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MARKETING PRACTICES BULLETIN – MPB029

The Sale of Glassware and Nonalcoholic Beverages by Certain Wholesalers and Distributors

Dear Alcoholic Beverage Industry Members:

As you are aware, the 81st Legislature passed House Bill 3413 changing the laws related to the sale of glassware and non-alcoholic beverages. Below is a summary of HB3413.

“Branded glassware” is defined as glassware containing the emblem, name, logo or any reference to any alcoholic beverages.

Wholesaler’s Permit - Primarily Engaged in Sale of Wine/Spirits

The holder of a wholesaler’s permit who is “primarily engaged in the wholesale sale of distilled spirits and wine” may sell branded or unbranded glassware to retailers. (This does not include a company who is primarily engaged in the sale of beer and ale/malt liquor.)

The wholesaler may sell:

- unbranded glassware to the retailer on a credit basis (like liquor) in accordance with AB Code Sec. 102.32.
- glassware that is branded with wine or spirits to the retailer on a credit basis (like liquor) in accordance with AB Code Sec. 102.32.
- glassware that is branded with malt beverages (ale, malt liquor or beer) to the retailer on a cash basis (like beer) in accordance with Sec. 61.73 and Sec. 102.31 AB Code.

The glassware may not be marketed or sold in a manner that:

- 1) influences the permittee or licensee to purchase any quantity of alcoholic beverage; or
- 2) affects the terms by which a retailer may purchase alcoholic beverages; or
- 3) threatens the independence of a retailer.

Distributor’s License

The holder of a distributor’s license may sell glassware that is branded with malt beverages (ale, malt liquor or beer) to the retailer on a cash basis (like beer) in accordance with Sec. 61.73 and Sec. 102.31 AB Code.

Beer Territorial Agreements and the Beer Industry Fair Dealing Law apply when:

a distributor sells to a retailer non-alcoholic beverages that are produced or sold by a brewer or manufacturer AND the name/emblem/logo or brand of a malt beverage appears on the labels.

(Chapter 102, Subchapter C Territorial Limits on the Sale of Beer AND Subchapter D Beer Industry Fair Dealing Law)

H.B. No. 3413
AN ACT

relating to the sale of glassware and nonalcoholic beverages by certain wholesalers and distributors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 102, Alcoholic Beverage Code, is amended by adding Section 102.071 to read as follows:

Sec. 102.071. SALE OF GLASSWARE AND NONALCOHOLIC BEVERAGES. (a) In this section:

(1) "Branded glassware" means glassware that contains the name, emblem, or logo of or any reference to a brand of alcoholic beverage.

(2) "Unbranded glassware" means glassware that does not contain the name, emblem, or logo of or any reference to a brand of alcoholic beverage.

(b) Notwithstanding Sections 102.04 and 102.07 or any other provision of this code, the holder of a wholesaler's permit who is primarily engaged in the wholesale sale of distilled spirits and wine may sell branded or unbranded glassware to retailers, provided that the glassware is not marketed or sold in a manner:

(1) to influence a retailer to purchase any quantity of alcoholic beverages;

(2) to affect the terms by which a retailer may purchase alcoholic beverages; or

(3) that threatens the independence of a retailer.

(c) Section 102.32 applies to payment for unbranded glassware or glassware bearing the name, emblem, or logo of a brand of distilled spirits or wine by the holder of a wholesaler's permit under Subsection (b).

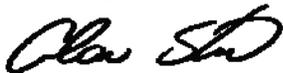
(d) Sections 61.73 and 102.31 apply to payment for glassware bearing the name, emblem, or logo of a brand of malt beverage by the holder of a wholesaler's permit or a distributor's license.

(e) For the purposes of Subchapters C and D, the sale, by the holder of a distributor's license, of a nonalcoholic beverage produced or sold by a manufacturer of malt beverages and that bears the name, emblem, logo, or brand of a manufacturer of malt beverages is the same as a sale of beer.

SECTION 2. This Act takes effect September 1, 2009.

If you have any questions or would like additional information, you may contact Thomas Graham, Marketing Practices Supervisor, 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 fax at 512-206-3349.

Sincerely,



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