler can deliver to a retail establishment. The way this section is written it would include all retailers even though none of the arguments in support of this concept have included the on premises industry.

Limiting the number of times a week a restaurant or bar can receive deliveries has many unintended consequences. What about busy times of year? A small restaurant doesn't usually have a large store room where they can store excess alcohol. During the holiday season when restaurants are packed night after night, a small restaurant may decide to get deliveries 5-7 days a week in order to make sure that they don't run out of a product. This is actually very common.

What about a larger business like a casino? Speaking with one of our casino members they informed us that this restriction would significantly change their business because they routinely get deliveries 5 days a week, or more, in order to keep up with the high demand of their customers and because of the multiple locations on their premises where they sell alcohol to the guests.

Another large license in the state informed me that they will routinely get requests from their clientele for specific brands of alcohol and wine that the business may not have in stock or carry. They will often call their wholesaler asking them to deliver the product the next day, or sometimes the same day, outside of their normal delivery, which can mean they get deliveries 5-7 times a week.

What about large events? Recently the Broadmoor hotel hosted the US Senior Open Championship. With the amount of people who were there to be on the course as well as the many different companies who purchased hospitality suites, the Broadmoor had to get deliveries every day to keep up with the demand from the people attending the event.

It is our understanding that this was proposed because there were retailers requiring suppliers or their representatives to be at the store 7 days a week performing stocking or merchandising activities, as well as activities that would not fall under the definition of stocking or merchandising. Putting a limit on the number of days alcohol can be delivered goes well beyond preventing outrageous requests for stocking and merchandising. If the intent is to prevent retailers from requiring outrageous stocking and merchandising activities, then put a limit on stocking or merchandising. These are two things that don't happen in a restaurant or bar anyway.

The CRA would request that the rules not limit the number of days that alcohol can be delivered to a retail establishment and instead if there is a need to manage stocking and merchandising activities, that the limit be applied to that section of the rules. If there is going to be a limit on the number of deliveries that can be made to a retailer, then the CRA would request that LED separate out the on premises locations from the off premises locations and have the limit not apply to on premises licenses. The reason for this is because all of the arguments for establishing limits revolve around off premises establishments.

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: Comments from yesterday's working group discussion

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Mon, Aug 20, 2018 at 4:39 PM

For the rule record

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: Doug Caskey - CDA <doug.caskey@state.co.us>
Date: Thu, Aug 9, 2018 at 11:52 AM
Subject: Comments from yesterday's working group discussion
To: Patrick Maroney <patrick.maroney@state.co.us>

Patrick,

Thanks for hosting the discussion of trade practices yesterday. I very much appreciate your willingness to listen to the industry's concerns and address them in the regulations as best you can.

As I said yesterday, I think it is important to separate the regulations governing "on-site sales promotions" for on-premise licenses from off-premise licenses, since there are inherent differences in the approach for event on the different licenses. I have always found the language of Reg. 47-322 B confusing in that regard. So as you clarify that section, please take care to make extra clear what regulations apply to on-premise sales promotions and which to sales promotions for off-premise licenses.

And I believe we discussed it, but in the language in your draft of 47-322 (B)(2)(e), and any other regulation with parallel language, please be sure to include "it's representatives or authorized agents" whenever you refer to "the supplier." Otherwise the license holder would ostensibly be the only individual allowed to work an on-site sales promotion.

ON the subject of limits for on-site sales promotions on an on-premise licensed premises, we do support some limits. I believe that the language you include in your draft of 47-322 (B)(2)(h) "Each consumer shall be limited to one (1) alcohol beverage sample per product" is sufficient to impose a limit on sampling. You could add that a sample is no larger than a normal serving of the product and that no more than two products may be sampled during any on-site promotion. But I think that defining the sample size becomes very difficult. As the discussion noted repeatedly yesterday, there are market forces at play that will naturally restrict excess sampling.

One of the problems you run into with limiting the volume of samples is the variation in bottle sizes and measurements. Saying that FMB or Malt Liquor can only offer a 24 oz. sample size precludes offering a 750ml bottle.

Which leads to the question of size limits for product giveaways (on-site promotions) at an off-premise licensed premises. Although I still have some concerns about giving away free vinous liquor

in an RLS or LLDS, I will defer to our hard cider partners. And I believe that they would like to see a 500ml bottle allowed as a giveaway.

I don't want to start down the slippery slope of differentiating hard cider from other vinous liquor in the context of product giveaways, as that will open the door to separating cider from wine.

Under Value of Labor, Reg 47-322 (B)(2)(L)(2)(a), I think you need to tread very cautiously about limiting the number of days that a supplier can deliver to a retailer's licensed premises. The conversation yesterday mentioned issues surrounding the holidays or other busy seasons. And I would also like you to consider large event venues: what about a week-long conference at the Convention Center with 30,000 attendees? Center Plate will need to have deliveries more than 4 days out of a week. And what about other special event that last more than 4 days?

If you impose the proposed 4-day limit, I think more exceptions than any of us ever imagined will pop up.

I would suggest adding the word "intentionally" to the phrase "A supplier is prohibited from INTENTIONALLY disturbing another supplier's product..." to avoid unnecessary infractions.

Also, if you add language prohibiting suppliers from using power equipment, ladders, etc., be aware that there could easily be occasions when a supplier would need access to a ladder or other equipment to stock, rotate or merchandise product. Think of stocking wines in a tall wine cellar in a restaurant that requires a ladder to reach the top row of wine bins.

My request would be to prohibit a supplier from being required to use power equipment, ladders, etc. EXCEPT in the performance of otherwise authorized activities, namely stocking, rotating and merchandising.

Sorry this is so long. I hope it helps, but I have no doubt that you will be overwhelmed with equally lengthy messages after yesterday's meeting.

Doug Caskey, executive director
Colorado Wine Industry Development Board
c/o Colorado Dept. of Agriculture
305 Interlocken Pkwy., Broomfield, CO 80021
P: 303.869.9177 | Cell: 720.304.3406 | FAX: 303.466.8515
www.coloradowine.com



"I can certainly see that you know your wine. Most of the guests who stay here wouldn't know the difference between Bordeaux and Claret."

