

USER'S GUIDE TO ABC LAWS



Regarding On-Premise
Marketing, Sampling, Gourmet
Shop Tastings, Novelties and
Specialties, and Service Items



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On-Premise Marketing by Alcoholic Beverage Manufacturers and Wholesalers and Their Authorized Representatives

On-premise marketing events (“OPM Events”) involve sales by the retail licensee of full servings of alcoholic beverages that are arranged by or on behalf of manufacturers and wholesalers. These events are not tasting events. A completely different set of rules applies to tasting events.

- Employees and authorized representatives of manufacturers and wholesalers can conduct OPM Events for wine, beer, or spirits in hotels, restaurants, and clubs licensed for on-premise consumption.
 - Authorized representatives of manufacturers and wholesalers (but not their employees) must secure an ABC permit to participate in OPM Events.
 - Employees of manufacturers and wholesalers or their authorized representatives must be present while an OPM Event is being conducted.
- On-premise licensees must be licensed to sell the category of alcoholic beverage product (beer, wine, distilled spirits) being marketed.
- Consumers must be served by the on-premise licensee or its employees.
- The quantity of beer, wine, or spirits provided to any person during an OPM Event cannot exceed 12 ounces of beer, 5 ounces of wine, or 1 ½ ounces of spirits. Please note that no single sample of spirits can exceed ½ ounce. No more than 3 spirits products may be offered to any patron.
- Alcoholic beverages used in OPM Events must be purchased from the on-premise licensee on whose premises the Event is being held.
- No more than \$100 may be spent by or on behalf of any manufacturer or wholesaler at any on-premise licensee’s premises during a 24-hour period.
- The 2007 amendment provides that the \$100 limit does not include taxes and gratuities paid in conjunction with the alcohol purchased as long as the gratuity does not exceed 20% of the sum of the alcohol purchase price and taxes.
- Manufacturers, wholesalers, and their authorized representatives are required to keep records of each OPM Event for a period of at least two (2) years. These records must include: (i) the date and place of each OPM Event; and (ii) the dollar amount spent by the manufacturer, wholesaler, or authorized representative to purchase alcoholic beverages used in the OPM Events.

- Manufacturers and wholesalers are liable for any violation of the law by their employees or their authorized representatives.

What Services Can Wholesalers Render During On-Premise Marketing Events?

- **On-Premise Marketing Events Conducted by Wholesalers or Their Authorized Representatives:** Wholesalers or their authorized representatives may buy a patron 12 ounces of beer or 5 ounces of wine for consumption in a restaurant, hotel, or club.

ABC Permits Are Required for Authorized Representatives of Manufacturers and Wholesalers Who Want to Conduct On-Premise Marketing Events

- Authorized representatives of manufacturers and wholesalers must obtain a permit from ABC in order to conduct OPM Events.
- As part of the ABC permit application process, the applicant must state that he/she is under contract to conduct OPM Events on behalf of the manufacturer or wholesaler whose name must appear in the application.
- Contracts between manufacturers or wholesalers and authorized representatives must state that the applicant has the authority of the manufacturer or wholesaler to act as its authorized representative.
- The contract must acknowledge that the manufacturer or wholesaler may be held liable if the authorized representative violates the statute applicable to manufacturers and wholesalers.
- **Remember:** The permit process does not apply to employees of manufacturers or wholesalers. All of the other requirements applicable to OPM Events, however, do apply to employees of manufacturers and wholesalers.

Sampling as Part of an On-Premise Educational Tasting Event

- An educational tasting event must be held in a designated area of an on-premise licensee holding on-premise wine and beer privileges.
- Samples of beer or wine may be given or sold by the on-premise licensee to patrons during a tasting event: 4 ounces of beer; 2 ounces of wine.

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- Educational tasting events do not allow distilled spirits to be sold or given to patrons.
- Farm wineries, wineries, and breweries (but not wholesalers) are allowed to participate in these events and may pour wine or beer samples.
- There are no limits on the number of product samples that may be given to a patron during one of these tasting events.

