



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

*Texans Helping Businesses & Protecting Communities*

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## MARKETING PRACTICES ADVISORY – MPA002

### **Consumer Tasting Events at Retail Locations**

**To:** Members of the Manufacturing, Distribution, and Retail Tiers

#### **Scope of the Advisory**

This advisory provides guidance on how manufacturing, distribution, and retail permittees may conduct consumer tastings on a retailer's premises.

#### **General Rule**

TABC Code sections: § 14.07; § 16.01(c); § 22.18; § 24.12; § 26.08; § 37.01(b), (c), (d); § 50.001; § 62.01(a)(4), (b); § 63.04; § 71.11; § 74.01; § 102.07; § 102.15; and § 109.541.

The following material should clarify how and by whom alcoholic beverage tasting or sampling events may be conducted. Please note that the terms tastings and samplings are used interchangeably in the Texas Alcoholic Beverage Code (Code). There appears to be no legal distinction in the use of the two terms.

Tastings may be conducted by upper tier members of distilled spirits, wine, and malt beverages on the premises of a Mixed Beverage Permit, Private Club Registration Permit, Private Club Exemption Certificate, and a Package Store Permit; wine and malt beverages on the premises of a Private Club Malt Beverage and Wine Permit, Wine and Malt Beverage Retailer's Permit, Wine and Malt Beverage Retailer's Off-Premise Permit, and Wine-Only Package Store Permit; or malt beverages only on the premises of a Retail Dealer's On-Premise License and Retail Dealer's Off-Premise License.

Note: The tasting can only be conducted at a private club if membership has been procured by the representative/employee of the brand(s) being sampled.

Pursuant to Rule 45.113(b)(3) for malt beverages and Rule 45.117(b)(3) for liquor, the 1

holder of a Distiller's and Rectifier's Permit, Winery Permit, Nonresident Seller's Permit, Brewer's License, Nonresident Brewer's License, Brewpub License, Promotional Permit, Wholesaler's Permit, or Distributor's License may, as a gift to consumers, provide samples of product by purchasing alcoholic beverages from an on-premises retailer on behalf of the consumer. This is commonly referred to as a "bar spend." The beverages must be consumed on the retailer's premises and in the presence of the purchaser, who must be one of the license or permit types mentioned in this section, or their employee or agent<sup>1</sup>. Specifics are provided in subsequent sections for the aforementioned license and permit types.

### **Texas Distillers and Rectifiers**

Distiller's and Rectifier's Permit holders may participate in and conduct tastings of distilled spirits on the premises of a package store.

- A distiller, its agent, or employee may open, touch, or pour the distilled spirits; make product presentations; and answer questions at the tasting.
- All distilled spirits used in the tasting must be purchased from the package store permittee on whose premises the tasting is held and should be purchased at retail cost.<sup>2</sup>
- A distiller may not pay a package store a fee to participate in or conduct a tasting.
- A distiller may preannounce and advertise a distilled spirits tasting but may not provide any money or other thing of value to the package store in exchange for advertising, participating in, or conducting a tasting.
- A distiller may not charge the consumer a fee to participate in the tasting.
- A distiller should not purchase more distilled spirits than necessary to participate in or conduct a tasting. Any unused portions of distilled spirits cannot be given to the retailer and must be discarded or removed from the premises immediately following the tasting.
- Wholesaler representatives may be present during the tasting at package stores and may answer questions during the event. However, they may not participate in the purchasing/underwriting, opening, or pouring of product. In contrast, wholesaler representatives may purchase spirits or mixed drinks by the glass for consumers during a bar-spend event that takes place at permitted mixed beverage or private club locations per Rule 45.117.
- The package store permittee, its agents, and its employees may participate in the tasting and dispensing of distilled spirits (e.g., assist in pouring or opening the

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<sup>1</sup> "Agent" as used in this section and throughout this advisory refers to a representative of the referenced primary license or permit holder and is used in the same manner as in the definitions of "licensee" and "permittee" in Code § 1.04.

<sup>2</sup> TABC does not dictate the prices at which retailers sell alcoholic beverages. "Retail cost" as used in this section and throughout this advisory refers to the price a retailer sells alcoholic beverages in its normal course of business and includes any legally permissible sales or discounts based on volume.

alcoholic beverages), but may not represent themselves as an agent or employee of the distiller.

### **Texas Wineries**

Winery Permit holders may conduct a wine tasting on the premises of any retailer authorized to sell or serve wine to the ultimate consumer.

