



ADVISORY NOTICE NO. 16 (Revised September 2017)

DISCOUNT PRICING PRACTICES SEPTEMBER 27, 2017

TO: All Retail Licensees

The purpose of this advisory notice, originally issued in April 2004, is to answer questions frequently asked by retail licensees (including brew pubs) regarding the discounting of alcoholic beverages in general. It has been updated to reflect changes in the law since that time. Note that these rules do not apply to manufacturers, even though they may now have the ability to sell alcohol at retail.

1. Are retail licensees ever permitted to discount the prices of alcoholic beverages?

Yes. Retail licensees can discount the prices of alcoholic beverages to their customers but only under limited circumstances. These circumstances generally fall into one of the following categories: happy hours, daily drink specials, free drinks, mug clubs, and catered events. Otherwise, discounting alcoholic beverages is a violation of section 493(24)(i) of the Liquor Code, 47 P.S. § 4-493(24)(i).

2. What are the rules regarding "happy hours"?

A "happy hour" is defined as a period of time during which a retail licensee can discount alcoholic beverages. 47 P.S. § 1-102. Retail licensees are permitted to have happy hour pricing up to four hours in a day and up to fourteen hours in a week. 47 P.S. §§ 4-406(g), 4-442(g); 40 Pa. Code § 13.102. These daily hours may be consecutive or non-consecutive, but the total of happy hours can never be more than four hours in a day or fourteen hours in a week. Thus, the amount used per day can be adjusted by licensees to take advantage of slow/busy days as long as the maximum limits above are not exceeded.

A licensee can choose to discount all or just some of its alcoholic beverages during a happy hour, but the price of a particular alcoholic beverage cannot change during the happy hour. 40 Pa. Code § 13.102(a)(4). Thus, for example, a promotion in which drinks are twenty-five cents during the first thirty minutes of a happy hour and fifty cents during the second thirty minutes of the hour would not be a permissible promotion.

No happy hour discount pricing may ever occur between 12:00 a.m. (midnight) and the legal closing hour. 47 P.S. §§ 4-406(g), 4-442(g); 40 Pa. Code § 13.102. This time restriction does not apply to casino liquor licensees. 47 P.S. § 4-416(i).

The times for happy hour must be posted on the licensed premises seven days prior to each happy hour. 47 P.S. §§ 4-406(g), 4-442(g).

Catered events and daily drink specials under section 13.102(b) of the PLCB's Regulations, as well as mug club discounts and discounting offered by casino liquor licensees, are not be counted against the four-hour per day/fourteen-hour per week limit. 47 P.S. §§ 4-406(g), 4-416(i), 442(g).

Examples of other prohibited discount pricing practices are: a sale or serving of more than one alcoholic beverage for the price of a single drink, an increased volume of an alcoholic beverage without a corresponding proportional increase in the price, an indefinite or unlimited amount of alcoholic beverages for a set price (unless offered as part of a catered event), and a change in the price of an alcoholic beverage within a happy hour period. 40 Pa. Code § 13.102(a).

3. What are the rules regarding "daily drink specials"?

A retail licensee may also offer one *specific* type of alcoholic beverage at a discounted price all day or for a portion of the day. 40 Pa. Code § 13.102(b)(2). A specific type of alcoholic beverage means a specific registered brand of malt or brewed beverages, a type of wine, or a type of distilled spirit or a mixed drink. Id.

- Beer Daily Drink Specials:

A *beer* daily drink special should be identified by one manufacturer/brewer and one type of beer that it manufactures. The following examples involve hypothetical manufacturers:

Permissible Specials	Impermissible Specials
Blue Hound Pilsner beer	all Blue Hound beer products
Brendan's Cream Stout beer	all bottled beer
Oil City Light beer	all light beer
Maher Low Cal draft beer	all draft beer
Harrisburg Midtown Lager beer	all domestic beer
Susquehanna Hard Apple Cider	all hard cider

- Wine Daily Drink Specials:

A *wine* daily drink special should be identified by a type of wine, such as "chardonnay" or "merlot." It is not required that a particular winery's chardonnay or merlot be identified, although the retail licensee could choose to limit it in that manner. The following examples involve mythical manufacturers:

Permissible Specials	Impermissible Specials
Chardonnay	all white wines
Merlot	all red wines
Peter's Pinot Noir	all Peter's wine products

- Spirit Daily Drink Specials:

A *spirit* daily drink special should be identified by a type of liquor. It does not matter what brand of spirit is used. The following examples involve mythical manufacturers:

Permissible Specials	Impermissible Specials
all brandy drinks	all well drinks
Jackson gin	all Jackson spirits
rum and coke	all mixed drinks including coke

As with happy hours, no daily drink specials can occur between 12:00 a.m. (midnight) and the legal closing hour. 40 Pa. Code § 13.102(a). This time restriction does not apply to casino liquor licensees. 47 P.S. § 4-416(i).

