

Chapter ATCP 106

BREWERS, UNFAIR SALES DISCRIMINATION

ATCP 106.01 Definitions  
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Note: Chapter Ag 118 was renumbered chapter ATCP 106 under s. 13.93 (2m) (b) 1, Stats., Register, April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

**ATCP 106.01 Definitions. (1)** "Brewer" means a person, firm or corporation engaged in the sale of beer to wholesalers licensed to sell beer to retailers under the provisions of s. 66.054 (6), Stats.

**(2)** "Wholesaler" means a person, firm, or corporation engaged in the sale of fermented malt beverages for resale.

**(3)** "Fermented malt beverages" means any liquor or liquid capable of being used for beverage purposes, made by the alcoholic fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing one-half of one percent or more of alcohol by volume.

History: Cr. Register, August, 1968, No. 152, eff. 9-1-68; am. (1), Register, July, 1969, No. 163, eff. 8-1-69.

**ATCP 106.02 Prohibited trade practices. (1)** No brewer shall discriminate in price, allowance, rebate, refund, commission or discount between wholesalers purchasing fermented malt beverages of like kind or quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition by a person who is or in good faith intends to become a competitor, in the wholesaling of fermented malt beverages, unless such discrimination is:

(a) Merely commensurate with a difference in the cost of manufacture, sale, or delivery resulting from differing methods or quantities of sale or delivery, or

(b) Made in good faith to meet or enable a wholesaler to meet the price or other terms of a competitor of either of them.

**(2)** No brewer shall threaten any wholesaler with any discrimination prohibited under sub. (1) with the purpose or effect of changing or maintaining resale prices of the wholesaler.

**(3)** Nothing in this chapter shall be deemed to prohibit brewers from selecting their own customers in bona fide transactions not in restraint of trade.

**(4)** The provisions of sub. (1) shall not be deemed to prohibit a brewer from extending to its wholesalers different terms of credit in the ordinary course of business taking into consideration the financial condition of the individual wholesaler and other factors normally considered in establishing credit, or from offering or furnishing to its wholesalers different advertising, promotional or merchandising services, provided that such services shall not be intended or used to effect a discrimination in price, allowance, rebate, refund, commission or discount prohibited by said sub. (1).

History: Cr. Register, August, 1968, No. 152, eff. 9-1-68; am. (1), cr. (4), Register, July, 1969, No. 163, eff. 8-1-69.

**ATCP 106.03 Report requirements.** In any investigation under this chapter a brewer or wholesaler upon request of the department shall furnish to it price lists and such other information as directed concerning the terms of any agreement, transaction, or offer which may be the subject of any prohibition under this chapter.

History: Cr. Register, August, 1968, No. 152, eff. 9-1-68.