— Basil Fawlty, *Fawlty Towers*

Maroney - DOR, Patrick <patrick.maroney@state.co.us>

Thu, Aug 23, 2018 at 9:48 AM

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: Time period and Points Clubs

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 17, 2018 at 10:38 AM

For the rule record - trade practices

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: John Cohagen <jrc@sgcus.com>
Date: Fri, Aug 17, 2018 at 10:04 AM
Subject: Time period and Points Clubs
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>

Good Morning Patrick,

I believe that a period of 12 months would be adequate. If a sale occurred in December 2018 it would not be allowed to repeat until January 2020 which would I think accomplish our goal of not having a store run below cost close out every December driving out competition.

I also believe that points or loyalty clubs are very important to our industry. We are not giving a product away or selling below cost but rather encouraging repeat customers. When a customer joins our Cheers Club they get basically 5 points for every dollar they spend with us. So on \$10.00 they get points worth \$.50 they cannot use points until they have accumulated a certain amount. When they do redeem the sale is sold at the register for the shelf price of the product, we charge sales tax based on that amount and then they can apply the points. So there is no and the sale is not below the cost of the goods at any time.

I believe that most clubs work about this same way. I visited with the owner of Big Bear, and Hazels and both work about the same and are bonified. Jim at Applejack doesn't use a loyalty program. The other point here is that it allows us a method to reach out to our customers with promotions etc.

The fear however is much like Kroger has done with Shell Oil where their points given at any store then are good at any Shell Oil station. Shell uses this as an incentive for new franchises to get in business with them. When I was working on a new station this was a real incentive for our owners to team up with Shell.

8/23/2018

State.co.us Executive Branch Mail - Fwd: Time period and Points Clubs

Like wise today with the combination of Marriott and Starwood there is a big issue of who's point program lives on and how to combine the two. When we owned the Boulder Marriott over 50% of all of our business was driven by the Marriott points program.

Thank you.

John R Cohagen

Atlas Valley Purveyors

2770 Arapahoe Road

Lafayette, Colorado 80026

jrc@avpurveyors.com

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:47 AM

[Quoted text hidden]

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: Distilled Spirits Council position RE: sampling AKA Hand sales & wholesaler delivery days

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 16, 2018 at 1:18 PM

For the rule record.

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: Dale Szyndrowski <DSzyndrowski@distilledspirits.org>
Date: Thu, Aug 16, 2018 at 1:14 PM
Subject: Distilled Spirits Council position RE: sampling AKA Hand sales & wholesaler delivery days
To: "Maroney - Dor, Patrick" <patrick.maroney@state.co.us>
Cc: Joan Green Turner <joangreen@me.com>, Dale Szyndrowski <DSzyndrowski@distilledspirits.org>

Patrick:

Joanie is traveling next few days and I wanted to make sure you received our input prior to the Friday 8/17 deadline. I have received directions from our membership Re: these two very important proposed regulations.

1. Sampling; 47-322 B.2 AKA hand sales; The council continues to take our previous position that distilled spirits should not be part of the practice in Colorado.
2. The Under Value of Labor section that deals with wholesaler delivery days limited to 4 is unacceptable in this modern day marketplace. The idea that a retailer may not be serviced on as needed basis is counter to the purpose of brand building and not supportive of a true 3 tier system to present to the consumer all the products they are accustomed to have present and available during normal retail business hours. This does not mean that a wholesaler person is there 24/7 however they should provide current levels of service to the marketplace in the future.

Thank you for allowing the opportunity to work to refine these regulations and we look forward to continuing our participation.

Dale

Distilled Spirits Council

214-914-8865

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Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:47 AM

[Quoted text hidden]

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: Today's meeting re delivery

1 message

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Mon, Aug 20, 2018 at 4:42 PM

for the rule record

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: **Nidhi Kumar** <nidhi@drizly.com>
Date: Wed, Aug 8, 2018 at 11:20 AM
Subject: Today's meeting re delivery
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>

Good afternoon (morning), Patrick,

I have to stay in Boston today for other work matters, so regretfully I will not be attending today's delivery discussion.

If it's at all possible for me to call in, I would appreciate being able to do so.

Otherwise, please accept this email as my expressing concern about any rule requiring retailers to collect personal information from consumers at the time of placing an order for alcohol. As raised during last month's meeting, any such rule raises significant privacy issues. The critical time for ensuring legal age consumption is at the time of delivery, when transfer of physical possession happens, so requiring retailers to collect ID information at the time of ordering does not really advance the state's interest in preventing underage drinking or intoxicated individuals from drinking. As you are aware, there is a heightened public interest of protecting sensitive and personal information; so the state should tread carefully when instituting requirements to collect individuals' ID information. Also, Colorado is in the minority in upholding this requirement; other states merely require ID checks at the time physical possession is given by retailer to consumer, and this approach has been deemed sufficient to prevent illegal and inappropriate transfers.

Drizly is willing to cooperate with initiatives to protect the public. To that end, I have spoken with others, some of whom will be attending today, to brainstorm less intrusive ways we can safeguard against underage and other inappropriate deliveries. We are hopeful the state will consider alternatives to the currently proposed rule.

I would be happy to discuss further or submit a more detailed explanation of my thoughts, but in the interest of time and respect for your inbox, I will pause here!

Thank you, Patrick,
Nidhi

Nidhi Kumar

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: Distiller's comments on proposed rules ...

1 message

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 17, 2018 at 10:42 AM

For the rule record

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: Steve Gould <s.gould@gouldglobal.com>
Date: Fri, Aug 17, 2018 at 5:46 AM
Subject: Distiller's comments on proposed rules ...
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>
Cc: Kara Miller <mmemiller2@icloud.com>

Patrick,

Regarding the proposed rule changes, here are our inputs.

1. Regulation 47-322, B. 2. G. – We would like to include both spirits and RTDs (i.e. canned or bottled cocktails). We would like to be able to give out spirits samples in up to 100ml sealed containers and RTD samples in up to 12oz (355ml) samples.

Our logic behind this is that beer can give out single serving samples (i.e. a bottle of beer). As such we would like to do the same, so that would mean a single small spirits container such as those served on airplanes or a single serving RTD.

