

New York State Liquor Authority

Commission to Reform the Alcoholic Beverage Control Law

Commission Meeting #2

Briefing Material – Policy Research

Topic – 7: “The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market”

Adam Clayton Powell, Jr. State Office Building

163 West 125th Street

New York, NY 10027

November 16, 2022

Commission Meeting #2
Agenda Topic – 7

State	State implemented cooperative buying for cooperatives of retail licensees	If yes, is cooperative for on-premises retailers, off-premises retailers or both	State provides a price posting system	State provides discounts on the purchase of higher quantities of price posted products	If Cooperative Buying allowed, statute
Arizona	Yes	Both	No	Yes	ARS Title 4 -222 - Rules R19-1-203, R19-1-322 and R19-1-503
California	No	N/A	Yes	No	N/A
Colorado	No	N/A	No	N/A	N/A
Hawaii - County	Yes	Both	Yes	Yes	Sec. 281-46, Hawaii Revised Statutes
Hawaii - Kauai	No	N/A	No	No	N/A
Illinois	Yes	Both	No	Yes	235 ILCS 5/6-9.5, 235 ILCS 5/6-9.10, and 235 ILCS 5/6-9.15.
Indiana	Yes	Both	No	No	Our Group Purchasing regs are in our administrative rules and may be found at 905 IAC 1-32.1-1 et seq.
Iowa	Yes	Both	Yes	Yes	N/A
Kansas	No	N/A	No	No	N/A
Kentucky	No	N/A	No response provided	No response provided	N/A
Maryland	No	N/A	No	Yes	https://www.marylandtaxes.gov/form/s/Tax_Publications/Tax_Bulletins/Alcohol_Tax_Bulletins/bl_ab55.pdf
Massachusetts	No	N/A	Yes	Yes	N/A
Michigan	No	N/A	Yes	No	No
Montana	No	N/A	Yes	Yes	N/A
New Mexico	Yes	Yes	Yes	Yes on the purchase of higher quantities of	Section 60-6B-21 NMSA 1978 and NMAC 15.11.30.8.
New York	No	N/A	Yes	Yes	N/A
North Dakota	No	N/A	Yes	No response provided	N/A
Oregon	No	N/A	Yes	No	N/A
Pennsylvania	No	N/A	No response provided	No response provided	N/A
South Dakota	No	N/A	Yes	No	N/A
Tennessee	No	N/A	No	Yes	N/A
Texas	No	N/A	No	No	N/A
Vermont	No	N/A	No response provided	No response provided	N/A
Virginia	No	N/A	No	N/A	N/A
Washington	Yes	Yes	No	No	No response provided
Wisconsin	Yes	Both	Yes	Yes	No response provided
Wyoming	No	N/A	No	No	N/A

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State	Rationale for cooperatives	Rationale for retailers	Rationale for price posting system	Rationale for discounts
Arizona	Yes this has allowed small retailers and restaurants to purchase product using discounts on quantities or family plans of products. This applies to both on premise and off premise licenses. Arizona also allows discounts by distribution channels.	This applies to both on premise and off premise licenses. Arizona also allows discounts by distribution channels.	Not for many years, Not posting prices has allowed suppliers, wholesalers and retailers to react to a very competitive marketplace that has over 70% of all sales going through chain grocers, box stores, large retail liquor chains (Total Wines and More etc.)	Yes, see "Rationale for price posting system" on the left.
California			Yes (for beer only)	
Colorado	No. Not as this time.			
Hawaii - County				
Hawaii - Kauai				Currently No
Illinois	Yes, cooperative buying groups are regulated pursuant to 235 ILCS 5/6-9.5, 235 ILCS 5/6-9.10, and 235 ILCS 5/6-9.15. This became effective August 20, 2021.	Both. However, the group must be channel specific (i.e., all on-premises or all off-premises).		Yes, see 235 ILCS 5/6-9.15 and Administrative Rule 11 IAC 100.500(d)(5).
Indiana				
Iowa	No Iowa hasn't implemented a policy, legislation doesn't prohibit this practice.	Both Iowa ABD does not regulate the markups, prices, discounts, allowances, or other terms of sale at which alcoholic liquor may be purchased by on-premises retailers from off-premises retailers. ABD also does not regulate markups, prices, discounts, allowances, or other terms of sale at which wine and beer are sold by wholesalers to retailers. It is possible that on-premises retailers are cooperatively buying liquor from off-premises retailers. It is also possible that on and off premises retailers are cooperatively buying beer and wine from wholesalers.	Yes Equal treatment for those licensees purchasing liquor through ABD.	Yes As long as the discounts are offered to all, discounts may be offered.
Kansas				
Kentucky				
Maryland				https://www.marylandtaxes.gov/forms/Tax_Publications/Tax_Bulletins/Alcohol_Tax_Bulletins/bl_ab55.pdf
Massachusetts	No. Cooperative buying is prohibited in the Commonwealth of Massachusetts.			

