

Part 7 Trade Practices Act

32B-4-701 Title.

This part is known as the "Trade Practices Act."

Enacted by Chapter 276, 2010 General Session

32B-4-702 Definitions.

As used in this part:

- (1)
 - (a) For purposes of Section 32B-4-703, "exclusion" is as defined in 27 C.F.R. Sec. 8.51 through 8.54.
 - (b) For purposes of Section 32B-4-704, "exclusion" is as defined in 27 C.F.R. Sec. 6.151 through 6.153.
- (2)
 - (a) "Industry member" means:
 - (i) an alcoholic product manufacturer;
 - (ii) a producer;
 - (iii) a supplier;
 - (iv) an importer;
 - (v) a wholesaler;
 - (vi) a bottler;
 - (vii) a warehouse and bottler; or
 - (viii) for a person described in Subsections (2)(a)(i) through (vii), any of its:
 - (A) affiliates;
 - (B) subsidiaries;
 - (C) officers;
 - (D) directors;
 - (E) partners;
 - (F) agents;
 - (G) employees; or
 - (H) representatives.
 - (b) "Industry member" does not include:
 - (i) the commission;
 - (ii) a commissioner;
 - (iii) the director;
 - (iv) the department; or
 - (v) a department employee.
- (3) "Product" means an alcoholic product or item associated with an alcoholic product.
- (4) "Retailer" means:
 - (a) the holder of a license or permit issued by the commission or by a local authority to allow the holder to engage in the sale of an alcoholic product to a patron whether for consumption on or off the premises; or
 - (b) an agent, officer, director, shareholder, partner, or employee of a holder described in Subsection (4)(a).

Enacted by Chapter 276, 2010 General Session

32B-4-703 Exclusive outlets.

- (1) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to require, by agreement or otherwise, that the department or a retailer purchase a product from the industry member or the department to the exclusion in whole or in part of a product that is sold or offered for sale by another person.
- (2)
 - (a) Subsection (1) applies only to a transaction between:
 - (i) one or more industry members; and
 - (ii)
 - (A) the department; or
 - (B) one or more retailers.
 - (b) Subsection (1) does not apply to a transaction between two or more industry members, including between a manufacturer and a wholesaler.
- (3) Subsection (1) includes purchases coerced by an industry member through an act or threat of physical or economic harm, as well as through a voluntary industry member-retailer purchase agreement.
- (4)
 - (a) Subsection (1) includes a contract or agreement, written or unwritten, that has the effect of requiring the department or retailer to purchase an alcoholic product from the industry member beyond a single sales transaction.
 - (b) Examples of a contract or agreement described in Subsection (4)(a) include:
 - (i) an advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's product; or
 - (ii) a sales contract awarded on a competitive bid basis that has the effect of prohibiting the department or retailer from purchasing from another industry member by:
 - (A) requiring that the retailer purchase a product or line of products exclusively from the industry member for the period of the agreement; or
 - (B) requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.
- (5)
 - (a) Subsection (1) includes a contract, agreement, or other arrangement between an industry member and a third party nonretailer that requires the department or a retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person.
 - (b) This Subsection (5) applies whether a contract, agreement, or other arrangement originates with the industry member or the third party.
 - (c) Examples of a contract, agreement, or other arrangement described in this Subsection (5) include:
 - (i) a contract, agreement, or arrangement:
 - (A) with a third party, such as a ball club or municipal or private corporation, that is not a retailer;
 - (B) under which the third party leases the concession rights and is able to control the purchasing decisions of a retailer; and
 - (C) that requires the retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person; or

- (ii) a contract, agreement, or arrangement with a third party nonretailer that requires a retailer to purchase the industry member's product to the exclusion in whole or in part of a product sold or offered for sale by another person in return for which the third party provides a service or other thing of value such as:
 - (A) sponsoring radio or television broadcasting;
 - (B) paying for advertising; or
 - (C) providing other services or things of value.

Enacted by Chapter 276, 2010 General Session

32B-4-704 Tied house -- Prohibitions.

