

32B-4-705 Exclusions from tied house prohibitions.

- (1) Notwithstanding Subsection 32B-4-704(3), a thing of value may be furnished by an industry member to a retailer under the conditions and within the limitations prescribed in:
 - (a) this section; and
 - (b) the applicable federal laws cited in this section.
- (2) The following may be furnished by an industry member:
 - (a) a product display as provided in 27 C.F.R. Sec. 6.83;
 - (b) point of sale advertising material or a consumer advertising specialty as provided in 27 C.F.R. Sec. 6.84;
 - (c) a thing of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;
 - (d) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;
 - (e) combination packaging as provided in 27 C.F.R. Sec. 6.93;
 - (f) an educational seminar as provided in 27 C.F.R. Sec. 6.94;
 - (g) a consumer promotion as provided in 27 C.F.R. Sec. 6.96;
 - (h) an advertising service as provided in 27 C.F.R. Sec. 6.98;
 - (i) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;
 - (j) merchandise as provided in 27 C.F.R. Sec. 6.101; and
 - (k) an outside sign as provided in 27 C.F.R. Sec. 6.102.
- (3) The following exceptions provided in federal law are not applicable:
 - (a) the exception for a sample as provided in 27 C.F.R. Sec. 6.91;
 - (b) the exception for a consumer tasting or sampling at a retail establishment as provided in 27 C.F.R. Sec. 6.95; and
 - (c) the exception for participation in a retailer association activity provided in 27 C.F.R. Sec. 6.100.
- (4) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall maintain a record:
 - (a) of an item furnished to a retailer;
 - (b) on the premises of the industry member; and
 - (c) for a three-year period.
- (5) A sample of liquor may be provided to the department under the following conditions:
 - (a) With the department's permission, an industry member may submit a department sample to the department for product testing, analysis, and sampling.
 - (b) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing, analysis, and sampling within a consecutive 120-day period.
 - (c)
 - (i) A department sample may not exceed 1 liter.
 - (ii) Notwithstanding Subsection (5)(c)(i), a department sample of the following may not exceed 1.5 liters unless that exact alcoholic product is only commercially packaged in a larger size, not to exceed 5 liters:
 - (A) wine;
 - (B) heavy beer; or
 - (C) a flavored malt beverage.
 - (d) A department sample submitted to the department:
 - (i) shall be shipped prepaid by the industry member by common carrier; and
 - (ii) may not be shipped by United States mail directly to the department's central administrative warehouse office.
 - (e) A department sample may not be shipped to any other location within the state.

- (f) The industry member shall submit with a department sample submitted to the department a letter from the industry member that clearly:
 - (i) identifies the product as a "department sample"; and
 - (ii) states the FOB case price of the product.
- (g)
 - (i) The department may transfer a listed item from current stock:
 - (A) for use as a comparison control sample; or
 - (B) to verify product spoilage as considered appropriate.
 - (ii) The department shall charge back a sample transferred under this Subsection (5)(g) to the respective industry member.
- (h) The department shall:
 - (i) account for, label, and record a department sample received or transferred;
 - (ii) account for the department sample's disposition; and
 - (iii) maintain a record of the sample and its disposition for a two-year period.
- (i) The department shall affix to each container of a department sample a label clearly identifying the product as a "department sample."
- (j) The department shall dispose of a department sample delivered to the department or transferred from the department's current stock in one of the following ways as chosen by the department:
 - (i) test and analyze the department sample, with the remaining contents destroyed under controlled and audited conditions established by the department;
 - (ii) destroy the entire contents of the department sample under controlled and audited conditions established by the department; or
 - (iii) add the department sample to the inventory of the department for sale to the public.
- (k) A person other than an authorized department official may not be in possession of a department sample except as otherwise provided.
- (l) The department shall handle a liquor item received by the department from a supplier that is not designated as a sample by the supplier, but that is an item not specifically listed on a department purchase order, in accordance with this Subsection (5).
- (m) The department may not use its money to pay freight or charges on a sample or a liquor item:
 - (i) shipped to the department by a supplier; and
 - (ii) not listed on a department purchase order.
- (6) A sample of beer may be provided by a beer industry member to a retailer under the conditions listed in this Subsection (6).
 - (a) A sample of beer may be provided by an industry member only to a retailer who has not purchased the brand of beer from that industry member within the last 12 months.
 - (b) For each retailer, the industry member may give not more than three gallons of any brand of beer, except that if a particular product is not available in a size within the quantity limitation, an industry member may furnish the next largest size.
- (7) An educational seminar may involve an industry member under the conditions listed in this Subsection (7).
 - (a) An industry member may provide or participate in an educational seminar:
 - (i) involving:
 - (A) the department;
 - (B) a retailer;
 - (C) a holder of a scientific or educational special use permit;
 - (D) another industry member; or