State	Rationale for cooperatives	Rationale for retailers	Rationale for price posting system	Rationale for discounts
Michigan			<p>Manufacturers and wholesalers must submit price postings for beer, wine (including cider), and mixed spirit drink (low ABV distilled spirits). However, these postings are protected from disclosure under the Michigan Freedom of Information Act for one year from the date they were submitted and even after the one-year timeframe they are not posted publicly on the MLCC website. Spirits suppliers post their quotations for products with the MLCC, which is the wholesaler of spirits in Michigan, and the retailer minimum shelf prices for those products are posted on the MLCC website.</p> <p>Rationale: Michigan Legislature created this requirement for beer, wine and mixed spirit drink products in MCL 436.1609a. The purpose of the requirement was codified by the Legislature in the subsection (16) of the statute:</p> <p>(16) The regulation described in this section is necessary for both of the following reasons: (a) To promote temperance and the public health and welfare. (b) To promote a stable 3-tier distribution system with orderly markets for wine and malt beverage products in which there is no price discrimination by a wholesaler in its sales to retailers within the wholesaler's sales territory.</p>	No. The aforementioned MCL 436.1609a explicitly prohibits quantity discounts for beer, wine, and mixed spirit drink products.
Montana			We set the posted price for liquor only, it's established in statute	Retail licensees receive an 8% discount from posted price for full case purchases
New Mexico	Yes. To allow small business owners to band together to obtain bulk discounts and remain competitive with large retailers.	Yes, for off-premises retailers. To allow small business owners to band together to obtain bulk discounts and remain competitive with large retailers.	The NM Liquor Control Act does include statutory provisions requiring price disclosures, price schedules, and price affirmations. However, NM ABC does not enforce these statutes after US District Court ruling that price affirmation statute violated commerce clause. Brown-Forman Corporation v. New Mexico Department of Alcoholic Beverage Control, 672 F.Supp. 1383.	See "Rationale for price posting system"
New York				
North Dakota			We require all pricing sheets to be the same to all wholesalers. Discounts can be offered for quantity, and must be equitable.	
Oregon	Oregon does not allow retail licensees to form cooperatives for the purpose of buying malt beverages, wine, or cider. The OLCC controls the retail price of distilled liquor. Rationale - N/A		Yes, although only for malt beverages, wine, and cider. Manufacturers and wholesalers must post the price and sell to all retailers at that price. Rationale - Prohibited financial assistance from Manufacturer Wholesaler to Retailer.	N/A
Pennsylvania	This section is not applicable to PA.			
South Dakota				
Tennessee			Not for liquor. Beer has to submit prices to dept of revenue for tax purposes. However, to my understanding this is not a typical price posting system.	Liquor wholesalers may offer bulk discounts but they have to offer the same discount to every retailer.
Texas				
Vermont	No specific laws for cooperative buying as it relates to liquor in Vermont.			

