Arkansas

15. TRADE PRACTICE ACTIVITIES

Note: Suppliers are reminded that the Federal Alcohol Administration Act (FAA) and the Federal Regulations (Title 27 CFR) contain provisions governing trade practices and those provisions may be more restrictive than state law. Therefore, Federal law may limit some activities allowed by state law and regulations. When reviewing any of the trade practice sections contained in the State Digests, suppliers should consider Federal law as well.

15.9 Sampling/Promotional Activities for Consumers

Sampling for consumers is permitted by statute only as described below. Other types of “sampling parties” for consumers or retail licensees may not be conducted without prior written approval from the Director. [AR Regulations, Title 2, Subtitle E, Section 2.28(6).]

15.9.1 Arkansas Wineries and Wholesalers

Arkansas wineries and licensed Arkansas wine and spirits wholesalers may conduct wine tasting events for promotional and educational purposes with prior approval from the Alcoholic Beverage Control Division without obtaining a wine sampling permit, if written request for approval is received by the Division a minimum of ten (10) days before the event.

15.9.2 Arkansas Retail Licensees

An off-sale retail licensee that is licensed to sell beer, wine, or distilled spirits under a permit, as defined in Title 3, Chapter 4, Subchapter 6, Section 3-4-604, of Arkansas law, may conduct tasting events for promotional and educational purposes on the licensed premises after obtaining a sampling permit from the Division. A sampling permit allows the permittee to conduct tasting events on the licensed premises during regular business hours.

The cost for a sampling license (permit) is as follows:

| $500.00 | beer, wine or spirits licenses |
| $1,000.00 | combined beer, wine and spirits license |

Sampling permits expire annually on June 30.

Any wine, beer or distilled spirits purchased by the retail licensee for this purpose is subject to the gross receipts and use tax. If the wine, beer or distilled spirits is removed from the retail licensee’s stock, it is subject to the gross receipts tax as a withdrawal from inventory.

A wholesaler may not offer special discounts on wine, beer or distilled spirits sold for use at a tasting event, nor may such products be provided to the licensee without charge.

Samples may not exceed the following quantities, and must be for consumption on the licensed premises only.

<p>| Wine | Three (3) one-half ounce (½ oz.) servings per customer per day |</p>
<table>
<thead>
<tr>
<th>Beer</th>
<th>Two (2) two-ounce (2 oz.) servings per customer per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distilled Spirits</td>
<td>Two (2) one-half ounce (½ oz.) servings per customer per day</td>
</tr>
</tbody>
</table>

[AR Law, Title 3, Chapter 5, Subchapter 1, Section 3-5-104.]

15.9.3 Promotional Activities on Licensed Premises

Sampling by suppliers is not allowed.

15.9.4 Bar Spending

Prohibited. No supplier or wholesaler may purchase drinks for consumers. [AR Regulations, Title 2, Subtitle E, Section 2.28(6).]

Mississippi Control

15. TRADE PRACTICE ACTIVITIES

Note: Suppliers are reminded that the Federal Alcohol Administration Act (FAA) and the Federal Regulations (Title 27 CFR) contain provisions governing trade practices and those provisions may be more restrictive than state law. Therefore, Federal law may limit some activities allowed by state law and regulations. When reviewing any of the trade practice sections contained in the State Digests, suppliers should consider Federal law as well.

15.9 Sampling/Promotional Activities for Consumers

15.9.1 Wine and Distilled Spirits at Package Retailer’s Licensed Premises

A package retailer’s permit shall, with prior written approval from the Department, authorize the permittee to hold tasting or sampling events on the licensed premises under the following guidelines:

- There may not be any charge to consumers to participate.
- Sampling/tasting may only take place within an area that is cordoned off clearly separating the tasting/sampling area from the rest of the licensed premises.
- No sampling/tasting event may last longer than four (4) hours and no one under twenty-one (21) years old may participate in a tasting/sampling event.
- No food may be sold or served.
- Samples may not exceed the following quantities:

<table>
<thead>
<tr>
<th>Wine</th>
<th>1-1/4 ounces or a total five ounces (5 oz.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distilled spirits</td>
<td>1/4 ounce or a total of one ounce (1 oz.)</td>
</tr>
</tbody>
</table>

- All product sampled must come from the permittee’s inventory, and must have been purchased from the Department or a licensed wholesaler.
- Only employees of the permittee may serve product for tasting/sampling.
- The permittee must keep records of the various alcoholic beverages and amounts consumed at each sampling/tasting event, and must provide a copy to the Department within ten (10) days after any event.
- No package retailer permittee may conduct more than one (1) such event during any three (3) month period.
15.9.2 Wine and Distilled Spirits at Other Events

Any educational seminar, trade show or tasting event given for the general public (where alcoholic beverages are sampled), regardless of who sponsors the program, is limited to on-premise retail licensed premises or an establishment holding a one (1) day temporary permit, with the permittee solely responsible for furnishing the product to be sampled. Any such event must occur in a “wet” county. [MS Regulations, Title 35, Part II, Subpart 02, Chapter 12, 102 and 103.]

Texas
15. TRADE PRACTICE ACTIVITIES

Note: Suppliers are reminded that the Federal Alcohol Administration Act (FAA) and the Federal Regulations (Title 27 CFR) contain provisions governing trade practices and those provisions may be more restrictive than state law. Therefore, Federal law may limit some activities allowed by state law and regulations. When reviewing any of the trade practice sections contained in the State Digests, suppliers should consider Federal law as well.

15.9 Sampling/Promotional Activities for Consumers

15.9.1 Package Store Tasting Permit Holders

The holder of a Package Store Tasting Permit may conduct product tastings of distilled spirits, wine, beer or malt- or spirits-based coolers on its licensed premises during regular business hours.

The holder of a Wine-Only Package Store Permit and a Package Store Tasting Permit may conduct tastings of only those alcoholic beverages the permit holder is authorized to sell.

Written notification of a product tasting must be posted on the licensed premises a minimum of forty-eight (48) hours prior to the tasting, and the following information must be clearly stated. A copy of this notice must be kept on file and available for inspection on the premises while a tasting is being conducted.

- The brand and type of alcoholic beverage to be tasted.
- The date and hours during which the tasting will be held.
- The address of the premises where the tasting will be held.

Tastings may be held under the following guidelines:

- Tasting portions may not exceed the following quantities:

<table>
<thead>
<tr>
<th>Beverage</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distilled spirits</td>
<td>One-half ounce (½ oz.)</td>
</tr>
<tr>
<td>Wine</td>
<td>One ounce (1 oz.)</td>
</tr>
<tr>
<td>Beer</td>
<td>One ounce (1 oz.)</td>
</tr>
<tr>
<td>Coolers</td>
<td>One ounce (1 oz.)</td>
</tr>
</tbody>
</table>

- Not more than twenty (20) different products may be made available for tasting at any one time.
- A person of legal drinking age may be served more than one (1) sample. Samples may not be served to minors or any person who is obviously intoxicated.
- Samples may not be removed from the licensed premises.
• No charge of any sort may be made for a sample serving.

• Not more than two (2) containers of each brand and type of product being tasted may be open at any time during the tasting.

• At the conclusion of a tasting, all empty and open containers of the alcoholic products used at the tasting must be removed from the licensed premises or stored in a locked, secure area on the licensed premises.

Tastings may be advertised only by on-premise communications, by direct mail, electronic mail or on the permit holder’s Internet website.

The holder of a Non-Resident Seller’s Permit or a Manufacturer’s Agent Permit—or the permit holder’s agent or employee—may participate in and conduct product tastings at the retailer’s licensed premises. Such individuals may open, touch and pour alcoholic beverages, make a presentation and answer questions.

