



STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION

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Consumer Samplings as a Marketing Tool is Allowed

This document will serve to supplement and clarify the Department's April 21, 2015 "Consumer Samplings as a Marketing Tool is Allowed" document.

The Department has been asked whether a manufacturer, out-of-state shipper, or wholesaler are allowed to conduct consumer samplings or tastings at on-premises consumption premises without violating the Liquor Control Act and its regulations, specifically as it relates to unlawful inducements, tie-in sales, and the improper furnishing of services, advertising materials, and equipment.

This analysis involves the following statutes and regulations: C.G.S. §30-94 (Gifts, loans and discounts prohibited between permittees and tie-in sales); §30-6-A32a of the Regulations of Connecticut State Agencies (the "Regulations") (Furnishing services, advertising material or equipment to retailer); §30-6-B21a of the Regulations (Tastings); and §30-6-A33 of the Regulations (Free samples of liquor).

Specifically, §30-6-B21a (a)(3) of the Regulations states that, "Tastings by the general public may be conducted on the premises by the package store permittee, backer or employee or agent of same and shall not exceed the following amounts per patron: one half ounce per cordial or spirit, one ounce per wine, and two ounces per beer." In a policy statement clarifying the department's position dated September 13, 2013, we wrote that wholesalers, out-of-state shippers, manufacturers, or third party vendors may be present and assist in such planning, promoting, and conducting, including pouring, of such tastings as long as they are acting as agents of the package store in this limited instance.

We now turn to whether such manufacturers, out-of-state shippers, wholesalers, of their third party vendors may conduct tastings at on-premises consumption premises.

Like most states, Connecticut has statutory and regulatory provisions which prohibit or restrict a manufacturer, out-of-state shipper, or wholesaler from owning or otherwise being financially interested in a retail liquor permit premises. The purpose or intent of this arrangement was to directly protect retailers, and indirectly the public, from undue pressure from such manufacturer, out-of-state shipper or wholesaler promoting in retail liquor premises the sale of their alcoholic liquor in preference to products from other manufacturers, out-of-state shippers or wholesalers. The public policy concern behind such statutes and regulations was that, if left unchecked, such liquor entities would resort to excessive and artificial sales stimulation at the retail level, creating a conflict with the noble public policies of promoting reasonable consumption of alcoholic liquor by adults of legal drinking age and reducing instances of over service and artificial sales of alcoholic liquor.

C.G.S. §30-94 prohibits a permittee from directly or indirectly offering, furnishing or receiving any free goods, gratuities, gifts, loans or other inducements with the sale of alcoholic beverages.

Section 30-6-A32a of the Regulations, restricts the level of service, advertising material or equipment which manufacturers, out-of-state shippers, and wholesalers may provide to retailers. In addition, the pertinent quantity and/or monetary restrictions form what is permissible and impermissible. A review of the permissible activities

include inside advertising material, advertising novelties and specialties, consumer novelties of nominal value, the cleaning and repairing of beer lines and limited rotation of stock. These are all typical duties which a retailer would normally conduct, and are not considered an exception to the retail owner's daily and regular work assignments.

The specialized marketing of a new or existing brand of alcoholic liquor does not fall into the everyday duties or work of the typical liquor retailer. Marketing of an alcoholic liquor product is usually done at the manufacturer or wholesaler level. Indeed, promotion funds may be made available from manufacturers to wholesalers for this expressed purpose. These entities are more familiar with the product, its blend, taste, and anticipated demographics of public interest in the marketplace. This specialized knowledge base can be found at the manufacturer, out-of-state shipper, or wholesaler (or its third party vendor) level. As such, the providing of personnel from the manufacturer, out-of-state shipper, or wholesaler is not seen as providing a service as contemplated in section 30-6-A32a, but rather as a marketing tool for the manufacturer, out-of-state shipper, or wholesaler (or its third party vendor), and thus allowed.

Like tastings at a package store, the manufacturer, out-of-state shipper, or wholesaler would be acting as an agent of the on-premises liquor permit premises, and must be at the premises only with the permission of the on-premises backer representative and permittee.

For new products coming on the market, free samples of alcoholic liquor are allowed in a specified and limited quantity as outlined in §30-6-A33 of the Regulations. All other liquor products to be sampled by consumers may be purchased by the wholesaler/supplier from the liquor retailer at the retailer's purchased bottle price. In the alternative, the supplier/wholesaler may purchase the sample product from the on-premises retailer. The cost of sample may be calculated by determining the approximate consumer cost of the drink as would be charged by the on-premises retailer. Both methods are acceptable to the Department, and both the supplier/wholesaler and retailer must mutually agree on the method of payment to be made prior to the tasting event.

Tastings at on premise consumption premises would have the same quantity offerings to patrons as a tasting within a package store.

The Department offers the following suggestions for conducting such tastings:

- That there be a \$500 limit for each tasting event, not including a maximum 15% tip;
- That each tasting event's event duration last no more than two (2) hours and not extend beyond 11:00pm;
- That supplier/wholesaler and retailer maintain written records of each tasting event conducted, to include date and time of event, place of event, product sampled, and funds exchanged.

While these tastings or consumer samplings may be allowed, there are certain cautionary reminders to be considered by the three tiers of the Connecticut liquor marketplace:

On-premises consumptions permit holders will be held strictly accountable as it relates to the service to minors and/or intoxicated patrons. Under certain circumstances, the wholesaler, manufacturer, or out-of-state shipper may be held responsible for such transgressions.