As with happy hours, the price of a particular alcoholic beverage cannot change during the daily drink special period. 40 Pa. Code § 13.102(a)(4).

4. Can a retail licensee have a happy hour and a daily drink special on the same day?

Yes. As long as the rules for each are followed, a licensee can have both a happy hour(s) and a daily drink special on the same day.

5. Can a retail licensee ever give complimentary or free alcoholic beverages to customers?

Yes. A retail licensee may offer a patron **one** free standard-size alcoholic beverage during the patron's visit. A standard-size alcoholic beverage is defined as:

- twelve fluid ounces of a malt or brewed beverage,
- four fluid ounces of wine (including fortified wine), or
- one and a half fluid ounces of spirits.

40 Pa. Code § 13.53.

The giving of a free alcoholic beverage **cannot** be made contingent upon the purchase of any other alcoholic beverages. Id. However, the patron must be twenty-one or older and cannot be visibly intoxicated at the time the free drink is given. 47 P.S. § 4-493(1).

A restaurant licensee that is also approved to hold a slot machine license or a conditional slot machine license pursuant to 4 Pa. C.S. Part II (relating to gaming) may give liquor and malt or brewed beverages free of charge to any person actively engaged in playing a slot machine. 47 P.S. § 4-493(24)(ii). A casino liquor licensee may, in addition to the above, provide free alcoholic beverages to any person at an invitation-only event on the premises. Id. The Gaming Act specifically provides that section 493(24)(ii) applies to table games under that Act.

Note that unlicensed establishments which provide free alcoholic beverages to patrons are not limited to one drink or to the standard-size amounts specified above. However, if an unlicensed entity wishes to give access to "free" alcoholic beverages, such access may not be made contingent upon a purchase requirement. By doing so, it could be considered a sale of alcoholic beverages and could result in the issuance of a criminal citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement. 47 P.S. § 4-494. Unlicensed establishments are also prohibited from selling to minors and visibly intoxicated patrons. 47 P.S. § 4-493(1).

6. Can a retail licensee serve a complimentary New Year's toast to its customers?

Yes. A licensee may provide a complimentary toast to a patron or a group of patrons at any time, so long as the above rules on free drinks are followed.

7. Are retail licenses permitted to have mug clubs?

Yes. Retail licensees (and breweries) can now offer a mug club to their customers. 47 P.S. § 4-493(24). Such an offer will not be construed as an unlawful inducement to purchase alcohol. 47 P.S. § 4-493(24)(iii).

A “mug club” is defined as a group organized by a retail licensee or a brewery whose members are entitled to discounted malt or brewed beverages. Membership in the mug club must be by written application and the licensee must maintain a written list of active members as part of its records. The licensee may require members to pay an annual fee, as well as a renewal fee, but the licensee is not required to do so. No discounted malt or brewed beverages to members may be provided between 12:00 a.m. and 7:00 a.m. 47 P.S. § 1-102.

As noted earlier, mug club discounts are separate from happy hour discounts and, therefore, are not considered when calculating the number of hours that a licensee may offer happy hour pricing. 47 P.S. §§ 4-406(g), 4-442(g). A licensee may operate a happy hour, a daily drink special, and a mug club simultaneously.

8. Can a retail licensee offer any alcohol-related discounts during a catered event?

Yes. Retail licensees are permitted to sell and serve an unlimited or indefinite amount of alcoholic beverages at a fixed price (which is normally prohibited by 40 Pa. Code § 13.102(a)(3)) for catered events arranged at least twenty-four hours in advance. 40 Pa. Code § 13.102(b)(1). This includes such events as weddings or private parties booked by an individual, a group, or an organization for a specific number of people at a set date and time.

Generally, a catered event must be conducted for a third party and a licensee may not conduct its own catered event. 40 Pa. Code § 5.83(a). Catering club licensees, however, are permitted to hold a maximum of twelve self-sponsored catered events during their two-year licensing term, with no more than one event in any calendar month. 47 P.S. § 4-406(h).

