



New Legislation for Distilleries

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SB 905 by Van de Putte

Sales to Consumers

Effective
9/1/13

- ▶ Authorizes distillery to sell product made on the premises direct to consumers at the distillery.
 - for on-premise consumption (up to 3,000 gallons annually) and
 - for off-premise consumption (up to 3,500 gallons annually)
 - in unbroken packages containing no more than 750 ml
 - no more than two 750 ml bottles or the equivalent to the same consumer in a 30-day period.

TABC

SB 905 by Van de Putte Sales to Consumers

Effective
9/1/13

- ▶ Distilleries not authorized to ship or deliver to consumers.
- ▶ Consumers purchasing must be present at the distillery.
- ▶ The bottle sold “to go” must “bear a notice affixed to the bottle that” says the bottle is commemorative, states the month and year the bottle is sold and is signed by an agent/employee of the permit holder.

TABC

SB 905 by Van de Putte

- ▶ Hours of sale for on-premise sales same as mixed beverage permit.
- ▶ Hours of sale for off-premise sales same as package store.
- ▶ Taxes paid for on-premise consumption sales same as mixed beverage permit.
- ▶ Sales taxes to be collected for off-premise commemorative bottle sales.
- ▶ Distilleries must keep records on consumer sales and gallonage. Retain for inspection.

SB 905 by Van de Putte

- ▶ Planning a stakeholder meeting to discuss how Rule 45.103 On-Premise Promotions should apply to the manufacturing tier.
 - ▶ Distilleries, Breweries, Wineries
 - ▶ Happy Hour Rules / Drink Specials
 - ▶ Practices that promote excessive consumption

SB 905 by Van de Putte

- Because distilleries are now authorized to sell for on-premise consumption:
 - Application amended for city/county to certify “wet” status and zoning / distance requirements. If the distillery intends to sell for on-premise consumption, a city “might” refuse to certify (or protest upon renewal) if location isn’t wet for on-premise consumption. (Section 501.035(g) Election Code)
 - Post 60-day sign to notify community of application for new permit. (Section 11.391)
 - Notify neighbors within 300 feet of application for permit (Section 11.393)

TABC

SB 828 by Van de Putte Distiller's Agent's Permit

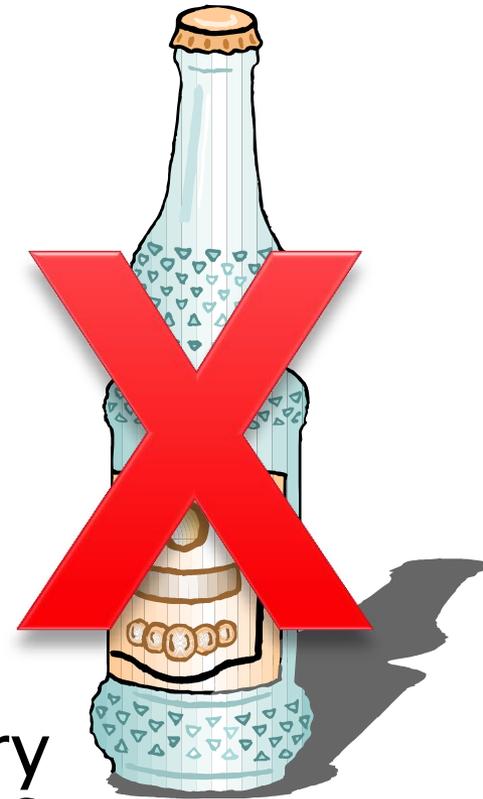
Effective
9/1/13

- ▶ Creates Distiller's Agent's Permit (DK) for employees of a Texas distillery.
 - May solicit and take orders from wholesalers
 - May conduct free tastings at package stores
 - Must buy product from the package store
 - Can't solicit business from MB or P unless accompanied by wholesaler
 - \$10 annual fee / \$20 for two-year permit
 - 5-day grace period.
 - Must be 21 years old.
 - Can conduct bar spending.

TABC

SB 828 by Van de Putte

- ▶ TABC will begin accepting DK applications on October 24, 2013.
 - Permit Fee: \$20
 - Permit Surcharge: \$94
 - Total Every Two Years: \$114
- ▶ Note: SB 828 does not authorize distiller's agent to transport or carry liquor samples or give free bottle of spirits to a retailer.
- ▶ Wholesalers can under 102.02 AB Code.



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SB 642 by Van de Putte

Bulk Sales to Industrial Permit Holders

- ▶ Allows distillers to sell bulk spirits to food processors holding a TABC industrial permit.
 - BBQ Sauce, Ice Cream, Candy, etc.
 - Distiller must retain records of bulk sales for audit by TABC.
- ▶ Under previous law, industrial permit holders had to buy spirits by the bottle from a package store for use in food processing.

