



STATE OF  
COLORADO

LED\_Rulemaking - DOR, DOR <dor\_led\_rulemaking@state.co.us>

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## Updated Substance Use Recovery rule recommendations and examples

1 message

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Mon, Sep 2, 2024 at 7:07 PM

To: "LED\_Rulemaking - DOR, DOR" <dor\_led\_rulemaking@state.co.us>



Additions and changes to alcohol merchandising ...



Substance Use Recovery Examples 9-2-2024.pdf

Added examples of commingled products to the powerpoint.  
Small changes to rule text regarding commingling - in red type.

Thanks

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Find archived content at [AlanPLewis.com](http://AlanPLewis.com)

	<b><u>DOUBLE UNDERLINE ARE ADDITIONS TO CURRENT RULES</u></b>		
1	<b>EXISTING RULE</b>	<b>PROPOSED RULE</b>	<b>COMMENTS</b>
3	Regulation 47-950. Display of Alcohol Beverages Immediately Adjacent to Soft Drinks, Fruit Juices, Bottled Water, Candy, or Toys.	Regulation 47-950. Display of Alcohol Beverages: 1. Immediately Adjacent to <del>Soft Drinks, Fruit Juices, Bottled Water, Candy, or Toys</del> <u>products intended to appeal to children or</u> 2. <u>Merchandised using Eminent Placement.</u>	Generalizing the set of children's goods to include things like hair ties and bows, lunchboxes, crayons, coloring books, costumes, birthday goods, books, pumpkin kits, etc.
4			
5	<b>Basis and Purpose.</b>	<b>Basis and Purpose.</b>	
6	The statutory authority for this regulation includes but is not limited to subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(R), C.R.S. The purpose of this regulation is to prevent consumer confusion regarding whether a beverage contains alcohol and to help prevent sales of alcohol beverages to persons under 21 years of age.	The statutory authority for this regulation includes but is not limited to subsections 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(R), C.R.S. The purpose of this regulation is: 1. to prevent <del>consumer</del> <u>shopper</u> confusion regarding whether a beverage contains alcohol and <u>2. to help prevent sales of alcohol beverages to persons under 21 years of age and</u> <u>2. to reduce the likelihood of unplanned impulse purchases or accidental purchases of alcohol products.</u>	Need to use "shopper" because the consumer may be watching TV at home waiting for the groceries.
7			

8	A. Definition.	A. Definitions.	
9			
10	<p>1. As used in this regulation, "immediately adjacent" means directly touching or immediately bordering one another from above, below, or the side, for example, on a shelf directly above or below another shelf; or on a shelf, cooler shelf, or display (including permanent or temporary displays) that is adjacent to another shelf, cooler shelf, or display shelving units on the opposite side of an aisle.</p>	<p>1. As used in this regulation:</p> <p>(a) "Immediately Adjacent" means directly touching or immediately bordering one another from above, below, or the side. <u>For example, placed on a shelf directly above or below another shelf; or on a shelf, cooler shelf, or case display (including permanent or temporary displays) that is adjacent to another shelf, cooler shelf, case stack, or other retail merchandising device, or display shelving units on the opposite side of an aisle.</u></p> <p>(b) "Retail Merchandising" means the methods by which retailers <u>make merchandise available to shoppers in stores including display devices, choice of location, proximity to shopping pathways, shelf placement, placement near other products, promotional placards, and audio/visual enhancements to product appearance and perception.</u></p>	<p>Why opposite side of the aisle? How wide is this aisle? Anywhere on the shelves on the opposite side? What if it is a 50 foot aisle?</p> <p>Must exempt small footprint stores</p>
11		<p><u>(c) "Eminent Placement" means the use of merchandising methods for alcohol products that:</u></p> <p><u>i. locate products where customers wait for customer service, pharmacy, or other in-store services, OR</u></p> <p><u>i. locate products at the entrance to checkout lanes, shopper ingress pathways, or shopper egress pathways, OR</u></p> <p><u>iii. impede or redirect the flow of traffic within aisles formed by permanent fixtures, OR</u></p> <p><u>iv. obscure a shopper's view of the primary display panel of other products in the immediate area.</u></p>	<p>Eminent placement is a useful term to capture how a retailer will place alcohol products in the direct path of shoppers coming and going, or standing at the cash register waiting to check out, or passing through the store aisles. It describes the essence of the problem to be solved.</p>

12	A. Definition.	A. Definitions. (cont'd)	
13		<u>(d) "Permanent Display" means a retail display that:</u>	
14		<u>--is placed to ensure the unobstructed movement of employees, stockers, and shoppers through ingress routes, egress routes, aisles, and waiting areas; AND</u>	
15		<u>-- is a fixture mechanically attached to the retail sales floor; OR</u>	
16		<u>-- is a fixture mechanically attached to a fixture mechanically attached to the retail sales floor OR</u>	This is intentional see power point with images of display methods.
17		<u>-- a fixture attached to a constructed wall on the periphery of the retail sales floor or within the retail sales floor OR</u>	
18		<u>-- an unattached merchandising device located in the same position within the store and moved only for cleaning, maintenance, or remodeling OR</u>	Includes such devices as attached hanging shelves, attached end caps, attached side displays attached to end caps, attached floating shelves that do not contact floor, gondolas and islands
19		<u>-- is a visually demarcated area used to store and/or display alcohol products on the sales floor, whose location does not change even though different alcohol products may be rotated through the location.</u>	includes pallets/stacks placed in wide aisles, cases stored against walls.
20			
21		<u>(e) "Temporary Display" means a retail merchandising device that:</u>	The match checks out on this, stay with me!
22		<u>-- uses Eminent Placement as defined in this regulation, AND</u>	
23		<u>-- is not a Permanent Display</u>	
24			
25			
26			
27			
28		<u>(f) "Small Business" means a retail food establishment licensed by the Colorado Department of Health and Environment with retail floor space less than 15,000 square feet.</u>	This is an existing database created and maintained by CDPHE
29			
30		<u>(g) "Very Small Business" means a grocery retail location with:</u> <u>'-- (i) less than 5,000 square feet of selling area or</u>	Would require an inspector to estimate square footage.
31			



32	EXISTING RULE	PROPOSED RULE	COMMENTS
34	<b>B. Alcohol Beverages Immediately Adjacent to Soft Drinks, Fruit Juices, Bottled Water, Candy, or Toys.</b>	<b>B. Alcohol Beverages Immediately Adjacent to <del>Soft Drinks, Fruit Juices, Bottled Water, Candy, or Toys.</del> <u>products intended to appeal to children.</u></b>	
35	Any retail liquor store, liquor licensed drug store, fermented malt beverage and wine retailer, or fermented malt beverage on/off premises licensee that locates, places, or displays (including permanent or temporary displays) alcohol beverages immediately adjacent to soft drinks, fruit juices, bottled water, candy, or toys, shall:	Any <del>retail liquor store,</del> liquor licensed drug store, fermented malt beverage and wine retailer, or fermented malt beverage on/off premises licensee that <del>locates, places, or displays (including permanent or temporary displays)</del> <u>merchandises</u> alcohol <u>products</u> <del>beverages</del> immediately adjacent to <del>soft drinks, fruit juices, bottled water, candy, or toys,</del> products intended to appeal to children, shall:	Retail liquor stores are readily avoidable by the recovery community, and their practices are entirely different than food stores.  I think the word beverages understates the gravity of alcohol use by individuals with substance use disorders. Product is clearer.
36			
37			
38	B. 1. Place signage that is clearly visible to consumers on any such shelves, cooler shelves, or displays (including permanent or temporary displays) that contains alcohol beverages and is immediately adjacent to soft drinks, fruit juices, bottled water, candy, or toys. This signage must:	B. 1. Place signage that is clearly visible to <del>consumers</del> <u>shoppers</u> on any <del>such</del> <u>retail merchandising device</u> <del>shelves, cooler shelves, or displays (including permanent or temporary displays)</del> that contains <u>displays</u> alcohol beverages and is immediately adjacent to <del>soft drinks, fruit juices, bottled water, candy, or toys,</del> <u>products intended to appeal to children.</u> This signage must:	
39			
40			
41	a. Be at least 8.5 x 5.5 inches or 4.2 x 11 inches, depending on the orientation of the sign;	a. Be at least 8.5 x 5.5 inches or 4.2 x 11 inches, depending on the orientation of the sign;	
42			
43	b. Use a font size of at least 40 points in black ink; and	b. Use a font size of at least 40 points in black ink; and	
44			
45	c. State “THESE PRODUCTS ARE ALCOHOL BEVERAGES AVAILABLE FOR SALE ONLY TO PERSONS WHO ARE 21 YEARS OF AGE AND OLDER.”	c. State “THESE PRODUCTS ARE ALCOHOL BEVERAGES AVAILABLE FOR SALE ONLY TO PERSONS WHO ARE 21 YEARS OF AGE AND OLDER.”	
46			
47	B. 2. Signage may contain only retailer store branding or logos, but may not contain branding or logos of any alcohol beverage brand, manufacturer, or wholesaler.	B. 2. Signage may contain only retailer store branding or logos, but may not contain branding or logos of any alcohol beverage brand, manufacturer, or wholesaler.	
48			

