

DEPARTMENT OF REVENUE
Division of Liquor Enforcement
1 CCR 203-2
Liquor Code
(Draft – August 27, 2018)

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. ~~ON-PREMISES SAMPLING. 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 PREMISES LICENSED FOR ON-PREMISES CONSUMPTION for the purpose of product sales promotion, ~~are permitted~~ under the following conditions:
 - A. A SUPPLIER-SPONSORED CONSUMER SAMPLING HELD AT THE LICENSED PREMISES OF A RETAILER LICENSED FOR ON-PREMISES CONSUMPTION SHALL INCLUDE ONLY THE ALCOHOL BEVERAGES THE RETAILER IS LICENSED TO SELL.
 - B. THE SUPPLIER SHALL ONLY OFFER ITS ALCOHOL BEVERAGE PRODUCT TO CONSUMERS DURING A SUPPLIER-SPONSORED CONSUMER SAMPLING.
 - C. A RETAILER OR SUPPLIER SHALL NOT IMPOSE ANY CHARGE TO THE CONSUMER TO ENTER OR PARTICIPATE IN THE SAMPLING.
 - aD. Product used for sampling must be invoiced by ~~a~~ THE supplier, who is authorized to sell THE 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.~~
 - eE. 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.

- dF. Any remaining product must be returned to the wholesaler, or sold to the retailer at a minimum of the ~~seller's~~ WHOLESALER'S cost.
 - eG. THE SUPPLIER MUST BE PRESENT AND SHALL BE THE PERSON WHO PROVIDES 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 PROVIDING THE SAMPLE.
 - fH. Suppliers may provide or pay for any media announcement of a ~~supplier sponsored~~ 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.
 - I. THE MAXIMUM VOLUME OF AN ALCOHOL BEVERAGE SAMPLE SHALL NOT EXCEED THREE (3) OUNCES OF EITHER FERMENTED MALT BEVERAGES OR MALT LIQUOR, THREE (3) OUNCES OF VINOUS LIQUOR, AND ONE (1) OUNCE OF SPIRITUOUS LIQUOR.
3. OFF-PREMISES GIVEAWAY. A supplier-sponsored consumer ~~give-a-way~~ GIVEAWAY OF SEALED malt liquors LIQUOR OR FERMENTED MALT BEVERAGES MAY BE HELD ~~in retail establishments licensed for off-premises consumption~~ AT A RETAILER'S PREMISES LICENSED FOR OFF-PREMISES CONSUMPTION for the purpose of product sales promotion, ~~are permitted~~ under the following conditions:
- A. A SUPPLIER-SPONSORED CONSUMER GIVEAWAY HELD AT THE LICENSED PREMISES OF A RETAILER LICENSED FOR OFF-PREMISES CONSUMPTION IS LIMITED TO EITHER SEALED MALT LIQUOR OR FERMENTED MALT BEVERAGES, WHICHEVER THE RETAILER IS LICENSED TO SELL.
 - B. THE SUPPLIER SHALL ONLY OFFER ITS MALT LIQUOR OR FERMENTED MALT BEVERAGES PRODUCT TO CONSUMERS DURING A SUPPLIER-SPONSORED CONSUMER GIVEAWAY.
 - C. A RETAILER OR SUPPLIER SHALL NOT IMPOSE ANY CHARGE TO THE CONSUMER TO ENTER OR PARTICIPATE IN THE GIVEAWAY.
 - ad. ~~The supplier must purchase the malt liquors from the retailer at the retail price of the product to be given away, including sales tax.~~ PRODUCT USED FOR THE GIVEAWAY MUST BE INVOICED BY A SUPPLIER, WHO IS AUTHORIZED TO SELL MALT LIQUOR OR FERMENTED MALT BEVERAGE TO LICENSED RETAILERS PURSUANT TO ARTICLE 3 OR 4 OF TITLE 44, AS IF SOLD TO THE RETAILER.
 - b. ~~A retailer/supplier may not impose any charge to the consumer to enter or participate in the give-a-way.~~
 - E. IF ALL PRODUCT LISTED IN THE SALES INVOICE IS GIVEN AWAY AS PERMITTED HEREIN, THE SUPPLIER MAY ISSUE THE RETAILER A CREDIT AGAINST THE ENTIRE AMOUNT OF THE ORIGINAL INVOICE.
 - F. ANY REMAINING PRODUCT MUST BE RETURNED TO THE SUPPLIER, OR SOLD TO THE RETAILER AT A MINIMUM OF THE SUPPLIER'S COST.
 - c. ~~The product purchased must be of the supplier's brands and currently offered by the supplier.~~