SB 652 by Van de Putte

Transfer of Bulk Product

Effective
9/1/13

- ▶ Authorizes transfer of bulk alcohol between members of manufacturing tier, for manufacturing purposes, as permitted by federal law.
 - TTB notified TABC that a distillery is authorized to buy from another distillery or a brewery for manufacturing purposes.
 - TABC will notify distilleries if this information changes.

TABC

HB 3572 by Hilderbran

Mixed Beverage Taxes

Effective
1/1/14

- ▶ Impacts Mixed Beverage Permits, Private Clubs and Distilleries
- ▶ Reduces 14% mixed beverage gross receipts taxes to 6.7% (paid by permittee)
- ▶ Creates an 8.25% mixed beverage sales tax (paid by patron).
- ▶ Essentially it shifts part of the tax burden to the consumer.
- ▶ Taxes are paid to Comptroller, not TABC

Amends the Tax Code.

TABC



TABC Marketing Practices Training for Distillers

Thomas Graham
Marketing Practices Supervisor

October 7, 2013

ON-PREMISE PROMOTIONS

Upper-tier members and retailers work together to advertise and promote their products and services.

Consumer Promotions – Bar Spending

- ▶ Distiller's agent or their wholesaler may pre-arrange and pre-announce a promotional activity to be held on a retailer's premises.
- ▶ Distillers or their wholesaler may also pre-announce the promotion to consumer.
- ▶ Beverages must be consumed on the premises in the presence of the purchaser.
- ▶ Purchases may not be excessive.
- ▶ Purchaser must hold a distiller's agent's permit or be a promotional permit holder contracting with a distillery. Agent of the distiller, promotion company or wholesaler must be present during promotion.

Coupons

Rule 45.101

- ▶ Cannot give a coupon if the purchase of an alcoholic beverage is required.
- ▶ Cannot give a coupon for the purchase of alcoholic or non-alcoholic beverages produced by the alcohol manufacturer.

Cross-Promotion Coupons

- ▶ The cost must be born by the non-licensed producer of the non-alcoholic product (e.g. the promoter for the concert tickets).
- There can be no required purchase of alcoholic beverages
- The upper tier member cannot pay or redeem the discount, directly or indirectly.

Examples

- ▶ ABC Winery promotes its *Cabernet Sauvignon* brand with a “necker” offering a \$2 discount on the purchase of any pork product. The coupon is redeemable by the National Pork Council.
 - The winery does not pay or reimburse any part of the \$2.00 discount.
- ▶ A bottle of spirits has a necker for free cheese. The distiller can print and distribute the necker, but Kraft must reimburse the liquor store for the cost of the cheese.

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Coupons for Non-Beverage Products

- ▶ Rule 45.101(c) – Allows manufacturers and wholesalers to offer discounts on items to consumers provided the items are not alcoholic beverage products and no alcoholic beverage product purchase is required.
- ▶ Example: Upper-tier members may have promotional offers for items such as BBQ grills, bicycles, jackets, etc. These items may be purchased from the upper tier member usually through a website using a coupon program.

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Novelty Items

102.07(d) Code and Rule 45.117(b)(2):

- ▶ Distiller, brewer, winery, wholesaler may give prizes, premiums or gifts to consumers.
- ▶ Must be of limited value.
- ▶ Designed to promote a specific product or brand.
- ▶ May have a utilitarian function in addition to product promotion.
- ▶ Examples: Branded key chains.

Who may receive free products or novelty items that advertise liquor?



Only Consumers

Co-Packs

§102.07(a)(5) AB Code
Rule §45.120



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Co-Packs

- ▶ Alcoholic beverages packaged in combination with other items.
- ▶ The package is designed to be delivered intact to the ultimate consumer.
- ▶ The additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.
- ▶ Retailer may not separate the additional item and sell it by any other means other than the way it was originally packaged when received.

INDUCEMENTS

Rule §45.110

Prohibited practices which restrict or hamper the free choice of a retailer to decide which products or quantities of products it will sell.

Illegal Inducements - Examples

Upper tier member:

- ▶ Purchases or rents shelf, floor or warehouse space from retailers
- ▶ Requires tie-in sales from retailers
- ▶ Purchases advertising which benefits a retailer
- ▶ Furnishes retailers with service trailers with equipment
- ▶ Provides T-shirts for retail employees
- ▶ Provides money or gift card incentives
- ▶ Provides legal items illegally; promo items for free
- ▶ Gives away equipment including display enhancers

Criteria for Establishing Illegal Inducement

- ▶ Retailer right of choice is restricted;
- ▶ Retailer is obligated to participate as condition to obtain upper tier member's product;
- ▶ Retailer is obligated to promote upper tier member's product;
- ▶ Retailer is committed to selling a particular product.