49	EXISTING RULE	PROPOSED NEW SECTION C	COMMENTS
51		<u>C. Alcohol Beverages Merchandised using Eminent Placement.</u>	This section applies the same stipulations to Eminent Placement as is applied to children's products. Since Eminent Placement defines all the methods of inducement to purchase alcohol, the same restrictions/requirement should apply. This fundamentally reduces the impact of both temporary and permanent displays.
52		<u>A retail liquor store, liquor licensed drug store, fermented malt beverage and wine retailer, or fermented malt beverage on/off premises licensee that uses Eminent Placement of alcohol beverages, shall:</u>	There is no reason to write rules for retail liquor stores. The recovery community has stated that it can avoid these stores altogether and they were never intended to be part of the grocery workgroup. Note these stores display the disclosure "LIQUORS" in red letters above the entrance.
53			
54		B. 1. Place signage that is clearly visible to <del>consumers</del> <u>shoppers</u> on any <del>such retail merchandising device shelves, cooler shelves, or displays (including permanent or temporary displays)</del> that contains <u>displays</u> alcohol beverages and is immediately adjacent to <del>soft drinks, fruit juices, bottled water, candy, or toys,</del> <u>products intended to appeal to children.</u>	
55			
56		C. 1. a. Be at least 8.5 x 5.5 inches or 4.2 x 11 inches, depending on the orientation of the sign;	
57			
58		<u>C. 1. b. Use a font size of at least 40 points printed in black ink on a white or yellow background; and</u>	
59			
60		c. State "THESE PRODUCTS ARE ALCOHOL BEVERAGES AVAILABLE FOR SALE ONLY TO PERSONS WHO ARE 21 YEARS OF AGE AND OLDER."	
61			
62		C. 2. Signage may contain only retailer store branding or logos, but may not contain branding or logos of any alcohol beverage brand, manufacturer, or wholesaler.	
63			

64	EXISTING RULE	PROPOSED NEW SECTION D - EXEMPT SMALL BUSINESS	COMMENTS
66		<u>D. Exemptions for Small Business and Very Small Business</u>	
67			
68		Using the definitions above:	
69		<u>A. 1. A Small Business is exempt from applicable restrictions on Retail Merchandising of alcohol beverages if:</u>	The cost of retrofitting store layouts and utility connections is extraordinarily high compared to the revenue and profit generated by very small businesses.
70		<u>A. 1. a. relocating a cooler connected to electrical service and drainage would cause economic hardship or business disruption.</u>	Many grocery stores have very limited electric and drain infrastructure available to move displays, even when space is available. It's also difficult to install or relocate.
71		<u>A. 1. b. insufficient space exists to relocate a display device</u>	
72		<u>A. 1. c. the selected location of the alcohol produce merchandising is required to prevent theft or in-store consumption.</u>  <u>Provided that</u>	Many Small Businesses depend on human observation to reduce losses, and cannot survive excessive theft or in-store-consumption.
73		<u>A. 1. d. nothing in this section exempts a Small Business from compliance with advertising and warning sign rules.</u>	
74			
75		<u>A. 2. A Very Small Business is exempt from restrictions on Retail Merchandising of alcohol beverages if:</u>	
76		<u>A. 2. a. relocating a cooler installed connected to electrical service and drainage would cause economic hardship or business disruption.</u>	This section appears redundant, but certain restrictions on Small Business may not be applicable to Very Small Business, so this section is reserved for those special exemptions.
77		<u>A. 2. b. insufficient space exists to relocate a display</u>	
78		<u>A. 2. c. selected location of alcohol is required to prevent theft or in-store consumption.</u> <u>Provided that</u>	
79		<u>A. 2. d. nothing in this section exempts a Very Small Business from compliance with advertising and warning sign rules.</u>	
80			

81	EXISTING RULE		NEW SECTION E - EXEMPT LICENSED RETAIL LIQUOR STORES	COMMENTS
82				Exempt because the recovery community agrees they can just avoid those stores altogether.
83				Note these stores have the word LIQUOR in bright lights above their doors.
84				
85				

86	EXISTING RULE	Restatement of Prohibited Acts	COMMENTS
87		Retail merchandising methods used for alcohol products shall not:	This section is to clarify the intent
88		-- use audio or video marketing messages	
89		-- use flashing electronic placards including price tags	
90		-- offer instant promotional discount coupons on displays	
91		-- offer instant rebates or discounts through electronic means	
92		-- place alcohol product within, or at the entrance to, cashier lanes or self-checkout areas	Endcaps across from but facing checkout areas are ubiquitous. Alcohol products placed at checkouts is very rare.
93		-- place alcohol where customers wait for customer service, pharmacy, or other in-store services.	Obvious, but it still is happening
94			
95		<b>Alcohol products merchandised using Eminent Placement in Temporary Displays shall not:</b>	
95		-- be placed in a temporary display immediately adjacent to another temporary display containing food products or non-alcohol products.	avoid creating confusion
96		-- be commingled with non-alcohol products in the same temporary display	avoid creating confusion
97		-- be commingled with food products in the same temporary display	Case stacks are fine, don't adorn it with Cheetos Placing case stacks of food next to cases of alcohol is ok.
98		-- be placed in a temporary display immediately adjacent to products intended to appeal to children	Obvious, but it is still happening
99		-- be offered for sale in containers under 200ml .	So as to not entice or induce impulse purchases
100		-- be placed in a temporary display <b>immediately adjacent</b> to non-alcoholic products that may cause shopper confusion due to similar branding and packaging.	Don't place hard spritzer near regular spritzer. Don't place NA beer next to ABV beer. Don't place NA kombucha next to hard kombucha.
101			

102	EXISTING RULE	Restatement of Prohibited Acts	COMMENTS
103		<b>Alcohol products shall not:</b>	
104		-- be displayed commingled with non-alcoholic beverages or food products	<p>Not on same shelf, preferably not in same vertical shelf section. Alcohol labeled 21+.</p> <p>NA mixers are not typically displayed with alcohol products in food stores.</p> <p><b>Good example of why retail liquor stores should be exempt, since their practices are so different.</b></p>
105		<b>-- be merchandised except in a permanent display or temporary display.</b>	Note-Twisted Tea does not have an NA analog.
106		<b>Alcohol products using Eminent Placement and merchandised on permanent displays shall not:</b>	Yes, Eminent placement can be both temporary and permanent.
107		-- be placed <b>immediately adjacent</b> to non-alcoholic products that may cause shopper confusion due to same <b>name</b> branding and packaging.	Hard Topo Chico, Hard Spindrift, Etc. Put the NA versions well away from the alcohol products that use same branding.
108		-- be placed <b>immediately adjacent</b> to products intended to appeal to children unless 1) physical divider and 2) 21+ notice	Here we employ the method of placing a physical divider between alcohol and children's products, plus 21+ notice. The number of products that are intended to appeal to children in a supermarket is too long to list.



**Retail merchandising,  
eminent placement,  
temporary displays, floor  
displays, and  
'immediately adjacent':  
examples of applications  
of LED alcohol rules.**

**Submitted to the  
Substance Use Recovery  
workgroup.**

**September 2, 2024**

**Alan Lewis**





Alcohol product floor storage/display against wall in large supermarket.  
Note placement next to milk.





**Alcohol product cooler spanning entire wall of large supermarket.  
Temporary floor storage in front.**



Alcohol product coolers next to case drop of candy.

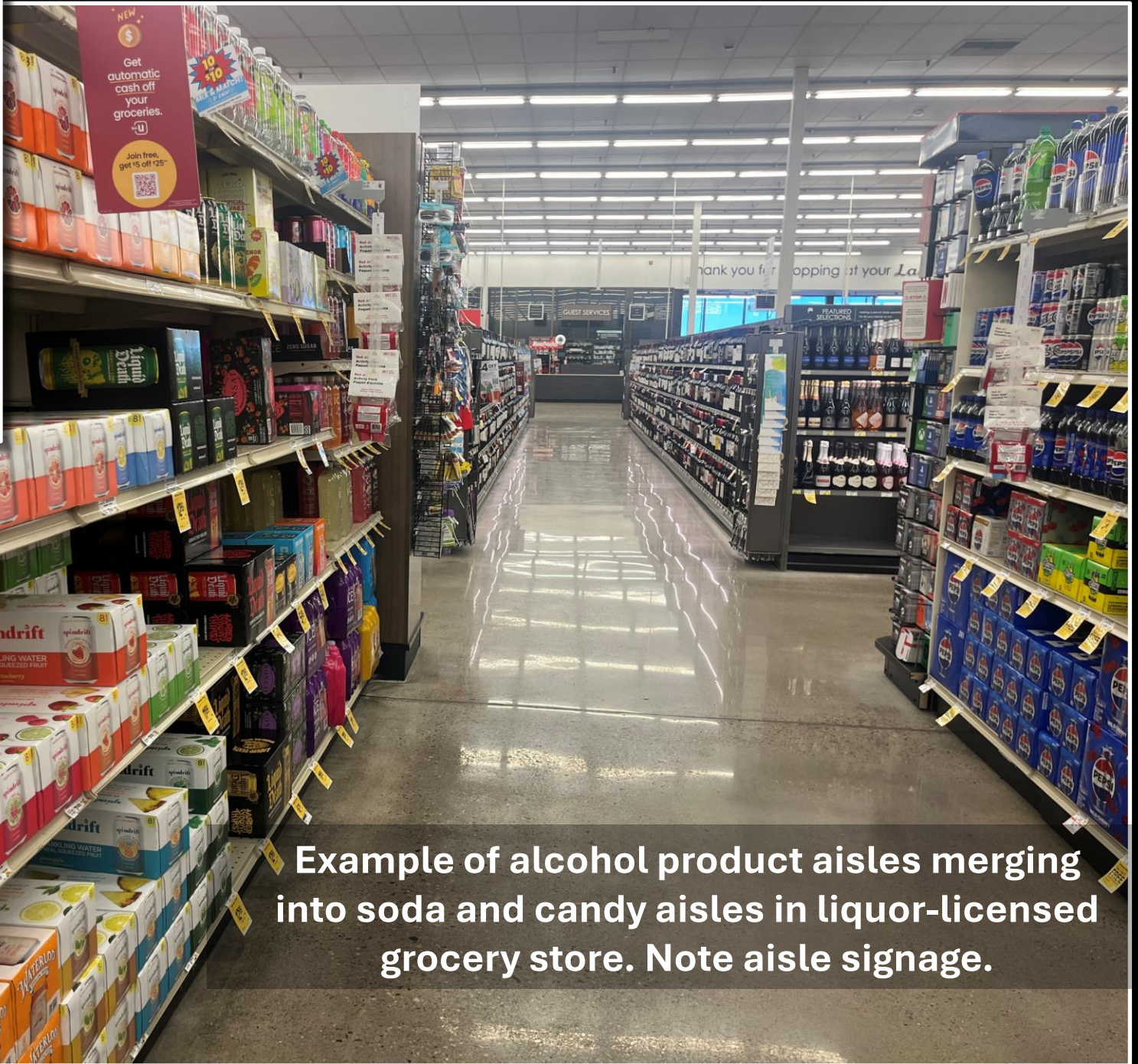






**Example of a temporary wall formed by various display devices used to create lineup corral in front of customer service counter against wall. This should be considered a shopper waiting area where eminent placement is not allowed.**





