

ON-PREMISE BEER RETAILERS / 32A-10 (Part 2) - VIOLATION GRID

<u>Descriptions</u>	<u>Code Citation</u>	<u>Rule Citation</u>	<u>Degree</u>
A. <u>ADVERTISING</u>			
1. Improper advertising:			
a. that contains any statement, design, device, or representation that is false or misleading;	32A-12-401(4)	R81-1-17(6)(b), (7)	MOD, *b
b. that contains any statement, design, device, or representation that is obscene or indecent;	32A-12-401(4)	R81-1-17(6)(c), (7)	MOD, *b
c. that refers to, portrays, or implies illegal conduct, illegal activity, abusive or violent relationships or situation, or anti-social behavior;	32A-12-401(4)	R81-1-17(6)(d), (7)	MOD, *b
d. that encourages over-consumption or intoxication, promotes the intoxicating effects of alcohol, or overtly promotes increased consumption;	32A-12-401(4)	R81-1-17(6)(e), (7)	MOD, *b
e. that offers any unlawful discounting practice such as "happy hour", "two for the price of one", or "all you can drink for \$.....";	32A-12-401(4)	R81-1-17(6)(f), (7)	MOD, *b
f. that encourages or condones drunk driving;	32A-12-401(4)	R81-1-17(6)(g), (7)	MOD, *b
g. that depicts the act of drinking;	32A-12-401(4)	R81-1-17(6)(h), (7)	MOD, *b
h. that promotes or encourages the sale to or use of alcohol by minors;	32A-12-401(4)	R81-1-17(6)(i), (7)	MOD, *b
i. that is directed or appeals primarily to minors by:	32A-12-401(4)	R81-1-17(6)(j), (7)	MOD, *b
(1) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Clause;			
(2) employing any entertainment figure or group that appeals primarily to minors;			
(3) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing			

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<p>advertising on the comic pages of magazines, newspapers, or other publications;</p> <p>(4) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other print media, or sponsoring any school, college or university activity;</p> <p>(5) using models or actors in the advertising that are or reasonably appear to be minors;</p> <p>(6) advertising at an event where most of the audience is reasonably expected to be minors;</p> <p>(7) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use by minors.</p>			
<p>j. that portrays use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;</p>	32A-12-401(4)	R81-1-17(6)(k), (7)	MOD, *b
<p>k. that contains claims of representations that individuals can obtain social, professional, educational, athletic, or financial success or status or solve such problems as a result of consumption;</p>	32A-12-401(4)	R81-1-17(6)(l), (7)	MOD, *b
<p>l. that requires the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program or other activity;</p>	32A-12-401(4) 32A-12-606(2)	R81-1-17(6)(n), (7)	MOD, *b
<p>m. that implies by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical or sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.</p>	32A-12-401(4)	R81-1-17(6)(o), (7)	MOD, *b
<p>2. Advertising scheme that offers alcoholic beverages to patrons or the general public without charge.</p>	32A-12-401(4), (5) 32A-10-206(5)(f)	R81-1-17(6)(m), (7)	MOD, *b

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B. <u>AUDIT</u>	<u>Descriptions</u>	<u>Code Citation</u>	<u>Rule Citation</u>	<u>Degree</u>
1.	Change of floor plan without department approval.	32A-10-202(1)(g)		MOD
2.	Failure to maintain local licensing.	32A-10-202(1)(d) 32A-10-203(6) Title 11-10(2)		*f
3.	Failure to maintain a compliance bond.	32A-10-202(1)(f) 32A-10-203(6) 32A-10-205	R81-10A-3	*f, *e
4.	Failure to maintain general liability insurance as required.	32A-10-202(1)(h) 32A-10-203(6)	R81-10A-4	*f, *e
5.	Failure to maintain dram shop insurance if required (depending on beer sales figures).	32A-10-202(1)(i) 32A-10-203(6)	R81-10A-4	*f, *e
6.	Record maintenance:			
	a. Failure to maintain accounting records as required.	32A-10-206(14)(a)		MOD
	b. Failure to keep ID badge records.		R81-4A-13	MOD
	c. Failure to keep employee alcohol server training records.		R81-1-12(3)	MOD
7.	Falsification/tampering with records.	32A-10-206(14)(b) 32A-12-303(2) 32A-12-304		GR, *b, *d
8.	Failure to maintain 51% food sales <i>[non-tavern licensees]</i> .	32A-1-105(56)(b)		*f
9.	Change of ownership or organizational structure without notifying the department.	32A-10-202(3) 32A-10-206(17)	R81-10A-1	*f
10.	Failure to comply with state and federal laws pertaining to payment of taxes, unemployment funds, etc.	32A-1-123 32A-10-203(6)		*f
11.	Obstructing or failing to allow an officer or department representative from making a search or investigation.	32A-10-202(1)(j) 32A-12-305 32A-13-109		GR, *b
12.	Failure to maintain responsible alcohol service plan (if required by Commission).		R81-1-24(4)	SER, *e