Regarding the spirits container size. A growing number of Colorado producers are now packaging in either 50ml or 100ml bottles for sample/airline/gift package use. Those sizes are the smallest sizes of sealed containers that any Colorado producer currently uses. We would like the 100ml size, to allow more of our Colorado Distilleries to be able to give away these types of samples ...

2. Regulation 47-322, B. 2. H. II. – We would like, for this section to be able to serve a larger sample size of a mixed cocktail. So we would like the wording to read "and one half of one

(1/2) ounce of spiritous liquor or two (2) ounces of a cocktail containing spirituous liquor (either mixed on-sight or from an RDT) for samples ..."

The two ounce size is ideal for us as it gives us enough volume to allow the consumer to actually taste / experience the cocktail with our products. Further, it is also the standard size for most "tasting cups" available on the market.

3. FAIR MARKET VALUE (for other goods) – We are concerned that this is a subjective assessment and that without some sort of method of calculation that is fair to all parties concerned, could lead to problems.

4. 47-322, L.2.A. – We do not agree with the prohibition of a wholesaler delivering products to a retailers premises more than four times per week. By limiting deliveries to four times per week we believe that it will harm Colorado Distilleries having product on the shelves during busy times ... costing Colorado distillers to lose sales to larger out-of-state brands with more shelf space.

5. 47-322, L.2.C. – We would like to add the language to the section about a supplier cleaning a retailers alcohol beverage dispensing equipment stating "A retailer is prohibited from requiring a supplier to do so."

If you have any questions please let me know. I'm en-route from Ireland to Colorado today. I'll be in Kentucky Mon – Wed next week but will be available by phone and e-mail for most of that time.

Thank you.

Sincerley,

Stephen A Gould – Board Member for Government Affairs, Colorado Distillers Guild

Golden Moon Distillery

Golden Moon Speakeasy

Maison De La Vie, Ltd

303-993-7174 Fax: 303-279-5299

Mobile: (734)945-8178

www.goldenmoondistillery.com

www.goldenmoonspeak.com

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: Subject: Trade Practices and Delivery Subgroups

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 17, 2018 at 4:13 PM

For the rule record

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: Hunt, Bob <Robert.Hunt@millercoors.com>
Date: Fri, Aug 17, 2018 at 3:58 PM
Subject: Subject: Trade Practices and Delivery Subgroups
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>
Cc: Jenn Penn <Jenn@jenn-penn.com>

Patrick

Please find attached MillerCoors comments as requested.

Bob

From: dor_liquorreportinglist@mail-2b8z3.getresponse.com [mailto:dor_liquorreportinglist@mail-2b8z3.getresponse.com] **On Behalf Of** Colorado Liquor Enforcement Division
Sent: Thursday, August 9, 2018 3:37 PM
To: Jenn Penn <Jenn@jenn-penn.com>
Subject: Trade Practices and Delivery Subgroups



VIA ELECTRONIC MAIL
PATRICK.MARONEY@STATE.CO.US

AUGUST 17, 2018
MR. PATRICK MARONEY
DIRECTOR - LIQUOR ENFORCEMENT DIVISION
COLORADO DEPARTMENT OF REVENUE
1881 PIERCE STREET, SUITE 108
LAKEWOOD, CO 80214

RE: COLORADO LIQUOR RULES 1 C.C.R. 203-2 (DRAFT – AUGUST 1, 2018 – TRADE PRACTICE/DELIVERY)

DEAR PATRICK:

THE FOLLOWING IS A SUMMARY OF MILLERCOORS COMMENTS TO COLORADO LIQUOR RULES 1 C.C.R. 203-2 (DRAFT – AUGUST 1, 2018 – TRADE PRACTICE/DELIVERY)

1. **REGULATION 47-322. UNFAIR TRADE PRACTICES AND COMPETITION. 8. (E). ON-SITE SALES PROMOTIONS.** WE URGE THE DIVISION TO REINSTATE LANGUAGE IN THE CURRENT RULES THAT SUPPLIER REPRESENTATIVES OR THEIR AUTHORIZED AGENTS MAY PROVIDE ALCOHOL BEVERAGE SAMPLES DIRECTLY TO THE CONSUMER. THE USE OF SUPPLIER REPRESENTATIVES AND THEIR AUTHORIZED AGENTS IN SALES PROMOTIONS HAS BEEN A LONG STANDARD PRACTICE BOTH IN COLORADO AND OTHER STATES. WE ARE UNAWARE OF ANY PROBLEMS ASSOCIATED WITH THIS PRACTICE THAT WOULD WARRANT A PROHIBITION OF SUPPLIER REPRESENTATIVES AND THEIR AUTHORIZED AGENTS PARTICIPATING IN THIS TRADE PRACTICE.
2. **REGULATION 47-322. UNFAIR TRADE PRACTICES AND COMPETITION. 3. (A.-H.)** WE URGE THE DIVISION TO REINSTATE LANGUAGE IN THE RULE TO PERMIT THE CONTINUED PRACTICE OF SUPPLIER-SPONSORED CONSUMER GIVE-A-WAY OF MALT LIQUORS HELD IN RETAIL ESTABLISHMENTS. LICENSED FOR OFF-PREMISE CONSUMPTION FOR THE PURPOSES OF PRODUCT SALES PROMOTION, UNDER THE CONDITIONS IN THE CURRENT RULE. THIS IS A PRACTICE THAT HAS BEEN BENEFICIAL TO OUR INDUSTRY ESPECIALLY WHEN NEW PRODUCTS ARE BEING INTRODUCED INTO THE MARKETPLACE AND THE CONSUMER IS RELUCTANT TO SAMPLE IF THEY ARE FACED WITH PURCHASING A QUANTITY OF PRODUCT BEYOND A SINGLE DEFINED SAMPLE SIZE. WE ARE UNAWARE OF ANY PROBLEMS ASSOCIATED WITH THIS PRACTICE THAT WOULD WARRANT A PROHIBITION OF THIS CURRENT TRADE PRACTICE.
3. **REGULATION 47-322. J. OTHER GOODS.** PLEASE DEFINE THE TERM "FAIR MARKET VALUE".
4. **REGULATION 47-322. L. VALUE OF LABOR.** WE URGE THE DIVISION TO MAKE NO CHANGES TO THE CURRENT VALUE OF LABOR RULES. WE ARE UNAWARE OF ANY DOCUMENTED ABUSE OF THIS RULE THAT WARRANTS A CHANGE. WE BELIEVE THAT THE CHANGES PROPOSED VEER DRASTICALLY FROM THE PUBLIC POLICY DETERMINATION MADE BY THE COLORADO STATE LEGISLATURE DURING ITS 2016 SESSION WHEN LEGISLATORS AGREED TO THE ONLY SIGNIFICANT AMENDMENT TO SB 197 WHICH HAD THE EFFECT OF STRIPPING OUT SIMILAR VALUE OF LABOR RESTRICTIONS. IF PROponents OF SUCH RESTRICTIVE LANGUAGE AS FOUND IN SECTION L. WANT TO REDEFINE VALUE OF LABOR THEY SHOULD SEEK A PUBLIC POLICY MANDATE FROM THE COLORADO STATE LEGISLATURE.