- (1)
 - (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by acquiring or holding an interest in a license with respect to the premises of a retailer, except when the license is held by a retailer that is completely owned by the industry member.
 - (b) Interest in a retail license includes an interest acquired by a corporate official, partner, employee, or other representative of the industry member.
 - (c) An interest in a retail license acquired by a separate corporation in which the industry member or the industry member's officials hold ownership or are otherwise affiliated is an interest in a retail license.
 - (d) Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of Subsection (1)(a).
- (2)
 - (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of the retailer's business.
 - (b) For purposes of Subsection (2)(a):
 - (i) "interest" does not include complete ownership of a retail business by an industry member;
 - (ii) interest in retail property includes an interest acquired by a corporate official, partner, employee, or other representative of the industry member;
 - (iii) any interest in a retail license acquired by a separate corporation in which the industry member or its officials hold ownership or are otherwise affiliated is an interest in the retailer's property;
 - (iv) less than complete ownership of a retail business by an industry member constitutes an interest in retail property;
 - (v) the acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property; and
 - (vi) the renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property.
- (3)
 - (a) Subject to Section 32B-4-705, it is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or

offered for sale by another person by furnishing, giving, renting, lending, or selling to the retailer equipment, a fixture, a sign, supplies, money, a service, or other thing of value.

(b)

(i) For purposes of this Subsection (3), indirect inducement includes:

- (A) furnishing a thing of value to a third party when the benefit resulting from the thing of value flows to an individual retailer; and
- (B) making a payment for advertising to a retailer association or a display company when the resulting benefits flow to an individual retailer.

(ii) Notwithstanding Subsection (3)(b)(i), an indirect inducement does not arise if:

- (A) the thing of value is furnished to a retailer by the third party without the knowledge or intent of the industry member; or
- (B) the industry member does not reasonably foresee that the thing of value would be furnished to a retailer.

(c) Anything that may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under Section 32B-4-705 may be furnished directly by a third party to a retailer.

(d)

(i) A transaction in which equipment is sold to a retailer by an industry member, except as provided in Section 32B-4-705, is the selling of equipment within the meaning of Subsection (3)(a) regardless of how the equipment is sold.

(ii) The negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of Subsection (3)(a).

(e) The furnishing of free warehousing by delaying delivery of an alcoholic product beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(f) A financial, legal, administrative, or influential assistance given a retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(4) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by paying or crediting the retailer for an advertising, display, or distribution service:

(a) as defined in and to the extent restricted by 27 C.F.R. Sec. 6.51 through 6.56; and

(b) subject to the exceptions:

- (i) for newspaper cuts listed in 27 C.F.R. Sec. 6.92; and
- (ii) for advertising services listed in 27 C.F.R. Sec. 6.98.

(5) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by guaranteeing a loan or the repayment of a financial obligation of the retailer.

(6)

(a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase beer from the industry member to the exclusion in whole or in part of a beer product sold or offered for sale by another person by extending to a retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge from all indebtedness arising from the transaction by the retailer paying cash or its equivalent, unless:

- (i) beer purchased or delivered during the first 15 days of any month is paid for in cash or its equivalent on or before the 25th day of the same month; and
 - (ii) beer purchased or delivered after the 15th day of any month is paid for in cash or its equivalent on or before the 10th day of the next succeeding month.
 - (b) A first party in-state check is considered cash payment if the check is:
 - (i) honored on presentment; and
 - (ii) received under the terms prescribed in Subsection (6)(a).
 - (c) An extension of credit for product purchased by an industry member to a retailer whose account is in arrears does not constitute a violation of Subsection (6)(a) if the retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.
- (7)
- (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a retailer to purchase an alcoholic product from the industry member or from the department to the exclusion in whole or in part of a product sold or offered for sale by another person by requiring:
 - (i) the department to take and dispose of a certain quota of a product; or
 - (ii) a beer retailer to take and dispose of a certain quota of a beer product.
 - (b)
 - (i) It is an unlawful means to induce to require:
 - (A) the department to purchase one product in order to purchase another product; or
 - (B) a beer retailer to purchase one beer product in order to purchase another beer product.
 - (ii) This Subsection (7)(b) includes:
 - (A) the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium container such as:
 - (I) a distinctive decanter; or
 - (II) a wooden or tin box; or
 - (B) combination sales if one or more products may be purchased only in combination with another product and not individually.
 - (c) This Subsection (7) does not preclude the selling, at a special combination price, of two or more kinds or brands of products so long as the department or beer retailer:
 - (i) has the option of purchasing either product at the usual price; and
 - (ii) is not required to purchase a product the department or beer retailer does not want.
 - (d) An industry member may package and distribute an alcoholic product in combination with other nonalcoholic items.
 - (e) A combination package shall be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the department or beer retailer.