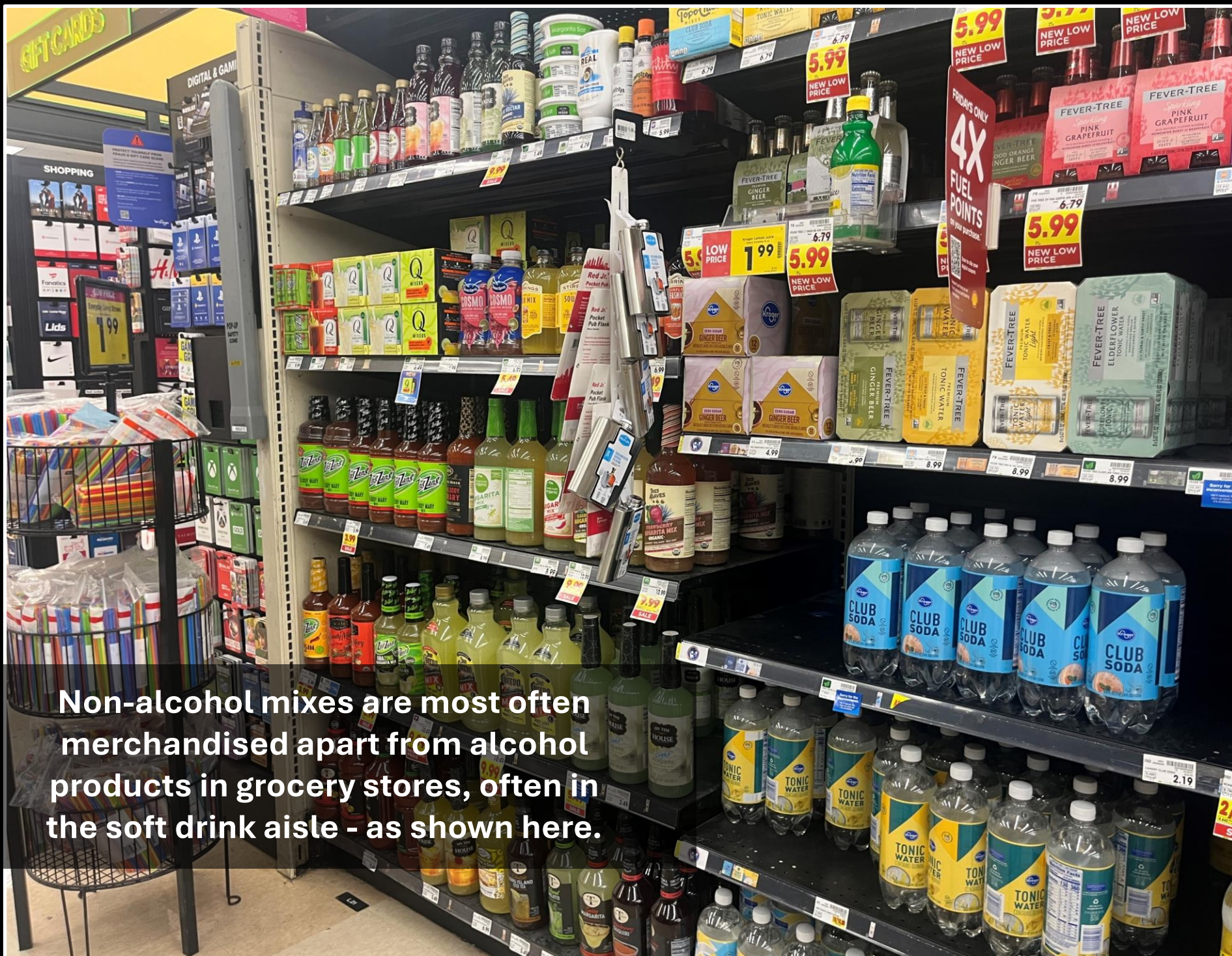
Example of alcohol product aisles merging into soda and candy aisles in liquor-licensed grocery store. Note aisle signage.



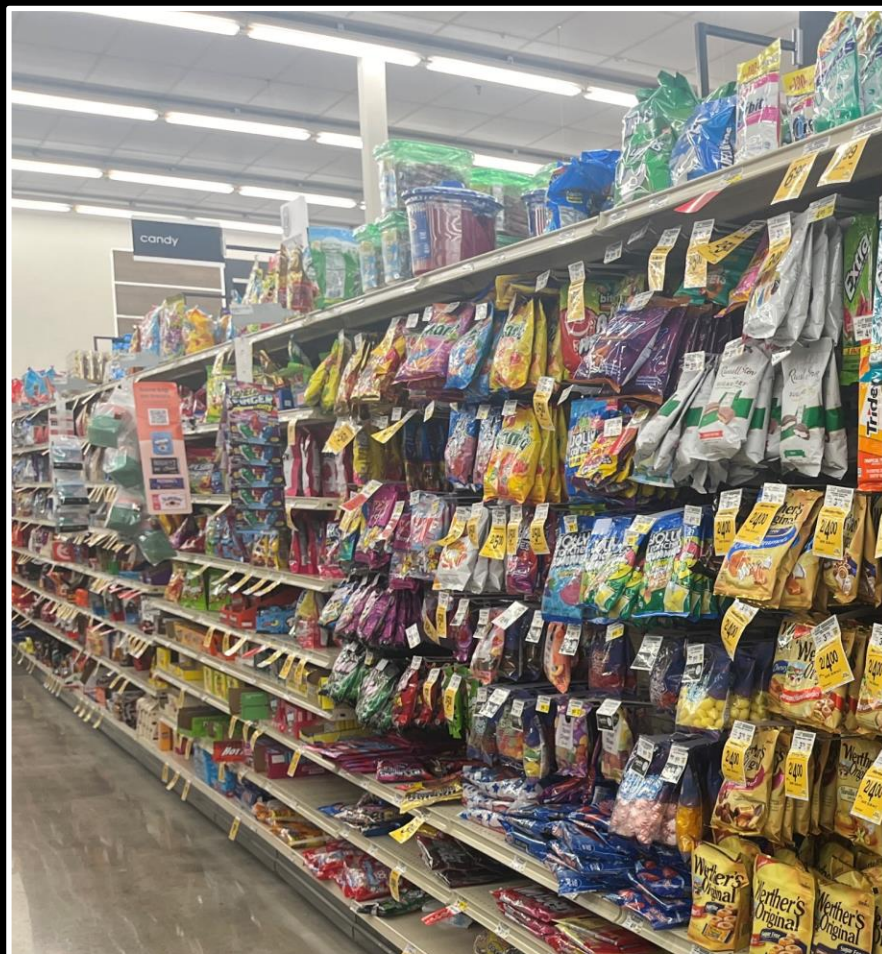


**Non-alcohol mixes are most often merchandised apart from alcohol products in grocery stores, often in the soft drink aisle or as shown here.**







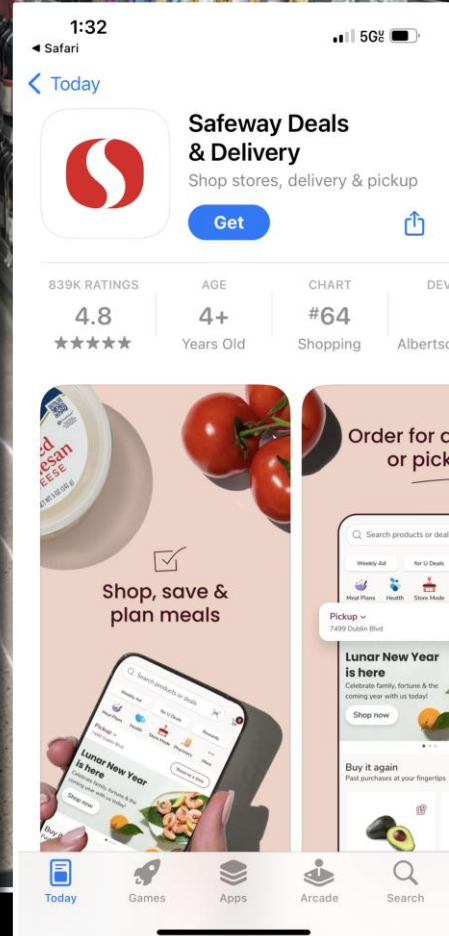


**Example of alcohol products  
merchandised immediately adjacent  
to candy without compliant physical  
barrier or 21+ notice in liquor-licensed  
grocery store.**





Example of shopper inducement to make impulse purchase of alcohol product using visual and electronic media











