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# TITLE 4 ALCOHOLIC BEVERAGES AND MARIJUANA

## DELAWARE ADMINISTRATIVE CODE

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### DEPARTMENT OF STATE

#### OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

#### 900 Trade Practices for Suppliers, Wholesales, and Retailers

### Rule 908 (Formerly Rule 2) Prohibited Trade Practices

#### 1.0 Purpose

- 1.1 The Commissioner has concluded that reasonable marketing techniques are acceptable in the liquor industry.
- 1.2 Promotional activities which tend to encourage excessive and/or uncontrollable consumption of liquor resulting in increased risk to consumers and the general public are not acceptable. Activities which impact adversely on open competition within the industry are not acceptable. This rule seeks to prohibit all such acts.

#### 2.0 Applicability

This rule shall govern the trade practices of all retail licenses, on-premise licenses, importer licenses, and supplier licenses issued by the Delaware Alcoholic Beverage Control Commissioner.

#### 3.0 Prohibited Practices

##### 3.1 Retail Licensees

- 3.1.1 On-Premise License. No establishment licensed to sell alcoholic beverages for consumption on the premises where sold shall engage in any trade practice which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at an unduly rapid rate and shall include, but not be limited to, the following:

- 3.1.1.1 Giving alcoholic beverages in any form, either directly or indirectly, to any individual, organization, group or other entity except that a licensee may "comp" alcohol to compensate a patron for a failure to provide satisfactory service or product and may donate alcohol to a not-for-profit entity that has received a Gathering license from the Commissioner.
- 3.1.1.2 Giving any form of cash (medium of exchange), either directly or indirectly, to any individual, organization, group, or other entity if such contribution is conditional upon the purchase and/or consumption of alcoholic beverages.
- 3.1.1.3 Selling alcoholic beverages at a price which is less than the seller's cost.
- 3.1.1.4 Promoting, sponsoring, conducting, or participating in any event that is in any way conditional upon or involves consumption of alcoholic beverages.
- 3.1.1.5 Offering or selling two (2) or more drinks for the regular price of one.
- 3.1.1.6 Extending credit except as provided in Rule 301 (Formerly Rule 56).
- 3.1.1.7 Unlimited consumption of alcoholic beverages for a set price. However, caterers, as defined in 4 Del.C. §101(7), and private functions in which the host/hostess pays a set price and which are conducted by invitation on a licensed premises are excluded from this prohibition.
- 3.1.1.8 Delivering alcoholic beverages to any person who is or who appears to be intoxicated.
- 3.1.1.9 Soliciting or receiving any items which an importer or supplier licensee is prohibited under subsection 3.2.1.1 or 3.2.1.2 from giving to a retailer.
- 3.1.1.10 Open bars are generally not permitted pursuant to the provisions of 3.1.1.7 above; however, the Commissioner may grant a variance to this section provided that the licensee meets the criteria that follows:
  - 3.1.1.10.1 The licensee must submit a written request to the Commissioner for a variance in this rule for a specific, planned event.
  - 3.1.1.10.2 Admission to the event must be by ticket only and include the place, time, date, and hours of the event.
  - 3.1.1.10.3 The request for a variance must be received by the Commissioner six (6) weeks in advance of the planned event.
  - 3.1.1.10.4 Food of adequate variety and quantity must be offered as part of the package price for a ticket to the event.

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- 3.1.1.10.5 Non-alcoholic beverages must be available and offered as part of the package price of a ticket for the event.
- 3.1.1.10.6 The tickets used for each event must contain a statement that the licensee retains the right to discontinue service of alcoholic liquor as required by state law and Delaware Alcoholic Beverage Control Commissioner rules.
- 3.1.1.10.7 All servers of alcoholic liquor and staff at the event must be trained in compliance with the Delaware mandatory server training law.
- 3.1.1.10.8 Adequate staff must be on site to monitor drinking by patrons and to take action consistent with state law and Commissioner rules.
- 3.1.1.10.9 The approval for an open bar by the Commissioner does not authorize the unlimited consumption of alcoholic beverages for a set price. Licensees, therefore, are still required to comply with all other applicable rules and laws, including the prohibition on serving a patron who is intoxicated or appears to be intoxicated and to refuse service of alcoholic liquor to underage patrons.
- 3.1.1.11 Engaging in any restraint of trade or commerce of this State as prohibited by 6 **Del.C.** §2103.

3.1.2 Off-Premise License. No establishment licensed to sell alcoholic beverages for consumption not on the premise where sold shall engage in any trade practice which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at any unduly rapid rate and shall include, but not be limited to, the following:

- 3.1.2.1 Giving alcoholic beverages in any form, either directly or indirectly, to any individual, organization, group, or other entity, except that wine tasting on those premises properly licensed for such is permitted in accordance with established regulations and compensating a customer for product purchased which is not satisfactory. Further it is permissible for a retailer to donate alcohol to a not-for-profit entity that has obtained a Gathering license from the Commissioner.
- 3.1.2.2 Selling alcoholic beverages at a price which is less than the seller's cost.
- 3.1.2.3 Promoting, sponsoring, conducting, or participating in any event in which any gift, prize, service, or other gratuity is received by any consumer and is in any way conditional upon or involves consumption of alcoholic beverages.
- 3.1.2.4 Extending credit except as provided in Rule 201 (Formerly Rule 56).
- 3.1.2.5 Delivering alcoholic beverages to any person who is or who appears to be intoxicated.
- 3.1.2.6 Soliciting or receiving any items which an importer licensee is prohibited under subsections 3.2.1.1 or 3.2.1.2 from giving to a retailer.
- 3.1.2.7 Engaging in any restraint of trade or commerce of this State as prohibited by 6 **Del.C.** §2103.

#### 3.2 Importer Licensees

3.2.1 No importer shall engage in any trade practice which can reasonably be expected to injure any retailer through discriminatory practices, nor shall any importer engage in any trade practices which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at any unduly rapid rate and shall include, but not be limited to, the following:

- 3.2.1.1 Giving alcoholic beverages in any form, either directly or indirectly, to any individual, organization, group, or other entity except that an importer may donate alcoholic beverages to a not-for-profit entity who has obtained a Gathering license from the Commissioner.
- 3.2.1.2 Giving any form of cash (medium of exchange) either directly or indirectly, to any individual, organization, etc. except for bona fide contributions to not for profit entities and provided that such contribution is in no way conditional upon the purchase and/or consumption of alcoholic beverages.
- 3.2.1.3 Requiring any retailer to take and dispose of a certain quota of any alcoholic beverages.
- 3.2.1.4 Requiring that a retailer purchase one product in order to purchase another or requiring that one or more products may be purchased only in combinations with other products.
- 3.2.1.5 Engaging in any restraint of trade or commerce of this State as prohibited by 6 **Del.C.** §2103.

3.2.2 The granting of quantity discounts by wholesalers to retailers shall not be considered an unfair trade practice provided that the wholesaler and retailer comply with the provisions of Rule 904 (Formerly Rule 29.)

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#### 3.3 Supplier Licensees

3.3.1 No supplier shall engage in any trade practice which can reasonably be expected to injure any retailer, importer, or other supplier through discriminatory practices, nor shall any supplier engage in any trade practices which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume alcoholic beverages in excessive amounts or at an unduly rapid rate and shall include, but not be limited to, the following:

3.3.1.1 Any practice which is not permitted by the Federal Alcohol Administration Act

3.3.1.2 Engaging in any restraint of trade or commerce of this State as prohibited by 6 **Del.C.** §2103.

**19 DE Reg. 775 (02/01/16)**