

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