



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

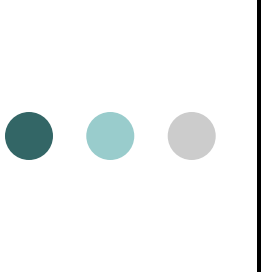
service ★ courtesy ★ integrity ★ accountability

**MBAA District Texas
2009 Summer Conference
July 25, 2009**

Master Brewers Association of the Americas

Dedicated to the technology of brewing.



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- Definitions
 - Inter-Tier Relationships – Services / Equipment, Novelty Gifts, Promotional Items, Advertising Specialties
 - Illegal Inducements
 - Product Tastings
 - Fundraisers, Charities, Temporary Events and Unlicensed Persons
 - TABC Certification
 - New Laws in 2009



Definitions

- Beer – no more than 4% ABW
- Liquor – more than 4% ABW
Ale / Malt Liquor, Wine, Spirits
- Brewer's Permit / Wholesalers (ale / malt liquor)
- Manufacturer's License / Distributors (beer)
- Brewers and manufacturers who produce less than 75,000 barrels per year may sell directly to retailers. Otherwise, must use "middle tier."
- Brewpub License – sale to ultimate consumer; not to distributors/retailers; limit of 5,000 barrels per year



Three-Tier System

- In 1935, Texas established the three-tier system to prevent the creation or maintenance of a “tied house.”
- Strict separation between the manufacturing, wholesaling, and retailing levels of the industry.
- 102.01 AB Code prohibits overlapping ownership or other prohibited relationship between those engaged in the alcoholic beverage industry at different levels.



Service or Thing of Value

- Manufacturer, distributor, wholesaler may NOT furnish, give, or lend any money, service, or thing of value to a retailer.
- Examples: T-shirts, glassware
- There are exceptions.



Equipment / Fixtures

- Manufacturer, distributor, wholesaler may NOT furnish, give, rent, lend, or sell to a retailer any equipment, fixtures, or supplies to be used in selling or dispensing alcoholic beverages.
- Examples: shelves, fridges, stoves
- There are exceptions.



The Exceptions





Bar Spending Promotions (Beer and Liquor)

- Holder of Agent's Beer License, Agent's Permit, Manufacturer's Agents Permit employed by manufacturer, wholesaler or distributor, may buy alcoholic beverages for consumers.
- For consumption on retailer's premises in presence of the purchaser.
- Beer may not be pre-arranged or pre-announced -- Rule 45.113(b)
- Ale/Malt liquor may be pre-arranged only
- Wine/Spirits may be pre-arranged or pre-announced
- AB Code 102.07 (g) / Rule 45.117 (b)(3)



Services Provided to Retailers (Beer and Liquor)

- Manufacturers, wholesalers and distributors may service and repair promotional items and signs furnished or sold under the provisions of this rule.
- Beer manufacturers and distributors may furnish meeting rooms to retailers on the manufacturer's or distributor's licensed premises.
- Liquor manufacturers and wholesalers may furnish meeting rooms to retailers for purposes of product promotions.
- In no event shall anything be furnished to retailers except samples of the manufacturer's, wholesaler's or distributor's product or food provided as a courtesy in accompaniment to such samples.



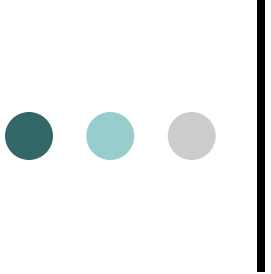
Services Provided to Retailers (Beer)

- Beer distributors and manufacturers may furnish and install items necessary for the proper delivery and dispensing of draft malt beverages.
- Examples of items allowed:
 - Shanks and washers
 - Hoses and hose connections
 - Tap rods and tap markers
 - Coil cleaning service
- Rule 45.113 (e)(3)



CO2 Filters (Beer)

- 108.041 AB Code
- Beer manufacturer or distributor may provide carbon dioxide filters to beer retailers for draught systems using carbon dioxide or a carbon dioxide and nitrogen blend, commonly referred to as "beer gas."
- Beer manufacturer must provide, maintain, and replace the carbon dioxide filters.



