

Retailer Requests of Distributors

The following information is intended to serve as a general understanding of the laws and rules governing the relationships between industry members (manufacturers, importers and wholesalers) and retailers authorized to sell beer. The information is not intended to serve as a precise statement of the Iowa Alcoholic Beverage Control Act, the Division's administrative rules or other statutes. Because responses to questions may vary depending upon actual circumstances, the Division suggests industry members and retailers contact their private attorneys.

Responses based on federal trade practice regulations may also be directed to the U. S. Department of Treasury, Tax and Trade Bureau at industryanalyst.beer@ttb.gov.

- Can you give me logoed glassware?

No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for durable glassware for retail licensees and permittees. Iowa Code § 123.45.

- Can you give me logoed buckets or pitchers?

No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45.

- Can you give me a cooler that has no refrigeration and the retailer will supply the ice? The cooler will be used for all brands of alcohol, water and soda.

No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code §123.45 and 185 IAC 16.4

- Can you supply me with tents, tables and chairs for me to use at my outdoor event?

No. An industry member is prohibited from giving, selling, renting, or lending equipment, furnishings or fixtures to a retailer for use by the retailer or in the retail establishment. 185 IAC 16.4, 27 CFR 6.21 and Iowa Code §123.45

- Can you give me beer dispensing equipment, coil boxes or draft truck with tapping equipment on the side?

No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45.

- Can you buy advertising for my account or event?

Yes, as long as the payment is not offered as an inducement to exclude a competitor's products. The purchase of advertising for one retailer obligates the manufacturer or wholesaler to pay for a like amount of advertising for all retail customers. Iowa Code §§ 123.135 and 123.186; 27 C.F.R. §§ 6.21 and 6.51 through 6.56.

- Can you co-op advertise with me?

Yes, as long as the payment is not offered as an inducement to exclude a competitor's products. Co-op advertising with one retailer obligates the manufacturer or wholesaler to pay for co-op advertising for all retail customers. Iowa Code §§ 123.135 and 123.186; 27 C.F.R. §§ 6.21 and 6.52.

- Can you provide me outside banners with beer logos and beer specials on them?

No. Iowa law prohibits advertising on the outside of licensed premises if the advertising contains a brand name or other matter readily identified with the brand. Thus, a manufacturer or wholesaler may provide outside banners to retailers as long as the banners do not contain a brand name, logo or other advertising matter readily identified with a brand name. Iowa Code § 123.51.

- Can you give me umbrellas for my outdoor service area tables?

Yes, manufacturers and wholesalers may give or sell table umbrellas to retailers as point-of-sale items. The umbrellas must bear substantial advertising matter about the product or the manufacturer or wholesaler. Providing umbrellas and other point-of sale items to one retailer obligates the wholesaler to provide t-shirts and other point-of-sale items to all retail customers if requested. Iowa Code §§ 123.45, 123.135 and 123.186; 27 C.F.R., § 6.84.

- Are one-time use cups legal for you to give me?

No. Manufacturers and wholesalers may sell – not give – one-time usage cups made of paper, paper laminate, or plastic. Iowa law requires manufacturers and wholesalers to charge the retailer an amount equal to or greater than the cost of the one-time usage cups. Iowa Code § 123.45.

- Why can't I have alcohol signage outside my building facing the street?

Iowa law prohibits outside signage bearing brand names and other matter identified with brand names. Outside signage may refer to "whiskey," "wine," or "beer," and may include cost of the product. Iowa Code § 123.51.

- Can you buy me a draft system or walk-in cooler?

No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45.

- Can I require a beer purchase to win something?

Usually, consideration + chance = gambling. Thus, requiring the purchase of a beer to enter a drawing for a prize is most likely gambling. Because answers to questions often differ based on circumstances, the Division recommends licensees and permittees contact the Iowa Division of Inspections and Appeals Gaming Unit at 515.281.6848 with gambling-related the questions.

- How come liquor and wine companies can do some of these things and you can't?

The laws governing liquor, beer and wine are essentially the same. The primary differences include:

- *Glassware – Liquor manufacturers and brokers may sell durable glassware to retailers, but wine and beer manufacturers and wholesalers are limited to selling one-time usage glassware to retailers.*
- *Credit – Retailers are required to pay for liquor and beer purchases on or before delivery, while wine wholesalers may extend credit for a period up to 30-days from delivery.*

Iowa Code §§ 123.45, 123.135 and 123.181.

