3 AAC is amended by adding a new article to chapter 305 to read:

Chapter 305. Alcoholic Beverage Control Board.

Article

5. Trade Practices (3 AAC 305.500 – 3 AAC 305.570)

Article 5. Trade Practices.

Section

500. Trade practices prohibitions

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3 AAC 305.500. Trade practices prohibitions. (a) A person holding a brewery manufacturer license under AS 04.09.020, a winery manufacturer license under 04.09.030, a distillery manufacturer license under 04.09.040, a general wholesale license under 04.09.100, or a limited wholesale brewed beverage and wine license under 04.09.110, or a person engaged in the alcoholic beverage industry in another state or country as a brewer, vintner, distiller, wholesaler, importer, or as an agent of a brewer, vintner, distiller, wholesaler, or importer, may not, except as provided in this article, induce a person holding a license under AS 04.09 to

(1) operate a tied house;

(2) operate as an exclusive outlet;

(3) engage in commercial bribery; or

(4) engage in consignment sales.

(b) In this section, the meanings of "commercial bribery," "consignment sales," "exclusive outlet," and "tied house" are defined at AS 04.16.017(d). (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.510. Tied house prohibitions. In addition to the prohibitions set forth at AS 04.16.017(a)(1), it is prohibited to induce the holder of a retail license under AS 04.09, Article 4

to purchase products from an entity to the exclusion, in whole or in part, of products sold or offered for sale by other entities by

(1) providing, purchasing, or supplying advertising services including all forms of print, media, or internet advertising;

(2) paying or crediting the retailer for an advertising, display, or distribution service;

(3) requiring the retailer to condition the purchase of products by requiring the purchase of any other product or a minimum quantity of any brand;

(4) building, constructing, or otherwise erecting permanent or semi-permanent shelves, refrigeration, or any other fixtures for stocking and displaying alcohol beverages, or moving retailer fixtures in a manner that obscures or hides other alcoholic beverage products from view;

(5) serving alcohol to the general public on a retailer's premises; or

(6) rearranging or resetting all or part of the alcoholic beverages of a competing manufacturer or wholesaler, or reset all or part of the premises of a retailer. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

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3 AAC 305.515. Exceptions to tied house prohibitions. (a) The following practices are exceptions to the practices listed under AS 04.16.017(a)(1) or 3 AAC 305.510 of this section. An entity may

(1) furnish to the holder of a retail license under AS 04.09, Article 4, equipment, inside signs, supplies, services, or other things of value, if the entity keeps and maintains records, for a three-year period, of all items furnished to retail license holders. These records, which may include commercial records or invoices, must show:

(A) the name and address of the retailer receiving the item;

(B) the date furnished;

(C) the item furnished;

(D) the entity's cost of the item furnished, calculated at the invoice price and landed price to the entity's licensed premises in Alaska; and

(E) charges to the retailer for any item;

(2) give or sell a product display, if

(A) the total value of a product display, excluding installation costs, given or sold by the entity to the holder of a retail license under AS 04.09, Article 4 does not exceed **$400** per brand at any one time in any single licensed premises and not to exceed **$1,600** per brand if the retailer has two or more licensed premises. Entities may not pool or combine dollar limitations to provide a retailer a product display valued more than **$400** per brand;

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(B) the product display identities the featured product or information about its manufacturer in a manner that is conspicuous, identifiable, and securely affixed. The name and address of the retailer may also appear on the product display; and

(C) any conditioned purchase of the alcoholic beverage on the product display does not exceed the quantity necessary for the initial completion of such display. No other condition can be imposed by the entity on the retailer for the retailer to receive or obtain the product display;

(3) give, sell, or loan signs, indoor posters, table tents, place mats, menus, pamphlets, writing utensils, product description sheets, light fixtures and other non-consumable, similar items if

(A) the item identities the featured product or information about its manufacturer in a manner that is conspicuous, identifiable, and securely affixed. The name and address of the retailer may also appear on the item; and

(B) the entity does not directly or indirectly pay or credit the retailer for using or distributing the item or for any expense incidental to its use;