- Winery employees may open, touch, or pour wine; make a product presentation; and answer questions at the wine tasting.
- Wine used in the tasting may be provided out of the winery's inventory, be lawfully transported to the retailer's premises, and be accompanied by an invoice depicting the product's removal from the winery's inventory. If the retailer holds a Mixed Beverage or Private Club Permit, the winery must purchase wine from the retailer.
- A winery may purchase wine at retail cost from the retail permittee on whose premises the tasting is held.
- A winery may not pay the retailer a fee to conduct a wine tasting.
- A winery may preannounce and advertise a wine tasting but may not provide any money or other thing of value to the retailer in exchange for advertising or conducting the wine tasting.
- Wholesaler representatives may be present during tasting events at off-premises retailer locations and may answer questions during the event. However, they may not participate in the purchasing/underwriting, opening, or pouring of product. In contrast, wholesaler representatives may purchase wine by the glass for consumers during a bar-spend event that takes place at an on-premises retailer authorized to sell that type of beverage per Rule 45.117.
- The retailer or its employees may assist in pouring or opening the wine but may not represent themselves as an agent or employee of the winery.
- Any unused portions of wine purchased cannot be given to the retailer and must be discarded or removed from the premises immediately following the wine tasting.

### **Nonresident Sellers**

In accordance with § 37.01(b), (c), and (d) of the Code, the holders of a Nonresident Seller's Permit may conduct a wine or distilled spirits tasting on the premises of any on- or off-premises retailer authorized to sell or serve wine or distilled spirits to the ultimate consumer. The following guidelines should be followed:

- Nonresident sellers may open, touch, or pour the wine or distilled spirits. They may also make product presentations and answer questions at the tasting.
- Nonresident sellers must purchase the wine or distilled spirits used for the tasting at retail cost from the retailer on whose premises the tasting is held and may not provide wine or distilled spirits for the tasting that is not purchased from the retailer. Wine or distilled spirits provided at the tasting event may not be purchased or otherwise obtained from a wholesaler.

- Nonresident sellers may not pay the retailer a fee to host a tasting.
- Nonresident sellers may announce a wine or distilled spirits tasting to the consumer but not provide any money or other thing of value to a retailer for consideration to advertise the tasting.
- Nonresident sellers may not charge the consumer a fee to participate in the tasting.
- Any unused portions of alcoholic beverages purchased cannot be given to the retailer and must be discarded or removed from the premises immediately following the tasting.
- Wholesaler representatives may be present during the tasting at permitted off-premises wine and malt beverage locations, wine-only package stores, and package stores and may answer questions during the event. However, they may not participate in the purchasing/underwriting, opening, or pouring of product. In contrast, wholesaler representatives may purchase wine, spirits, and mixed drinks by the glass for consumers during a bar-spend event that takes place at an on-premises retailer authorized to sell any of those types of beverages per Rule 45.117.
- The retailer or its employees may assist in pouring or opening the wine or distilled spirits but may not represent themselves as an agent or employee of the nonresident seller.

## **Brewers**

The holders of a Brewer's License and Nonresident Brewer's License (collectively referred to as "brewer" in this section) may conduct a tasting of malt beverages on the premises of any on- or off-premises retailer authorized to sell or serve malt beverages to the ultimate consumer. The following guidelines should be followed:

- A brewer may open, touch, or pour the alcoholic beverages. A brewer may also make product presentations and answer questions at the tasting.
- A brewer must purchase the malt beverages used for the tasting at retail cost from the retailer on whose premises the tasting is held and may not provide malt beverages for the tasting that are not purchased from the retailer. Malt beverages provided at the tasting event may not be purchased or otherwise obtained from a distributor.
- A brewer may not pay the retailer a fee to host a tasting.
- A brewer may announce a malt beverage tasting to the consumer but may not provide any money or other thing of value to a retailer for consideration to advertise the tasting.
- A brewer may not charge the consumer a fee to participate in the tasting.
- Any unused portions of malt beverages purchased cannot be given to the retailer and must be discarded or removed from the premises immediately following the tasting.
- Distributor representatives may be present during the tasting at off-premise malt

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beverage retailers, off-premise wine and malt beverage retailers, and package stores and may answer questions during the event. However, they may not participate in the purchasing/underwriting, opening, or pouring of product. In contrast, distributor representatives may purchase malt beverages by the glass for consumers during a bar-spend event that takes place at an on-premises retailer authorized to sell that type of beverage per Rule 45.113.

- The retailer or its employees may assist in pouring or opening the malt beverages but may not represent themselves as an agent or employee of the in-state or out-of-state brewers.