- I'm going on vacation. Can you hold my check for 3 days until I can make a deposit?

No. Holding a check for a period of time is considered an extension of credit. Retailers are required to pay for beer on or before delivery. Failure to pay for beer at the time of delivery is a violation which may result in a civil penalty or suspension for both the wholesaler and the retailer. Iowa Code § 123.45.

- Can you sell me beer if you are holding a bad check from me?

No. Holding a bad check is essentially an extension of credit and therefore additional sales are not permitted until the bad check has cleared your bank. Iowa Code § 123.45.

- Can you accept 2-party checks as payment for beer?

No. Retailers must pay for beer purchases by business check, electronic funds transfers, prepaid accounts or cash. Iowa Code § 123.45. A two-party check indicates the wholesaler is not the party purchasing the beer as required by statute.

- Can you give me beer for my anniversary, grand opening, birthday party, etc., etc. party?

Yes, but since Iowa law prohibits manufacturers and wholesalers from discriminating between retailers, the manufacturer or wholesaler is required to give a like amount of free beer to all retail customers. Iowa Code §§ 123.135.

- Can you sell me a quantity buy on a package with a discount and if the product doesn't sell in a specific time frame, can you buy that beer back at full cost?

No. The return of overstocked and slow-moving beer by wholesalers and manufacturers is prohibited by both federal and state law. Iowa Code § 123.186; 27 C.F.R. § 11.45.

- Can you sponsor my band, softball team, race car, and concert?

Yes, as long as the sponsorships are not offered as an inducement to exclude a competitor's product. If the manufacturer or wholesaler sponsors an event for one retailer, the manufacturer or wholesaler is required to sponsor a like event for all other retail customers if asked to do so. Iowa Code §§ 123.45, 123.135 and 186.

- Can you give me t-shirts for my employees to wear?

Yes, manufacturers and wholesalers may give or sell t-shirts to retailer's employees as point-of-sale items. The t-shirts must bear substantial advertising matter about the product or the manufacturer or wholesaler. Providing t-shirts and other point-of sale items to one retailer obligates the wholesaler to provide t-shirts and other point-of-sale items to all retail customers if requested. Iowa Code §§ 123.45, 123.135 and 123.186; 27 C.F.R., § 6.84.

- I will put your beer on tap if you give me free kegs, glasses, etc.

While retailers may try to negotiate benefits from wholesalers, the law prohibits the granting of some requests. For example, manufacturers and wholesalers are prohibited by statute from selling or providing durable glassware to retailers. If a beer manufacturer or wholesaler gives a keg of beer to one retail customer, the manufacturer or wholesaler is obligated to give a keg to all retail customers. Iowa Code §§123.45, 123.135 and 123.186.

- Can you take back this brand and exchange it with another? I have too much inventory this week of the brand I want exchanged. I'll buy again next week.

No. The return of overstocked and slow-moving beer by wholesalers and manufacturers is prohibited by both federal and state law. Iowa Code § 123.186; 27 C.F.R. § 11.45.

- Give me coupons (I don't care what brand it is or if I handle) and I will promote whatever product you want at a lower price.

Manufacturers and wholesalers may offer coupons for redemption by consumers – not to retailers for redemption by retailers. Iowa Code § 123.135 and 123.186; 27 C.F.R. § 6.96.

- Give me picnic pumps and I will turn them in for credit and that will let me run your product at a hot price.

Manufacturers and wholesaler may sell – not give – picnic pumps to retailers. Therefore, manufacturers and wholesalers cannot directly or indirectly give picnic pumps to retailers. Doing so may result in a civil penalty or suspension for the manufacturer or wholesaler, as well as the retailer. Iowa Code §§ 123.45 and 123.186.

- Can you loan me a refrigerated truck for the weekend to store extra product in?

No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45.

- Can you supply me a couple of people to work as bartenders this weekend; we are going to be busy?

No. Manufacturers and wholesalers, as well as their jobbers, representatives, brokers, employees, and agents are prohibited from directly or indirectly being interested in the conduct or operation of a retail licensee or permittee. Iowa Code § 123.45.

- Why are you charging me for picnic pumps?

Manufacturers and wholesalers may sell – not give – tapping accessories including faucets, rods, vents, taps, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves, and “picnic” pumps which are used in dispensing wine or beer from kegs or bulk packaging. Iowa Code § 123.45; 185 IAC 16.1 and 16.11.