Any alcoholic beverages tasted must be purchased from the package store permittee on whose premises the tasting is held. The permit holder may not require the purchase of more alcoholic beverages than are necessary for the tasting. The holder of a Non-Resident Seller’s Permit or a Manufacturer’s Agent’s Permit is not permitted to withdraw or purchase any alcoholic beverages from the holder of a Wholesaler’s Permit or provide any alcoholic beverage for tasting on a retail licensed premises that is not purchased from that retail licensee.

[TX Law, Title 3, Subtitle A, Chapter 52, Section 52.01.]

The annual fee for a Package Store Tasting Permit is $25.00. This fee is in addition to and subject to the same conditions as the fee paid for the permit holder’s Package Store Permit. [TX Law, Title 3, Subtitle A, Chapter 52, Section 52.02.]

15.9.2 Wine-Only Package Store Permit Holders

A Wine-Only Package Store Permit holder may conduct free sampling of those products he is authorized to sell (wine, ale, and malt liquor) on the licensed premises during regular business hours, provided he holds a package store tasting permit.

An agent or employee of the permit holder may open, touch and pour wine or ale, as well as make a presentation and answer questions at a sampling event.

This type of permit does not authorize the sale of alcoholic beverages for on-premise consumption, and none of the permittee’s income may be considered to be income from the sale of alcoholic beverages sold for consumption on the licensed premises.

Wine or ale used for sampling must be purchased from or provided by the retail licensee on whose premises the event is held.

When a sampling event is held on the premises of a Wine-Only Package Store Permit holder located in an area that is “wet” for the sale of wine, but not “wet” for the sale of the higher alcohol content wines that may be sold under an unrestricted Wine-Only Package Store Permit, the only wines that may be sampled are wines that may be legally sold by the permittee.

[TX Law, Title 3, Subtitle A, Chapter 24, Section 24.12.]

15.9.3 Wine and Beer Retailer’s Off-Premise Permit

The holder of this type of permit may conduct free product sampling or tasting of wine, beer, and malt liquor products having an alcohol content ranging between 0.5% ABV to not more than 17% ABV on the permittee’s licensed premises during regular business hours. (A Wine and Beer Retailer’s Off-Premise Permit does not authorize the sale of alcoholic beverages for on-premises consumption.)

Employees of permittees may open, touch or pour product, make a presentation or answer questions at a product sampling or tasting.

Any alcoholic beverages used for sampling must be purchased from or provided by the retail
licensee on whose premises the sampling is held. The holder of a Wine and Beer Retailer’s Off-
Premise Permit is not authorized to withdraw or purchase the product from the holder of a
Wholesaler’s Permit or to provide alcoholic beverages for sampling that are not purchased from
the retail licensee. The amount of alcoholic beverages purchased from the retail licensee may not
exceed the amount used in the sampling.

[TX Law, Title 3, Subtitle A, Chapter 26, Sections 26.01 and 26.08.]

15.9.4 Non-Resident Seller’s Permit

The holder of a Non-Resident Seller’s Permit who owns a winery or brewery outside Texas may
conduct samplings of the kinds of alcoholic beverages the permit holder is authorized to produce,
including tastings at a licensed retail premises. An employee of the winery or brewery may open,
touch or pour the alcoholic beverages, as well as make a presentation or answer questions at a
sampling event.

Any alcoholic beverages used for sampling must be purchased from or provided by the retail
licensee on whose premises the sampling is held. The holder of a Non-Resident Seller’s Permit or
a Manufacturer’s Agent’s Permit is not authorized to withdraw or purchase the product from the
holder of a Wholesaler’s Permit or to provide alcoholic beverages for sampling on a retailer’s
licensed premises that are not purchased from the retail licensee. The amount of alcoholic
beverages purchased from the retail licensee may not exceed the amount used in the sampling.

[TX Law, Title 3, Subtitle A, Chapter 37, Section 37.01.]

