



COMMONWEALTH of VIRGINIA

Department of Alcoholic Beverage Control

COMMISSIONERS
J. NEAL INSLEY, CHAIRMAN
SANDRA C. CANADA

2901 HERMITAGE ROAD
P O BOX 27491
RICHMOND, VIRGINIA 23261
PHONE (804) 213-4400
FAX (804) 213-4411
TDD LOCAL (804) 213-4687

CHIEF OPERATING OFFICER/SECRETARY TO THE BOARD
W. CURTIS COLEBURN, III

Circular Letter 13-01

To: Wineries, Breweries and Wholesalers of Alcoholic Beverages

Subject: Prices Charged to Wholesale Distributors by Wineries and Breweries

PURPOSE: The purpose of this circular letter is to remind and clarify the provisions contained in section 3 VAC 5-70-150 prohibiting price discrimination among wholesale distributors by wineries and breweries.

BACKGROUND: In response to requests from manufacturers and wholesalers of wine and beer, the Board provides the following guidance on the provisions of 3 VAC 5-70-150 as it pertains to the pricing of wine and beer by manufacturers to wholesalers in the Commonwealth.

HELD: Wineries and breweries are prohibited from charging wholesale distributors in this Commonwealth a different price for the same products and packages. There are two limited exceptions permitted by regulation by which a winery or brewery may charge wholesale distributors different prices for the same product and package which are: 1.) the difference in the price charged is due to a bona fide difference in the cost of sale or delivery of the product and 2.) a lower price is charged to meet an equally low price charged by a competing winery, brewery or wholesaler on a brand and package of like grade and quality. When there is a different price charged wholesalers for the same products and packages, the wineries and breweries must maintain documentation to substantiate that the difference charged was due to the cost of sale, delivery or to meet a competitor's lower price. Such documentation shall be supplied to the Board or its Special Agents upon request. In summary, wineries and breweries must establish a uniform price (fob) for all products and packages shipped to their wholesale distributors and any deviation in prices charged among its wholesalers must be related to the exceptions stated above.

The Board has determined that wineries and breweries may rely on wholesalers' pricing letters to retailers as bona fide evidence in determining if a competing winery or brewery has lowered its prices to a wholesaler(s). If warranted, such pricing letters would be justification for a winery or brewery to lower its price to a wholesaler on similar products and packages to meet the lower price charged by the competing winery or brewery. These price reductions can only remain in effect during the period that the competing winery or brewery charges a lower price.

We were also asked to address the issue of "Suggested Price to Retail" for products established by wineries and breweries and what influence or mechanisms could be used to have wholesalers adhere to the suggested price. Wineries and breweries are prohibited by section 3 VAC 5-70-150 A of the Board's regulations and sections 4.1-411 and 4.1-510 of the Code of Virginia from establishing or attempting to establish a price by any means at which a wholesale licensee shall sell any alcoholic beverage.

INQUIRIES: Should you have any questions regarding the information contained in this guidance document please contact a member of our Compliance Unit at compliance@abc.virginia.gov You can find a listing of the members of the Compliance Unit on our web site at www.abc.virginia.gov >Law Enforcement>Manufacturers/Wholesalers .

A handwritten signature in black ink, reading "W. Curtis Coleburn III". The signature is written in a cursive style with a large, stylized initial "W".

W. Curtis Coleburn III
Chief Operating Officer/Secretary to the Board