Novelty Items (Beer and Liquor)

- Manufacturers, wholesalers and distributors may furnish (GIVE) novelty items to CONSUMERS.
- Novelty Items: Things designed to advertise or promote a specific product or brand.
- Novelty items may have a utilitarian function in addition to product promotion.
- Beer novelty items may not exceed a value of \$1.00 per unit wholesale cost.
- Liquor – nominal value (\$5-\$10)



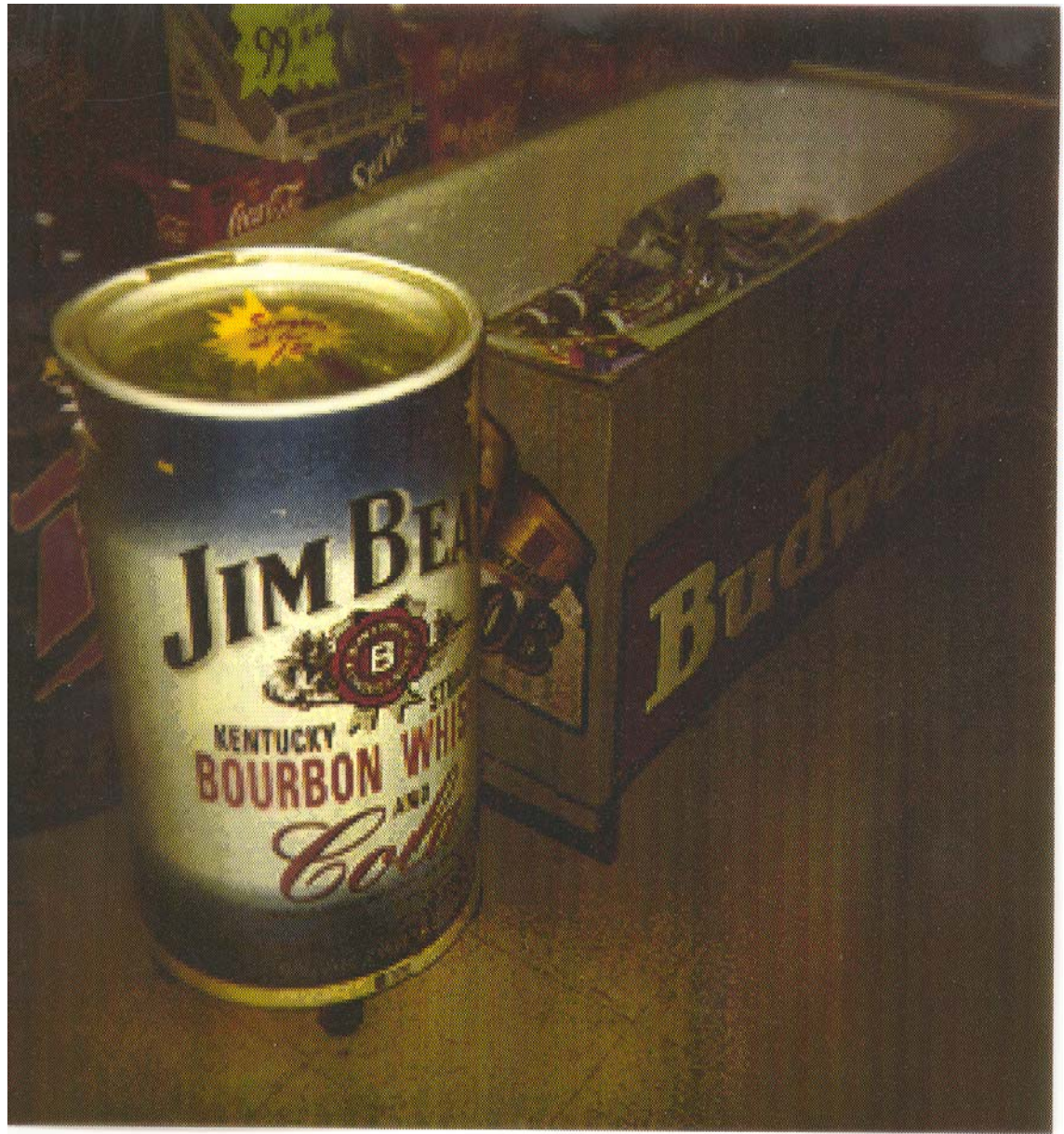
Promotional Items (Beer)

- Beer distributors and manufacturers may SELL promotional items to RETAILERS.
- Promotional Items: Things designed to promote a specific product or brand and are designed for use by the consumer (utilitarian).
- Promotional items must bear a manufacturer's logo, brand or product name.
- Promotional items may not be sold for less than the item manufacturer's regularly published wholesale price. Payment must be in cash, paid on or before delivery.