(4) furnish things of value to a temporary retailer;

(5) provide equipment, consumable supplies, or service ware to a holder of a retail license under AS 04, Article 4 provided:

(A) the item or items are sold at a price not less than the cost to the entity who initially purchased them and the landed price to the entity's registered address in Alaska; and

(B) the purchase cost is collected from the retailer within 30 days of the date of delivery or installation of the item or items;

(6) provide installation, maintenance, and cleaning of alcohol beverage dispensing systems, including alcoholic beverages taps or drafting equipment, to a retailer licensed under AS 04.09, Article 4 if

(A) the cost of the original installation is billed to the retailer at a price not less than the cost to the entity who initially purchased them and the landed price to the entity's registered address in Alaska;

(B) the purchase cost is collected from the retailer within 30 days of the date of the installation, maintenance, or cleaning; and

(C) installation, cleaning, and maintenance services are not conditioned on the exclusion, in part or whole of other entities' products;

(7) provide newspaper cuts, mats, engraved blocks, or digital artwork for use in advertisements of a licensed retailer under AS 04.09, Article 4 that feature the entity's products;

(8) package and distribute alcoholic beverages in combination with other (non-alcoholic) items for sale to consumers;

(9) give or sponsor educational seminars for employees of a licensed retailer under AS 04.09, Article 4 either at the entity's facility, a third-party location, or at the retailer's facility, provided the entity does not pay the retailer's expenses for attending to include travel

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and lodging. Nominal hospitality during the event, such as providing water or hors d'oeuvres, is permissible;

(10) be on the licensed premises of a holder of a retail license under AS 04.09 Article 4 to provide presentations to the general public, such as describing featured products during consumer-sampling activities;

(11) furnish to consumers coupons for alcoholic beverages or related accessories, which are redeemable at the licensed premises of a holder of a retail license under AS 04.09 Article 4, if

(A) all licensed retailers within the market where the coupon offer is made may redeem such coupons;

(B) the entity does not reimburse a retailer for more than the face value of all coupons redeemed;

(C) the coupons are only created and provided by a manufacturer of an alcoholic beverage; and

(D) the coupons are only offered for products sold for off-premises consumption;

(12) list the names and addresses of two or more unaffiliated retailers licensed under AS 04.09 Article 4, selling the products of an entity in an advertisement of the entity if

(A) the advertisement does not also contain the retail price of the product;

(B) the listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole; and

(C) the advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer;

(13) manage display space at the licensed premises of a holder of a retail license under AS 04.09 Article 4 on a nondiscriminatory basis. Such display-space management may include;

(A) product rotation of alcoholic beverages on retail shelves or in displays and from storage areas to retail shelves and display;

(B) storage area, retail shelf, and display stocking;

(C) display construction for freestanding, special, and nonpermanent floor displays; and

(D) delivery and placement of products to the retailer-designated storage areas;

(14) recommend shelf plan or shelf schematic for alcoholic beverages;

(15) reset all or part of the licensed premises of a holder of a retail license under AS 04.09 Article 4, only if

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(A) the retailer sends notice, by certified mail, to all entities from whom it receives alcoholic beverage of the date and time of the contemplated movement or reset, no less than two weeks before the contemplated date; and

(B) employees of an entity are not used as employees of, or required to provide services to, the retailer on any basis;

(C) the resultant movement of products or reset does not exclude a competing entity from the premises; and

(D) all entities are allowed to participate in the reset;

(16) extend credit to a holder of a retail license under AS 04.09 Article 4 for the purchase on credit with a line of credit provided by a third-party financial institution of alcoholic beverages at standard market price, which must also include any finance charges and processing fees;

(17) if also in business as a bona fide producer or vendor of other merchandise, such as groceries or pharmaceuticals, sell that merchandise to the holder of a retail license under AS 04.09 Article 4, if

(A) the merchandise is sold at the manufacturer's invoice price and if applicable, landed price to the entity in Alaska;

(B) the merchandise is not sold in combination with alcoholic beverages, except for packaging and distributing of alcoholic beverages in combination with other (non-alcoholic) items for sale to consumers;