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C. CONSUMPTION

1. 3.2 beer sold in a container exceeding 2 liters.	32A-10-206(1)(b) 32A-12-206		SER, *b
2. 3.2 beer sold to an individual patron in a container exceeding 1 liter.	32A-10-206(1)(bi)		SER
3. Allowing consumption on a premises during a license suspension.	32A-10-201(1) 32A-12-301(1)(d)		GR, *b
4. Employee consuming alcoholic beverages while on duty	32A-10-206(11)(a)		SER
5. Permitting a person to become intoxicated, or an intoxicated person to consume.	32A-12-216(1)(a)		GR, *c
6. Permitting the consumption of alcoholic beverages illegally carried onto the premise by a patron.	32A-10-206(7)(b)		SER

D. DUAL LICENSE (WITH FULL-SERVICE RESTAURANT LICENSE - ON SAME PREMISES AT DIFFERENT HOURS):

1. Operating dually as a full-service restaurant without first acquiring a full-service restaurant license.		R81-10A-1(2)(a)	SER
2. Operating under the restaurant and on-premise beer licenses concurrently.		R81-10A-1(2)(b) & (c)	SER
3. Changing times of operation of each license type without first requesting and receiving approval from DABC.		R81-10A-1(2)(b)	MOD
4. Liquor storage unlocked during the hours establishment is operated under the on-premise beer license.		R81-10A-1(2)(d)	SER

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E. EMPLOYEE:

1. Lack of alcohol server training and education.	32A-10-206(3) 32A-1-401	R81-1-12	MOD
2. Employee consuming alcoholic beverages while on duty.	32A-10-206(11)(a)		SER
3. Employee intoxicated while on duty.	32A-10-206(11)(b)		GR
4. No or improper identification badge.		R81-10A-6	MIN
5. Employee allowing a person to brownbag an alcoholic beverage onto the premises.	32A-10-206(7)(b) 32A-12-213		SER, *b
6. Minor employee selling, dispensing or handling alcoholic beverages/ flavorings.	32A-10-206(10)(a)(i)		SER
7. Minor employee under 16 years of age entering a beer sale into cash register.	32A-10-206(10)(b)		SER
8. Minor employed by or on the premises of a tavern.	32A-10-206(10)(a)(ii)	R81-10A-7	SER
9. Employee allowing a patron to leave with an open container of alcoholic beverages.	32A-10-206(9)		SER
10. Supervisor or manager convicted of (or arrested for) designated offense.	32A-10-203(2), (3), (6)		*f

F. LICENSE:

1. Unapproved transfer of license to another location.	32A-10-206(17) 32A-12-301(1)(d)		GR, *b
2. Attempt to sell, transfer, barter, give, etc. license to another entity.	32A-10-202(3) 32A-10-206(17)(a)		GR
3. DABC license not displayed.	32A-10-206(12)(a)		MIN
4. Selling alcoholic beverages during a license suspension.	32A-10-201(1)(a) 32A-12-301(1)(d)		GR, *b
5. Operating without a license.	32A-10-201(1)(a) 32A-12-201(7), -301(1)(d)		GR, *b