Sampling by On-Premise Retailers Not Conducting Educational Tasting Events

- An on-premise beer licensee can give a patron of legal age a sample of beer for on-premise consumption.
- An on-premise wine and beer licensee can give a patron of legal age a sample of wine or beer for on-premise consumption.
- A mixed beverage licensee can give a patron of legal age a sample of wine, beer, or spirits for on-premise consumption.
- In each case, samples are limited to: 4 ounces of beer; 2 ounces of wine; and ½ ounce of spirits.
- No more than two (2) product samples may be given to any person per visit.

What Services Can Wholesalers Render During On-Premise Educational and Non-Educational Tasting Events?

- **On-Premise Educational Tasting Events And On-Premise Non-Educational Tasting Events:** No wholesaler involvement is allowed.

Gourmet Shop Tastings (Q&A)

I. Questions For the Gourmet Shop Environment

- Q1:** **How many brands can be included in a gourmet shop tasting?**
A: There is no limit on the number of brands that can be included in a gourmet shop tasting.
- Q2:** **How many SKUs can be included in a gourmet shop tasting?**
A: There is no limit on the number of SKUs that can be included in a gourmet shop tasting.

Q3: **Are there any limits on the number of wines or beers that can be poured during a gourmet shop tasting?**

A: No.

Q4: **Are there any limits on the number of samples (two ounces of wine; four ounces of beer) that can be provided to any one customer during a gourmet shop tasting?**

A: No.

Q5: **Is it necessary for the retail licensee holding the gourmet shop license to participate in the tasting event?**

A: Yes. Remember that gourmet shop tastings are retailer-sponsored events. ABC has ruled that the retail licensee or his employees must monitor the event and be within close proximity to it since the event is the responsibility of the retail licensee.

Q6: **Are there any limitations on the number of gourmet shop tasting events that can take place on the retail premises at the same time?**

A: No.

Q7: **Are there any restrictions on how long a gourmet shop tasting event can last?**

A: No.

Q8: **Who pays for the products to be used at a gourmet shop tasting?**

A: The retailer must purchase the product from a wholesale licensee.

Q9: **Can manufacturers pay for the products to be used at a gourmet shop tasting? Can third parties hired by manufacturers pay for the product?**

A: Neither manufacturers nor third parties hired by them can pay for the product to be used at a gourmet shop tasting.

Q10: **Can manufacturers perform the same services (pouring, offering literature) at gourmet shop tastings that distributors can?**

A: Yes, with the consent of the gourmet shop licensee.

Q11: **Can independent contractors of manufacturers perform the same services that manufacturers can perform at gourmet shop tastings?**

A: Yes.

Q12: **Can independent contractors of distributors perform the same services that distributors can at a gourmet shop tasting?**

A: Yes.

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Q13: Can distributors who use independent contractors for gourmet shop tastings bill suppliers for their independent contractors' charges?

A: Yes.

Q14: With regard to "pouring," doesn't ABC view it as being the same as "serving"?

A: Yes.

In other words, if the distributor/manufacturer personnel pours the product at a gourmet shop tasting, it's okay to hand the sample to the customer, right?

A: Yes.

Q15: Can a gourmet shop licensee sell samples of beer and wine during a tasting as well as give them away?

A: No.

Q16: What are the rules for tastings for high-end grocers (Wegman's, Whole Foods, etc.) that are licensed as on-and off-premise retailers but not as gourmet shops?

A: Because these retailers do not have a gourmet shop license, only manufacturers may participate in the tasting.

Q17: What are the rules for these high-end grocers that are licensed both as an on-premise retailer and as a gourmet shop?

A: Wholesalers may participate in a tasting only in that portion of the establishment covered by the gourmet shop license. Manufacturers, however, may participate in both sections of the licensed premises.

Q18: Is it possible to have an "on-premise marketing event" in one of these high-end grocery stores while a tasting is being held simultaneously in the same store?

A: Yes, so long as the on-premise marketing event is held in that part of the establishment licensed as on-premise.

Q19: A gourmet shop licensee wants to offer "wine seminars" on the licensed premises with samples of free food and wine for its customers.

Isn't this a tasting by another name?

A: Yes.

Can distributors participate?

A: Yes.

Can third parties hired by distributors participate?

A: Yes.