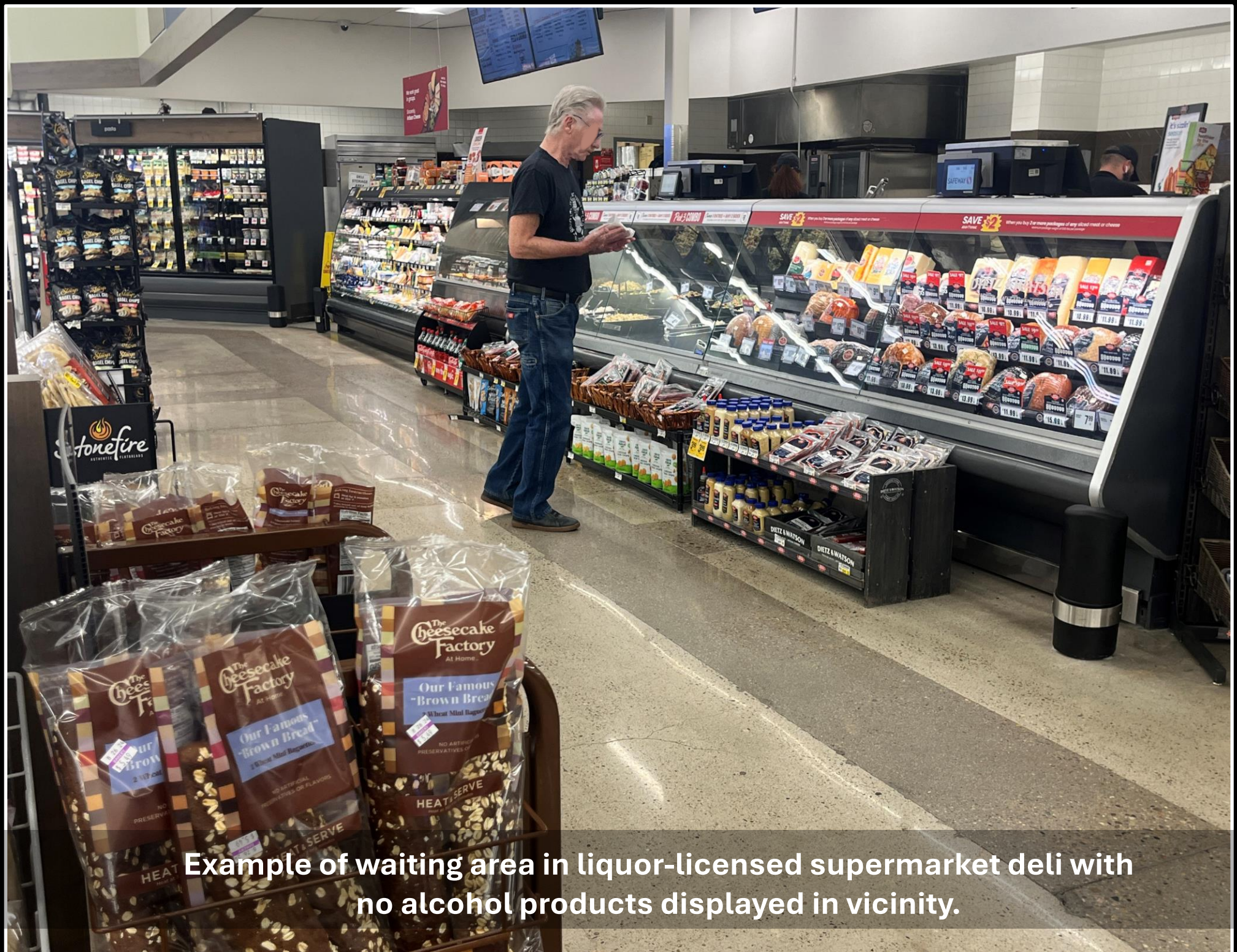
**Example of small-sized alcohol products under 200 ml merchandised on a permanent display in a clearly demarcated section.**





**Temporary island display with food commingled in liquor-licensed supermarket.**





Example of waiting area in liquor-licensed supermarket deli with no alcohol products displayed in vicinity.





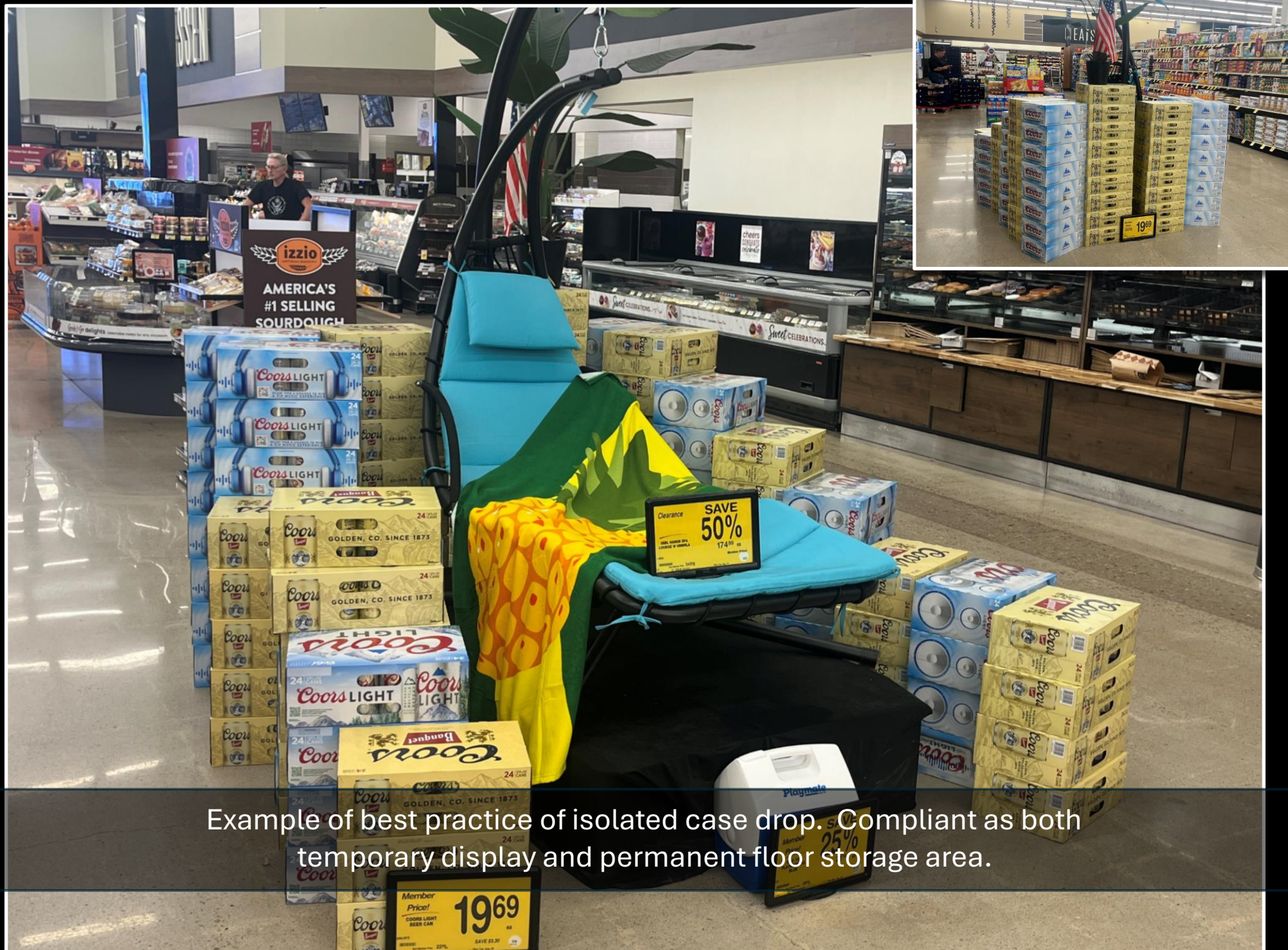
**Example of waiting area in a supermarket deli area with alcohol products displayed. Note no 12+ warning.**





Compliant case drop floor storage/display.





Example of best practice of isolated case drop. Compliant as both temporary display and permanent floor storage area.





Example of eminent placement  
a temporary display using retail  
merchandising inducement  
techniques to prompt impulse  
purchase through lower price  
point of smaller container  
under 200 ml.  
Note no 21+ signage.

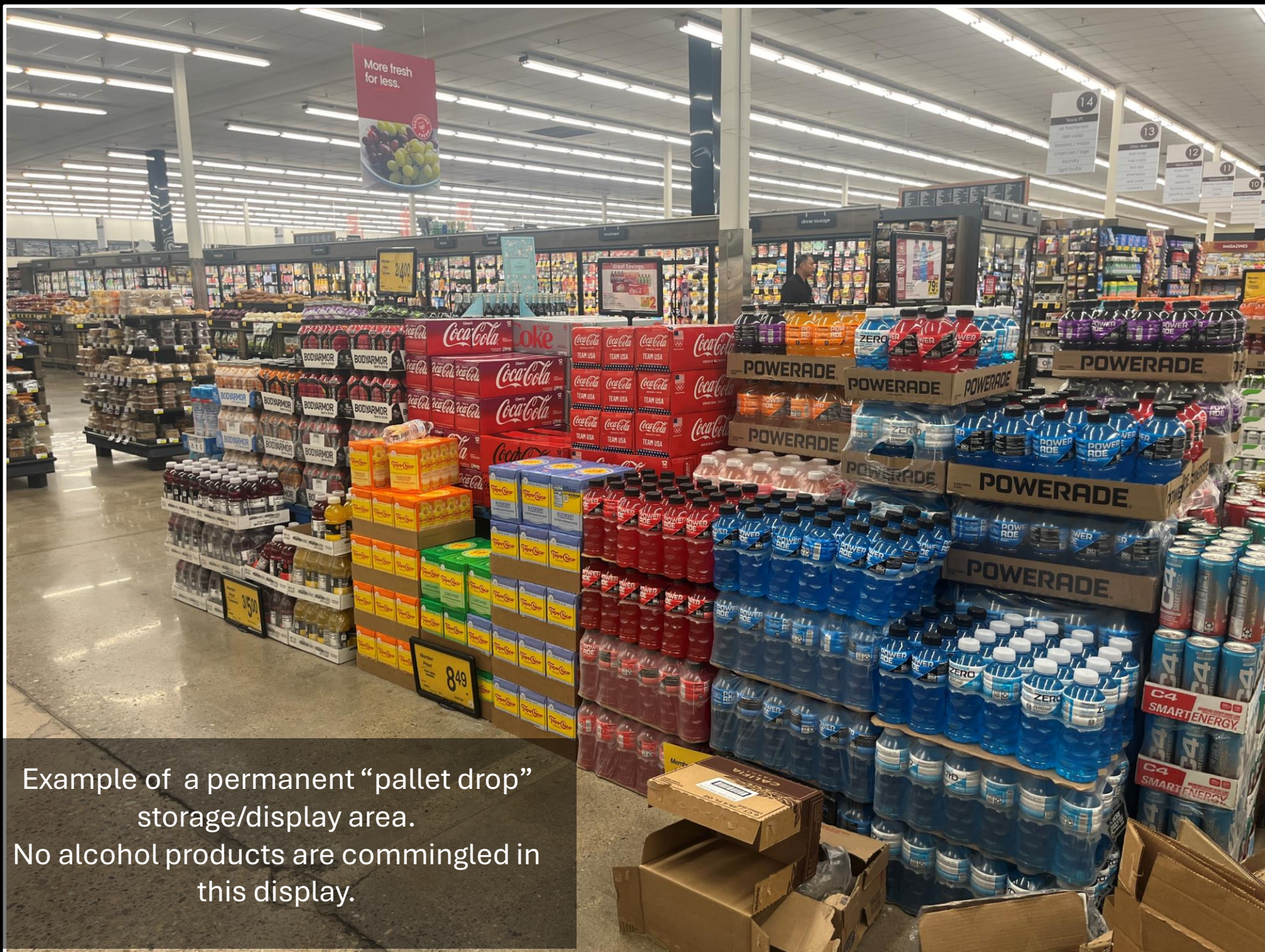






Example of best practice of leaving pharmacy, customer service, and other waiting areas clear of alcohol products.





