



Washington State Liquor Control Board

Industry Advisory Number: **2012-02**
Issue Date: **November 20, 2012**
Advisory Subject: **Volume discounts and other types of discounts provided by distributors to retailers**

What is the purpose of this advisory: This advisory is intended to address questions that have been presented to the Washington State Liquor Control Board (WSLCB) regarding the legality of distributors providing volume discounts or other types of discounts to retailers. These discounts are known under different industry names such as "Family Plans."

1. Question: Are volume discounts for spirits and wine allowed?

Answer: Yes. Discounts that are based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor are allowed. However, the limitations on interactions between the levels of licenses remain, including the prohibition on undue influence and sales below cost.

2. Question: Are other types of discounts for spirits and wine allowed?

Answer: No. Discounts that are based on criteria other than the volume purchased, are not generally permitted. However, a distributor may adjust their prices based on the time and cost to transport and service a retailer i.e. remote geographic area. Distributors must keep their discount policy on file and available for review by the Board and its employees. Under no scenarios may a distributor exert "undue influence" on a licensee or act in a coercive manner.

Scenarios: The following are examples of pricing practices that the Board has determined are allowed under the law, and some that are not:

A. Allowed: Distributor provides a percentage discount to retailer based on the volume of cases of product purchased. This may include spirits and/or wines, but not beer. The plan may provide for an increase in the discount rate between the types of products based on their cost or emphasis on promotion i.e. a case of premium scotch is given twice the volume rate of a non-premium product.

B. Not Allowed: Distributor provides a percentage discount only if the licensee dedicates a percentage of their spirits back-bar, well-drinks, wine by the glass or any combination of sales items in order to participate in a discount plan. This practice constitutes "undue influence" as outlined in the reference section.

Contact Information

For any additional questions on this advisory please contact Patrick Woods, Education and Outreach Manager, 360.664.1604.

REFERENCES

What is the Liquor Board's authority to issue this Advisory: This advisory is issued under the authority provided in:

RCW 34.05.230, RCW 66.28.280 through .320, as well as RCW 66.28.170. Initiative 1183 changed many aspects of how liquor is distributed and sold in Washington, including removing the Board from the sales and distribution of liquor, as well as eliminating the prohibition on volume discounts in sales of wine and spirits to licensees. However, the limitations on interactions between the levels of licensees remain, including the prohibition on undue influence and sales below cost.

❖ **RCW 66.28.170 Wine or malt beverage manufacturers — discrimination in price to purchaser for resale prohibited — price differentials.**

It is unlawful for a manufacturer of spirits, wine, or malt beverages holding a certificate of approval or the manufacturer's authorized representative, a distillery, brewery, or a domestic winery to discriminate in price in selling to any purchaser for resale in the state of Washington. Price differentials for sales of spirits or wine based upon competitive conditions, costs of servicing a purchaser's account, efficiencies in handling goods, or other bona fide business factors, to the extent the differentials are not unlawful under trade regulation laws applicable to goods of all kinds, do not violate this section.

❖ **RCW 66.28.285 (6) Three-tier system-Definitions**

(6) "Undue influence" means one retailer or industry member directly or indirectly influencing the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement written or unwritten or any other business practices or arrangements such as but not limited to the following:

(a) Any form of coercion between industry members and retailers or between retailers and industry members through acts or threats of physical or economic harm, including threat of loss of supply or threat of curtailment of purchase;

(b) A retailer on an involuntary basis purchasing less than it would have of another industry member's product;

(c) Purchases made by a retailer or industry member as a prerequisite for purchase of other items;

(d) A retailer purchasing a specific or minimum quantity or type of a product or products from an industry member;

(e) An industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;

(f) A retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;

(g) An industry member having a continuing obligation to sell a product to a retailer;

(h) A retailer having a commitment not to terminate its relationship with an industry member with respect to purchase of the industry member's products or an industry member having a commitment not to terminate its relationship with a retailer with respect to the sale of a particular product or products;

(i) An industry member being involved in the day-to-day operations of a retailer or a retailer being involved in the day-to-day operations of an industry member in a manner that violates the provisions of this section;

(j) Discriminatory pricing practices as prohibited by law or other practices that are discriminatory in that product is not offered to all retailers in the local market on the same terms.

❖ **RCW 66.28.300 Three-tier system-Undue Influence-Determination by the Board.**

Any industry member or retailer or any other person seeking a determination by the board as to whether a proposed or existing financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety may file a complaint or request for determination with the board. Upon receipt of a request or complaint the board may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety the board may issue an administrative violation notice or a notice of intent to deny the license to the industry member, to the retailer, or both. If the financial interest was acquired through a transaction that has already been consummated when the board issues its administrative violation notice, the board shall have the authority to require that the transaction be rescinded or otherwise undone. The recipient of the administrative notice of violation or notice of intent to deny the license may request a hearing under chapter [34.05](#) RCW.

Please Note: It is the Boards opinion that this advisory is consistent with Federal TTB CFR: Title 27. However it is the duty of the industry members to ensure that their business practices are consistent with federal law

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