15.9.5 Promotional Activities on Licensed Premises – Pre-planning and Pre-announcement to
Retail Licensee

A distiller, rectifier, wholesaler, Class “B” wholesaler, brewer, winery or wine bottler or their
respective employees or agents may pre-plan and/or preannounce to a retail licensee any
promotional activity that is legal under Texas statutes and regulations and that is to be held on the
retailer’s licensed premises.

A wholesaler or Class “B” wholesaler may pre-arrange a promotional activity for distilled spirits,
wine or beer.

15.9.6 Promotional Activities on Licensed Premises -Pre-planning and Pre-announcement to
Consumers

A distiller, rectifier, winery or wine bottler, brewer, wholesaler or Class “B” wholesaler may pre-
announce a promotion and/or its intent to purchase wine, malt beverages, or distilled spirits for
consumers.

[TX Regulations, Title 16, Part III, Chapter 45, Subchapter D, Section 45.113 and TX Law, Title 4,
Chapter 102, Subchapter A, Section 102.07(g).]

15.9.7 Bar Spending

It is permissible to buy a drink for a consumer, provided that such purchases are not excessive, and
effective September 1, 2007, such purchases may be pre-announced for all classes of alcoholic
beverages. Purchases must be consumed on retail licensed premises in the presence of the
purchaser, who must hold an Agent’s Permit or a Manufacturer’s Agent Permit. [TX Regulations, Title
16, Part III, Chapter 45, Subchapter E, Section 45.113, and Subchapter F, Section 45.117.]

Notwithstanding the foregoing, a manufacturer, its representatives, agents, employees, contractors,
etc., may not do any of the following at a retail licensee’s premises:

• Engage a consumer in order to determine taste preferences.
• Provide a service to a retail licensee.
• Induce a consumer to participate in a promotion.
• Collect data on consumer preferences regarding product color, aroma, perceived taste, etc.
• Use data resulting from commercial speech (e.g., a discussion with a consumer or consumers) regarding consumer preferences for color of product, aroma, perceived taste, etc., for advertising in any manner.

• Disparage a competitor’s product.

15.9.8 Market Research

Market research may be conducted under the following guidelines. These guidelines apply to distilled spirits, wine or malt beverages.

• Advance notice must be given to the Alcoholic Beverage Commission, Marketing Practices Department, in Austin, at least ten (10) days prior to conducting any market research.

• Research must be conducted at an unlicensed location in a “wet” area.

• Participants must be at least twenty-one (21) years of age.

• The research must be run by a recognized, independent market research firm, and must be licensed. See the licensing requirements set forth below.

• Compensation may be paid to participants by the market research firm.

• Results of the research may not be advertised or published.

• Products tasted by participants may not be identified as to brand or supplier.

• The products used must be legally purchased in the state from a licensed retailer. If the products are not currently available in the Texas market, they may be obtained directly from the manufacturer. The market research firm must keep a record of all beverages purchased or obtained directly from the manufacturer, amounts used during research sessions, and amounts disposed of after each session.

• The research firm is responsible for adhering to all municipal and state laws that may apply.

• Food may be supplied for the limited purpose of clearing the palate of the participants during the research session.

• Research may be conducted on behalf of suppliers only. Research may not be conducted on behalf of wholesalers or distributors.

• No product may be removed from the research site by participants. All products not consumed during the research session must be destroyed.

The conditions set forth above apply to both new products and products already established in the state.


In order for a market research firm to receive alcoholic beverages from a winery, distiller or brewer permittee or a licensed Texas manufacturer or alcoholic beverages produced by or belonging to an authorized entity or person outside the state of Texas, a Market Research Packager’s Permit must be held. This permit allows a market research firm to do the following:

• Place the alcoholic beverages in containers or packages in connection with a market research program.

• Return alcoholic beverages to the licensee, permittee or other authorized person or entity from which received.

The biennial fee for a Market Research Packager’s Permit is $200.00, plus a surcharge of $127.00, for a total of $327.00. The Commission may issue such permit in either a “wet” or “dry” area.
[TX Law, Title 3, Subtitle A, Chapter 49, Sections 49.01 to 49.03.]