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6. Failure to post suspension sign.	32A-1-119(6)(e)		GR

G. LICENSEE:

<p>1. After the day the on-premise beer retailer license is granted a partner, managing agent, manager, officer, director, 20% stockholder, 20% LLC member, or employee in a supervisory or managerial capacity <u>is found to have been convicted</u> of any of the following offenses <u>prior</u> to the license being granted:</p> <ul style="list-style-type: none"> a. a felony; b. a violation concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages; or c. a crime of moral turpitude. d. driving under the influence of alcohol, any drug, or the combination of the two – twice within 5 years. 	<p>32A-10-203(2)(a) 32A-10-203(6)</p>	<p>R81-1-16</p>	<p>*f</p>
<p>2. On or after the day the on-premise beer retailer license is granted, a partner, managing agent, manager, officer, director, 20% stockholder, 20% LLC member, or employee in a supervisory or managerial capacity <u>is convicted of:</u></p> <ul style="list-style-type: none"> a. a felony; b. a violation concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages; c. a crime of moral turpitude; or d. driving under the influence of alcohol, any drug, or the combination of the two for a second time within 5 years. 	<p>32A-10-203(2)(b) 32A-10-203(6)</p>	<p>R81-1-16</p>	<p>*f</p>

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3. On or after the day the on-premise beer retailer license is granted, a partner, managing agent, manager, officer, director, 20% stockholder, 20% LLC member, or employee in a supervisory or managerial capacity <u>is arrested for</u> : a. a felony; b. a violation concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages; c. a crime of moral turpitude; or d. driving under the influence of alcohol, any drug, or the combination of the two for a second time within 5 years.	32A-10-203(3) 32A-10-203(6)	R81-1-16	*f
4. Falsification/tampering with records.	32A-10-206(14)(b) 32A-12-303(2) 32A-12-304		GR, *b, *d
5. False statement.	32A-12-304		GR, *d
6. A minor is found to be serving as a partner, managing agent, manager, officer, director, 20% stockholder, or 20% member of an LLC.	32A-10-203(5)		*f
7. Failure to notify department of any change in ownership.	32A-10-202(3) 32A-10-206(17)(a)		*f
8. Licensee no longer possesses qualifications required for obtaining the license.	32A-10-203(6)		*f, *g

H. OPERATIONS:

1. Closure in excess of 240 hours without notification and approval of the department <i>[taverns only]</i> .	32A-10-206(15)(a)		*g
2. Closure in excess of 90 days without Commission approval <i>[taverns only]</i> .	32A-10-206(15)(c) & (e)		*g
3. Failure to reopen and resume business by the approved date <i>[taverns only]</i> .	32A-10-206(15)(f)		*g

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4. Seasonal operator opening on days outside the designated season <i>[taverns only]</i> .	32A-10-201(2)(d) 32A-12-202, -301(1)(d)		MOD, *b
5. Minors handling alcoholic beverages/ flavorings.	32A-10-206(10)(a)(i)		SER
6. Minor employee under 16 years of age entering a beer sale into cash register.	32A-10-206(10)(b)		SER
7. Minors employed by or on the premises of a tavern.	32A-10-206(10)(a)(ii)	R81-10A-7	SER
8. Warning sign not displayed.	32A-10-206(12)(b)		MIN
9. DABC license not displayed.	32A-10-206(12)(a)		MIN
10. Failure to maintain 51% food sales <i>[non-tavern beer licensees]</i> .	32A-1-105(56)(b)		*f
11. Refusing proper entry to the department, commission, or law enforcement officers.	32A-10-202(1)(j) 32A-12-305 32A-13-109		GR, *b
12. Possess, purchase, sell, or acquire illegal beer.	32A-10-101(3) 32A-10-102(1) 32A-12-201(7), -208		GR, *a, *b
13. Purchase beer from other than designated licensed wholesaler.	32A-10-102(1)(b) 32A-12-208		MOD, *b
14. Allowing a patron to bring alcoholic beverages onto the premises.	32A-10-206(7)(b) 32A-12-213(1)(e) & (2)		SER, *b
15. Liquor stored or sold in an on-premise beer establishment.	32A-10-206(2), 32A-12-213(1)(e) & (2)		SER, *b
16. Allowing a patron to leave the premises with an open container of alcoholic beverages.	32A-10-206(9)		SER
17. Attire and conduct violations including allowing lewd acts or visual reproductions depicting lewd acts.	32A-1-601, -602, -604 32A-1-603 <i>(taverns only)</i>		GR
17. Allowing gambling or video gambling devices on the premises of the restaurant.	32A-10-206(13)		GR
19. Obstructing an officer or department representative from making a search or investigation.	32A-10-202(1)(j) 32A-12-305 32A-13-109		GR, *b