What about manufacturers and their third party representatives?

A: Yes.

Can the wine maker participate?

A: Yes.

Q20: A gourmet shop licensee wants to familiarize his employees with various wines and beers: providing wine and beer on the licensed premises at no charge to his employees and offering educational materials to familiarize them with the products they will be selling to their customers.

Is this okay?

A: Yes, the retailer could conduct an employee tasting using: (i) wine or beer from his own inventory (purchased from a distributor); or (ii) use samples provided by distributors or manufacturers pursuant to ABC regulation and Section 4.1-325.2 of the ABC Act.

Can a distributor or a manufacturer play a role in an event like this at the request of the gourmet shop licensee?

A: Yes.

II. Liability Issues/Penalties in the Gourmet Shop Environment

Q1: What are the liability issues facing distributor personnel when rendering services in the gourmet shop during a tasting?

A: Distributors face two kinds of liability: general tort liability (i.e., faced when a customer slips and falls on wine or beer poured by the distributor's personnel); and liability – civil and criminal – if the ABC laws are violated.

Q2: What are the liability issues for distributors when they use third parties to render these services during a gourmet shop tasting?

A: Same as above.

Q3: What are the liability issues faced by the third parties themselves when performing tasting services in the gourmet shop?

A: Third parties have general tort liability and criminal liability according to ABC. They may also face civil liability if they hold an ABC permit.

Q4: What are the penalties for violating the ABC regulations and the statutes which govern these practices?

A: Distributors face the usual array of sanctions which are found throughout the ABC laws and include (depending on the severity of the violation) suspension or loss of license, fines, etc., and distributors may also face criminal penalties as well.

Flights of Beer and Wine

- A *flight* is defined as and limited to samples of not more than five (5) different wines or beers.
- On-premise wine and beer licensees can sell a *flight* of wines or beers for one price to a person of legal age.
- There are no specific restrictions on the size of a sample.

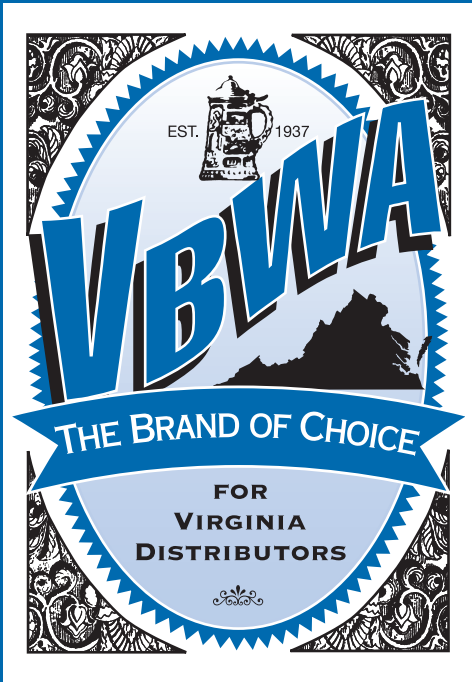
Novelties and Specialties: 2006 Changes to the ABC Regulation

Two changes to the ABC regulation concerning novelties and specialties took effect on July 1, 2006:

- On- and off-premise licensees and their employees may wear/display on the licensed premises novelties and specialties given to them by alcoholic beverage manufacturers and wholesalers.
- Manufacturers and wholesalers may provide novelties and specialties only in quantities equal to the number of employees present at the time these items are delivered to the retail account.
- Note: The 2006 amendments made no change in the \$10 limit (wholesale) for these items, which can include wearing apparel. Novelties and specialties may not be given to patrons (except for moderation novelties and specialties bearing moderation and responsible drinking messages).

Purchase of Service Items by On-Premise Licensees From Alcoholic Beverage Manufacturers or Their Authorized Vendors

- On-premise licensees can purchase service items bearing alcoholic beverage brand references from such beverage manufacturers or their authorized vendors.
- Service items are defined as those normally used to serve alcoholic beverages to customers, including – but not limited to – glasses, napkins, buckets, and coasters.
- These products may be displayed and used by the on-premise licensee.
- On-premise licensees are required to maintain for at least two (2) years copies of evidence that these items were purchased.



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