9. Can food and alcohol be sold together as a combination package?

Yes, although care must be taken when promoting such a combination package. The Liquor Code prohibits giving something of value to induce the purchase of alcoholic beverages. 47 P.S. § 4-493(24)(i). While combination packages are permitted, e.g. buy a pitcher of beer and a large pizza for \$15.00, if the package is marketed as a discount of either the alcohol or the food, it may violate the Liquor Code. For example, if a large pizza is normally \$10.00 and a pitcher of beer is normally \$5.00, a \$15.00 beer/pizza combination is permissible since neither item is discounted. If the combination package is offered for \$13.00, however, further analysis is required. If the package is being marketed as a discount on the pizza, that is not permitted under section 493(24)(i) because a thing of value (\$2.00 off the pizza) is being offered to induce the purchase of alcohol. If the package is being marketed as a discount on the beer and it does not otherwise fall under one of the permitted discounting practices discussed above, it would not be permitted. If, however, the combination is simply listed as the package’s everyday price and there is no indication that the combination is a discount, then it is permissible.

10. Can a retail licensee ever charge two different prices for the same alcoholic item at the same time?

Generally speaking, a pricing scheme under which two different prices are charged for the same item is not permissible, since one of the prices would represent a discount and the existence of two prices would represent a type of price fluctuation not allowed under the PLCB's Regulations. 40 Pa. Code § 13.102(a)(4).

However, an exception exists if a licensee operates two or more separate bars under one license and each bar has its own pricing scheme. It is permissible for a single licensee to have different pricing structures for distinctly separate areas of the licensed premises, so long as the prices charged are the standard prices consistently charged at each location. For example, a licensee with a wine expanded permit (WEP) cannot normally charge \$20.00 for a bottle of wine intended for on-premises consumption and \$15.00 for the same bottle of wine if it is purchased for off-premises consumption. However, if the licensee were to separate its premises into two separate bars, each with its own pricing scheme and if it were to limit wine-to-go sales to one of these bars and wine for on-premises consumption to the other bar, it could sell the same bottle of wine for two different prices. That being said, the use of different pricing schemes may not be used to circumvent the discount pricing regulations contained in section 13.102 of the PLCB's Regulations.

Please note, however, that even if a licensed premises has different alcohol prices in different sections of the premises, it may only have one daily drink special per day pursuant to the PLCB's Regulations. Id. Thus, there could not be two different daily drink specials in separate areas of the licensed premises.

Finally, as to happy hour, because it is permissible to have multiple happy hours in one day, a licensee would be permitted to have a happy hour in each of its bar areas, as long as the total of the happy hours on the licensed premises does not exceed four hours per day and fourteen hours per week.

11. Can a retail licensee accept a manufacturer's coupon for the purchase of alcoholic products at its licensed establishment?

No. The Liquor Code generally prohibits offering or giving anything of value or soliciting or receiving anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverages. 47 P.S. § 4-493(24)(i). However, section 493(24)(i) contains the following exception for rebate promotions:

This section shall not prevent any manufacturer or any agent of a manufacturer from offering and honoring coupons which offer monetary rebates on purchases of wines and spirits through State Liquor Stores or purchases of malt or brewed beverages through distributors and importing distributors in accordance with conditions or regulations established by the board. The board may redeem coupons offered by a manufacturer or an agent of a manufacturer at the time of purchase. Coupons offered by a manufacturer or an agent of a manufacturer shall not be redeemed without proof of purchase.

Id. (emphasis added).

As emphasized above, the exception for manufacturer rebate coupons is limited to products purchased through the PLCB's Fine Wine & Good Spirits stores and those purchased at distributor and importing distributor licensees. Therefore, a retail licensee may not offer coupons or rebates on alcoholic beverages sold at its retail establishment.

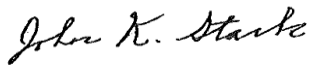
Any discount pricing issues not covered by this Advisory Notice may be resolved by writing to:

The Office of Chief Counsel
Room 401
Northwest Office Building
Harrisburg PA 17124-0001

ra-lblegal@pa.gov

This notice supersedes Advisory Notice No. 16 (Amended) adopted June 2007 and all prior versions of the Notice. Advisory Notice No. 16 (Revised September 2017) is hereby adopted on this date. Please govern your operations accordingly.

BY ORDER OF:
PENNSYLVANIA LIQUOR CONTROL BOARD



JOHN K. STARK
Secretary to the Board