AS WRITTEN, THE PROPOSED RULE AT A MINIMUM SHOULD STRIKE THE PROPOSED LANGUAGE WHERE A WHOLESALER IS PROHIBITED FROM DELIVERING ALCOHOL BEVERAGE PRODUCTS TO A RETAILER'S LICENSED PREMISES MORE THAN FOUR (4) DAYS PER CALENDAR WEEK. THIS IS AN ARBITRARY PROPOSED RULE CHANGE COMPELLING US TO ASK WHAT IS THE PROBLEM TO BE SOLVED BY THE NEW PROPOSED RULE CHANGE? WHAT HAS CHANGED IN THE MARKETPLACE TO WARRANT ANY CHANGE CURRENT DELIVERY AND MERCHANDISING PRACTICES BY A DISTRIBUTOR WHICH IS THE ESSENCE OF WHAT A DISTRIBUTOR BY DEFINITION IS TO PERFORM? IF THE PROPOSED CHANGE IS BECAUSE COLORADO IS GOING TO SINGLE STRENGTH AS OF 1/1/2019 THIS ISSUE AGAIN WAS DECIDED IN 2016 BY THE STATE LEGISLATURE WHICH SAID NO TO ANY CHANGES REGARDING DISTRIBUTOR SERVICING OF RETAIL ACCOUNTS. THIS PROPOSED CHANGE APPEARS TO BE PROTECTING ONE TIER AND ONE SEGMENT WITHIN ANOTHER TIER ARBITRARILY WITH NO BASIS OR DOCUMENTATION OF ANY TYPE OF PROBLEM OR VIOLATION OF THE RULES. THE PRACTICE OF DELIVERY AND MERCHANDISING RETAILERS BY WHOLESALERS AND SMALL BREWERS THAT SELF-DISTRIBUTE IS A MARKET DRIVEN FUNCTION PRACTICED NOT ONE THAT SHOULD BE DICTATED ARBITRARY LIMITS IMPOSED BY GOVERNMENT POLICY REGARDING THE NUMBER OF TIMES A DISTRIBUTOR MUST DELIVER AND SERVICE A RETAIL ACCOUNT BE IT AN ON OR OFF PREMISE ACCOUNT. IF A RETAILER IS GOING THRU ENOUGH BEER TO WARRANT ADDITIONAL DELIVERIES, THE WHOLESALER SHOULD AT LEAST BE ABLE TO REFRESH A DISPLAY WITH ADDITIONAL PRODUCT AS WELL AS ROTATE ON SHELF TO ACCOMPLISH THE "GOAL OF OLDEST BEER SHOULD BE SOLD FIRST". WE BELIEVE THAT A DISTRIBUTOR AND THEIR EMPLOYEES ARE THE MOST QUALIFIED TO EASILY AND QUICKLY READ DATE CODES TO DETERMINE WHICH BEER SHOULD BE PLACED AT THE FRONT. IF A WHOLESALER NEEDS TO DELIVER, THESE BASIC FUNCTIONS GO ALONG WITH DELIVERY WITH NO ARBITRARY RESTRICTIONS. AGAIN, LET THE MARKETPLACE AND THE INDUSTRY MEMBERS BEST DECIDE ON FREQUENCY AND ASSOCIATED ACTIVITIES THAT DISTRIBUTORS ARE BEST TRAINED AND SKILLED TO PERFORM. IMPOSING SPECIFIC DAYS OF SERVICE AND MERCHANDISING DOES NOT TAKE INTO ACCOUNT A NUMBER OF FACTORS:

- A. DIFFERENCES IN RETAIL CHANNELS—GROCERY, C STORES, LIQUOR STORES, BIG BOX/WAREHOUSE STORES, RESTAURANTS, TAVERNS HAVE DIFFERENT DISPLAY SPACE AND STORAGE REQUIREMENTS
- B. DIFFERENCES WITHIN EACH SEGMENT WITHIN EACH RETAIL CHANNEL—I.E. INDEPENDENTS THAT ARE SMALLER THAN LARGER STORES, BREWPUB VS. TAVERNS—A LIQUOR STORE MAY BE ABLE TO TAKE ON A 600 CASE DELIVERY WHERE A SMALLER RETAILER ONLY 250 CASES
- C. DIFFERENT BEER PRODUCTS THAT HAVE DIFFERENT SALES VELOCITIES—SOME BEERS TURN OVER FASTER THAN OTHERS AND HENCE MORE LIKELY TO BE OUT OF STOCK AND SALES SHELVES WILL NEED TO BE REPLENISHED MORE FREQUENTLY
- D. DIFFERENT VOLUMES SOLD AT RETAIL—A SPECIALTY CRAFT BEER MAY GO OUT OF STOCK FASTER THAN A REGULAR CRAFT OR DOMESTIC BEER MAY SELL FASTER THAN IMPORTS
- E. THE VALUABLE KNOWLEDGE OF DISTRIBUTORS IN KNOWING HOW TO BEST STOCK, ROTATE, AND MERCHANDISE THE PARTICULAR BRANDS OF PRODUCT THEY ARE ASSIGNED TO DISTRIBUTE.

