



WHOLESALE LICENSEE BULLETIN

The information contained in this licensee bulletin is a summary of the Board's regulations and those sections of the Virginia State Code that pertain to a Wholesale Wine or Beer licensee. We recommend that wholesale licensees and their employees become familiar with the material contained in this bulletin.

(1) The privileges of a wholesale beer licensee are:

- The sale of beer to a retail licensee that holds a Beer On, Beer Off or Beer On/Off premises license.
- The sale of beer to Banquet, Banquet Special Event, and Manufacturer Beer/Wine Event banquet licensees.
- The sale of kegs of beer for off premises consumption to those retailers that hold a Keg Permit in addition to the above licenses.
- The transfer of beer to other wholesale beer licensees.
- The sale of beer that is shipped out of state or to the military.
- The sale of beer to ships sailing to foreign ports or other states.

(2) The privileges of a wholesale wine licensee are:

- The sale of wine to a retail licensee who holds a Wine and Beer Off Premises or a Wine and Beer On and Off Premises license.
- The sale of cider to a retail licensee who holds any Wine or Beer On or Off Premises license individually or any combination of the two. Cider shall be sold in any container that complies with federal regulations for wine or beer, and this is labeled in accordance with Board regulations.
- The sale of wine or cider to Banquet, Banquet Special Event, and Manufacture Beer/Wine Event banquet licensees.
- The sale of kegs (containers over four gallons) for off premises consumption to those retailers who hold a keg permit in addition to the above licenses.
- The sale of low alcohol beverage coolers to a retail licensee that holds a Wine and Beer Off Premises license and to a Mixed Beverage restaurant licensee if they are going to be sold for On Premises consumption. Low alcohol beverage coolers can only be sold in those localities that have approved the sale of mixed beverages.
- The sale of wine that will be shipped out of state or to the military.
- The sale of wine to ships sailing to foreign ports or other states.

(3) Advertising guidelines for wholesalers include:

- Wholesalers may lend, buy for, or give to a retail licensee Alcoholic beverage advertising materials made of paper, cardboard, canvas, rubber, foam, or plastic, provided the materials have a wholesale value of \$40.00 or less per item. Wholesalers may print logos and other brand identification of these items of brands that they sell only. They may not include food items or items sold by other wholesalers.
- These advertising materials may be installed inside the retailer's premises by a wholesaler using normal and customary means (string, tape, thumb tacks). With the consent of the retailer, the wholesaler may mark or affix retail prices on these materials.
- No advertising provided shall contain any statement, symbol, depiction or reference that would tend to induce minors to drink, or would tend to induce persons to consume to excess; is obscene or suggestive of any illegal activity; incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess; except that, persons granted a license to sell wine or beer may display within their licensed premises point-of-sale advertising materials that incorporate the use of any present or former professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the appropriate federal agency and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity, do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery, and do not imply that the alcoholic beverage so advertised enhances athletic prowess.
- The advertising material may also not contain false or misleading information; imply or indicate, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise; make any reference to the intoxicating effect of any alcoholic beverages; constitute or contain a contest or sweepstakes where a purchase is required for participation; or constitute or contain an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages, except for refund coupons and combination packaging. Any such combination packaging shall be limited to packaging provided by the manufacturer that is designed to be delivered intact to the consumer.
- Outdoor alcoholic beverage advertising is limited as follows: No outdoor alcoholic beverage advertising shall depict persons consuming alcoholic beverages, use cartoon characters in any way, or use persons who have not attained the minimum drinking age as models or actors.
- No outdoor alcoholic beverage advertising shall be placed on property zoned exclusively for agricultural or residential uses, or on un-zoned property.
- No alcoholic beverage wholesale licensee may sell, rent, lend, buy for, or give to any retail licensee any outdoor alcoholic beverage advertising, any billboard placements for such advertising, or in any other way confer on any retail licensee anything of value that constitutes outdoor alcoholic beverage advertising.
- No alcoholic beverage wholesale licensee may engage in cooperative advertising, as defined in 3VAC5-30-80, on behalf of any retail licensee.
- Wholesalers may post information listing at which retail establishments their products are available for purchase, provided the information is limited to: (1) the retailer's name, address, telephone number, website address and (2) all retailers that carry the products are included in

the listing. A post on social media of only selected retailer(s) is prohibited, and as an alternative, a post linking to the entire list is acceptable.

- Wholesalers may post information concerning upcoming events to be held at an ABC licensed retail establishment so long as (1) the event involves the products they distribute, (2) the wholesaler is authorized by Board regulation or statute to be present and participating in the event (i.e. tasting event), (3) the wholesaler intends to participate in the event and (4) any information posted on a social media site is limited to the name, address, telephone and website address of the retail licensee at which the event is to be held.