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(C) the normal manufacturer's invoice price of the merchandise appears on the licensed retailer's purchase invoices or other records; and

(D) the individual selling prices of merchandise and alcoholic beverages sold in a single transaction can be determined from commercial documents covering the sales transaction;

(18) give or sell outside signs to the holder of a retail license under AS 04.09 Article 4 if

(A) the sign bears information about a featured product or its manufacturer in a manner that is conspicuous, identifiable, and securely affixed;

(B) the retailer is not compensated, directly or indirectly, for displaying the sign; and

(C) the cost of a single sign does not exceed $400 per location or $1600 for a retailer with two or more licensed premises.

(b) For purposes of this section

(1) "product display" means the custom fixtures or special presentations that are used to attract and entice the buying public;

(2) "temporary retailer" means a person who does not hold a retail license under AS 04, Article 4, but who is supplied with an alcoholic beverage permit not more than five times

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in a calendar year and where each event does not exceed four days. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.520. Exclusive outlet prohibitions. For purposes of AS 04.16.017(a)(2), it is prohibited to induce the holder of a retail license under AS 04.09 Article 4 to operate as an exclusive outlet for an entity by requiring the retailer to purchase alcoholic beverages from an entity to the exclusion, in whole or in part, of alcoholic beverages sold or offered for sale from other entities by

(1) oral promise or written contract;

(2) requiring the retailer to purchase a specific or minimum quantity during the term of an oral promise or written contract; or

(3) third party arrangements not directly involving the entity that compel a retailer to purchase alcoholic beverages in whole or part to the exclusion of products for sale by other entities. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.525. Exceptions to exclusive outlet prohibitions. (a) Notwithstanding AS 04.16.017(a)(2) or 3 AAC 305.520 of this section, an entity may enter into an agreement for one

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year or less with the holder of a retail license under AS 04.09 Article 4 under which the entity agrees to provide at a customarily reasonable contract price alcoholic beverages to the retailer on an as-needed basis.

(b) For purposes of this section, "as needed" means _____. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.530. Practices that do not amount to commercial bribery. The following practices are not considered commercial bribery under AS 04.16.017(a)(3). An entity may

(1) participate in activities of associations of holders of retail licenses under AS 04.09, Article 4 by;

(A) displaying its products at a convention or trade show;

(B) renting display booth space, if the rental fee is the same as that charged and paid for by all exhibitors at the event;

(C) providing hospitality, which is independent from association sponsored activities;

(D) purchasing tickets to functions;

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(E) paying registration fees for an entity's participation in conferences, events, or tradeshows, if the payments or fees are the same as those paid by all attendees, participants, or exhibitors at the event; or

(F) making payments for advertisements in programs or brochures issued by the association at a convention or trade show if the total payments made by an entity for all such advertisements do not exceed $25,000 per year for any retailer association;

(2) furnish or give a sample of alcoholic beverages to the retailer, in no more than the following sizes:

(A) one gallon per brand of brewed beverages;

(B) one liter per brand of wine; and

(C) one liter per brand of distilled spirits.

However, if a brand is not available in these sizes, an entity may furnish to a retailer the next larger size;

(3) offer contest prizes, premium offers, and like items to consumers if;

(A) officers, employees and representatives of entities or retailers are excluded from participation; and

(B) the contest prizes, premium offers, and like items do not exceed **$400** in value at any one time on any single licensed premises and do not exceed **$1600** in

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value at any one time if the retailer has two or more licensed premises. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.535. Exceptions to consignment sales prohibitions. Notwithstanding the practices listed under AS 04.16.017(a)(4), an entity may accept returned merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold, including return of products, which are:

(1) unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures. In such case, products may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness, except if the products were damaged after delivery to the retailer;

(2) in error, because of a discrepancy between products ordered and products delivered so long as the return of products occurs within a reasonable period after delivery, not to exceed 30 days by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness;

(3) no longer lawfully sold, including due to change in regulation or administrative procedure, which may be returned for cash or credit against outstanding indebtedness;