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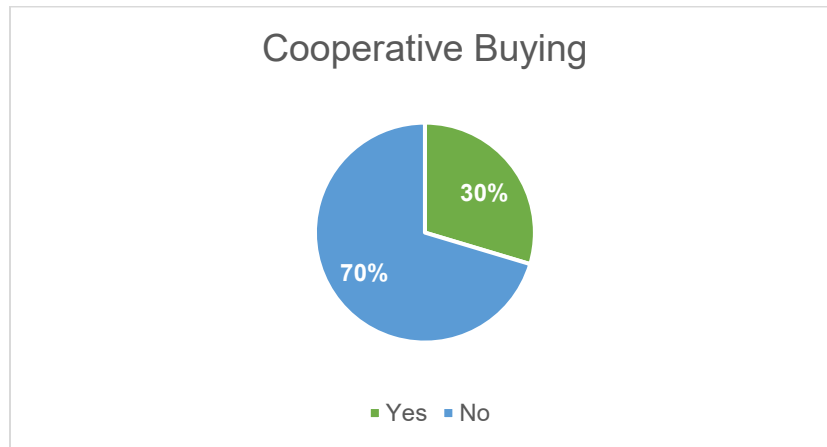
State	Rationale for cooperatives	Rationale for retailers	Rationale for price posting system	Rationale for discounts
Virginia	Virginia does not have cooperative buying or a price posting system.		Virginia does not have cooperative buying or a price posting system.	
Washington	While WA does not have a specific cooperative buying allowance for retailers, we do allow for combined delivery of product (spirits and wine only) to a registered warehouse also called (Central Warehousing) <u>WAC 314-02-104</u> . Which may allow the supplier to give the retailers a better price on the purchase, since the delivery location for multiple licensees would be at one location. In this situation each retailer must order and pay for their product independently of the other retailers using the warehouse delivery location.	The registered warehouse is only allowed for off-premises retailers <u>RCW 66.28.340 (2)</u> .	Washington State required price posting for all beer and wine products, but it was changed with Initiative 1183 in 2011, requiring all licensees to maintain pricing at their premises and making products reasonably available to all who would like to purchase the same price <u>RCW 66.28.180</u> .	As noted above price posting has been discontinued. Quantity or Volume discounts are allowed for spirits and wine only, <u>WAC 314-23-060</u> .
Wisconsin	Retailers must buy from a wholesaler that holds a valid permit. DOR Alcohol Beverage Laws for Retailers Licensee Responsibilities (wi.gov)			
Wyoming				

Briefing Material – Policy Research

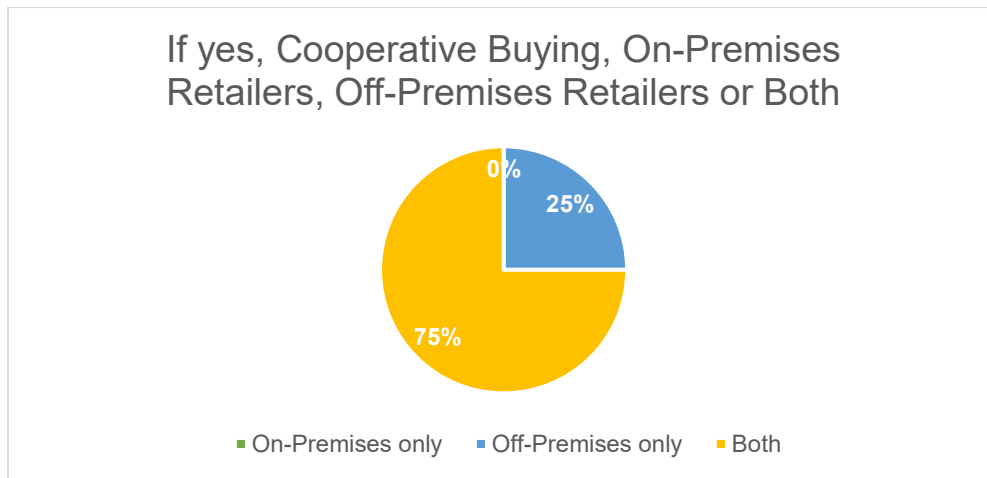
Supplemental Information

Topic – 7: “The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market”

