



To: Beer Wholesalers and Retailers

From: Commissioner Herb Frierson

RE: Exclusionary Practices

Date: December 5, 2016

The Department of Revenue has recently received complaints of alleged exclusionary practices by beer and light wine manufacturers, distributors and/or wholesalers. Specifically, the Department of Revenue has received allegations that manufacturers and distributors are requiring that retailers only serve product provided by the manufacturer or distributor while excluding product from other manufacturer's or distributors, either in return for a payment to the retailer or as a condition for receiving the product. The Alcoholic Beverage Control Division of the Mississippi Department of Revenue (ABC) takes such allegations seriously and considers exclusionary violations to be a threat to the legitimacy of the three tier system. The following guidance is provided to those involved in the Mississippi beer and light wine industry to foster an atmosphere of voluntary compliance as well as place permittees on notice of actions that are viewed as a violation of Mississippi law.

Mississippi Code Annotated Section 67-3-45 prohibits a manufacturer, distributor or wholesale dealer from **any interest**, direct or indirect, in the business of a retail dealer. 27 United States Code, Chapter 8, Subchapter 1, Section 205(B), prohibits distributors or manufacturers of beer or light wine subject to the Alcohol and Tobacco Tax and Trade Bureau from requiring that retailers purchase product to the exclusion in whole or in part from another distributor or manufacturer. ABC considers this exclusionary practice to constitute a distributor's or manufacturer's indirect interest in a retail permittee. Therefore, such practices violate Mississippi beer law and will result in disciplinary action against all parties involved.

ABC considers the following general practices to raise the possibility of an indirect interest:

(a) Any practice that restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(b) Any practice in which the distributor or manufacturer obligates the retailer to participate in a promotion to obtain the distributor's or manufacturer's product.

(c) Any practice in which the retailer has a continuing obligation to purchase or otherwise promote the distributor's or manufacturer's product.

(d) Any practice in which the retailer has a commitment not to terminate its relationship with the manufacturer or distributor with respect to purchasing the manufacturer's or distributor's products.

(e) Any practice that involves the manufacturer or distributor in the day-to-day operations of the retailer. For example, the manufacturer or distributor controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(f) Any practice that is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

Should a distributor or manufacturer require a retailer to participate in any of the general practices listed above, there is a strong likelihood that ABC will consider the practice to be exclusionary and in violation of Mississippi law. Nothing above, however, should be construed to prohibit a retail permittee from choosing which product it wishes to carry for resale.

Sincerely,

A handwritten signature in cursive script that reads "Herb Frierson".

Herb Frierson
Commissioner of Revenue