Example of a permanent “pallet drop” storage/display area. No alcohol products are commingled in this display.





Example of “convenience”.  
Note the lack of 21+ notice.





Example of a very large alcohol product displays in deli area. This use of eminent placement may obscure the view of nearby products (deli area) and thus may be noncompliant. The area is also not visually demarcated as permanent floor storage / display. Note the lack of 21+ notice.





Example of typical alcohol product permanent displays in large a grocery store.









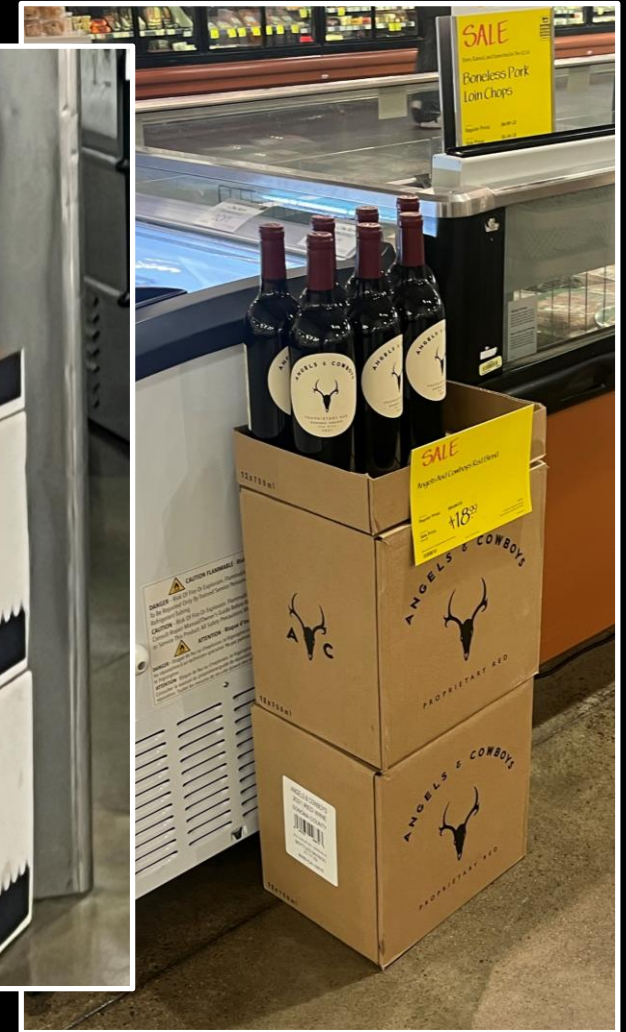
Example of excessive number of temporary displays.





Examples of typical temporary alcohol product displays in deli area. Note the lack of 21+ notice.





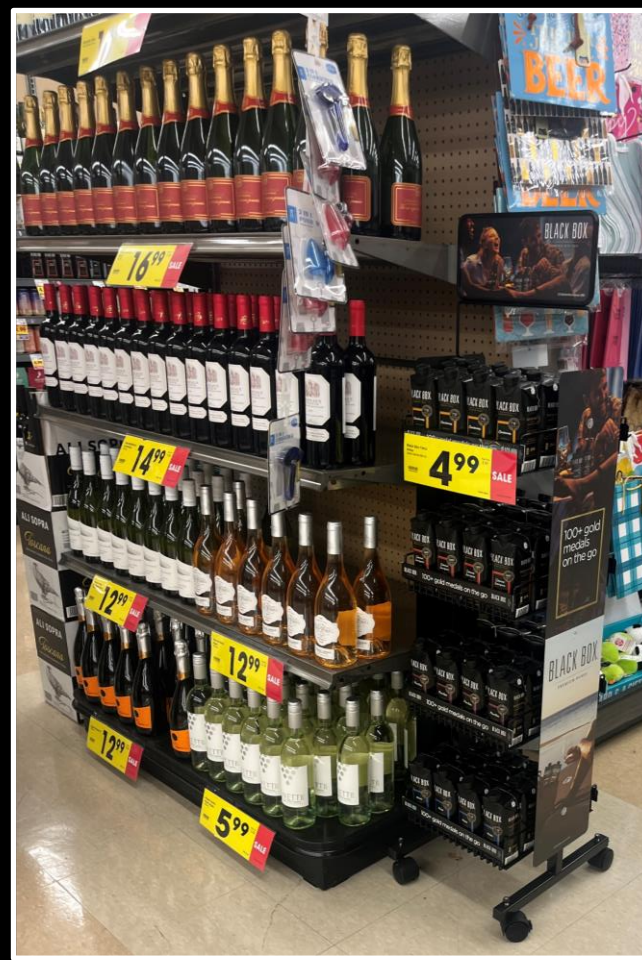
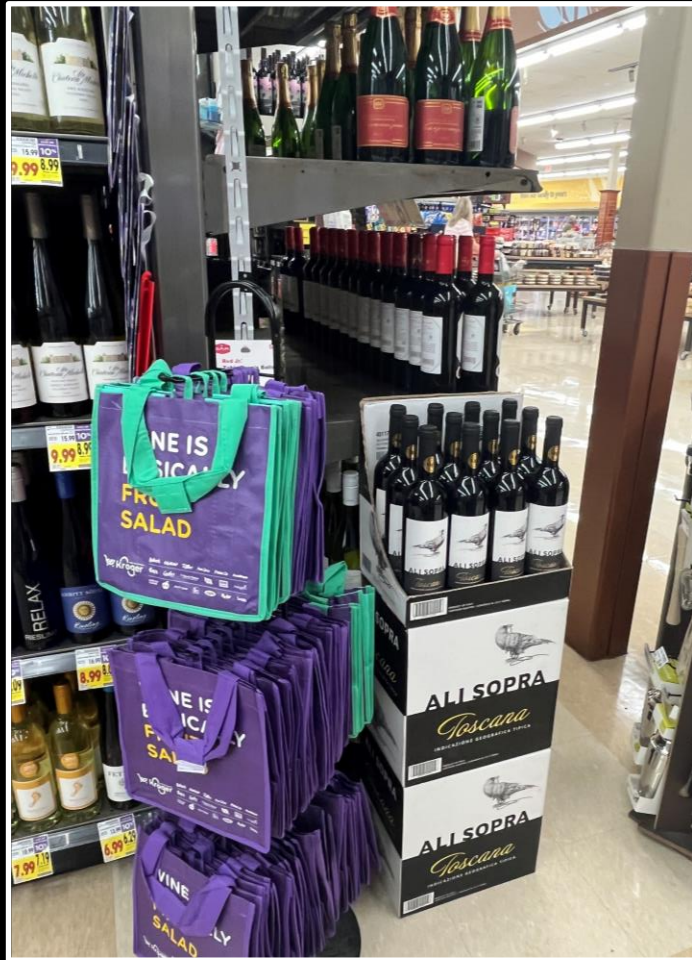
**Examples of typical temporary alcohol product displays.  
Note the lack of 21+ notice.**





Example of eminent placement of a temporary display in shopper ingress/egress route.





**Examples of typical temporary alcohol product displays. Displays do not obscure view of nearby product labels. Note the middle image shows an individual serving size at a lower price point to induce impulse purchase. Note temporary displays are not adjacent to temporary food displays. Note the lack of 21+ notice.**





Above, example of typical alcohol product display that is permanently placed although not attached to floor. Alcohol product is not commingled with food product or non-alcohol product.

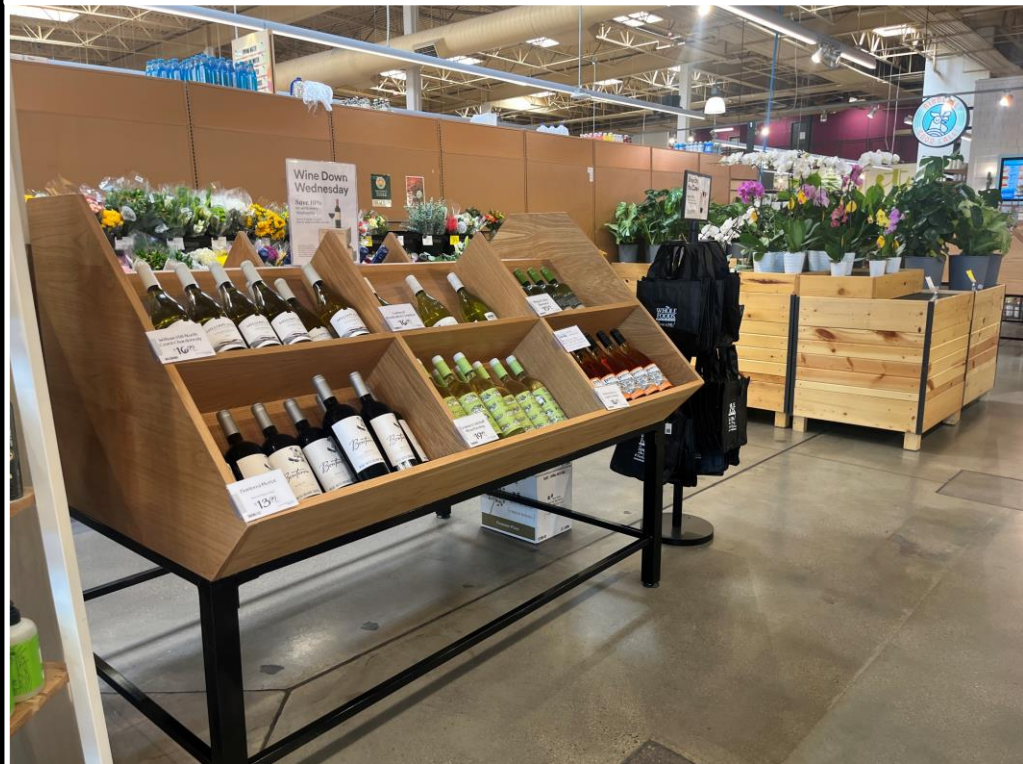
The stacked cases in both photos are temporary displays. Note the lack of 21+ notice.