Manufacturers and wholesalers may provide without charge beer coil cleaning services, including carbon dioxide filters and other accessories to properly clean the coil and affix carbon dioxide filters. Iowa Code §123.186.

- Can you sell me the 100 case buy and deliver half to each of my two stores?

No. Transferring products between retail premises is prohibited. Each premises is separately licensed, and required to operate as a separate business. Iowa Code §§ 123.123, 123.132 and 123.140.

- Can you pick up and credit beer that we are discontinuing as a result of a reset?

No. The return of overstocked and slow-moving beer and wine by wholesalers and manufacturers is prohibited by both federal and state law. Iowa Code § 123.186 and 27 C.F.R. § 11.45.

- Can you pick up and credit this beer – it’s not selling?

No. The return of overstocked and slow-moving beer and wine by wholesalers and manufacturers is prohibited by both federal and state law. Iowa Code § 123.186 and 27 C.F.R. § 11.45.

- Can you provide single-serve glide racks for my store?

No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45.

- Can you pick up and credit beer – it’s been damaged by a customer or it’s been damaged by store personnel?

No. State and federal law prohibits the return product due to damage by customers or store personnel. Iowa Code § 123.186; 27 C.F.R. § 11.45.

- Can you tag our community event to your radio spots?

Yes, as long as the radio spots are not offered as an inducement to exclude a competitor's products. The tagging of an event for one community obligates the manufacturer and wholesaler to tag an event to all other communities licensed under a liquor, wine or beer license or permit. Iowa Code §§ 123.135 and 123.186; 27 C.F.R. §§ 6.21 and 6.51 through 6.56.

- Can you tag our bar/bar promotion to your radio spots?

Yes, as long as the promotion is not offered as an inducement to exclude a competitor's products. Tagging a bar promotion to the manufacturer's or wholesaler's radio spot obligates the manufacturer or wholesaler to provide the same service to all retail customers if requested. Iowa Code §§ 123.135 and 123.186; 27 C.F.R. §§ 6.21 and 6.51 through 6.56.

Non-Licensee Request

- Can you donate alcohol for my fundraiser?

No. Manufacturers and wholesalers are prohibited from donating or selling beer to persons and entities that do not hold the required liquor license or beer permit.

Iowa Code

123.45 Limitations on business interests.

A person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages, wine, or beer, or any jobber, representative, broker, employee, or agent of such a person, shall not directly or indirectly supply, furnish, give, or pay for any furnishings, fixtures, or equipment used in the storage, handling, serving, or dispensing of alcoholic beverages, wine, beer, or food within the place of business of a licensee or permittee authorized under this chapter to sell at retail; nor shall the person directly or indirectly extend any credit for alcoholic beverages or beer or pay for any such license or permit, nor directly or indirectly be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under this chapter to sell at retail, nor hold a retail liquor control license or retail wine or beer permit. However, a person engaged in the wholesaling of beer or wine may sell only disposable glassware, which is constructed of paper, paper laminated, or plastic materials and designed primarily for personal consumption on a one-time usage basis, to retailers for use within the premises of licensed establishments, for an amount which is greater than or equal to an amount which represents the greater of either the amount paid for the disposable glassware by the supplier or the amount paid for the disposable glassware by the wholesaler. Also, a person engaged in the business of manufacturing beer may sell beer at retail for consumption on or off the premises of the manufacturing facility and, notwithstanding any other provision of this chapter or the fact that a person is the holder of a class "A" beer permit, may be granted not more than one class "B" beer permit as defined in section 123.124 for that purpose. A licensee or permittee who permits or assents to or is a party in any way to a violation or infringement of this section is guilty of a violation of this section.

123.51 Advertisements for alcoholic liquor, wine, or beer.

1. No signs or other matter advertising any brand of alcoholic liquor, beer, or wine shall be erected or placed upon the outside of any premises occupied by a licensee or permittee authorized to sell alcoholic liquor, beer, or wine at retail. This subsection does not prohibit the use of signs or other matter inside a fence or similar enclosure which wholly or partially surrounds the licensed premises.

2. Violation of this section is a simple misdemeanor.

123.135 Certificate of compliance -- civil penalty.

4. It shall be unlawful for any holder of a certificate of compliance or the holder's agent, or any class "A" permit holder or the permit holder's agent, to grant to any retail beer permit holder, directly or indirectly, any rebates, free goods, or quantity discounts on beer which are not uniformly offered to all retail permittees.