(4) Wholesale licensees may distribute novelty items, provided the following conditions are met:

- Wholesale licensees may provide novelty items not in excess of \$10.00 in wholesale value and is limited to one item per employee present, per visit. These items may be worn by the employees and displayed on the licensed premises.
- Wholesale licensees may provide one novelty item not in excess of \$10.00 in wholesale value to a patron of a retail establishment, when that patron is participating in that wholesaler's legal tasting event.
- Novelty items may be distributed to individuals at a **non-retail licensed** location provided the item does not exceed \$10.00 in wholesale value.
- Items bearing moderation and responsible drinking messages may be displayed by the licensee and employees and given to patrons on licensed premises provided references to any alcoholic beverage manufacturer or brands are subordinate in type size and quantity of text to such moderation message.

(5) For the purpose of maintaining the freshness of the stock, a wholesale licensee may perform the following services with the consent of the retailer (except on Sunday if a local jurisdiction prohibits Sunday sales of alcoholic beverages by ordinance):

- Rotate, repack, and rearrange wine and/or beer in a display.
- Restock wine and beer.
- Rotate, repack, rearrange and add to their own stocks of wine or beer in a storeroom space assigned to them by the retailer.
- Transfer wine or beer between storerooms and displays.
- Create or build original displays using wine or beer products only. The wine or beer products used in the display must be products available for sale by the retail licensee.

(6) Wholesale licensees may not:

- Alter or disturb the merchandise sold by another wholesaler except when it has been erroneously placed in the area assigned to the wholesaler by the retailer, or when a floor display is reassigned by the retailer to another wholesaler.
- Mark or affix retail prices to products that are not sold by the wholesaler.
- Sell or offer to sell alcoholic beverages to a retailer with the privilege of return except:
 - a) Products defective at time of delivery may be replaced at the time of delivery only.
 - b) Products erroneously delivered may be replaced or money refunded.

- c) Products of which a manufacturer or importer discontinues production or importation may be returned and money refunded if no lawful exchange under subdivision 6 g is available, and if prior written approval is provided by the Board.
- d) Resalable draft beer may be returned and money refunded.
- e) Products in the possession of a retail licensee whose license has been terminated by operation of law, voluntary surrender or by Board Order may be returned and money refunded upon permit issued by the Board.
- f) Products which have been condemned and are not permitted to be sold in this Commonwealth may be replaced or money refunded upon permit issued by the Board.
- g) Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. Where production of the product has been discontinued such as seasonally available products, the distributor may exchange the product for a product from the same manufacturer on an identical quantity and comparable wholesale price basis. Any such exchange shall be documented by the word "exchange" on the wholesaler and retailer invoice copies.

(7) Sales of alcoholic beverages between a wholesale licensee and a retailer:

- Must be paid for at the time of or prior to delivery.
- Must be by U. S. currency, money order, check or EFT in the retail licensee's name or trade name.
- Amount of transfer may not be larger than the purchase price for the alcoholic beverages.
- If non-alcoholic beverages are sold at the same time a separate invoice can be generated.
- If a single invoice is used for both alcoholic and non-alcoholic beverages, then the alcoholic beverage items shall be separately identified and totaled.
- Wholesalers must maintain records of all invalid checks, money orders and EFT's.
- When an invalid check is received, sales to the retailer must be suspended until it is satisfied.
- Wholesalers are required to file reports with the Board for invalid checks. This can be done on the VA ABC website: <https://www.abc.virginia.gov/licenses/spirits-industry-resources/dishonored-check-form>
 - The first time this happens, the wholesaler or distributor is not required to report it, as long as the retailer makes the check good within **seven days** of being notified.
 - Upon receiving the second bad check, **within a period of 180 days, or if the first check is not paid in seven days** after notification, both the first and any other bad checks must be reported to the ABC.
 - Any other checks after these are to be reported if they are returned from the bank. If you receive any documentation from the licensee's bank saying the check was returned due to a bank error, forward the documentation to us, and we will excuse that check.

- (8) A person must be at least 18 years of age to be employed as a solicitor salesman for wine and beer.**
- (9) A wholesaler or their employees may not be employed in any capacity by a retail licensee. This does not apply if the wholesaler does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to the retailer.**
- (10) Wholesale licensees may provide the following services and items to a retail licensee:**
- Draft wine/beer knobs, which shall include the brand name of product and cannot be illuminated.
 - Tapping equipment which includes all parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, **excluding:**
 - Carbonic gas (may be sold to a retail licensee at the reasonable open market price).
 - Gas pressure gauges (may be sold to a retail licensee at cost).
 - Draft boxes.
 - Draft arms or standards.
 - Refrigeration equipment or components.
 - Bottle or can openers \$20.00 or less in value. Openers in excess of \$20.00 may be sold provided that the reasonable open market price is charged.
 - Spirits back bar pedestals without regard to value, to be used on the retailer's premises.
 - Clip-ons and table tents provided that if customized, only alcoholic beverages sold by the wholesaler providing them are listed.
 - Wholesalers may sell paper or plastic cups to banquet licensees that have wine or beer advertising, provided the reasonable wholesale price is charged.
 - Wholesalers may clean and service for free or for a fee, coils and like equipment used in dispensing wine and beer, and may sell solutions for cleaning wine and beer glasses to retail licensees provided the reasonable market price is charged.
 - Wholesalers may sell ice to retail licensees provided the reasonable market price is charged.
- (11) A wholesaler may sell, rent or lend to any retailer, for use by a purchaser of draft beer in kegs from such retailer, whatever tapping equipment is necessary to extract the beer from its container. This would include hand pumped hand tapping equipment only. Cold plates and jockey boxes cannot be provided to a retail licensee.**
- (12) A wholesaler may sell and install in any retailer's establishment dispensing accessories (such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves) and carbon dioxide (and other gases used in dispensing equipment) at a price not less than the cost of the industry member who initially purchased them, and at a price not less than the initial purchase price paid by the industry**

member, and if the price is collected within 30 days of the date of sale. Contact your Agent for information on beer tapping equipment converted to wine tapping equipment.