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(4) in inventory stock on the licensed premises at the time a retailer terminates operations, excluding seasonal shutdowns, for cash or credit against outstanding indebtedness;

(5) in inventory stock on the licensed premises when a retailer's distribution agreement with an entity has terminated for cash or credit against outstanding indebtedness;

(6) changed in formula, proof, label, or container (subject to ___ C.F.R. § 11.46) for equal quantities of the new version of that product;

(7) from a discontinued production or importation of a product for cash or credit against outstanding indebtedness;

(8) on the licensed premises of a retailer that operates only seasonally, for cash or for credit against outstanding indebtedness; or

(9) from a permittee approved by the Alcohol & Marijuana Control Office, who is not also licensed under AS 04. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.540. Administrative penalties. (a) The board may level administrative penalties for violation of this section against all participants in the unlawful trade practice at no less than two times the value of the inducement but not to exceed ten times the value of the inducement. The penalty imposed may be joint or severable against one or more participants. If applicable,

(1) the value of the inducement permitted under this section may be included in the calculation of the value of the administrative penalty; and

(2) the value of inducement may include the identifiable market value of the inducement or comparable market value, or reasonable estimated market value.

(b) Administrative penalties will be levied in addition to any other fines imposed by any other governmental entity of the United States.

(c) The Alcoholic Beverage Control board may, in its discretion, calculate the penalty allowed under subsection (a) by considering the severity of the violation and the prior violations of this article by the parties involved in the inducement. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 As 04.06.100 AS 04.16.017

3 AAC 305.550. (old 304.405) Adulteration, misbranding and false advertising of alcoholic beverages. (a) Adulteration, misbranding, and false advertising of alcoholic beverages are prohibited.

(b) If a retailer licensed under AS 04.09 Article 4 or its employees or agents sell or serve an alcoholic beverage made with a wine product rather than a distilled beverage, the entity from whom the product is received or retailer shall disclose that the alcoholic beverage is "wine based" in all advertising, labeling or descriptions of the mixed alcoholic beverage drink made with a wine product. Advertising, labeling, or making any representation, written or oral, about

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an alcoholic beverage containing wine in a manner that does or could cause confusion that the beverage contains a distilled beverage when it does not is prohibited. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 AS 04.06.100 AS 04.16.017

3 AAC 305.560. (old 304.440) Pricing and marketing of alcoholic beverages. For the purpose of AS 04.16.015, except as provided for the holder of a package store sampling endorsement under AS 04.09.490, a retailer licensed under AS 04.09 Article 4, or its employees or agents may not set a period of time during a day that an alcoholic beverage drink or a brand of alcoholic beverage is sold or delivered that is less than the hours that the licensed premises is open to the general public. (Eff. ___/___/_____, Register _____)

Authority: AS 04.06.090 AS 04.16.015 AS 04.16.017

AS 04.06.100

3 AAC 305.570. Definitions. For purposes of this article

(1) "brand" means a type of product manufactured by a particular company under a particular name;

(2)"entity" means a person holding a brewery manufacturer license under AS 04.09.020, a winery manufacturer license under 04.09.030, a distillery manufacturer license under 04.09.040, a general wholesale license under 04.09.100, or a limited wholesale brewed beverage and wine license under 04.09.110 or a person engaged in the alcoholic beverage industry in another state or country as a brewer, vintner, distiller, wholesaler, importer, or as an

agent of a brewer, vintner, distiller, wholesaler, or importer;

(3) "product" means any alcoholic beverage;

(4) "retailer" is an entity licensed under AS 04.09, Article 4. (Eff. ___/____/___, Register ___).

Authority: AS 04.06.090 AS 04.06.100 AS 04.16.017

3 AAC is amended by adding a new section to read:

3 AAC 305.880. Fines for trade practice prohibition violations. In addition to administrative penalties, civil fines for violations of Article 5 will be determined by the board on a case-by-case basis. (Eff. ___/____/___, Register ___)

Authority: AS 04.06.090 AS 04.06.100 AS 04.16.017

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