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20. Offering free alcoholic beverages to patrons.	32A-10-206(5)(f) 32A-12-401(4), (5)	R81-1-17(6)(m), (7)	MOD, *b, *g
21. Permitting a person to become intoxicated, or an intoxicated person to consume.	32A-12-216(1)(a)		GR, *c
22. Failure to obtain department approval for multiple licensed facility storage and service.		R81-1-11(2)(h)	MOD
23. Failure to remain open for one hour after sales of beer cease as long as patrons are on the premises. <i>[taverns only]</i>	32A-10-206(4)(c)		SER
24. Allowing a patron to remain on the premises to consume alcoholic beverages between 2:00 a.m. and 10:00 a.m. <i>[taverns]</i>	32A-10-206(4)(d)		SER
25. Failure to post suspension sign.	32A-1-119(6)(e)		GR
26. Bad checks tendered to the department.	32A-1-113(5)	R81-1-3(6)	*e, *g
27. Knowingly allowing illegal drug activity on premises.	32A-10-206(18)		GR

I. SALES

1. Selling illegally acquired beer.	32A-10-101(3) 32A-10-102(1) 32A-12-201(7), -208		GR, *a, *b
2. Sale of, or offered or sale, beer during unauthorized days, times, or places	32A-10-206(4)(a) 32A-12-201(7), -202		MOD, *b
3. Sale of alcoholic beverages <i>by</i> a minor.	32A-10-206(10)(a)(1)		SER
4. Sale of alcoholic beverages during emergencies.	32A-12-207		GR, *b
5. Sale of alcoholic beverages without a license or during a license suspension.	32A-10-201(1)(a) 32A-12-301(1)(d)		GR, *b
6. Sale of 3.2 beer in an open container exceeding 2 liters.	32A-10-206(1)(b)		SER, *b

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	32A-12-206		
7. Sale of 3.2 beer to an individual patron in an open container exceeding 1 liter.	32A-10-206(1)(b)		SER
8. Sell, deliver, or furnish alcoholic beverages to:			
a. minor	32A-10-206(4)(b)(i) 32A-12-203		SER, *a, *b
b. intoxicated person	32A-10-206(4)(b)(ii) 32A-12-204		GR, *a, *b
c. any known habitual drunkard	32A-10-206(4)(b)(iii)		GR
d. any known interdicted person	32A-10-206(4)(b)(iv) 32A-12-205		GR, *b
9. Selling liquor (spirituous liquor, wine, heavy beer, or flavored malt beverage).	32A-10-206(2) 32A-12-201(7)		SER, *b
10. Allowing a patron to dispense their own alcoholic beverages.	32A-10-206(3)		GR
11. Permitting sale of beer by an untrained server.	32A-10-206(3) 32A-1-401	R81-1-12	MOD
12. Sale of beer "to go" in open containers.	32A-10-206(9)		SER
13. Discounting prices:			
a. Selling beer at less than cost.	32A-10-206(5)(a)		MOD
b. Selling beer at a special or reduced cost that encourages over consumption or intoxication.	32A-10-206(5)(b)		MOD
c. Selling beer for special or reduced prices at certain times. (happy hour)	32A-10-206(5)(c)		MOD