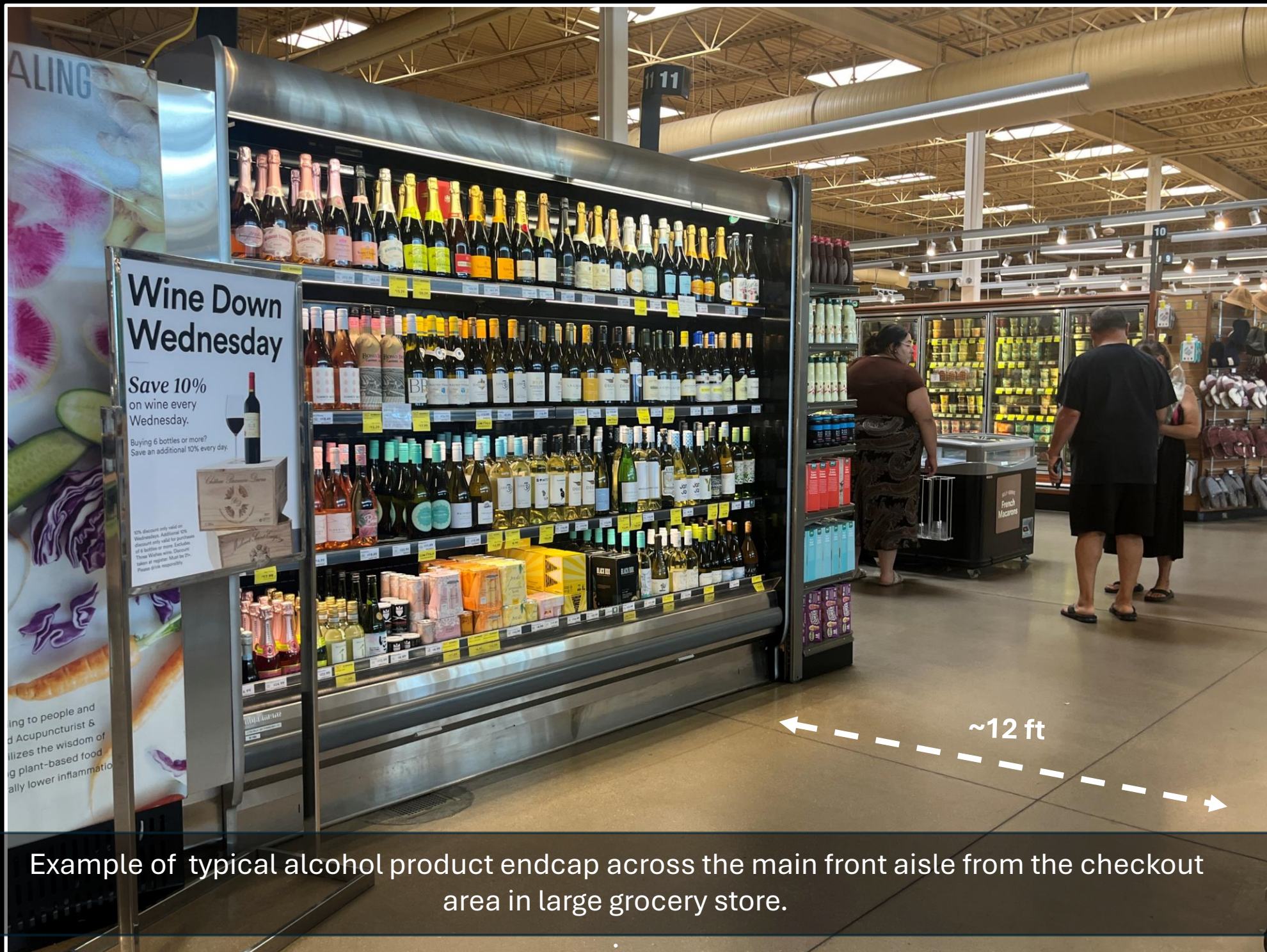




Example of typical alcohol product display that is permanently placed although not attached to floor. Alcohol product is not commingled with food product or non-alcohol product.







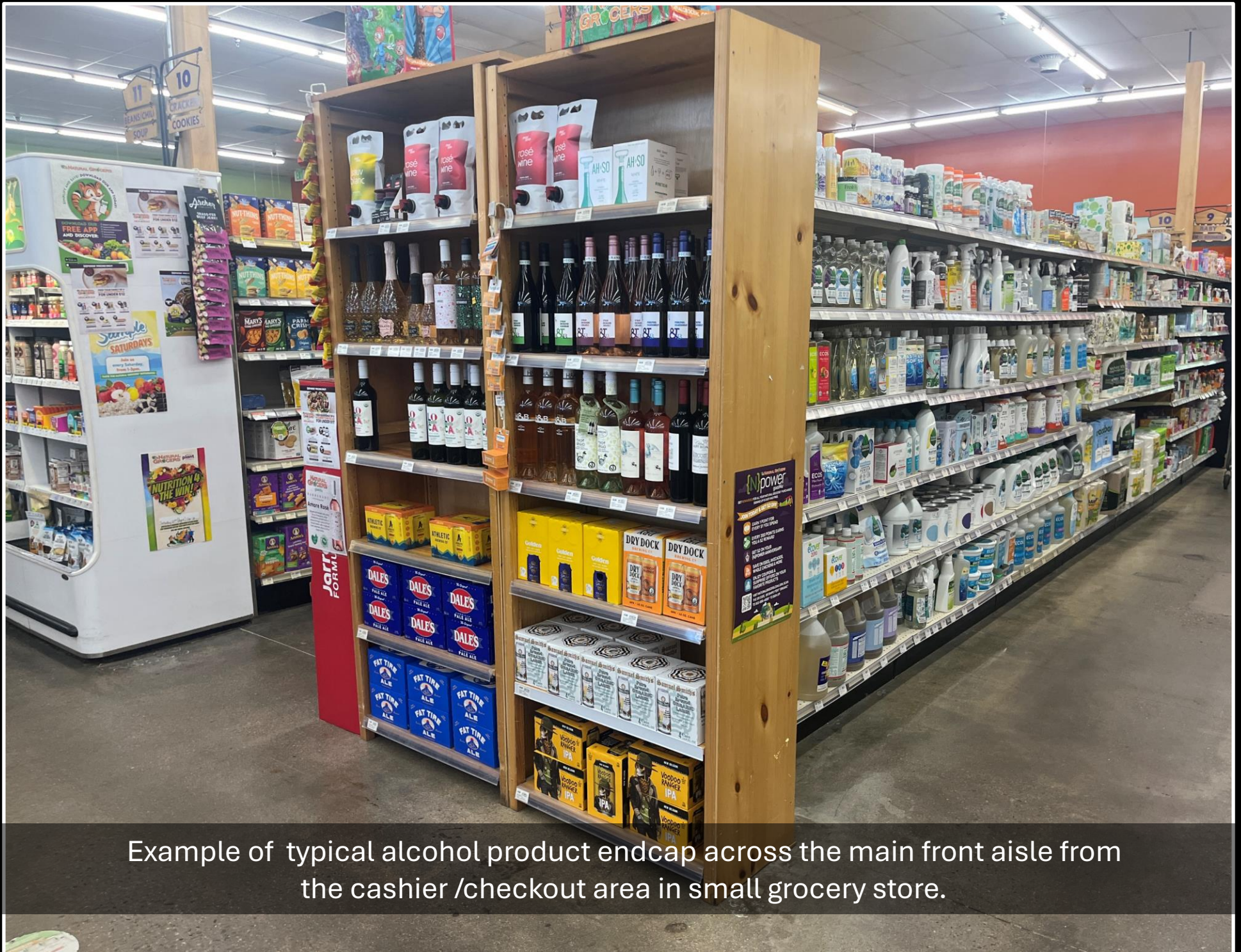
Example of typical alcohol product endcap across the main front aisle from the checkout area in large grocery store.





Example of typical alcohol product endcap across the main front aisle from the cashier / checkout area in large grocery store.





Example of typical alcohol product endcap across the main front aisle from the cashier /checkout area in small grocery store.





Example of typical alcohol product endcap across the main front aisle from the cashier /checkout area in small grocery store.



Example of noncompliant use of eminent placement at entrance to self-checkout corral at large grocery store. Note lack of 21+ notice. Note use of single serving size.

