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MARKETING PRACTICES BULLETIN – MPB 023 “Amendments to Statutory Provisions during 80th Legislature”

To: Alcoholic Beverage Industry

This bulletin is intended to clarify HB 1541, HB 2723, and HB 3123 passed during the 80th Legislature.

HB1541:

HB1541 becomes effective September 1, 2007 and amends §102.07(g) of the Alcoholic Beverage Code relating to preannouncement of certain promotional events and purchases by certain alcoholic beverage permit holders. The bill allows LIQUOR manufacturers and wholesalers to pre-arrange promotional activities designed to promote liquor products with retailers and pre-announce such events to the consumer.

Further, the bill authorizes LIQUOR manufacturers and wholesalers to preannounce the purchase of distilled spirits and wine for consumer consumption.

Note: Of importance here is to recognize that the bill **does not** provide authorization for BEER manufacturers and/or distributors to prearrange/preannounce beer promotional activities or purchases of beer for consumer consumption. Thus such activities for beer must be spontaneous and neither pre-arranged with retailer nor pre-announced with the consumer.

HB2723:

HB2723 becomes effective September 1, 2007 and amends §12.01 (brewer's permit), §24.12 (wine only package store permit), §26.01 and §26.08 (wine and beer retailers off premise permit), §37.01 (non-resident sellers permit), §62.01 (manufacturer's license), and adds section §71.11 (retail dealer's off-premise license) of the Alcoholic Beverage Code. The bill allows manufacturers and retailers of malt beverage products to conduct tastings of those products on the premises of a licensed/permitted retailer.

The bill requires manufacturers to purchase the products intended to be sampled from the retailer on whose premises the tasting will be conducted. Particularly, certain language in the bill states that those authorized to conduct samplings may not withdraw or purchase alcoholic beverages from the holder of a wholesaler's permit or a distributor's license or provide alcoholic beverages for a sampling on a retailers premises that is not purchased from the retailer. *In view of the fact that suppliers are prohibited from withdrawing or purchasing the product from a wholesaler/distributor, we infer that this provision would preclude a supplier from obligating a distributor to pay for the cost of the products used in sampling and seeking reimbursement from the supplier.

Be mindful that a distributor may not administer or arrange the sampling event and may not participate in the pouring, or touching of the products.

The bill prohibits the manufacturer and/or retailer from collecting a fee from the consumer.

Note: Of importance is to recognize that the bill limits sampling activities to manufacturers, retailers and their respective employees servants or agents. The term “agent” as used in this context and throughout the Code clearly isolates the term per tier member and does not grant authorization for the term to be used interchangeably to allow tier members to represent each other or act on behalf of one another. Thus it shall be unlawful for a beer distributor, to act on its own behalf, or represent a manufacturer/retailer as an agent, to engage in a product sampling.

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*Lastly, the bill does not authorize manufacturers to pre-arrange the sampling events with retailers and does not authorize the manufacturer to pre-announce the sampling event with consumers. Thus it shall be unlawful for a manufacturer or its agent, servant or employee to pre-arrange a sampling event with a retailer or pre-announce a sampling event with a consumer. The sampling events must be spontaneous.

HB 3123:

HB3123 becomes effective September 1, 2007 and amends §109.58 of the Alcoholic Beverage Code relating to relating to relaxation of restrictions as to charitable events. The bill authorizes licensees and permittees at different levels of the industry to simultaneously or jointly sponsor a civic, religious, or charitable event including providing or lending money, services or other things of value directly to a civic, religious or charitable entity in conjunction with the event.

The bill requires that any license or permit to sell or serve alcoholic beverages at the event be held by a retailer who is independent of the sponsors. Retail sponsors of the event may not receive any direct benefit or service because of joint sponsorship by a wholesaler or manufacturer of alcoholic beverages. Further manufacturers, wholesalers and retailers may not coerce, persuade or induce the civic, religious or charitable group to persuade the independent retailer to engage in activities that are prohibited by other provisions of the Alcoholic Beverage Code

Finally, civic, religious or charitable entities receiving donations from manufacturers, wholesalers and/or retailers may not exchange those gifts for exclusive products rights. The independent retailer must retain the right to control the quantity and/or selection of brands of alcoholic beverages bought or sold by the independent retailer.

This opinion is of the staff of the Commission, and it should be noted that any permittee/licensee may pursue a different opinion through administrative proceedings with the State Office of Administrative Hearings. *The commission will continue to monitor and discuss these issues and make necessary regulatory changes as statutorily applicable. We hope this opinion will assist you in your promotional endeavors. Please feel free to contact us at any time should other questions arise. We will monitor these events and make necessary regulatory changes as applicable. If you would like additional information or have questions regarding this bulletin, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by email at marketing.practices@tabc.state.tx.us, by phone at 512-206-3411 or by facsimile at 512-206-3203.

Kind Regards,



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