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d. Selling more than one alcoholic beverage for the price of a single alcoholic beverage.	32A-10-206(5)(d)		MOD
e. Selling of an indefinite or unlimited number of alcoholic beverages during any set period for a fixed price.	32A-10-206(5)(e)		MOD
f. Offering beer free of cost to the general public.	32A-10-206(5)(f)		MOD
14. When operating a dually licensed premises, selling liquor during hours restricted to beer sales.		R81-10A-1(2)(b) & (c)	SER
15. Misrepresenting the brand of beer being served.	32A-12-219		GR

J. Sexually Oriented Entertainment (Taverns only):

1. Permitting sexually-oriented entertainment without first obtaining Commission approval of the club's stage structure.	32A-1-603(4), -604	R81-1-25(4)(a)(i)	GR
2. All windows, doors, and other apertures of premises are not darkened or otherwise constructed to prevent anyone outside from seeing the performance of sexually-oriented entertainers.	32A-1-603(3)(b)(i), -604		GR
3. Outside entrances doors of the premises are locked.	32A-1-603(b)(ii), -604		GR
4. Minor on the premises during sexually-oriented entertainment.	32A-1-603(9), -604		GR
5. Entertainer performing in a state of nudity.	32A-1-603(2)(a), -604		
6. Permitting lewd acts.	32A-1-603(2)(b) & (c), -604		

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7. Prohibited activities involving patrons:			
a. Entertainer touching a patron during a performance, or while the entertainer is dressed in performance attire or costume.	32A-1-603(5), -604	R81-1-25(4)(a)(iv)	GR
b. Entertainer failing to wear opaque clothing to cover performance attire when in the portion of the premises used by patrons.	32A-1-603(6), -604	R81-1-25(4)(a)(ii)	GR
c. Entertainer engaging in straddle dancing with another person.		R81-1-25(4)(a)(iii)	GR
d. Permitting a patron to:			
(1) be on the stage when a sexually-oriented entertainer is performing.	32A-1-603(7), -604	R81-1-25(4)(a)(v)	GR
(2) touch a sexually-oriented entertainer during a performance.	32A-1-603(8)(a)(i), -604	R81-1-25(4)(a)(vi)	GR
(3) touch a sexually-oriented entertainer while the entertainer is dressed in performance attire.	32A-1-603(8)(a)(ii), -604	R81-1-25(4)(a)(vi)	GR
(4) place money or any other object on or within the costume of a sexually-oriented entertainer.	32A-1-603(8)(b)	R81-1-25(4)(a)(vii)	GR

K. STORAGE

1. Change of floor plan without department approval.	32A-10-202(1)(g)		MOD
2. Storing liquor on the premises (when not dually licensed).	32A-10-206(2), 32A-12-215		SER
3. When operating a dually licensed premises, liquor storage not locked at times other than those hours and days when sale and service of liquor is authorized.		R81-10A-1(2)(d)	SER

L. TAVERNS

1. Minor employed by or on the premises of a tavern.	32A-10-206(10)(a)(ii) 32A-12-201(7)	R81-10A-7	SER, *b
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2. Closure in excess of 240 hours without notification and approval of the department.	32A-10-206(15)(a)		*g
3. Closure in excess of 90 days without Commission approval.	32A-10-206(15)(c) & (e)		*g
4. Failure to reopen and resume business by the approved date.	32A-10-206(15)(f)		*g
5. Seasonal operator opening on days outside the designated season.	32A-10-201(2)(d) 32A-12-202, -301(1)(d)		MOD, *b
6. Permitting a patron to remain on the premises to consume alcoholic beverages between 2:00 a.m. and 10:00 a.m.	32A-10-206(4)(d)		SER
7. Allowing a patron to remain on the premises to consume alcoholic beverages between 2:00 a.m. and 10:00 a.m.	32A-10-206(4)(c)		SER
8. Regulations for sexually-oriented entertainment - <u>see</u> section J above.			

M. OTHER

1. Unlawful importations.	32A-12-201(2) & (7), -214		GR, *h
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N. TRADE PRACTICES

See violation grid - Industry Trade Practices.

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

*c - Class "C" misdemeanor
*d - 2nd degree felony

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

*g - See statute
*h - 3rd degree felony