5. Notwithstanding any other penalties provided by this chapter, any holder of a certificate of compliance or any class "A" permit holder who violates this chapter or the rules adopted pursuant to this chapter is subject to a civil fine not to exceed one thousand dollars or suspension of the holder's certificate or permit for a period not to exceed one year, or both such civil fine and suspension. Civil fines imposed under this section shall be collected and retained by the division.

123.186 Federal regulations adopted as rules.

1. The division shall adopt as rules the substance of the federal regulations 27 C.F.R. pt. 6, 27 C.F.R. pt. 8, 27 C.F.R. pt. 10, and 27 C.F.R. pt. 11 as they relate to transactions between wholesalers and retailers.

2. The division shall adopt as rules the substance of 27 C.F.R. § 6.88, to permit a manufacturer of alcoholic beverages, wine, or beer, or an agent of such manufacturer, to provide to a retailer without charge wine and beer coil cleaning services, including carbon dioxide filters and other necessary accessories to properly clean the coil and affix carbon dioxide filters. The rules shall provide that the manufacturer shall be responsible for paying the costs of any filters provided.

Iowa Administrative Code

185—16.1(123) Definitions.

16.1(3) Equipment includes, but is not limited to, mechanized and nonmechanized refrigeration units and devices used in the storage, dispensing, and cooling of alcoholic liquor, wine and beer, tap boxes, “party wagons,” dispensing systems, and shelving. Equipment does not include tapping accessories (including faucets, rods, vents, taps, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves and “picnic” pumps) which are used in dispensing wine or beer from kegs or bulk packaging.

185—16.11(123) Tapping accessories and coil cleaning service. An industry member may sell tapping accessories, identified in rule 16.1(123), and carbon dioxide to a retailer at not less than the industry member’s laid-in cost. An industry member may sell, furnish or give wine and beer coil cleaning services to a retailer.

This rule is intended to implement Iowa Code sections 123.45 and 123.186

185—16.4(123) Equipment, furnishings, fixtures. An industry member is prohibited from giving, selling, renting, or lending equipment, furnishings or fixtures to a retailer for use by the retailer or in the retail establishment.

16.4(1) An industry member is prohibited from obtaining equipment, furnishings, or fixtures for a retailer from a third party at a special price.

This rule is intended to implement Iowa Code sections 123.45 and 123.186

Federal Regulations 27 C.F.R.

§ 6.21 Application.

Except as provided in subpart D, it is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase any products from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale by other persons in interstate or foreign commerce by any of the following means:

- (a) By acquiring or holding (after the expiration of any license held at the time the FAA Act was enacted) any interest in any license with respect to the premises of the retailer;
- (b) By acquiring any interest in the real or personal property owned, occupied, or used by the retailer in the conduct of his business;
- (c) By furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in subpart D;
- (d) By paying or crediting the retailer for any advertising, display, or distribution service;
- (e) By guaranteeing any loan or the repayment of any financial obligation of the retailer;
- (f) By extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions as prescribed in §6.65; or
- (g) By requiring the retailer to take and dispose of a certain quota of any such products.

Paying for Advertising, Display or Distribution Service

§ 6.51 General.

The act by an industry member of paying or crediting a retailer for any advertising, display, or distribution service constitutes a means to induce within the meaning of the Act, whether or not the advertising, display, or distribution service received by the industry member in these instances is commensurate with the amount paid therefor. This includes payments or credits to retailers that are merely reimbursements, in full or in part, for such services purchased by a retailer from a third party.

§ 6.52 Cooperative advertising.

An arrangement in which an industry member participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.53 Advertising in ballparks, racetracks, and stadiums.

The purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire constitutes paying the retailer for an advertising service within the meaning of the Act.

§ 6.54 Advertising in retailer publications.

The purchase, by an industry member, of advertising in a retailer publication for distribution to consumers or the general public constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.55 Display service.

Industry member reimbursements to retailers for setting up product or other displays constitutes paying the retailer for rendering a display service within the meaning of the Act.

§ 6.56 Renting display space.

A promotion whereby an industry member rents display space at a retail establishment constitutes paying the retailer for rendering a display service within the meaning of the Act.

Exchanges and Returns for Reasons Not Considered Ordinary and Usual

§ 11.45 Overstocked and slow-moving products.

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for “ordinary and usual commercial reasons.”

§ 11.46 Seasonal products.

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for “ordinary and usual commercial reasons.”