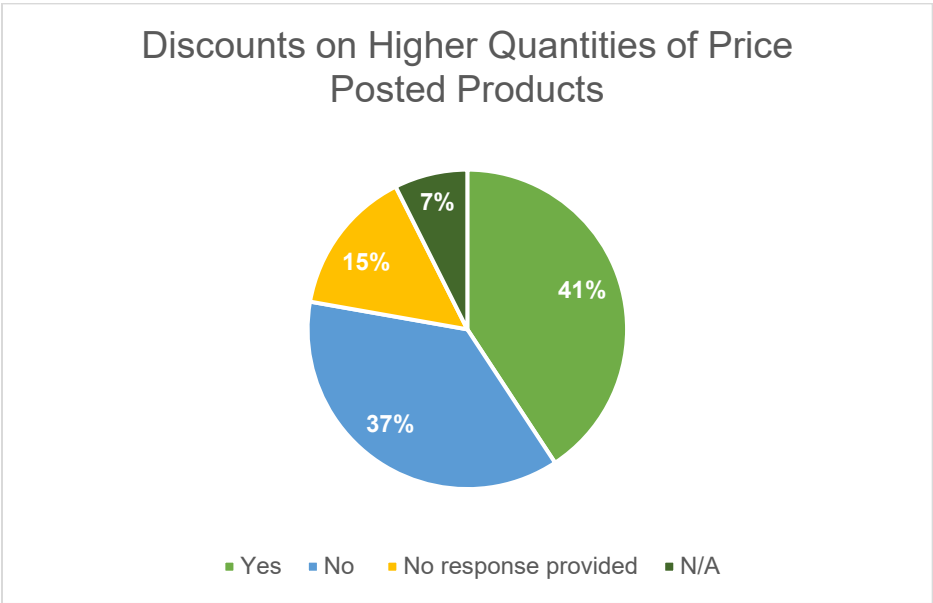
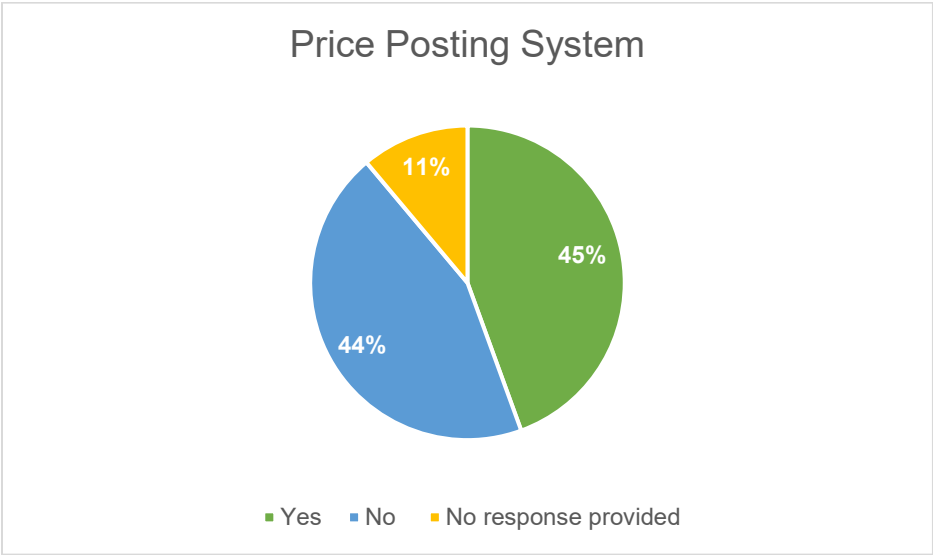
	Cooperative Buying
<i>Yes</i>	8
<i>No</i>	19
TOTAL	27



	If yes, Cooperative Buying, On-Premises Retailers, Off-Premises Retailers or Both
<i>On-Premises only</i>	0
<i>Off-Premises only</i>	2
<i>Both</i>	6
TOTAL	8



	Price Posting System	Discounts on Higher Quantities of Price Posted Products
Yes	12	11
No	12	10
No response provided	3	4
N/A	0	2
TOTAL	27	27