Criteria for Establishing Illegal Inducement

- ▶ Upper-tier member involved in day to day operation of retailer.
 - setting price
 - controlling display and schematics
 - making decisions on which products retailer will sell
- ▶ Practice is discriminatory without prudent justification.

Illegal Inducements Exceptions

Rule 45.110(c)(4)(A-E)

It is legal to furnish food and beverage, entertainment or recreation to retailers, their agents or employees **ONLY** under the following conditions:

- ▶ The value shall not exceed \$500 per person on any one occasion; and
- ▶ May only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; and
- ▶ Upper tier members may only furnish ground transportation.

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Additional Caveats

- ▶ Food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference or similar event if the primary purpose for the attendance of is not to receive benefits under this rule.
- ▶ Each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

Example of Possibly Legal Inducement

- ▶ Upper tier member provides all-expense-paid trip to retailer or retailer's employee(s) based on sales volume of a specific product.



Example of Possibly Legal Inducement

- ▶ Upper tier member provides retailer tickets to local college home games in exchange for promoting his product over a competitors.



SAMPLING / TASTING



Consumer Sampling

Chapter 52 AB Code

- ▶ A package store may conduct a product sampling with consumers.
- ▶ An off premise retailer may not charge a fee in conjunction with a sampling event.
- ▶ A Package Store may advertise the tasting event by on-site communication, direct mail, electronic mail, or permit holder's internet website.



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Consumer Sampling

- ▶ Written notification of the event must be internally posted at the location 48 hours prior to the event.
- ▶ Sampling sizes and number of containers allowed are limited to those authorized under Code Section 52.01.
- ▶ Items sampled must originate from retailer's stock.
- ▶ Package Store must have Tasting Permit.

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ADVERTISING SPECIALTIES

Designed to advertise or promote a specific product or brand.

May have a utilitarian function in addition to product promotion.

Rule 45.117

Advertising Specialties

- ▶ Manufacturers and wholesalers may furnish “advertising specialties” to retailers.
- ▶ The total cost of the advertising specialties shall not exceed \$101.00 per brand, per retailer, per calendar year.
- ▶ Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of \$101.

Advertising Specialties

- ▶ A product manufacturer may pool the dollar amounts for his own brands to give an advertising specialty provided the aggregate value if the advertising specialty does not exceed \$101.00 per individual brand of the combined brands identified on the specialty.



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Signage

Rule 45.113(b)

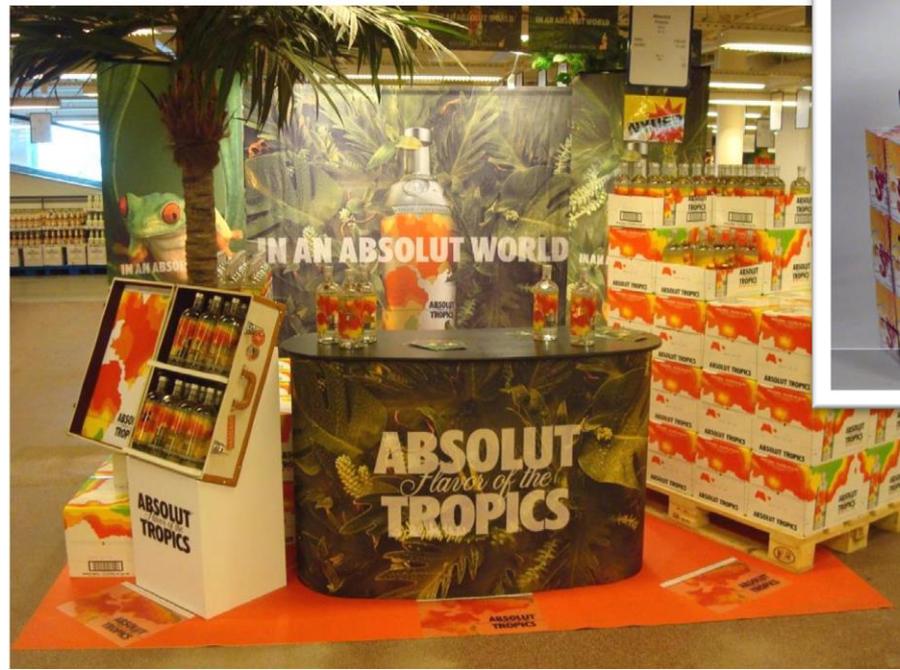
- ▶ A sign is a thing whose primary purpose is the advertisement:
 - 1) of a brand
 - 2) or product
 - 3) or the price thereof

Signage

- ▶ Wholesalers and members of the manufacturing tier authorized to sell to retailers may furnish, give or sell interior signs to retailers. This does not include distilleries.
- ▶ The sign may not bear the name, logo or trademark of a specific retailer.
- ▶ No manufacturer or wholesaler may paint, improve or remodel a retailer's buildings or parts of buildings, inside or out, or finance any improvements thereto.