Advertising Specialties (Liquor)

- Manufacturers and wholesalers may furnish (GIVE) “advertising specialties” to RETAILERS.
- The total cost of the advertising specialties shall not exceed \$101.00 per brand, per retailer, per calendar year.
- Advertising specialties are things designed to advertise or promote a specific product or brand.
- Such items may have a utilitarian function in addition to product promotion.
- 16 TAC 45.117 (c)(2)





Interior Signs Provided to Retailers (Beer and Liquor)

- Manufacturers, wholesalers, distributors may furnish, give or sell interior signs to retailers.
- A sign is a thing whose primary purpose is the advertisement of a brand or product or the price thereof.
- Must be generic. Usable at any retail account.
- Rule 45.113 applies to beer, but by unwritten policy, TABC applies this section to liquor.
- No manufacturer or distributor may paint, improve or remodel a retailer's buildings or parts of buildings, inside or out, or finance any improvements.





Illegal Inducements

- Practices which restrict or hamper the free choice of a retailer to decide which products or quantities of products it will sale.
- Examples:
 - Purchase shelf, floor or warehouse space from retailers
 - Require tie-In sales from retailers
 - Purchase advertising which benefits a retailers
 - Furnishing service trailers with equipment to retailers
 - Furnishing transportation, and/or lodging to retailers
- **Exceptions: 16 TAC 45.110 (c) (4) (A-E)**
 - Industry Service Appreciation Night
 - Food, beverage, entertainment, recreation, if they attend together, and value is less than \$500 total per person, per outing. May include ground transportation.



Criteria to Establish Illegal Inducement

- Retailer right of choice is restricted.
- Retailer is obligated to participate as condition to obtain upper tier members product.
- Retailer is obligated to promote upper tier members product.
- Retailer is committed to selling a particular product.
- Upper tier member involved in day to day operation of retailer.
 - setting price
 - controlling display and schematics
 - making decision on which products retailer will sale.
- Practice is discriminatory w/o prudent justification.

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Product Tastings





In-State or Out-of-State

Brewer/Manufacturer Permit

Holder or Agent or Promotional Permit Holder

- May conduct a tasting, of the kinds of alcoholic beverages the permit holder is authorized to produce, on the premises of any on or off premise retailer who is authorized to sell or serve alcoholic beverages to the ultimate consumer.
- May not pre-announce to consumers.
- Beer may not pre-arrange.



Guidelines

- Each employee of the brewer/manufacturer participating in the tasting must hold a Manufacturer's Agent's Permit or be the permit holder.
- Employees of the promotional permit holder should have an identification card issued by the Promotional Permit Holder.



Guidelines

- Agents of manufacturer/brewer or employees of the Promotional Permit Holder may open, touch or pour the alcoholic beverages.
- They may also make product presentations and answer questions at the tasting.
- Must purchase the alcoholic beverages used for the tasting at fair market value from the retailer on whose premises the tasting is held.
- May not pay the retailer a fee to host or advertise a tasting.



Guidelines

- May not charge the consumer a fee to participate in the tasting if the tasting is held at an off-premise retailer.
- Any unused portions of alcoholic beverages purchased by the bottle must be discarded or removed from the premises immediately following the tasting.



Guidelines

- A wholesaler or distributor representative who hold an agent's Permit or agent's beer license may be present during the tasting; however, they may not participate in the opening or pouring of product. They may answer questions during the event.
- The retailer or its employees at the retailer's discretion may assist in pouring or opening the alcoholic beverages, but may not represent themselves as an agent or employee of the brewer, manufacturer or Promotional Permit Holder.

Fundraisers, Charities, Temporary Permits





Gifts to Unlicensed Organizations

- Manufacturers, wholesalers and distributors may donate money, alcoholic beverages or other things of value to unlicensed civic, religious or charitable organizations.
- Only for consumption in a wet area.
- Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

● ● ● | Some Examples....



Ducks Unlimited
St. Arnold's Brewery



World Wildlife Fund
Live Oak Brewery



Coastal Conservation Association
(512) Brewery



Gifts to Unlicensed Organizations (Beer)

- Beer distributors and manufacturers may furnish draft beer dispensing equipment for use at temporary events, provided that such equipment may not be given in exchange for an exclusive sales privilege.
- Beer manufacturers, distributors and their employees and agents may not serve or dispense malt beverages at temporary events.



Budweiser
KING OF BEERS

Budweiser
King of Beers
\$1.50

Budweiser
KING OF BEERS
\$1.50

Budweiser
King of Beers
\$1.50

Budweiser
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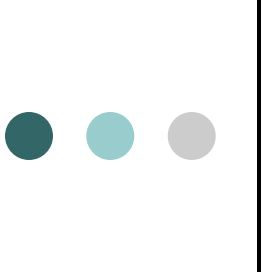
ESLAT

IT'S SNOWING



Charitable Events

- Temporary permit holders are considered licensed retailers.
- Three options available to charitable, religious or civic organizations wishing to serve alcoholic beverages at fundraising events.