WE ALSO HAVE TO ASK IF THE LED HAS CONDUCTED ANY RESEARCH ON CURRENT MARKET CONDITIONS TO WARRANT CHANGE IN THE RULES? DISTRIBUTORS ALREADY HAVE ESTABLISHED SERVICE LEVELS FOR THEIR ACCOUNTS THAT VARIOUS TYPES AND SIZES OF RETAILERS ARE INFORMED ABOUT BY THE DISTRIBUTOR—AGAIN BASED ON MARKET CONDITIONS, SIZE OF STORE, VOLUME SOLD AT STORE, ETC. IF CLARIFICATION IS NEEDED REGARDING OTHER SERVICES SUCH AS CLEANING OR MAINTAINING A RETAILER'S PREMISES OR REQUIRING A DISTRIBUTOR TO OPERATE A RETAILERS EQUIPMENT SUCH AS FORK LIFTS WE ENCOURAGE MORE DISCUSSION BY THE LED AND AFFECTED STAKEHOLDERS TO AVOID UNINTENDED CONSEQUENCES AS FOUND IN THE PROPOSED RULE CHANGES.

RESPECTFULLY SUBMITTED,
ROBERT C. HUNT
ROBERT C. HUNT
DIRECTOR, REGIONAL GOVERNMENT AFFAIRS
MILLERCOORS
7800 NORTH DALLAS PARKWAY SUITE 400
PLANO, TEXAS 75024
(214) 618-7440
BOB.HUNT@MILLERCOORS.COM



Fwd: Trade Practice and Delivery Meeting Notes

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 16, 2018 at 2:15 PM

For the rule record.

Patrick Maroney
Director
Liquor Enforcement Division

1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: Andrew Klosterman <andy@peakbev.com>
Date: Thu, Aug 9, 2018 at 2:38 PM
Subject: Trade Practice and Delivery Meeting Notes
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>

Hi Patrick!

I wrote down a few things during the meeting I wanted to send, I feel like some of the topics were more political so I figured an email would be a better place to go.

- Stephen was speaking about industry trade events where suppliers of all types invite retailers to taste through products. These events happen very regularly and are extremely commonplace in the industry. Perhaps a topic for next year would be to create a legal way for these events to continue happening? They occur both in on premise and private, unlicensed locations and are invite only for the most part at no charge.
- Fair Market Value - Can we just mimic the replacement costs that an insurance company uses? I am thinking they just have a database or something as a reference point. I agree with saying Fair Market Cost over Suppliers cost, as fair market cost is much easier to see if there is abuse of policy going on
- Value of Labor - For the record, as a small retailer (we're working on a larger liquor store soon!) I don't get to enjoy any of the "Value of Labor" things that a supplier does. For me the suppliers completely control when and how often they deliver, and they ONLY deliver and then leave. But - I do agree that the activities listed out are still fine from a competitive standpoint, as I understand that as my business grows, the demands I would put on my suppliers would grow as well - just not to an abusive level. I think simply by having allowable activities and saying everything else is not allowable, would solve the problem of abuses.

I would love to get a chance to pitch some topics for next year as well if I could get the chance. There are many things I think can be fixed within private events and non profit special event permits with some structured rules.

Thanks!



Andy Klosterman

CEO

Andy@peakbev.com www.peakbev.com

O: 720.722.1140 F: 888.814.6410

 Displaying ACBJ- 33402_Button_FINAL.jpg

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:48 AM

[Quoted text hidden]



STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: "Value of Labor" and Trade Practice Regulation

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 17, 2018 at 4:13 PM

For the rule record

Patrick Maroney
Director
Liquor Enforcement Division

1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: **Charrise R. Tracy** <ctracy@dillanddill.com>
Date: Fri, Aug 17, 2018 at 3:57 PM
Subject: "Value of Labor" and Trade Practice Regulation
To: "Patrick.Maroney@state.co.us" <Patrick.Maroney@state.co.us>
Cc: Jon Stonbraker <stonj@dillanddill.com>

Dear Director Maroney,

Jon Stonbraker asked that I forward to you the attached correspondence. Please contact Jon with any questions you may have. Thank you.

Sincerely,

Charrise Tracy

Legal Assistant



Dill Dill Carr Stonbraker & Hutchings, PC

455 Sherman Street, Suite 300

Denver, Colorado 80203

Direct: (303) 282-4150

Main: (303) 777-3737



Jon Stonbraker
stony@dillanddill.com
455 Sherman St, Ste 300
Denver, CO 80203
303-777-3737

August 17, 2018

Director Patrick Maroney
State of Colorado
Department of Revenue
Liquor & Tobacco Enforcement Division
1881 Pierce Street, Suite 108A
Lakewood, CO 80214
Via E-mail: Patrick.Maroney@state.co.us

RE: "Value of Labor" and Trade Practice Regulation

Director Maroney:

I am authorized to respond to the Division's request for input by Safeway and King Soopers.

Both companies support a regulation which will expand and enumerate the specific acts that a supplier is permitted to perform at any location in the retailer's licensed premises.

Both companies oppose hard limits on the number of deliveries from any wholesaler to any retailer's licensed premises. It is our understanding that both SB16-197 and SB18-243 were designed to reform retail sales of alcohol with the intent that consumers would benefit from an expanded opportunity to buy full strength beer, wine and spirits in grocery stores. Limiting product deliveries to any retailer can only result in an empty shelf, which undermines the spirit and intent of SB16-197 and SB18-243 and is exactly contrary to our clients' goal of providing the best possible products to their customers.

Further, limiting deliveries can be seen as an attempt by the government to "level the playing field." Respectfully, neither company believes that manipulating competition is the intent of SB16-197 or SB18-243. Rather, the legislative mandate is to expand opportunities to provide products to consumers.

Both companies oppose any daily limits relative to price stamping, rotation, stocking and merchandising, in addition to deliveries.

As previously stated, both organizations greatly appreciate the opportunity to provide input into the regulatory process.

Please do not hesitate to contact me with any question.