- (13) Wholesale licensees may provide “routine business entertainment,” which is defined as meals and beverages, concerts, theater and arts entertainment, entertainment at charitable events, private parties, and local transportation in order to attend one or more of these activities. When entertaining retail licenses, wholesalers must abide by the following conditions:
- There can be no corresponding obligation on the part of the retailer to purchase alcoholic beverages, or provide any other benefit to the wholesaler, or to exclude the sale of another wholesaler’s products at the retailer’s establishment.
 - The wholesaler must accompany the personnel of the retail licensee during the entertainment.
 - This shall not be construed to allow providing property or anything of value to retail licensees.
 - No more than \$400.00 may be spent per 24-hour period on any retail licensee or an employee.
 - No retailer or employee can be entertained more than six times per calendar year by a wholesaler.
 - Wholesalers must keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees to include the date, amount, type of activity, and licensee entertained.
- (14) Sunday deliveries by wholesalers to retail licensees are prohibited except to boats sailing to ports of call outside of the Commonwealth and to banquet licensees.
- (15) Gifts of alcoholic beverages by a licensee to any other person are prohibited except as follows:
- Personal friends.
 - A wholesale licensee may give to a retail licensee a sample serving of wine or beer not sold by the retail licensee. The sample may not exceed 52 fluid ounces (1.5 liters if metric) and the label must show “SAMPLE” in reasonable size letters.
- (16) Elaborate tapping equipment such as draft trucks, vans or trailers, and jockey boxes and cold plates may only be lent to banquet licensees and annual Mixed Beverage Caterer licensees. This type of equipment may not be loaned to individuals, or to retail licensees.
- (17) Beer and wine wholesalers may participate in tastings sponsored by a Gourmet Shop licensee. The wholesaler may assist in the pouring of wine and beer and provide information to customers. Samples are limited to 2 ounces of wine or 4 ounces of beer per person.
- (18) Beer and wine wholesalers without a permit (and their authorized representatives if they obtain a permit) may conduct tastings in licensed hotels, restaurants, and clubs. For information on these tastings or to apply for a solicitor tasting permit, go to the Virginia ABC web site at (www.abc.virginia.gov). Click on “Licenses,” select “Get a License or Permit,” and then select

“Permits.” Download the Application for Solicitor Tasting Permit, 805-97, to apply for the permit.

- (19) Wine wholesalers may participate in wine dinners or similar events that are organized by the retailer. Allowable conduct includes educating the patrons about the wine products.**
- (20) Do not discriminate in prices charged to different retailers except where the difference is due to:**
- Acceptance or rejection by a retail purchaser of terms or conditions affecting a price offer, including a quantity discount, as long as the terms or conditions are offered on an equal basis to all retailers.
 - A bona fide difference in the cost of sale or delivery.
 - Charging a lower price in good faith to meet an equally low price charged by a competing wholesale licensee on a brand and package of like grade and quality.
 - Wholesale wine licensees may differentiate in the pricing between retail purchasers with on-premises and off-premises privileges. However, there shall be no discrimination in pricing among retail licensee purchasers with on-premises privileges and no discrimination in pricing among retail licensee purchasers with off-premises privileges, unless the conditions in of this section are present.
 - For a difference in price charged to any retailer, the Board may ask for written justification for the price difference.
- (21) Beer may be peddled to retail licensees. A maximum of two cases or 24 bottles of wine may be peddled to retail licensees during an invoiced delivery, provided that the wholesale wine licensee provides a revised purchase order indicating the additional wine peddled during the transaction.**
- (22) “Pay to Play” is a common term for activities within the alcoholic beverage industry, where manufacturers or wholesalers provide something of value to their customers for preferential treatment. Please review the Code of Virginia, section 4.1-216, specifically section C, to become familiar with this provision. In general, if a wholesaler is providing something of value to a retail licensee that affords them treatment not available to another wholesaler, it may be a violation of this statute. Please contact your Compliance agent if you have questions on this guidance.**

Conclusion

If you have any questions about the information covered in this bulletin or on matters related to your operation under a wholesale wine or beer license, you are encouraged to contact a member of the Compliance Unit by phone or e-mail at (Compliance@ABC.Virginia.Gov).

If you have any questions related to tax reports, label registrations, or franchise designations, please call the Tax Management office at (804) 219-2034.

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