Option One is to provide free alcoholic beverages without obtaining a TABC temporary permit.

- May serve donated alcoholic beverages.
- May receive product or cash donations, and may enter into sponsorship or underwriting agreements with members of the alcoholic beverage industry, including agreements for advertising, signage, and product exclusivity.
- “Free” alcoholic beverages must be available to any adult who requests it.
- No membership fee, entrance fee, door charge, meal charge or ticket price to get alcohol.
- May offer free alcoholic beverages to the general public outside of the event, but condition entry into the event on a donation or fee.



Option Two is for a charitable, religious or civic organization to obtain a TABC temporary permit.

- May not sell donated alcoholic beverages.
- Only alcoholic beverages purchased from an authorized source may be sold at the event.
- The charitable, religious or civic organization would be able to accept cash donations from folks in the alcoholic beverage industry (or anyone else) and use it for whatever means the organization chooses, whether it is to purchase alcoholic beverages or something else.



Restrictions on Donations

- Must be a "no strings attached" donation.
- The charitable, religious or civic organization would have free reign to determine how the cash donation would be spent.
- No written or unwritten agreement or understanding between the organization and the upper tier regarding:
 - anything being received in exchange for the donation.
 - what products the charity would sell.
 - "sponsorship" rights, including signage or advertising.



Option Three is to use a third-party retailer to sell alcoholic beverages at the event.

- The organization may receive cash or in-kind donations from manufacturers, wholesalers or retailers.
- TABC temporary permit would be held by a retailer who is independent of the sponsors.
- The retail permit holder may not receive any direct benefit or service because of sponsorship by a wholesaler or manufacturer of alcoholic beverages.
- The charitable, religious or civic organization may enter into an agreement with the retailer whereby the retailer donates a portion of the proceeds from the event to the organization.



More on Option Three...

- The charitable, religious or civic organization may not exchange gifts or donations for exclusive product 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.
- 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.



Donations for Private Parties with No Admission Fees

- Manufacturers, wholesalers and distributors may, as a social courtesy, give alcoholic beverages and other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.



TABC Certification / Seller-Server Training

- Not required by law
- Benefits to retailers (Safe Harbor)
- Teaches bartenders, wait staff, store clerks Texas alcohol laws
- Teaches retail employees how to identify and refuse sales to minors, intoxicated persons, non-members of private clubs
- Certification expires after two years

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New Laws in 2009





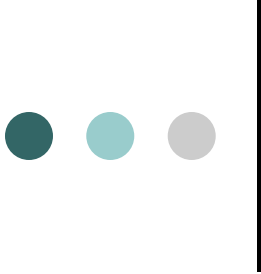
HB2560 – Credit Law (5/20/09)

- TABC may not accept the voluntary cancellation or voluntary suspension of a permit or allow a permit to be renewed or transferred if the permit holder is delinquent in the payment of an account for liquor.
- A person whose permit is canceled by TABC or whose permit has expired is not eligible to hold any other TABC permit or license until the person has cured any delinquency of the person under this section.



HB3413 – Glassware (9/1/09)

- Wholesalers who are “primarily engaged in the wholesale sale of distilled spirits and wine” may sell branded or unbranded glassware to retailers.
- Unbranded glassware or glassware that is branded with wine or spirits may be sold by a wholesaler to the retailer on a credit basis (like liquor - in accordance with AB Code 102.32).
- Glassware that is branded with malt beverages may be sold by a wholesaler or distributor to the retailer on a cash basis (like beer – in accordance with Sec. 61.73 and Sec. 102.31 AB Code).



HB3413 – Non-Alcoholic Beverages (9/1/09)

- Beer Territorial Agreements Apply:
- If 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)



SB2580 – Territorial Agreements (9/1/09)

- The protections provided to beer distributors by Subchapters C and D (territorial agreements) apply regardless of whether there is a transfer or change of ownership of a brand at the manufacturing level.
- Statute of limitations for litigation under the Beer Industry Fair Dealing Act is four years.
- If a termination related to a change in ownership of the brand occurs, the cause of action accrues when either the new brand owner or the transferring or selling brand owner provides notice of termination to the distributor.



SB693 – Sale to Minor (6/19/09)

- Extends the defense for sale to a minor FROM only Texas DL or ID card TO any ID issued by a state or the federal government.
- A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 years old or older by displaying an apparently valid proof of identification that contains a physical description and photograph consistent with the minor's appearance, purports to establish that the minor is 21 years of age or older, and was issued by a governmental agency.



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