

ATTACHMENT TO REQUEST FOR ADVISORY OPINION
Kentucky Beer Wholesaler's Association – Dec. 3, 2024

A dispute has arisen between members of the KBWA (malt beverage distributors) and nonquota retail malt beverage license holders with respect to the circumstances under which a distributor may provide draught-line and coil cleaning services to nonquota retail malt beverage licensees.

The relevant trade-practice statutes are found in KRS 244. Specifically, KRS 244.590(1)(c) prohibits brewers and distributors from “furnishing, giving, renting, lending, or selling” services or “things of value” to malt beverage retailers except as the malt beverages administrator may permit through the promulgation of an administrative regulation. KBWA members believe that draught-line and coil cleaning services are the types of prohibited “services” or “things of value” referenced in KRS 244.590(1)(c). However, KRS 244.590(2)(b) creates an exception to this prohibition permitting distributors to provide draught-line and coil cleaning services to nonquota malt beverage package license holders (off-premises consumption only). No other malt beverage retail license holders are referenced in this statutory exception.

Some nonquota retail malt beverage licensees (primarily on-premises licensees) have demanded that distributor members of the KBWA provide draught-line and coil cleaning services free of charge. Additionally, some nonquota retail malt beverage license holders (again, primarily on-premises licensees) believe that distributors are required to provide draught-line and coil cleaning services as long as the licensee will pay the distributor fair market value for such services.

Consequently, please provide an advisory opinion on the following questions to provide clarity on the circumstances in which draught-line and coil cleaning services may be provided to retail licensees. The KBWA's proposed response and rationale for each question are also summarized below.

- 1. May a malt beverage distributor provide draught-line and coil-cleaning services to any nonquota retail malt beverage licensee free of charge?**
 - No. KRS 244.590(1)(c) prohibits a brewer or malt beverage distributor from providing certain services such as draught-line and coil cleaning to a nonquota retail malt beverage licensee free of charge.

- 2. May a distributor legally refuse to provide draught-line and coil cleaning services to a nonquota retail malt beverage licensee free of charge after such a demand has been made by such licensee?**
 - Yes. KRS 244.590(1)(c) prohibits a brewer or malt beverage distributor from providing certain services such as draught-line and coil cleaning to a nonquota retail malt beverage licensee free of charge. Additionally, KRS 244.590(3) prohibits retail licensees from requiring or demanding that a brewer or distributor violate any of the provisions of KRS 244.590.

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- 3. May a malt beverage distributor provide draught-line and coil-cleaning services to a nonquota retail malt beverage licensee if the distributor is paid fair market value for such services?**
- Qualified yes. Under KRS 244.590(2)(b), a malt beverage distributor or brewer may provide draught-line and coil cleaning services only to nonquota retail malt beverage package licensees provided that such licensee pays the distributor or brewer fair market value for such services.
 - However, under KRS 244.590(1)(c), a distributor is prohibited from “furnishing, giving, renting, lending, or selling” such services to any other retail licensee, including nonquota retail malt beverage drink (on-premises) licensees. Thus, a distributor cannot legally provide such services to retail licensees (except for a nonquota retail malt beverage package licensee) even if the licensee pays fair market value to the distributor for such services.
- 4. Is a malt beverage distributor required to provide draught-line or coil cleaning services to a nonquota malt beverage package licensee if such licensee will pay the distributor fair market value for such services?**
- No. KRS 244.590(2) states that a distributor “may” provide draught-line or coil line cleaning services to a nonquota retail malt beverage package licensee. It does not obligate a distributor to provide such services upon request even if the distributor is paid fair market value for the service.
- 5. May a malt beverage distributor pay a third party the fair market value for draught-line or coil cleaning services provided to a nonquota retail malt beverage license holder who then provides such services to the license holder free of charge?**
- No. Rather directly or indirectly, providing a service or thing of value to a nonquota retail malt beverage licensee free of charge is illegally providing a service or thing of value to such licensee. *See* KRS 244.590(1) (stating that, in addition license revocation, “any person who, alone or acting through another, directly or indirectly, violates any of the provisions of this chapter for which no other penalty is provided shall, for the first offense, be guilty of a Class B misdemeanor; and for the second and each subsequent violation, the person shall be guilty of a Class A misdemeanor”).