

## INDUSTRY TRADE PRACTICES / 32A-12 - VIOLATION GRID

Descriptions

Code Citation

Rule Citation

Degree

(ALL INDUSTRY TRADE PRACTICES VIOLATIONS ARE IN THE GRAVE CATEGORY AND ALL ARE CLASS B MISDEMEANORS.)

**A. GENERAL PROVISIONS FOR INDUSTRY MEMBERS:**

(INDUSTRY MEMBERS INCLUDE: MANUFACTURERS, PRODUCERS, SUPPLIERS, IMPORTERS, WHOLESALERS, BOTTLERS, AND AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES OF THESE.)

<p>1. <u>Exclusive Outlets:</u> Directly or indirectly require that the department or a retailer purchase any alcoholic beverage products from the industry member to the exclusion of products sold or offered for sale by other persons, including:</p> <p>a. purchases coerced by industry members through acts or threats of physical or economic harm, as well as voluntary industry member/retailer purchase agreements;</p> <p>b. any contract or agreement, written or unwritten, that has the effect of requiring the department or retailer to purchase alcoholic beverages from the industry member beyond a single sales transaction;</p> <p>c. any contract, agreement or other arrangement between an industry member and a third party non-retailer that requires the department or a retailer to purchase the industry member's products to the exclusion in whole or in part of any alcoholic beverage products sold or offered for sale by other persons.</p>	<p>32A-12-602(1)</p> <p>32A-12-602(3)</p> <p>32A-12-602(4)</p> <p>32A-12-602(5)</p>	<p></p> <p></p> <p></p> <p></p>	<p>GR, *b</p> <p>GR, *b</p> <p>GR, *b</p> <p>GR, *b</p>
<p>2. <u>Tied House:</u></p> <p>a. Directly or indirectly inducing any retailer to purchase alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any other products sold or offered for sale by other persons by:</p> <p>1) acquiring or holding any interest in any license with respect to the premises of a retailer, except where the license is held by the retailer that is completely owned by the industry member;</p> <p>2) acquiring any interest in real or personal property owned, occupied, or used by a retailer in the conduct of business;</p>	<p>32A-12-603(1)</p> <p>32A-12-603(2)</p>	<p></p> <p></p>	<p>GR, *b</p> <p>GR, *b</p>

\*a - Class "A" misdemeanor  
\*b - Class "B" misdemeanor

\*c - Class "C" misdemeanor  
\*d - 2<sup>nd</sup> degree felony

\*e - See rule  
\*f - Licensee/permittee qualification

\*g - See statute  
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3) paying or crediting a retailer for any advertising, display, or distribution services accept as allowed, exceeding Federal guidelines and with noted exceptions.	32A-12-603(5)		GR, *b
4) guaranteeing any loan or the repayment of any financial obligation of a retailer.	32A-12-603(6)		GR, *b
5) extending any retailer credit for the purchase of beer for a period in excess of 15 days.	32A-12-603(7)		GR, *b
6) requiring the department or a beer retailer or the department to:			
a) take a certain quota of alcoholic products; or	32A-12-603(8)(a)		GR, *b
b) purchase one product in order to purchase another (except to the extent combination pricing and packaging is allowed under 32A-12-603(8)(c), (d), & (3)).	32A-12-603(8)(b)		GR, *b
b. Directly or indirectly inducing any retailer to purchase alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any other products sold or offered for sale by others by:	32A-12-603(3)(a)		GR, *b
1) Furnishing, giving, renting, lending, or selling to a retailer any equipment, fixtures, signs, supplies, money, services, or other thing of value (other than the exceptions listed in 32A-12-603(4)). This also includes:			GR, *b
a) furnishing such things of value to a third party where the benefits resulting from the things of value flow to individual retailers; and the industry member intended, knew, or could reasonably foresee that the third party would furnish the things of value to the retailer.	32A-12-603(3)(b)(i)(A)		
b) making payments for advertising to a retailer association or a display company where the resulting benefits flow to individual retailers;	32A-12-603(3)(b)(i)(B)		
c) negotiating special prices to a retailer for equipment from equipment companies to retailers;	32A-12-603(3)(c)(ii)		
d) furnishing free warehousing by delaying delivery of alcoholic beverages beyond the time that payment for the product is received;	32A-12-603(3)(d)		
e) providing financial, legal, administrative, or influential assistance to a retailer in a acquiring a retail license;	32A-12-603(3)(e)		

