

Bulletin

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AB-56

October 31, 2007

To: All Wholesalers, manufacturers, Nonresident Dealers, Nonresident Wineries, County Dispensaries and Retailers of Wine and Distilled Spirits

Subject: Price Filings and Quantity Discounts - Appeal of Court Decision

On October 26, 2007, an appeal was filed with the United States Court of Appeals for the Fourth Circuit Court in the case of TFWs, Inc., t/a Beltway Fine Wine & Spirits v. Peter Franchot, et al. You will recall we had advised in a previous Bulletin #AB-55 dated September 28, 2007, that The Honorable William D. Quarles, Jr., acting on behalf of the United States District Circuit for the District of Maryland, Northern Division, ruled that the State's price filing statute and ban on quantity discounts were a restraint of trade under the Sherman Act, and unenforceable. We will advise you of the outcome of the appeal once the appellate court rules.

In the meantime, you are reminded that the State's anti-discrimination statute found under section 12-102(a) of Article 2B, remains enforceable. Suppliers and wholesalers are prohibited from discriminating in price, discounts, or the quality of merchandise between different wholesalers, different county dispensaries, as well as different retailers.

In addition, suppliers and wholesalers are prohibited from providing something of value to a retail account based on section 12-104, of Article 2B. This provision would also prohibit a supplier or wholesaler from providing a retail licensee with free alcoholic beverages. Accordingly, discounts should be structured such that each case is sold for a given price. For example, a discount offered as "buy 5 cases and get one case free" would be an apparent violation of section 12-104, since the one case item would be at no charge to the retailer. To properly offer the discount in this example, the discounted price should apply to all cases such that the retailer is invoiced and pays a price for all the goods sold.

Should you have any questions concerning this Bulletin or the appeal in general, please feel free to contact Dan Adams, Assistant director at 410-260-7319.

Thad Russell
Director