- (E) an employee of a person listed in Subsections (7)(a)(i)(A) through (D); and
 - (ii) regarding a topic such as:
 - (A) merchandising and product knowledge;
 - (B) use of equipment; and
 - (C) a tour of an alcoholic product manufacturing facility.
 - (b) An industry member may not pay the expenses of or compensate a person who is a department employee, a retailer, or a permittee for attending a seminar or tour described in Subsection (7)(a).
- (8)
- (a) A liquor industry member may conduct a tasting of a liquor product of the industry member:
 - (i) for the department, at the department's request; and
 - (ii) for a licensed industry representative, but only at the department's central administrative warehouse office.
 - (b) A liquor industry member may only use a department sample or industry representative sample when conducting a tasting of the industry member's liquor product.
 - (c) A beer industry member may conduct a tasting of a beer product for a beer retailer either at:
 - (i) the industry member's premises; or
 - (ii) a retail establishment.
 - (d) Except to the extent authorized by commission rule, an alcoholic product industry member may not conduct tasting or sampling activities with:
 - (i) a retailer; or
 - (ii) a member of the general public.
- (9) A beer industry member may participate in a beer retailer association activity to the extent authorized by 27 C.F.R. Sec. 6.100.
- (10)
- (a) An industry member may contribute to a charitable, civic, religious, fraternal, educational, or community activity, except the contribution may not be given to influence a retailer in the selection of a product that may be sold at the activity.
 - (b) An industry member or retailer violates this Subsection (10) if:
 - (i) the industry member's contribution influences, directly or indirectly, the retailer in the selection of a product; and
 - (ii) a competitor's product is excluded in whole or in part from sale at the activity.
- (11)
- (a) An industry member may lease or furnish equipment listed in Subsection (11)(b) to a retailer if:
 - (i) the equipment is leased or furnished for a special event;
 - (ii) a reasonable rental or service fee is charged for the equipment; and
 - (iii) the period for which the equipment is leased or furnished does not exceed 30 days.
 - (b) This Subsection (11) applies to the following equipment:
 - (i) a picnic pump;
 - (ii) a cold plate;
 - (iii) a tub;
 - (iv) a keg box;
 - (v) a refrigerated trailer;
 - (vi) a refrigerated van; or
 - (vii) a refrigerated draft system.
- (12)
- (a) A liquor industry member may assist the department in:

- (i) ordering, shipping, and delivering merchandise;
 - (ii) new product notification;
 - (iii) listing and delisting information;
 - (iv) price quotations;
 - (v) product sales analysis;
 - (vi) shelf management; and
 - (vii) an educational seminar.
- (b)
- (i) A liquor industry member may, to acquire a new listing:
 - (A) solicit an order from the department; and
 - (B) submit to the department a sample of the liquor industry member's products under Subsection (5) and price lists.
 - (ii)
 - (A) An industry member is confined to the customer areas when the industry member visits a state store or package agency unless otherwise approved.
 - (B) An industry member is confined to the office area of a state warehouse when the industry member visits a state warehouse unless otherwise approved.
- (13) A beer industry member may assist a beer retailer in:
- (a) ordering, shipping, and delivering beer merchandise;
 - (b) new product notification;
 - (c) listing and delisting information;
 - (d) price quotations;
 - (e) product sales analysis;
 - (f) shelf management; and
 - (g) an educational seminar.
- (14) A beer industry member may, to acquire a new listing:
- (a) solicit an order from a beer retailer; and
 - (b) submit to a beer retailer a sample of the beer industry member's beer products under Subsection (5) and price lists.

Amended by Chapter 307, 2011 General Session
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