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f) paying a department employee's, retailer's, or permittee's expenses or compensate them for attending a seminar or tour;	32A-12-603(4)(e)(ii)		
g) providing liquor samples to persons other than the department;	32A-12-603(4)(b)(ii)(A)		
h) providing consumer tasting or sampling at a retail establishment; and	32A-12-603(4)(b)(ii)(B)		
i) participating in retailer association activities.	32A-12-603(4)(b)(ii)(C)		
c . Improperly furnishing lawful things of value by failing to comply the conditions and limitations of the federal or state guidelines:			GR, *b
1) Furnishing product displays to a retailer that:	32A-12-603(4)(b)(i)(A) <i>(27 C.F.R. 6.83)</i>		GR, *b
a) exceeds \$300 in value at any one time;			
b) fails to bear conspicuous and substantial advertising of the product or industry member that is permanently inscribed or securely affixed; or			
c) requires improper conditions on the retailer to receive the display.			
2) Furnishing point of sale materials:	32A-12-603(4)(b)(i)(B) <i>(27 C.F.R. 6.84)</i>		GR, *b
a) that fails to bear conspicuous and substantial advertising of the product or industry member that is permanently or securely affixed; or			
b) under conditions where the industry member directly or indirectly pays or credits the retailer for using or distributing these materials, or pays for any expense incidental to their use.			
3) Selling equipment and supplies:	32A-12-603(4)(B)(I)(D) <i>(27 C.F.R. 6.88)</i>		GR, *b
a) at a price less than the cost to the industry member;			
b) failing to collect the price within 30 days of the date of sale; or			
c) failing to charge the retailer the initial cost of installing dispensing accessories.			

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4) Paying a retailers' travel & lodging expenses to attend an educational seminar given or sponsored by the industry member.	32A-12-603(4)(b)(i)(F) <i>(27 C.F.R. 6.94)</i>		GR, *b
5) Furnishing consumer coupons redeemable at the retail establishment:  a) without allowing all retailers within the market where the coupon offer is made to redeem such coupons; or  b) by reimbursing a retailer for more than the face value of the coupons redeemed (beyond the usual and customary handling fee).	32A-12-603(4)(b)(i)(G) <i>(27 C.F.R. 6.96)</i>		GR, *b
6) Allowing officers, employees, and representatives of a wholesaler or retailer to participate in contests, premium offers, and the like.	32A-12-603(4)(b)(i)(G) <i>(27 C.F.R. 6.96)</i>		GR, *b
7) Running an advertisement that lists the names and addresses of two or more unaffiliated retailers who sell the industry members' product if:  a) it contains the retail price of the product;  b) it contains more than a simple inconspicuous listing of the retailers in relation to the advertisement as a whole; or  c) it refers only to retail establishments controlled directly or indirectly by the same retailer.	32A-12-603(4)(b)(i)(H) <i>(27 C.F.R. 6.98)</i>		GR, *b
8) Altering or disturbing the products of other industry members when stocking, rotating, and affixing prices at a retail establishment.	32A-12-603(4)(b)(i)(I) <i>(27 C.F.R. 6.99)</i>		GR, *b
9) Selling non-alcohol merchandise to a retailer:  a) at other than fair market price;  b) in combination with alcoholic beverages (except in combination packaging as allowed by 27 C.F.R. 6.93);  c) without putting the industry member's acquisition or production costs on the purchase invoice or in other records; or  d) without commercial documents that show the sales prices of the merchandise and the alcoholic beverages sold in a single transaction.	32A-12-603(4)(b)(i)(J) <i>(27 C.F.R. 6.101)</i>		GR, *b

