



STATE OF INDIANA
ALCOHOL AND TOBACCO COMMISSION

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Advisory Opinion 22-04: Offering Price Discounts to Consumers

I. Background

The following question was posed to the Indiana Alcohol and Tobacco Commission (“Commission”):

Are retailer and dealer permittees permitted to offer digital coupons or member-only pricing to select groups of customers or purchasers?

As an example, the requestor references two loyalty programs implemented by LiqGo and Big Red Liquors that offer savings to those who join a membership, club, or VIP loyalty program. Each of the examples provided will be addressed in turn below.

LiqGo offers savings and deals for customers who download an app or register a new account and sign up to join Go Club LiqGo! Customers without a smartphone can also register online with a valid e-mail address and phone number. After registering, club members can use the app to view the offers available. To receive member pricing, members enter their phone number at checkout in store or scan the app barcode in the app at the counter. It is free to join and there are no costs associated with the club membership.



Download the App &
Sign Up to get in the
Go Club LiqGo!



Explore exclusive
Deals, Featured Items &
Tobacco Offers.



Scan the App or
use phone number at
checkout in store.



<https://www.liqgo.com/goclub/>



<https://www.liqgo.com/goclub/>

LiqGo! BEER WINE LIQUOR GO CLUB! CLUB DEALS LOCATIONS CAREERS

Join Go Club LiqGo!
 Club Deals

Beer & Hard Seltzer
 Wine
 Liquor
 NEW Products
 Seasonal Products

Club Deals
 Join Go Club! for more savings!

BEER WINE LIQUOR SELECTS

<https://www.liqgo.com/club-deals/>

Under the Big Red VIP Program, VIP members gain access to special events, sales, and one-of-a-kind deals. Customers can join by downloading an app or signing up in store. Upon joining, VIP members receive special member pricing on items and are notified of special promotions, hard-to-find product, rare releases, special events and more. In order to receive the promotional pricing, members must present their customer ID or VIP card to a cashier prior to purchase. By joining the program, members also agree to receive marketing communications via mail, email, and phone.

Big Red VIPs get INSTANT SAVINGS!

Present your **VIP MEMBERSHIP Card** or **VIP Number** at checkout to receive preferred pricing on participating products.

Look for the signs in-store

20% off our Red Hot Deals and is our steepest discount on the hottest items.

15% off New Items that have our attention and might just rock your world.

10% off Best Sellers and everyday favorites like Tito's, Jack, and Crown.

[Shop the RED HOT DEALS Now](#)



<https://bigredliquors.com/vip/>

Big Red Liquors VIP Membership Terms and Conditions:

<https://bigredliquors.com/wp-content/uploads/sites/538/2020/07/BRLVIPTerms.pdf>

The purpose of this advisory opinion is to provide guidance on whether permittees may offer price discounts and/or loyalty programs as part of a promotional pricing strategy and, if so, how they must be conducted in order to comply with all applicable laws, rules, and regulations.

II. Relevant Statutes & Rules

Indiana Code § 7.1-5-5-7(a) states 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.”

Similarly, unless a valid exception under Ind. Code § 7.1-5-10-20 applies, it is unlawful for the holder of a retailer permit to do any of the following:

- (1) Sell alcoholic beverages during a portion of the day at a price that is reduced from the usual, customary, or established price that the permittee charges during the remainder of that day.
- (2) Furnish two (2) or more servings of an alcoholic beverage upon the placing of an order for one (1) serving to one (1) person for that person's personal consumption.
- (3) Charge a single price for the required purchase of two (2) or more servings of an alcoholic beverage.

Thus, it is unlawful for retailer permittees to provide discounts to certain customers or at certain times of day that are not available to everyone else (e.g., during "happy hour").

Additionally, no advertisement shall contain offers of financial awards as inducements to purchase alcoholic beverages under 905 IAC 1-38-4. Although the term “financial award” is not defined for

purposes of this rule, the Commission interprets this to mean any gift, bonus, premium, or other thing of value given to an individual that is intended to induce the sale or consumption of alcohol.

Finally, under 905 IAC 1-5.2-13, contest prizes, premium offers, and like items may be offered by a primary source of supply¹ or wholesaler directly to consumers as long as the prizes or premium offers are not conditioned upon the purchase of an alcoholic beverage.

III. Analysis & Conclusion

Based on the requirements above, permittees are required to treat all customers and purchasers the same in a sale or contract to sell alcohol. While the Commission recognizes that retailers and dealers use various promotional practices and pricing methods to attract consumers and drive sales, the agency must also ensure that these practices do not constitute price discrimination or an illegal inducement.

A. Clubs, Memberships & Loyalty Programs

It is the position of the Commission that a club, membership, or loyalty program that allows customers to sign up or enroll at any time and immediately become eligible to purchase alcohol products at the member price is permissible so long as the program is free to join and is available to all customers. A “member price” is essentially a front-end discount provided to members of a club, membership, or loyalty program.

Clubs, VIP memberships, and loyalty programs are distinguishable from a points-based rewards program that provides something of value (such as points that may be redeemed for a cash value) when a customer purchases alcohol, which is considered an inducement to stimulate the sale or consumption of alcohol and is prohibited under 90 IAC 1-38-4. Additionally, allowing customers to redeem points or rewards for discounted alcohol products under a rewards program would be considered price discrimination prohibited by Ind. Code § 7.1-5-5-7(a) since the product would not be available to all customers at the redeemable price. In contrast, a loyalty program or VIP membership where customers can sign up or enroll at any time and immediately be given a member price or discount would not be considered an inducement or price discrimination.

In the examples provided above, members can join at any time to receive member pricing. The programs are available to everyone who provides their contact information and are free to join. Therefore, if both retailers find a way to make the member price available to everyone by offering an instore sign-up option with a VIP card given to those who join, then they are permissible in the eyes of the Commission.

B. Coupons, Discounts & Rebates

Coupons or rebates offering a discount or reduced price must also be made available to all customers and purchasers, regardless of how the coupon or rebate is offered. For example, if a retailer or dealer permittee runs a coupon in a local newspaper, the discount, reduced price, and/or coupon must be offered to everyone, including individuals who do not subscribe to that newspaper. Similarly, a

¹ Under Ind. Code 7.1-1-3-32.5, the term “primary source of supply” means an artisan distiller, distiller, producer, vintner, rectifier, importer (into the United States), bottler, or brewer of an alcoholic beverage, or owner of an alcoholic beverage at the time it becomes a marketable product.

discount or reduced price offered in a digital coupon must be made available to all customers, including those without access to a computer or smartphone.

DISCLAIMER: Opinions expressed in this advisory opinion are fact-sensitive and based on the 2022 Indiana Code.