DISPLAYS

Rule 45.109 (c)



Displays

- ▶ Upper tier members subject to this rule, at retail premises with permission of the retailer, may organize and construct displays of alcoholic beverages they sell.
- ▶ Displays constructed must be accessible to the consumer.
- ▶ Display work may only be performed during the hours when the sale or delivery of specific alcoholic beverages are legal.

Displays

- ▶ An industry member may with the permission of the retailer:
 - Move products of other industry members, arranged in displays, in order to perform the services allowed by this subsection.
 - Move a competitor's display to the storeroom or out of the way to build their display.
- ▶ They cannot rebuild the display for the retailer at another location or re-stock the competitor's product on the retailer's shelves

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Display Enhancement Items



Display Enhancement Items

- ▶ Display enhancement items may include TVs, grills, etc. These items should only be provided temporarily. They may not be given to the retailers. Displays should be thematic.
- ▶ Example: Saint Patrick's Day, Beach, Thanksgiving, Western Themes, etc.
- ▶ Enhancement item must be removed after 30 days (Tracking Mechanism)

§102.07AB Code

EQUIPMENT



Equipment

- ▶ Equipment can be anything from refrigerators to various kinds of dispensing equipment.
- ▶ Upper-tier Members may not lend or sell equipment to a retailer.
 - Relevant Liquor Code –Section 102.07
 - Relevant Beer Code – Sections 102.14 & 102.15

Examples



TABC

These temporary ice sculptures would also be considered **illegal equipment.**



Legal or Illegal?

Placed in a wine specialty store.

Could Be Legal –

- If retailer obtained it on their own; or
- If it is a branded temporary display enhancement item provided by upper tier member. (30 day limit)

Could be Illegal –

- If furnished or sold to retailer by upper tier member; or
- If it is not branded. It would not qualify as advertising specialty.



Legal or Illegal?



Placed in a package store.

Could Be Legal –

- If retailer obtained it on their own; or
- If it is a branded temporary display enhancement item provided by upper tier member. (30 day limit)

Could be Illegal –

- If furnished or sold to retailer by upper tier member; or
- If it is not branded. It would not qualify as advertising specialty.

OUTDOOR ADVERTISING



§108.51 &
108.52 AB
Code

Outdoor Advertising – AB 108.51

- ▶ Any sign bearing a word, mark, description, or other device;
- ▶ Used to advertise an alcoholic beverage or the business of a person who manufactures, sells, or distributes an alcoholic beverage;
- ▶ Displayed outside the walls or enclosure of a building or structure where a license or permit is issued; or
- ▶ Displayed inside a building within five of an exterior wall facing a street or highway so that it is visible by a person of ordinary vision from outside the building.

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Outdoor Advertising – Does not include advertising

- ▶ On the radio or television;
- ▶ In a public vehicular conveyance for hire;
- ▶ On a race car while participating at a professional racing event or at a permanent motorized racetrack facility;
- ▶ On a boat participating in a racing event or a boat show, on an aircraft,
- ▶ On a bicycle or on the clothing of a member of a bicycle team in an organized bicycle race, or
- ▶ In a newspaper, magazine, or other literary publication published periodically.

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Permissible Outdoor Advertising

- ▶ Billboards, electric signs, or other signs to designate the firm name or business of a manufacturer or wholesaler may be displayed at the licensee's or permittee's place of business.
- ▶ On or affixed to the outside of a public transportation passenger vehicle or vehicle for hire.
 - An incorporated city or town may, by ordinance, prohibit outdoor advertising on or affixed to a vehicle for hire.
- ▶ Advertising placed on or affixed to a bench unless it is prohibited by local ordinance or in a dry area.

TABC

Billboards and Electric Signs:

- ▶ No person may erect a billboard or electric sign advertising an alcoholic beverage
 - within 200 feet of a retail establishment authorized to sell that type of beverage
 - unless he has first obtained a permit for that purpose from TABC.
- ▶ Billboard: A structure directly attached to the land, a house, or a building.

