



STATE OF INDIANA  
ALCOHOL AND TOBACCO COMMISSION

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## **Advisory Opinion 22-03: Wholesaler Product Availability**

### **I. Background**

The following question was posed to the Indiana Alcohol and Tobacco Commission:

1. Does an Indiana liquor wholesaler violate its statutory duties if it sells product(s) to one Indiana licensed permittee yet refuses to sell the same product(s), and under the same terms, to another Indiana licensed permittee who is otherwise eligible to purchase the same product(s)?

### **II. Relevant Statutes and Rules**

Indiana Code 7.1-5-1-1(a) sets forth the basic parameters of Indiana alcohol regulation when it states that “[i]t is unlawful for a person to manufacture for sale, bottle, insert into a container, sell, barter, import, transport, deliver, furnish, or possess, alcohol or alcoholic beverages, malt, malt syrup, malt extract, liquid malt or wort, for commercial purposes except as authorized in this title.”

Indiana Code 7.1-5-5-7(a) goes on to state that “[i]t is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time.”

905 IAC 1-31-1 states that “[a]ll prices, discounts, or allowances offered by liquor, wine, or beer wholesalers shall be disseminated by the wholesaler to his customers in such a manner and for such a period of time as is calculated to insure that such customers are afforded as [sic.] reasonable opportunity to secure the advantage of the price, discount, or allowance being offered. For dissemination purposes the customer will be anyone the wholesaler had sold alcoholic beverages to within the last thirty (30) days.”

905 IAC 1-31-2, which affects IC 7.1-5-5-7, provides that “[a]ll price, discount or allowance schedules shall be in writing, shall state the beginning and ending dates of the offer and shall set forth any other conditions or limitations. Wholesalers shall be prepared at all times during the regular business hours to furnish a copy of such schedules then in effect, or in effect at any time during the preceding two (2) years to any authorized representative of the commission and/or an auditor representing the alcoholic beverage commission. For the purposes of this rule [905 IAC 1-31] a reasonable opportunity to secure the advantage of the price, discount, and allowance offered shall be presumed [sic.] providing the offer is extended for not less than seven (7) days after dissemination of the price list to all customers.”



### **III. Analysis & Conclusion**

The above provisions specifically point to the basic premise that a wholesale permittee should treat all of their customers consistently. The Wholesale Pricing Practices provisions of Rule 31 make it clear that not only do wholesalers need to refrain from the prohibited practices addressed in the price discrimination statute, they must also afford their customers sufficient time to take advantage of any price, promotion, discount, or allowance offered.

Wholesale permittees are mandated to place all items on their “price sheet”. Additionally, they must disseminate said price sheet to all customers and extend all offers for at least 7 days after receipt of the price sheet. For the purposes of these provisions, a customer includes any permittee in which the wholesaler has sold alcoholic beverages to within the last thirty (30) days.

Therefore, it is the position of the Indiana Alcohol and Tobacco Commission that a wholesaler who offers a price, discount, or allowance to one permittee would be in violation of Indiana statutes and regulations if it does not also offer that same price, discount, or allowance to ALL its customers. Said offer of a price, discount, or allowance must be offered in such a way as to reasonably allow an opportunity for all customers to take advantage of said price, discount, or allowance.

However, in the limited circumstances in which an item’s demand exceeds a wholesale permittee’s supply, in order to comply with the above-referenced regulations, the wholesale permittee should develop business practices to distribute those items in a nondiscriminatory fashion.

**DISCLAIMER:** Opinions expressed in this advisory opinion are fact-sensitive and based on the 2021 Indiana Code.