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10) Giving or selling outside signs to a retailer: a) that fail to bear conspicuous and substantial advertising of the product or industry member that is permanently inscribed or securely affixed; b) under conditions where the retailer is directly or indirectly compensated for displaying the signs such as through a sign company; or c) when the cost of the sign is in excess of \$400.	32A-12-603(4)(b)(i)(K) <i>(27 C.F.R. 6.102)</i>		GR, *b
11) Failure of an industry member to keep and maintain records as required of all items legally furnished to the retailer.	32A-12-603(4)(b)(iii)		GR, *b
12) Failure to comply with requirements for providing product samples to the department.	32A-12-603(4)(c)		GR, *b
13) Failure to comply with requirements for providing beer samples to a retailer.	32A-12-603(4)(d)		GR, *b
14) Failure to comply with requirements for providing educational seminars.	32A-12-603(4)(e)	R81-12-2	GR, *b
15) Beer industry member involved in retailer association activities beyond what is allowed by federal law.	32A-12-603(4)(f) <i>(also see: 27 C.R.F. 6.100)</i>		GR, *b
16) Violating laws when contributing to charitable, civic, religious, fraternal, educational, and community activities, including giving a contribution to influence a retailer in the selection of the alcoholic beverages sold at the event.	32A-12-603(4)(g)		GR, *b
17) Violating requirements for leasing or furnishing items for special events.	32A-12-603(4)(h)		GR, *b
18) Paying or crediting a retailer for any advertising, display, or distribution service, except to the extent allowed by state or federal law.	32A-12-603(5) <i>(27 C.F.R. 6.51- 6.56, 6.92, &amp; 6.98)</i>		GR, *b
d. Industry member soliciting any store personnel for the purposes of furthering the sale of a particular brand.	32A-12-603(4)(i)(ii)(B)		GR, *b
3. <u>Commercial Bribery:</u>  It is unlawful for an industry member, directly or indirectly, to induce a Wholesaler or retailer to purchase the industry member's products, to the complete or partial exclusion of alcoholic beverages sold by other	32A-12-604		GR, *b

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persons, by commercial bribery, or by offering or giving a bonus, premium, compensation, or other thing of value, to an officer, employee, or representative of the wholesaler or retailer.			
<p>4. <u>Consignment Sales:</u></p> <p>a) It is unlawful for an industry member selling, offering to sell, or contracting with a wholesaler or retailer, any product on consignment or under conditional sale or with the privilege of return or on any basis other than a bond fide sale if the direct effect of the sale or contract is to hinder or deter other persons from selling any of those products to the wholesaler or retailer in interstate or foreign commerce.</p> <p>b) It is unlawful for the wholesaler or retailer to engage in the purchase of alcoholic beverage products from an industry member under the conditions described in 4(a).</p>	<p>32A-12-605</p> <p>32A-12-605</p>		<p>GR, *b</p> <p>GR, *b</p>
<p>5. <u>Unlawful Acts Involving Consumers:</u></p> <p>a) Industry member giving away its alcoholic products to any person except as authorized by law.</p> <p>b) Industry member giving away its alcoholic product as part of a promotion of the product.</p> <p>c) Industry member giving away its alcoholic product as a subterfuge to provide samples.</p> <p>d) Industry member engaging in any advertisement or promotional scheme that requires the purchase or consumption of the alcoholic beverage in order to participate.</p> <p>e) Industry member paying, giving or delivering to any person any thing of value, including rebates, refunds, or prizes based upon the purchase, display, use, sale, or consumption of alcoholic beverages.</p> <p>f) Industry member sponsoring or underwriting any athletic, theatrical, scholastic, artistic, or scientific event that:</p> <p>1) overtly promotes the consumption of alcoholic products;</p> <p>2) offers alcoholic products to the general public without charge; or</p> <p>3) takes place on the premises of a school, college, university, or other educational institution.</p>	<p>32A-12-606(1)(a)</p> <p>32A-12-606(1)(b)(i)</p> <p>32A-12-606(1)(b)(ii)</p> <p>32A-12-606(2)</p> <p>32A-12-606(3)</p> <p>32A-12-606(4)</p>		<p>GR, *b</p> <p>GR, *b</p> <p>GR, *b</p> <p>GR, *b</p> <p>GR, *b</p> <p>GR, *b</p>

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