New York State Liquor Authority

Commission to Reform the Alcoholic Beverage Control Law

Commission Meeting #2

Briefing Material – Legislation

Topic – 7: “The ability of licensees to form purchasing cooperatives, and the effects such cooperatives would have on the rest of the market”

Adam Clayton Powell, Jr. State Office Building

163 West 125th Street

New York, NY 10027

November 16, 2022

STATE OF NEW YORK

8964

IN SENATE

May 2, 2022

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the alcoholic beverage control law, in relation to allowing cooperative agreements by licensees to sell wine or liquor at retail for consumption off the premises

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The alcoholic beverage control law is amended by adding a
2 new section 106-c to read as follows:

3 § 106-c. Cooperative agreements by licensees to sell wine or liquor at
4 retail for consumption off the premises. No more than ten licensees with
5 licenses for the sale at retail of wine or liquor for off-premises
6 consumption as established in section sixty-three or section seventy-
7 nine of this chapter, may join a cooperative agreement to make joint
8 purchases of alcoholic beverages, provided that such agreement and
9 activity shall conform to the following standards:

10 1. The cooperative may hire employees to act in an administrative or
11 management capacity for the cooperative's purchase, storage and trans-
12 portation of alcoholic beverages. Such employees shall be in compliance
13 with sections one hundred twenty-six and one hundred twenty-eight of
14 this article;

15 2. No cooperative agreement shall prohibit any licensee from joining
16 any other cooperative agreement;

17 3. No cooperative agreement shall prohibit any retailer from advertis-
18 ing or selling any product at any otherwise lawful price;

19 4. Any licensee may withdraw from a cooperative agreement within thir-
20 ty days of forming such cooperative by written notice to the remaining
21 participating members of such cooperative and no penalties shall be
22 charged for such withdrawal;

23 5. All purchases on credit through or by cooperative agreement shall
24 be reduced to writing, signed by the wholesaler and each individual
25 participating member of the cooperative and be consistent with sections
26 one hundred one-aa and one hundred one-aaa of this article. All credit

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD15533-01-2

1 terms shall include adequate assurances of payment by each individual
2 participating member of the cooperative by either the posting of a bond
3 by the cooperative member or a provision that each member of the cooper-
4 ative shall be jointly and severally liable for payment for the
5 purchases made through the cooperative. A copy of such written agree-
6 ments shall be maintained by the wholesaler and by the registered buying
7 cooperative member;

8 6. All individual purchases through or by cooperative agreement shall
9 be separately invoiced consistent with sections one hundred one-aa and
10 one hundred one-aaa of this article and shall contain the cooperative's
11 registration number;

12 7. All purchases through or by a cooperative agreement shall be trans-
13 ported consistent with section one hundred seventeen of this article;

14 8. No licensed party to a cooperative agreement shall commingle inven-
15 tory, funds or other assets inconsistent with any section of this chap-
16 ter;

17 9. Any purchase or transfer in violation of any section of this chap-
18 ter or the regulations promulgated thereunder, shall be a violation by
19 all members of the cooperative purchase agreement;

20 10. Nothing herein shall be deemed to require the servicing of any
21 cooperative agreement with quantity or cash discounts if there exists no
22 corresponding justification for the differential; and

23 11. Each licensed cooperative buying group may maintain a public ware-
24 house provided that the cooperative complies with section one hundred
25 two of this article, the cooperative public warehouse maintains assigned
26 space for each individual participating member of the cooperative and
27 the inventory is transferred to that space within seventy-two hours
28 after delivery. All purchases through or by the cooperative agreement
29 shall be transported to and from the warehouse consistent with section
30 one hundred seventeen of this article.

31 § 2. This act shall take effect on the one hundred eightieth day after
32 it shall have become a law. Effective immediately, the addition, amend-
33 ment and/or repeal of any rule or regulation necessary for the implemen-
34 tation of this act on its effective date are authorized to be made and
35 completed on or before such effective date.