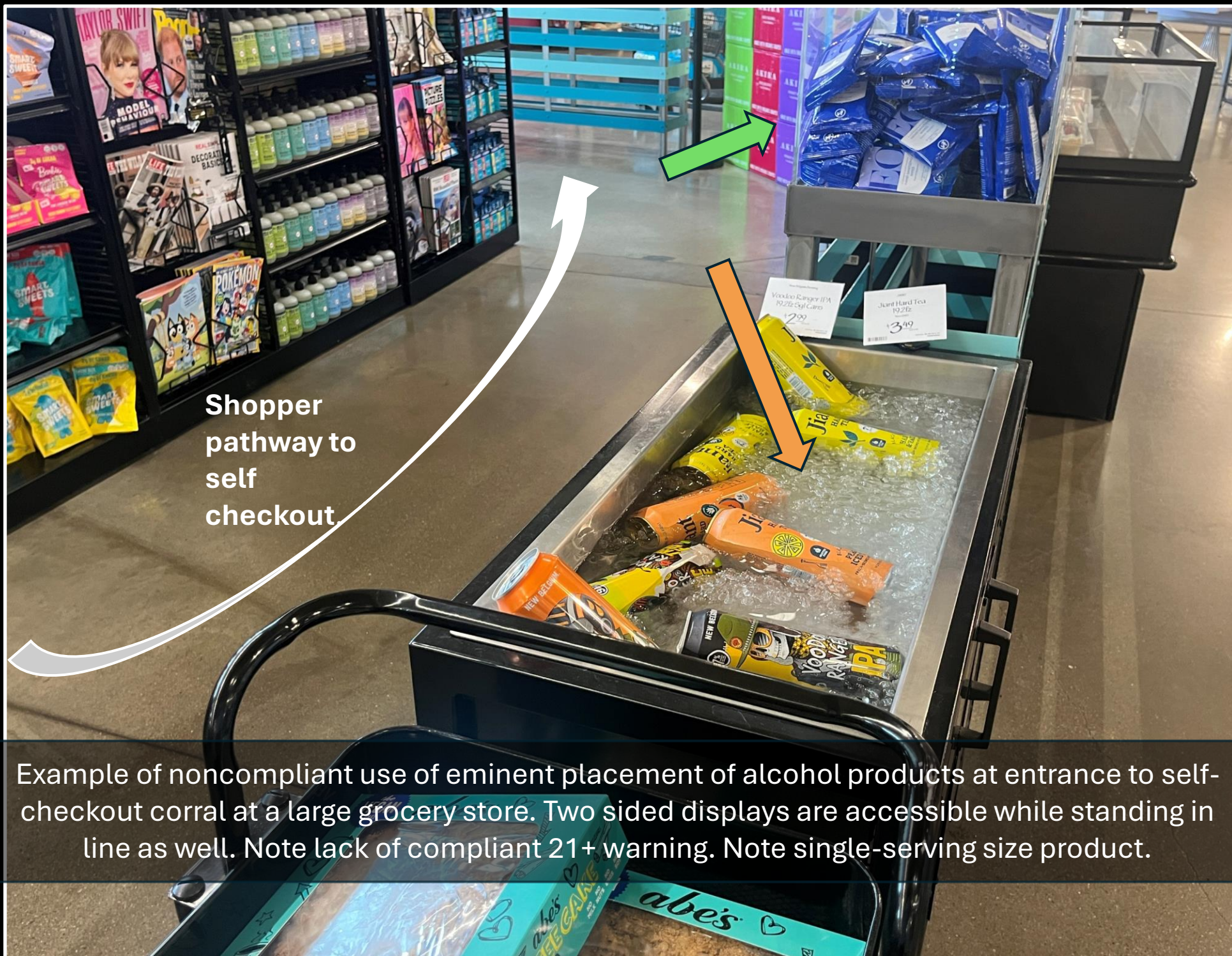






Example of noncompliant use of eminent placement at entrance to self-checkout corral at large grocery store. Two-sided displays are also accessible while standing in line. Note lack of 21+ notice.





Shopper  
pathway to  
self  
checkout.

Example of noncompliant use of eminent placement of alcohol products at entrance to self-checkout corral at a large grocery store. Two sided displays are accessible while standing in line as well. Note lack of compliant 21+ warning. Note single-serving size product.





Example of noncompliant eminent placement of alcohol product at the entrance to checkout lane.





Example of typical alcohol product endcap facing the main front aisle near cashier / checkout area.





Examples of compliant permanent fixtures that may also inhibit shopper movement through store.





Examples of compliant permanent fixtures that may inhibit shopper movement through store.



**Permanent display shelving  
(affixed to permanent  
display that is affixed to  
floor) -- above temporary  
floor display.**







Example of compliant non-alcohol product case stacks. Eminent placement shall not be used to merchandise alcohol products whose brand identity is also used to market non-alcohol products.







**Example of typical temporary floor displays in large supermarkets where alcohol products are merchandised near like non-alcohol products.**

**Eminent placement shall not be used to merchandise alcohol products whose brand identity is also used to market non-alcohol products.**



**“SPINDRIFT SPIKED”**



Example of compliant storage display located against permanent wall. Note the inducement to purchase on the wall poster.



Left end of 80-foot cooler section with alcohol products at large supermarket. Additional displays placed against wall.







Examples of typical temporary floor displays in large supermarkets







Example of proactive  
voluntary non-alcohol  
label claim







Example of compliant display of individual alcohol products containing less than 200 ml on a permanent display.







Example of compliant display of small-serving alcohol products containing less than 200 ml in a permanent display.





Example of compliant merchandising in a permanent display of a product whose brand identity may also be used to market non-alcohol products.



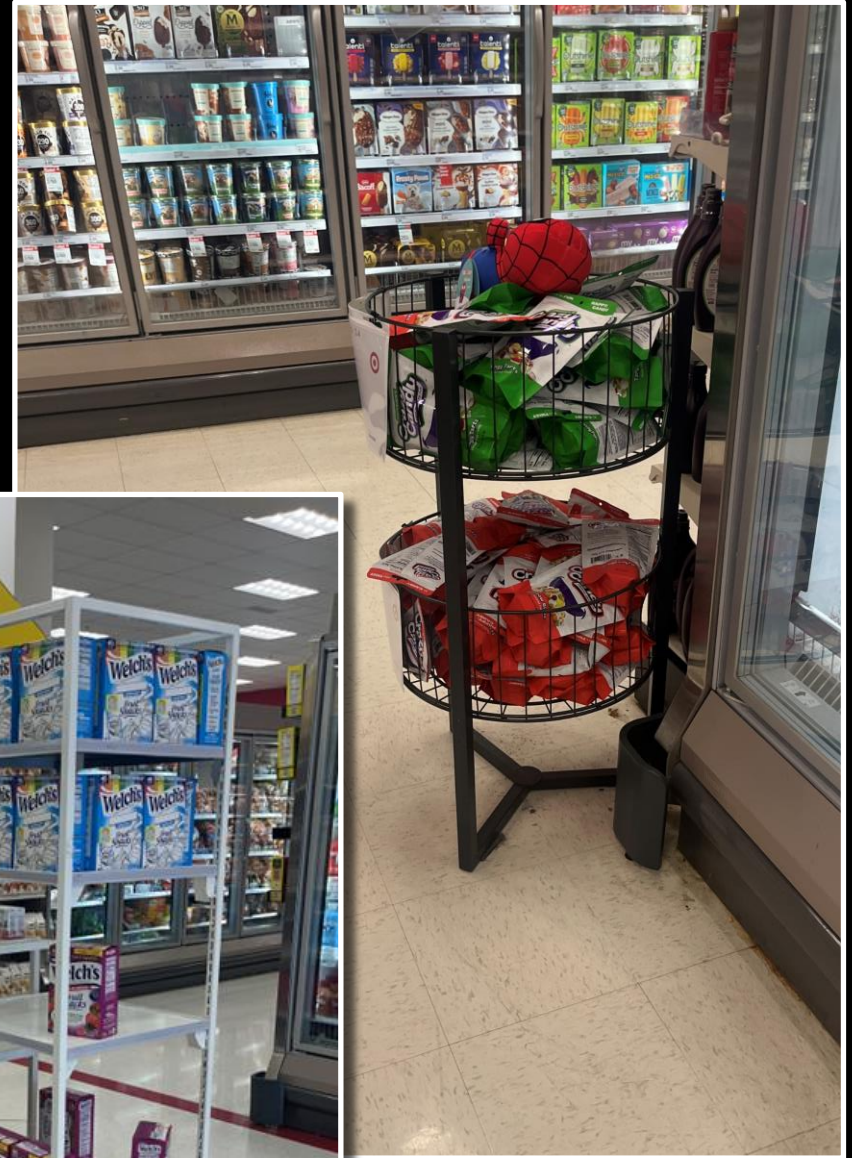




Examples of permanent displays attached to floor or attached other permanent displays.







**Examples of temporary displays: not mechanically attached to floor or to permanent display. Not visually demarcated as an alcohol product floor storage / display area.**





**Example of compliant temporary display: not mechanically attached to floor nor attached to permanent display.**

**Not visually demarcated as an alcohol product floor storage / display area.**

**Alcohol product not placed adjacent to food product or commingled with food product.**





Examples of temporary displays: not mechanically attached to floor or permanent display. Not visually demarcated as a permanent display location. Note the lack of proper 21+ warning.





Examples of temporary displays: not mechanically attached to floor or permanent display; not visually demarcated as a permanent display location.

No small containers.  
No commingled food items.  
Not obscuring nearby product labels.





Example of retail merchandising immediately adjacent next to products intended to appeal to children.

This is a compliant physical division between the two types of products.

Note the lack of proper 21+ warning.



