

Nick Jordan, Secretary
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Sam Brownback, Governor

March 30, 2016

POLICY MEMORANDUM 2016-1

Subject: Trade Practice Regulations; Product Displays, Point of Sale Items and Equipment

1. **Purpose:** The purpose of this memorandum is to provide clarification of the policy regarding the dissemination and use of product display and point of sale items by licensees.
2. **Applicability:** Supplier permit holders and distributor licensees, in addition to the retail liquor store, drinking establishment and private club licensees to which they provide product display and point of sale items.
3. **Discussion:**
 - a. **Background and History**
 - Pursuant to K.S.A. 41-703, manufacturer or distributor licensees are prohibited from providing “money or anything of value” to any licensee under the Kansas Liquor Control Act (K.S.A. 41-101 *et seq.*) or the Kansas Club and Drinking Establishment Act (K.S.A. 41-2601 *et seq.*). However, K.S.A. 41-703(d)(1) and 41-703(e) allow “things of value” to be furnished to licensees in accordance with rules and regulations adopted by the agency.
 - K.A.R. 14-10-17 adopts by reference certain portions of the federal trade practice regulations of the Alcohol and Tobacco Tax and Trade Bureau (TTB) contained in 27 C.F.R. Part 6.
 - 27 C.F.R. 6.83 allows an industry member (i.e. a manufacturer or distributor) to provide “product displays,” which are defined as “any wine racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products.”
 - The total cost of such product display items may not exceed \$300 per brand at any one time in any one retail establishment, and each item “must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed.”
 - 27 C.F.R. 6.84 allows an industry member to provide “point of sale advertising materials,” which are defined as “items designed to be used within a retail establishment to attract consumer attention to the products of the industry member.” The regulation goes on to provide a list of examples of items that meet this definition, which includes but is not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars and alcoholic beverage lists or menus.
 - There is no monetary limit placed on point of sale advertising materials, although it should be noted that the nature of the example items listed in the regulation tends to indicate a focus on less-expensive items.
 - Like product displays, point of sale advertising materials “must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed.”
 - 27 C.F.R. 6.88 allows an industry member to sell equipment and supplies to a retailer. Industry members are prohibited from “lending” equipment to a retailer free of charge.
 - “Equipment and supplies” means glassware, dispensing accessories, carbon dioxide or ice.

- “Dispensing accessories” include standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks and check valves. This term shall also be deemed to include trailers containing kegs, coolers or other materials used in dispensing.

b. Interpretation and Policy

- ABC believes the definition of “product display” provided in the federal regulations to be fairly straightforward. With this in mind, an item will be deemed to be a “product display” if its “primary function is to hold and display” alcoholic beverages.
 - Therefore, if an item’s primary function is to hold or display product, and its cost does not exceed the \$300 limit per brand provided by law, it will be deemed to be a permissible item.
- In dealing with potential “point of sale (POS)” items, ABC will utilize the following test, to be applied on a case-by-case basis: **Does the item in question have a significant secondary value?** If so, the item in question will be deemed to be prohibited by law.
 - In this setting, “significant” shall mean a market value of approximately \$300. In other words, if an item is assessed as having an approximate value of ***more than*** \$300 outside of the retail setting, it shall be deemed to possess significant secondary value, and shall be prohibited. Conversely, if the item is assessed to have an approximate value of ***less than*** \$300, it shall not be deemed to possess significant secondary value, and shall be permissible for display.
- **Display items used in conjunction with contests or sweepstakes:** Industry members (distributors, manufacturers, suppliers) may conduct contests or sweepstakes on a retailer’s licensed premises. **A retailer may not conduct its own contest or sweepstakes.** Contests and sweepstakes conducted by industry members must adhere to the following guidelines:
 - To participate in a contest or sweepstakes, no charge or alcoholic beverage purchase shall be required.
 - No alcoholic beverage shall be awarded as a prize.
 - Entry forms may be provided and collected on a retailer’s licensed premises or made available on the website of the industry member or its agent.
 - The item to be awarded as a prize may be displayed on the licensed premises of the retailer. There must be conspicuous mention of the contest or sweepstakes, which shall include the closing or drawing date of the contest or sweepstakes.
 - The selection of a winner and the awarding of the item may occur on the retailer’s licensed premises.
 - After the contest or sweepstakes, the retailer must maintain for a period of three years from the conclusion of the contest or sweepstakes evidence that the item was awarded to a participant and not taken by an employee or agent of the retailer.
 - Industry members shall not conduct any form of advertising that specifically mentions the retailer as the “host” of the contest or sweepstakes. A retailer may advertise the contest or sweepstakes on its own, but the act of doing so by an industry member shall be considered to be providing a prohibited thing of value (advertising) to the retailer.
- Equipment or supplies sold to a retailer may not be sold at a cost less than that paid by the industry member for such equipment or supplies. The purchase price charged to the retailer must be collected by the industry member within 30 days of the sale.
- An industry member may install any equipment or supplies sold, provided the retailer pays the cost of such installation.
- Upon written request to and with the permission of the ABC Director, an industry member may rent equipment and supplies to a licensee. The written request shall include a specific description of the item to be rented, the dates the item will be provided and the cost that will be charged to the licensee.

4. Clarification of Policy: All clarification requests to this policy should be directed in writing to this office via mail, fax, or submitted to the agency’s email at kdor_abc.email@ks.gov

5. Effective Date of this policy: This policy is effective from **March 30, 2016** until further notice.

Original Signed and On File

Debbi Beavers, Interim Director
Alcoholic Beverage Control

CC: Assistant Attorney General
Chief of Enforcement
Operations Manager/Licensing Supervisor
Enforcement Agents