

14B NCAC 15C .0708 CONSIGNMENT SALES: CONDITIONAL SALES: RETURNS

(a) **Consignment Sales Prohibited.** No industry member shall sell, offer for sale, or contract to sell to any retail permittee, nor shall any retail permittee purchase, offer to purchase, or contract to purchase from any industry member any alcoholic beverages on consignment or under conditional sale, or with the privilege of return, or on any basis other than a bona fide cash sale. For the purposes of this Rule, a consignment sale is any transaction in which title to the merchandise is not transferred at the time of shipment or delivery and which does not involve some form of full cash settlement. No industry member shall contract or agree with a retailer to retain title to alcoholic beverages until those products are sold.

(b) **Privilege of Return.** No industry member and retailer shall enter into any agreement whereby the retailer has an expressed or implied right to return alcoholic beverages that he cannot sell. Any acceptance of returned merchandise is considered a strong indication that the "privilege of return" existed at the time of sale, and a repeated practice of accepting returned merchandise from a retailer would establish an implied privilege of return, even though no formal agreement has been made.

(c) **Sales Conditioned on the Acquisition of Other Merchandise.** No industry member shall make any agreement with any retailer with terms that allow the industry member to remove the retailer's inventory conditioned upon present or future sales. The exchange of alcoholic beverages for equal quantities of the same type and brand in containers of another size and style is not considered an acquisition of "other" alcoholic beverages and, therefore, is not prohibited where the return is otherwise permissible.

(d) **Exceptions.** This Rule does not apply to the following transactions:

- (1) returns of malt beverages or wine for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, such as mutilated or damaged labels or containers, error in delivery, product deterioration, products have been deemed unsafe by State or federal authorities, the product approval has been withdrawn as referenced by 14B NCAC 15C .0201 and .0202, or a bona fide discontinuance of the retailer's business;
- (2) exchanges of malt beverage products for equal quantities of the same brand and type, so long as the manufacturer's code date on the products will expire within 30 calendar days of the date of exchange, and the quantity exchanged does not exceed 50 cases of each brand per 30 day period per retail permittee. For the purposes of this Rule, the term "exchange" means to replace product for product and does not authorize the wholesaler to accept returned malt beverage products for cash or credit; and
- (3) returns of wine or malt beverage products from a seasonal retailer who is open only a portion of the year if the products are likely to spoil during the off-season. For purposes of this Rule, a "seasonal retailer" is defined as one that closes its business completely for a period of at least eight weeks during the summer or winter months. Returns from a seasonal retailer may be for cash or credit.

Note: The return or exchange of wine products is governed by this Rule and the regulations under the Federal Alcohol Administration Act found in Title 27 of the United States Code of Federal Regulations, Part 11 (27 CFR Sec. 11.1 through 11.46), and nothing in these Rules shall be construed to authorize the return or exchange of wine products if the transaction is prohibited by federal law.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1116;
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