- ~~dG.~~ The supplier must be present and shall be the person who gives the ~~product~~ SEALED CONTAINER to consumers. The supplier ~~representative~~ must verify that each consumer is of lawful age prior to ~~giving the item to them~~ GIVING AWAY THE SEALED CONTAINER.
- ~~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.~~
- ~~hH.~~ Suppliers may provide or pay for any media announcement of a ~~supplier sponsored~~ SUPPLIER-SPONSORED consumer ~~give-a-way~~ GIVEAWAY that primarily advertises the product, the location, and the date and time of the ~~give-a-way~~ GIVEAWAY. 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.~~
- I. THE MAXIMUM VOLUME OF A MALT LIQUOR OR FERMENTED MALT BEVERAGES GIVEAWAY SHALL NOT EXCEED TWENTY-SIX (26) OUNCES.

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. "DELIVER" OR "DELIVERING" IS THE ACT OF A WHOLESALER BRINGING AND UNLOADING ITS ALCOHOL BEVERAGE PRODUCT FROM ITS DELIVERY VEHICLE ONTO THE RETAILER'S LICENSED PREMISES OR PERMITTED RETAIL WAREHOUSE STORAGE LOCATION. "DELIVER" OR "DELIVERING" DOES NOT MEAN A WHOLESALER BRINGING AND UNLOADING ITS ALCOHOL BEVERAGE PRODUCT FROM A PERMITTED RETAIL WAREHOUSE STORAGE LOCATION TO A RETAILER'S LICENSED PREMISES.
- B. "STOCK" OR "STOCKING" IS THE ACT OF A SUPPLIER PLACING OR REPLENISHING ITS ALCOHOL BEVERAGE PRODUCT ON ANY SHELF, REFRIGERATOR, OR SIMILAR LOCATION WITHIN THE RETAILER'S LICENSED PREMISES.
- C. "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.
- D. "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 WITHIN THE RETAILER'S LICENSED PREMISES.
- E. "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, WITHIN THE RETAILER'S LICENSED PREMISES, FOR THE PURPOSE OF INCREASED PRODUCT VISIBILITY TO CONSUMERS.

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 OR CONDUCTING AN ON-SITE SALES PROMOTION PURSUANT TO SUBSECTION (B) OF THIS REGULATION, FOR THE PURPOSE OF ALTERING OR INFLUENCING A RETAILER'S PRODUCT SELECTION. A RETAILER IS PROHIBITED FROM REQUIRING A SUPPLIER TO PROVIDE ANY LABOR TO THE RETAILER OR TO CONDUCT AN ON-SITE SALES PROMOTION PURSUANT TO SUBSECTION (B) OF THIS REGULATION, AS AN EXPRESS OR IMPLIED CONDITION OF THE DELIVERY, PURCHASE, OR FUTURE PURCHASES BETWEEN THE SUPPLIER AND THE RETAILER.

- A. A WHOLESALER MAY DELIVER ITS ALCOHOL BEVERAGE PRODUCT AT NO COST TO THE RETAILER.

- 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/OR MERCHANDISING. FOR PURPOSES OF THIS SUBSECTION (L)(2)(B), THE RETAILER'S LICENSED PREMISES SHALL NOT INCLUDE A PERMITTED RETAIL WAREHOUSE STORAGE LOCATION.
 - C. A SUPPLIER MAY CLEAN THE RETAILER'S ALCOHOL BEVERAGE DISPENSING EQUIPMENT AT NO COST TO THE RETAILER. A SUPPLIER MAY ONLY CLEAN THE PORTION OF THE RETAILER'S ALCOHOL BEVERAGE DISPENSING EQUIPMENT DEDICATED TO ITS ALCOHOL BEVERAGE PRODUCT.
 - 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.
- M. PROHIBITION.
- 1. EXCEPT AS OTHERWISE PROVIDED BY THE COLORADO LIQUOR CODE, COLORADO BEER CODE, OR COLORADO LIQUOR RULES, A SUPPLIER IS PROHIBITED FROM DISTURBING ANOTHER SUPPLIER'S ALCOHOL BEVERAGE PRODUCT.

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)(I)(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,~~ RETAILER 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 DELIVERY ADDRESS ~~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~~ OR 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 AND 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
 - CC. 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 RETAILER 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 RETAILER 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.

~~GB. 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.