Sincerely,



Jon Stonbraker
JS:bjh

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

**Fwd: Wine & Spirit Wholesalers of Colorado (WSWC) Trade Practices
Sub-Group Comments 8/17/18**

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Fri, Aug 17, 2018 at 2:13 PM

For the rule record.

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: **Michael Steppat** <michael@axiompolitics.com>
Date: Fri, Aug 17, 2018 at 1:30 PM
Subject: Wine & Spirit Wholesalers of Colorado (WSWC) Trade Practices Sub-Group Comments
8/17/18
To: "Maroney - Dor, Patrick" <patrick.maroney@state.co.us>
Cc: Micki Hackenberger <micki@axiompolitics.com>

Dear Mr. Maroney,

On behalf of the WSWC we respectfully submit the attached additions & deletions to the language you submitted to the Liquor Work Group. Please note we are not submitting comments in regards to 'B. On-site sales promotions' based on our understanding you will be submitting revised changes to that section. Our suggested changes reflect extensive discussions with our members. Deletions & additions are noted in the highlighted portions. The bulk of our suggestions apply to 'L. Value of Labor.'

Thank you.

Michael Steppat

1600 Broadway, Suite 1350
Denver, Colorado 80202

Mobile: (719) 648-2203



August 17, 2018

Mr. Patrick Maroney
Director of Liquor Enforcement
1881 Pierce Street, Room 108
Lakewood, CO 80214

Re: Wine & Spirit Wholesalers of Colorado (WSWC)
Comments on Proposed Unfair Trade Practice & Competition Rule changes

Dear Mr. Maroney:

On behalf of the WSWC we respectfully submit the following additions & deletions to the language you submitted to the Liquor Work group. Please note we are not submitting comments in regards to 'B. On-site sales promotions' based on our understanding you will be submitting revised changes to that section to the work group. Our suggested changes reflect extensive discussions with our members and are noted in this document. Deletions & additions are noted in the highlighted portions. The bulk of our suggestions apply to 'L. Value of Labor.'

Sincerely,

A handwritten signature in black ink, appearing to read "Micki M. Hackenberger".

Micki M. Hackenberger
Executive Director

Cc: WSWC Members
Michael Steppat

Wine and Spirit Wholesalers of Colorado
August 17, 2018 – Trade Practice/Delivery

Unfair Trade Practices and Competition.

J. Other goods

Suppliers may not provide a retailer with any other goods below a supplier's cost FAIR MARKET VALUE except those items expressly permitted by articles 46, 47, or 48 of title 12, C.R.S, and related regulations.

When a supplier also deals in items of commerce that are not regulated by articles 46, 47, or 48 of title 12, only the following restrictions shall apply:

1. The unregulated item(s) may not be on the same invoice as the alcohol beverages sold.
2. The unregulated item(s) may not be provided as an inducement, or require purchase of alcohol beverages.
- ~~3. Any equipment or other goods provided free of charge (e.g. energy drink refrigerated coolers) shall not be provided in conjunction with alcohol sales or promotions.~~

L. Value of labor

- ~~1. Suppliers may provide labor at no cost as it relates to product delivery, price stamping, rotation and stocking. The cleaning of beverage dispensing equipment and supplier provided displays may also be provided at no cost.~~
- ~~2. Suppliers may, upon retail premises, organize, construct, and maintain displays of those alcohol beverages that they sell. Such supplier constructed displays shall be accessible by the consumer.~~
- ~~3. Cost of labor provided to a retailer for services such as the installation of dispensing systems and the pouring or serving of alcohol beverages (except as allowed by regulation 47-322(B)(2)) shall be at least at a minimum of that employee's hourly wage.~~

1. FOR PURPOSES OF THIS SUBSECTION (L):

- A. "STOCK" OR "STOCKING" IS THE ACT OF A SUPPLIER PLACING OR REPLENISHING ITS ALCOHOL BEVERAGE PRODUCT, DELIVERED BY THAT LICENSEE, ON ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION THAT IS ACCESSIBLE TO CONSUMERS FOR THE PURPOSE OF SALE WITHIN THE RETAILER'S LICENSED PREMISES.
- B. "ROTATE" OR "ROTATING" IS THE ACT OF A SUPPLIER MOVING ITS ALCOHOL BEVERAGE PRODUCT FROM THE REAR TO THE FRONT OF ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION, THAT IS ACCESSIBLE TO CONSUMERS FOR THE PURPOSE OF SALE WITHIN THE RETAILER'S LICENSED PREMISES, SO THAT OLDER ALCOHOL BEVERAGE PRODUCT WILL SELL FIRST.
- ~~C. "PRICE STAMP" OR "PRICE STAMPING" IS THE ACT OF A SUPPLIER AFFIXING THE RETAIL PRICE OF ITS ALCOHOL BEVERAGE PRODUCT TO ITS RESPECTIVE CONTAINER, SHELF, REFRIGERATOR, OR ANY OTHER SIMILAR LOCATION, THAT IS ACCESSIBLE TO CONSUMERS FOR THE PURPOSE OF SALE WITHIN THE RETAILER'S LICENSED PREMISES.~~
- D. "MERCHANDISE" OR "MERCHANDISING" IS THE ACT OF A SUPPLIER ORGANIZING, CONSTRUCTING, OR MAINTAINING A TEMPORARY DISPLAY OF ALCOHOL BEVERAGE PRODUCT INCLUDING A SIGN, INTERIOR DISPLAY, CONSUMER ADVERTISING SPECIALTY, OR POINT-OF-SALE ADVERTISING, THAT IS ACCESSIBLE TO CONSUMERS FOR THE PURPOSE OF SALE AND INCREASING PRODUCT VISIBILITY TO THE CONSUMER WITHIN THE RETAILER'S LICENSED PREMISES.