Legal or Illegal?



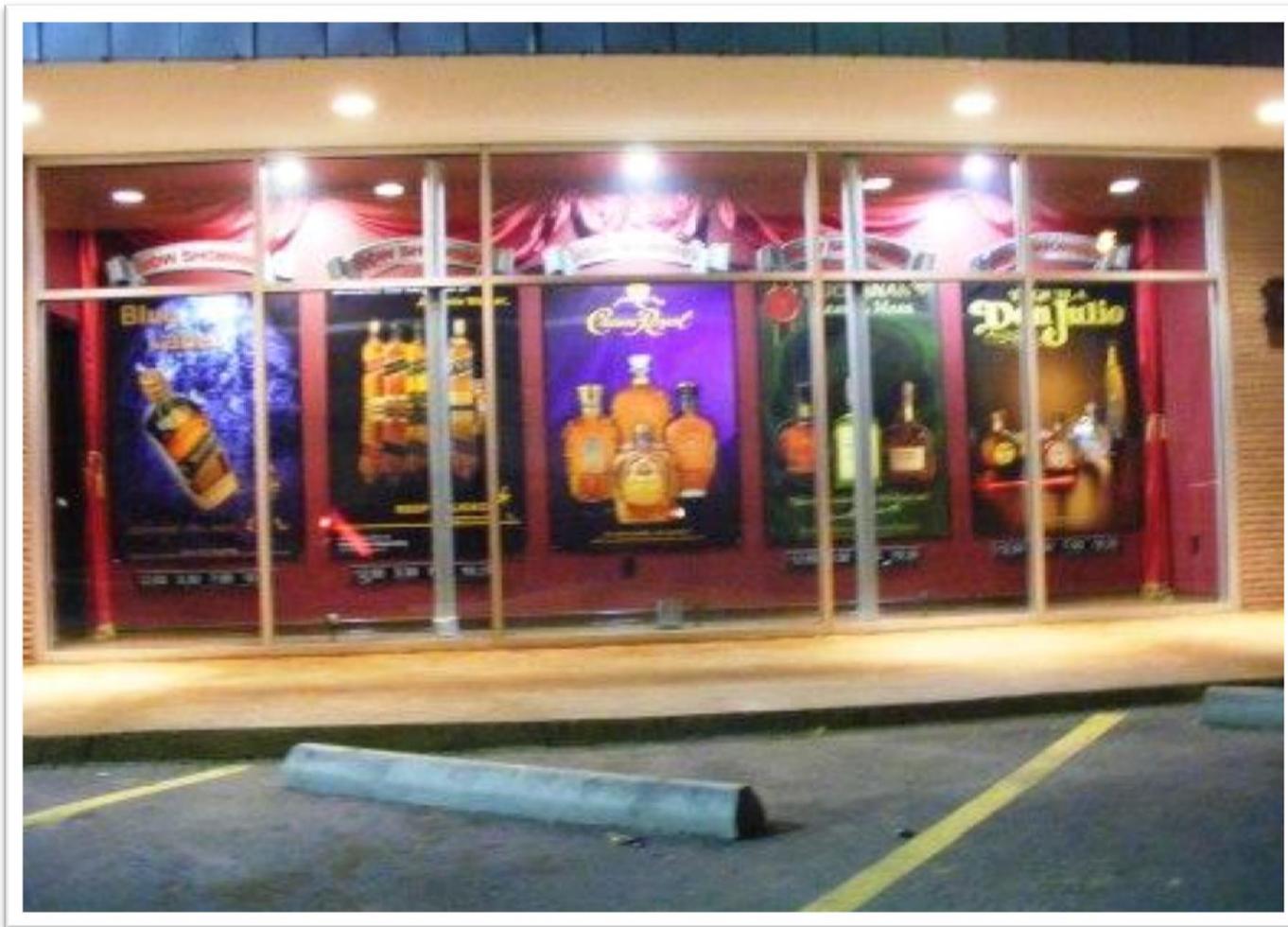
Illegal if store within 200 feet of the billboard sells beer.

Legal or Illegal?



Illegal: Signs in windows of liquor store cannot advertise brands and prices, “liquor” cannot be larger than 12 inches high.

Legal or Illegal?



Illegal: Signs in package store advertising brands must be five feet away from the windows.

Legal or Illegal?



Legal: Display is more than six inches from the window and is accessible by the consumer.

Legal or Illegal?



Legal: Pedicabs and other vehicles for hire can advertise alcoholic beverages or businesses.

Legal or Illegal ?



Illegal: Definition of billboard does not include a wall; therefore this is not authorized.

Questions?

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