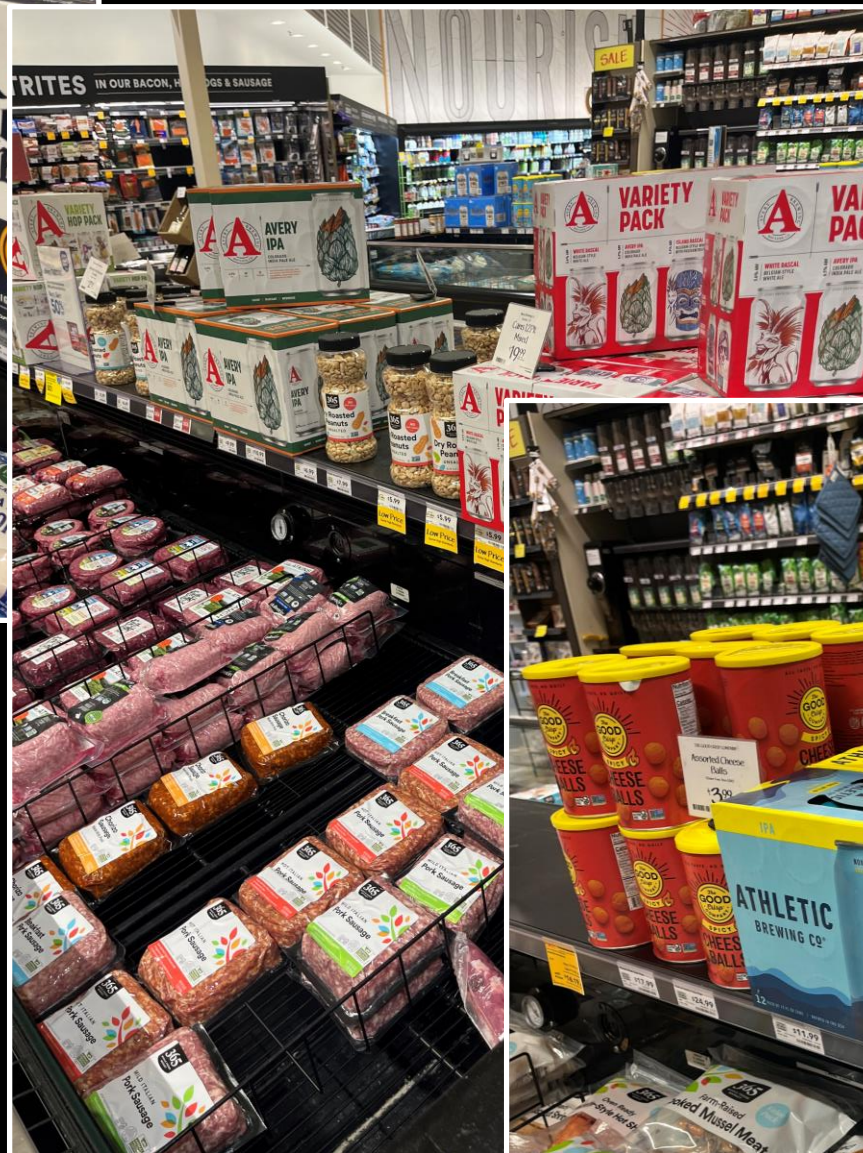


Example of noncompliant merchandising where alcohol product is not placed in a temporary display or permanent display.

Not visually demarcated as an alcohol product display area.

Alcohol product placed immediately adjacent to food product.





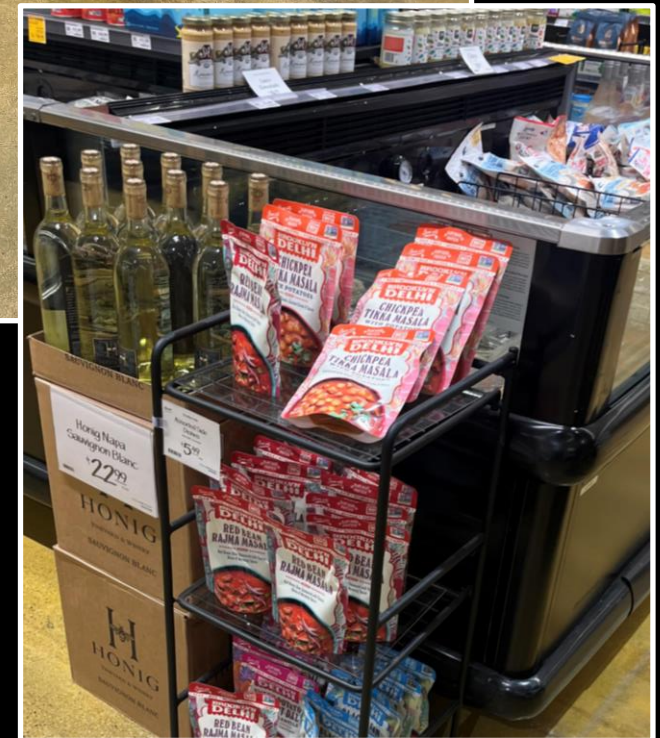
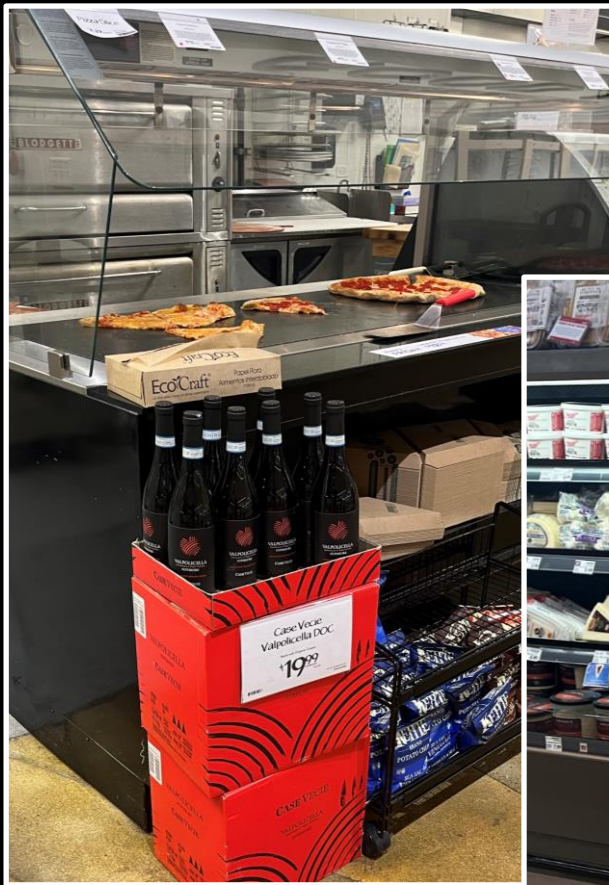
Example of noncompliant display. Not visually demarcated as a temporary alcohol product floor storage / display area. Alcohol product placed immediately adjacent to food product.





Alcohol product placed immediately adjacent to food product.

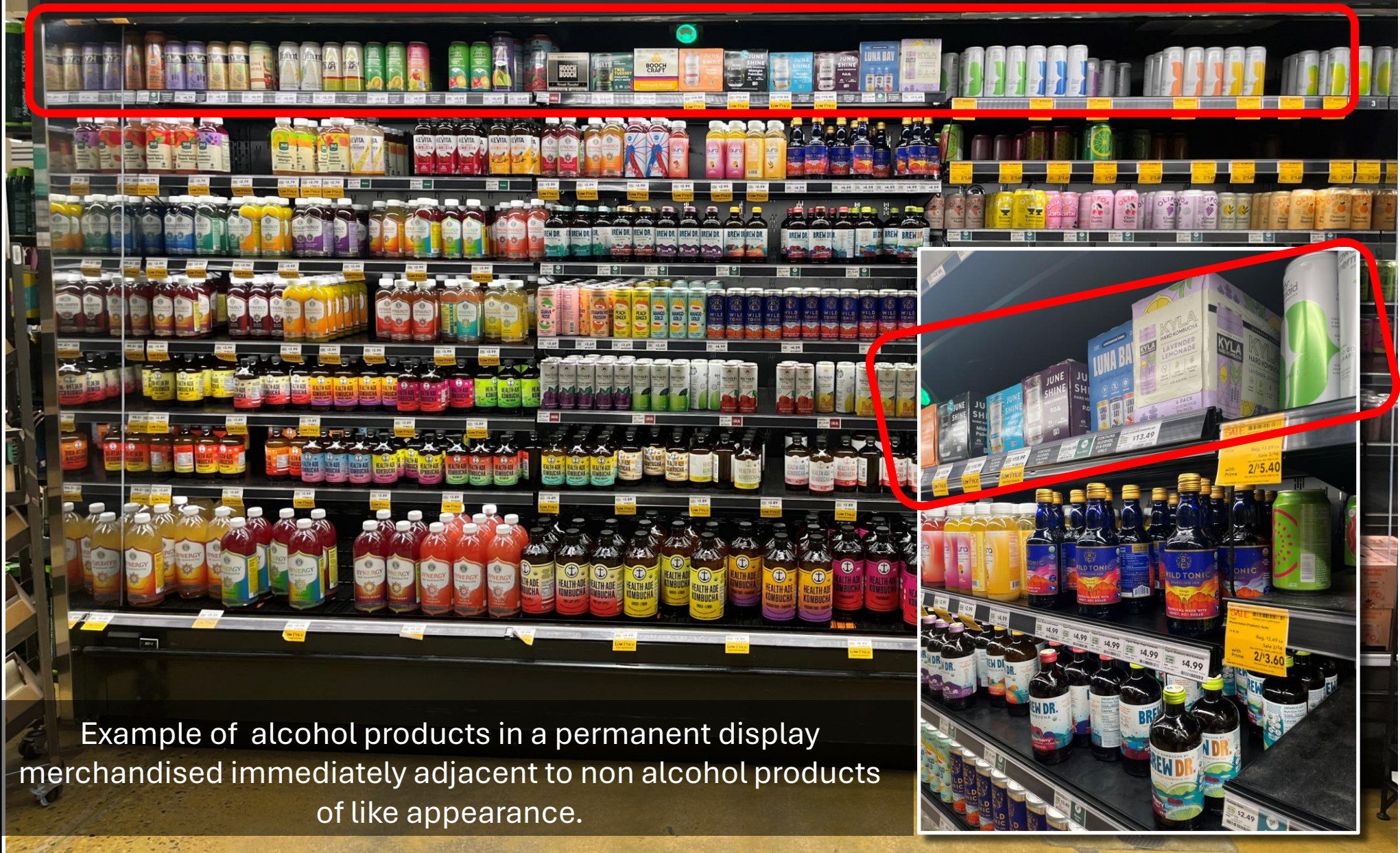




**Examples of temporary alcohol product displays immediately adjacent to temporary food displays.**



# SUPPORTING ORGANIC FARMERS SINCE 198



Example of alcohol products in a permanent display merchandised immediately adjacent to non alcohol products of like appearance.









Example of alcohol products merchandised in a permanent display immediately adjacent to non-alcohol products. Note no placards stating these products contain alcohol or are only for 21+.

Example of alcohol products merchandised in a permanent display immediately across from products intended to appeal to children. Note no placards stating these products contain alcohol or are only for 21+.





**Example of alcohol products not merchandised in a temporary display or permanent display and commingled with food products.**