E. ~~"DELIVERY" IS DEFINED VERY SIMPLY AS THE ACT OF THE WHOLESALER UNLOADING ITS ALCOHOL BEVERAGE PRODUCT FROM ITS DELIVERY VEHICLE ONTO THE RETAILER'S LICENSED PREMISES. DELIVERY DOES NOT INCLUDE ANY OTHER ACTS OR ACTIVITIES PERFORMED BY THE SUPPLIER, INCLUDING BUT NOT LIMITED TO STOCKING, ROTATING, MERCHANDISING AND/OR MOVING THE PRODUCT FOR ANY REASON; INCLUDING BUT NOT LIMITED TO UNLOADING PALLETS FOR ORDER VERIFICATION PURPOSES.~~

2. EXCEPT AS OTHERWISE PROVIDED BY THIS SUBSECTION (L)(2), THE COLORADO LIQUOR CODE, THE COLORADO BEER CODE, OR THE COLORADO LIQUOR RULES, A SUPPLIER IS PROHIBITED FROM PROVIDING ANY LABOR TO A RETAILER AT NO COST. A RETAILER IS PROHIBITED FROM REQUESTING OR REQUIRING A SUPPLIER TO PROVIDE ANY LABOR AT NO COST TO THE RETAILER AT ANY TIME. MOREOVER, A SUPPLIER IS PROHIBITED FROM MAKING THE ACTS OF STOCKING, ROTATING, AND/OR MERCHANDISING AS AN EXPRESS OR IMPLIED CONDITION OF THE DELIVERY, PURCHASE, OR FUTURE PURCHASES BETWEEN THE SUPPLIER AND THE RETAILER.

A. A WHOLESALER MAY UNLOAD ITS ALCOHOL BEVERAGE PRODUCT ONCE FROM ITS DELIVERY VEHICLE ONTO THE RETAILER'S LICENSED PREMISES OR PERMITTED RETAIL STORAGE LOCATION AT NO COST TO THE RETAILER. A WHOLESALER MAY STOCK, ROTATE, AND/OR MERCHANDISE ITS ALCOHOL BEVERAGE PRODUCT ON THE RETAILER'S LICENSED PREMISES AT A TIME, AND FOR A DURATION OF TIME, SOLELY WITHIN THE DISCRETION OF THE SUPPLIER, BUT NO MORE THAN THREE (3) DAYS PER WEEK. FOR PURPOSES OF THIS SECTION (L)(2)(A), A RETAILER IS SPECIFICALLY PROHIBITED FROM REQUESTING OR REQUIRING A SUPPLIER TO PERFORM THESE ACTS ON SPECIFIC DAYS, FOR SPECIFIC LENGTHS OF TIME AND/OR AT SPECIFIC TIMES OF DAY. A RETAILER'S LICENSED PREMISES SHALL NOT INCLUDE AREAS UTILIZED FOR STORAGE. IS PROHIBITED FROM DELIVERING ALCOHOL BEVERAGE PRODUCTS TO A RETAILER'S LICENSED PREMISES MORE THAN FOUR (4) DAYS PER CALENDAR WEEK. THIRD PARTY MERCHANDISERS EMPLOYED BY SUPPLIERS ARE INCLUDED IN THE THREE (3) DAYS PER WEEK RESTRICTION. PRESALE AND PRODUCT ORDERING ACTIVITIES ARE NOT SUBJECT TO THREE (3) DAYS PER CALENDAR WEEK RESTRICTION.

B. ~~IN A SUPPLIER'S SOLE DISCRETION, A SUPPLIER MAY STOCK, ROTATE, PRICE STAMP, AND MERCHANDISE ITS ALCOHOL BEVERAGE PRODUCT ON THE RETAILER'S LICENSED PREMISES AT NO COST TO THE RETAILER. A SUPPLIER IS PROHIBITED FROM DISTURBING ANOTHER SUPPLIER'S ALCOHOL BEVERAGE PRODUCT WHILE STOCKING, ROTATING, PRICE STAMPING, AND MERCHANDISING. FOR PURPOSES OF THIS SUBSECTION (L)(2)(B), THE RETAILER'S LICENSED PREMISES SHALL NOT INCLUDE A PERMITTED RETAIL STORAGE LOCATION. AREAS UTILIZED FOR STORAGE.~~

C. ~~A SUPPLIER MAY CLEAN THE RETAILER'S ALCOHOL BEVERAGE DISPENSING EQUIPMENT. AT NO COST TO THE RETAILER.~~

D. A RETAILER IS PROHIBITED FROM REQUESTING OR REQUIRING AND A SUPPLIER IS PROHIBITED FROM PERFORMING ANY ADDITIONAL ACTS OF LABOR, OTHER THAN THOSE ACTIVITIES SPECIFICALLY SET FORTH IN (L)(2)(A). ADDITIONAL ACTS OF LABOR SHALL INCLUDE, BUT NOT BE LIMITED TO THOSE ACTIVITIES THAT DO NOT PROMOTE THE SALES OF SUPPLIER'S PRODUCT SUCH AS THE SWEEPING AND/OR MOPPING OF FLOORS, CLEANING SHELVES AND COOLER DOORS, OPERATING RETAILER'S MECHANICAL EQUIPMENT, USING LADDERS OR STEP STOOLS TO MOVE PRODUCTS, PERFORMING INVENTORY FOR STORE LEVEL RECORDS, PERFORMING ACTIVITIES REQUIRING THE USE OF RETAILER'S CLIMBING AND STACKING EQUIPMENT (WHETHER ELECTRONIC OR MANUAL), ETC.

E. FOR PURPOSES OF THIS SECTION (L)(2), THE RETAILER'S LICENSED PREMISES SHALL NOT INCLUDE A PERMITTED OR LICENSED RETAIL STORAGE LOCATION.