Amended by Chapter 307, 2011 General Session

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
Amended by Chapter 334, 2011 General Session

32B-4-706 Commercial bribery.

This section adopts and makes applicable to an industry member, including a beer industry member, doing business in this state, 27 U.S.C. Sec. 205(c) and 27 C.F.R. Sec. 10.1 through 10.54, which make it unlawful for an industry member, directly or indirectly, or through an affiliate, to induce a wholesaler or retailer engaged in the sale of an alcoholic product to purchase the industry member's products, to the complete or partial exclusion of alcoholic beverages sold or offered for sale by other persons, by commercial bribery, or by offering or giving a bonus, premium, compensation, or other thing of value, to any officer, employee, or representative of the wholesaler or retailer.

Enacted by Chapter 276, 2010 General Session

32B-4-707 Consignment sale.

- (1) This section adopts and makes applicable to an industry member, including a beer industry member, doing business in this state, 27 U.S.C. Sec. 205(d) and 27 C.F.R. Sec. 11.1 through 11.46, which make it unlawful for an industry member, directly or indirectly, or through an affiliate to sell, offer for sale, or contract to sell to any wholesaler or retailer engaged in the sale of an alcoholic product, or for any wholesaler or retailer to purchase, offer to purchase, or contract to purchase any of those products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of the transaction involves, directly or indirectly, the acquisition by that person from the wholesaler or retailer or that person's agreement to acquire from the wholesaler or retailer other alcoholic beverages, if the sale, purchase, offer, or contract is made in the course of interstate or foreign

commerce, or if the person or wholesaler or retailer engages in such practice to an extent so as substantially to restrain or prevent transactions in interstate or foreign commerce in any of those products or if the direct effect of the sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any of those products to the wholesaler or retailer in interstate or foreign commerce.

- (2) This section does not apply to a transaction involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

Enacted by Chapter 276, 2010 General Session

32B-4-708 Unlawful act involving consumers.

- (1)
- (a) It is unlawful for an industry member, directly or indirectly, or through an affiliate, to give away any of its product to a person except for testing, analysis, and sampling purposes by the department or local industry representative licensee to the extent authorized by this title.
 - (b) This Subsection (1) does not preclude an industry member from serving its product to others at a private event hosted by the industry member in the industry member's home or elsewhere so long as the product is not served:
 - (i) as part of a promotion of the industry member's product; or
 - (ii) as a subterfuge to provide a sample to a person for product testing, analysis, or sampling purposes.
- (2) It is unlawful for an industry member or retailer, directly or indirectly, or through an affiliate, to engage in an advertisement or promotional scheme that requires the purchase or sale of an alcoholic product, or consumption of an alcoholic product, in order to participate in a promotion, program, or other activity.
- (3) It is unlawful for an industry member or retailer, directly or indirectly, or through an affiliate, to pay, give, or deliver to a person money or any other thing of value, including a rebate, refund, or prize, on the basis of the purchase, display, use, sale, or consumption of an alcoholic product.
- (4) It is unlawful for an industry member or retailer to sponsor or underwrite an athletic, theatrical, scholastic, artistic, or scientific event that:
- (a) overtly promotes the consumption of a product;
 - (b) offers a product to the general public without charge; or
 - (c) takes place on the premises of a school, college, university, or other educational institution.

Enacted by Chapter 276, 2010 General Session