3. ~~A RETAILER MUST PAY A SUPPLIER FOR ANY OTHER LABOR PROVIDED BY THE SUPPLIER TO THE RETAILER AT THE SUPPLIER'S ACTUAL COST OF LABOR. A SUPPLIER'S COST OF LABOR SHALL BE, AT A MINIMUM, THE HOURLY WAGE OF THE SUPPLIER'S EMPLOYEE OR EMPLOYEES WHO PROVIDED THE LABOR. EXAMPLES OF LABOR REQUIRING PAYMENT INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:~~

A. ~~INSTALLING OR REPAIRING THE RETAILER'S ALCOHOL BEVERAGE DISPENSING EQUIPMENT.~~

B. ~~CLEANING OR MAINTAINING THE RETAILER'S LICENSED PREMISES~~

STATE OF
COLORADO

Manning - DOR, Chris <chris.manning@state.co.us>

Fwd: Comments on Proposed Rules on Trade Practices

2 messages

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Mon, Aug 20, 2018 at 12:11 PM

For the rule record

Patrick Maroney
Director
Liquor Enforcement Division1881 Pierce St., Suite 108, Lakewood, CO 80214
office: 303-205-2934 | fax: 303-205-2341
email: patrick.maroney@state.co.us
www.colorado.gov/enforcement/liquor

----- Forwarded message -----

From: Tyler Rudd <trudd@wineinstitute.org>
Date: Fri, Aug 17, 2018 at 5:44 PM
Subject: Comments on Proposed Rules on Trade Practices
To: "Maroney - DOR, Patrick" <patrick.maroney@state.co.us>
Cc: Brock Herzberg <brock@capitolfocusllc.com>, Landon Gates <landon@capitolfocusllc.com>

Dear Patrick,

Please find attached Wine Institute's comments on the LED's recent proposed revisions to trade practice rules. If you have any questions or comments, please do not hesitate to call or email.

Cheers,

Tyler Rudd

Central States Counsel

WINE INSTITUTE

208 W. 14th St.

Austin, TX 78701

(512) 293-0247

trudd@wineinstitute.org

 **WI Ltr to Maroney (Trade Practices) Aug 2018.doc**
76K

Maroney - DOR, Patrick <patrick.maroney@state.co.us>
To: "Manning - DOR, Chris" <chris.manning@state.co.us>

Thu, Aug 23, 2018 at 9:45 AM

[Quoted text hidden]

 **WI Ltr to Maroney (Trade Practices) Aug 2018.doc**
76K



August 14, 2018

Patrick Maroney
Director, Colorado Liquor Enforcement Div.
1881 Pierce St. #108
Lakewood, CO 80214

VIA EMAIL

Dear Patrick,

Thank you for the opportunity to comment on the proposed rule revisions regarding trade practices.

Sampling Provisions

We appreciate your clarification at the August 8, 2018 meeting that Section B of the draft Regulation 47-322 does not relate to consumer tastings. As long as our importing wineries and their authorized agents maintain the right to conduct consumer tastings in on-premise retail locations as permitted by in Regulation 47-322(B) and in off-premise retail locations per Colorado Liquor Code section 12-47-301(10), the Wine Institute supports the current proposed changes to 47-322(B). However, we ask for some clarification on draft Regulation 47-322(B) to align it with Section 12-47-301(10) of the law.

Specifically, current Regulation 47-322(B) appropriately separates consumer sampling and consumer give-aways: B(2) authorizes on-premise samplings by malt, wine, and spirits suppliers, and B(3) addresses off-premise give-aways by malt suppliers. The new draft Section B(2) combines sampling and give-aways in a confusing manner and should be modified to clearly separate "sampling" (at an on-premise licensee) from a consumer "give a way" (at an off-premise licensee). On the subject of give-aways, other stakeholders mentioned that they would like to have wine and spirits included in the privilege of handing out sealed "samples" at off-premise licensees. Wine Institute continues to be opposed to that concept and requests that the draft rule be maintained as proposed, limiting it to malt products only.

Proposed Regulation 47-322B(2)(c) seems to remove the authorization for suppliers to use authorized agents to conduct consumer samplings at on-premise retail locations. While we recognize that sampling in the new proposed rules is ostensibly different from off-premise tastings, Wine Institute asks that the proposed rules on samplings align with the new law regarding tastings. Particularly, Wine Institute would like our members to have the ability to utilize agents to conduct on-premise samplings. Doing so would align better with suppliers' ability to use agents at off-premise tastings as provided in SB 18-243 (which provides that tastings can be conducted by a "representative, employee, or agent of the licensed wholesaler, importer...promoting the alcohol beverage for the tasting").

Additionally, draft Regulation 47-322 B(2)(c) *requires* suppliers to "serve" the tasting samples in on-premise retail accounts and verify the patrons' age when doing so. As a practical matter, this change is unnecessary since on-premise retailers will generally want to be responsible for serving their patrons and will have verified the age of its patrons upon entry. Therefore, in our opinion existing Regulation 47-322

B(2)(e), which provides that a supplier or its agent “may” provide tasting samples directly to consumers, is appropriate and should remain unchanged.

Other Goods

In Regulation 47-322(J), as mentioned at the previous stakeholder meeting, Wine Institute asks that the phrase “*but not below suppliers’ cost*” is added after the new addition of “fair market value.” We feel that adding this proviso will ensure that “fair market value” is not manipulated such that items of value are given to retailers at unrealistic prices that are well below the supplier’s cost. While concerns about “record-keeping issues” are valid, on balance it is more important that the rule does not create a loophole that might invite abuse.

Merchandising

I understand from the meeting on August 8, 2018, that the wholesalers seek more clarity in section L.2. Wine Institute supports further clarification on what suppliers can do at retail licensees, how often they can do these tasks, and where in the retail premises they can perform such tasks. To further such clarification, Wine Institute suggests adding the below language dealing with incidental contact in section L.2.B. (added language in italics).

“A supplier is prohibited from disturbing another supplier’s alcohol beverage product while stocking, rotating, price stamping, and merchandising; however, incidental touching or rearrangement of the brand of another supplier by a supplier for the sole purpose of accessing any shelf, refrigerator, or similar location to service the supplier’s alcoholic beverages in accordance with this section will not be deemed a violation of this provision provided that the other supplier’s alcoholic beverages is not removed from spaces allocated to that supplier.”

Finally, at the stakeholder meeting, participants discussed the need to clarify that the retailer’s backroom is a permissible place for suppliers to provide stocking, arranging and other permitted merchandising services. Wine Institute members agree. LED offered to draft language to address this and to distinguish between a separate storage location and the backroom onsite. For your consideration, we propose adding “*other than a retailer’s storeroom at its licensed premises for sale to consumers*” to the end of Section L(2)(B).

Again, thank you for your time and consideration of our comments on the proposed rules relating to trade practices. We look forward to the revised rules and may have further comments based on those changes.

Sincerely,

Tyler Rudd