### **Promotional Permits**

A Promotional Permit acting on behalf of a Distiller and Rectifier, Winery, Nonresident Seller, Brewer, or Nonresident Brewer may conduct alcoholic beverage tastings on the premises of any on- or off-premises retailer authorized to sell or serve the alcoholic beverage to the ultimate consumer. Wholesalers and distributors may not contract with or pay for the services of a Promotional Permit holder. The following guidelines should be followed:

- Employees of the Promotional Permit holder should have an identification card issued by the Promotional Permit holder.
- A Promotional Permit holder may open, touch, or pour alcoholic beverages; make product presentations; and answer questions at the tasting.
- A Promotional Permit holder must purchase the alcoholic beverages used for the tasting at retail cost from the retailer on whose premises the tasting is held. Alcoholic beverages provided at the tasting event may not be purchased or otherwise obtained from a wholesaler or distributor.
- A Promotional Permit holder may not pay the retailer a fee to host a tasting.
- A Promotional Permit holder may preannounce and advertise alcoholic beverage tasting to the consumer but may not provide any money or other thing of value to a retailer in exchange for advertising, participating in, or conducting a tasting to the consumer. A Promotional Permit holder may not provide any money or other thing of value to a retailer for consideration to advertise the tasting.
- A Promotional Permit holder may not charge the consumer a fee to participate in the tasting.
- Any unused portions of alcoholic beverages purchased cannot be given to the retailer and must be discarded or removed from the premises immediately following the tasting.
- Wholesaler or distributor representatives may be present during the tasting. However, they may not participate in the purchasing/underwriting, opening, or pouring of products used during a tasting event. They may answer questions during the event. In contrast, wholesaler or distributor representatives may purchase alcoholic beverages for consumers during a bar-spend event that takes place at an on-premises retailer authorized to sell any of those types of beverages per Rules 45.113 and 45.117.



- A Promotional Permit holder may purchase alcoholic beverages for consumers during a bar-spend event that takes place at an on-premises retailer authorized to sell any of those types of beverages per Rules 45.113 and 45.117.
- The retailer or its employees may assist in pouring or opening the alcoholic beverages but may not represent themselves as an agent or employee of the Promotional Permit holder.

### **Brewpubs**

The holders of a Brewpub License may conduct consumer tastings on their premises in accordance with the [Retailers](#) section of this advisory. In addition, brewpubs may conduct tastings at other retail locations where the brewpub's products are sold. The following guidelines should be followed:

- The brewpub or their employees may open, touch, or pour the alcoholic beverages; make product presentations; and answer questions at the tasting.
- A brewpub must purchase the malt beverages used for the tasting at retail cost from the retailer on whose premises the tasting is held. Malt beverages provided at the tasting event may not come directly from the brewpub's inventory.
- A brewpub may not pay the retailer a fee to host a tasting.
- A brewpub may preannounce and advertise a malt beverage tasting but may not provide any money or other thing of value to the retailer in exchange for advertising, participating in, or conducting a tasting to the consumer. A brewpub may not provide any money or other thing of value to a retailer for consideration to advertise the tasting.
- A brewpub may not charge the consumer a fee to participate in the tasting.
- Any unused portions of malt beverages purchased cannot be given to the retailer on whose premises the tasting was held and must be discarded or removed from the premises immediately following the tasting.
- Distributor representatives may be present during the tasting at off-premises malt beverage retailers, off-premises wine and malt beverage retailers, and package stores. Distributor representatives may answer questions during the event. However, they may not participate in the purchasing/underwriting, opening, or pouring of product. In contrast, distributor representatives may purchase malt beverages by the glass for consumers during a bar-spend event that takes place at an on-premises retailer authorized to sell that type of beverage per Rule 45.113.
- The retailer on whose premises the tasting was held or the retailer's employees may assist in pouring or opening the malt beverages but may not represent themselves as an agent or employee of the brewpub.

### **Retailers**

Retail licensees and permittees may conduct tastings using products from their own inventory without assistance from upper tier members. Package stores and wine-only package stores have additional statutory restrictions as noted in the [Package Stores](#)

section of this advisory. Brewpubs may conduct tastings at their own location in accordance with the guidelines in this section. However, brewpubs conducting tastings on another retailer's premises must follow the guidelines set forth in the [Brewpubs](#) section of this advisory. (Note: The holder of a Private Club Permit, Private Club Malt Beverage and Wine Permit, or Private Club Exemption Certificate must ensure that each consumer participating in the tasting holds a private club membership card or temporary membership card issued by the private club.) The following guidelines should be followed:

- The retailer or its employees may open, touch, or pour the kinds of alcoholic beverages it is authorized to sell on its premises. The employees may make product presentations and answer questions at the tasting.
- If the retailer is not authorized to sell for on-premises consumption, the retailer may not collect a fee of any sort from a consumer participating in the tasting.
- The retailer may only conduct tastings of the kinds of alcoholic beverages it is authorized to sell to the ultimate consumer. (For example, if a retailer holds a Wine and Malt Beverage Retailer's Off-Premise Permit, which allows the sale of 14% wine only, the retailer may not conduct tastings of wine in excess of 14%.)
- Product used for the tasting must be product purchased through the legal channels of distribution by the retailer on whose premises the tasting will occur and must be invoiced to that retailer.
- The retailer may not receive any money or other thing of value from a member of the alcoholic beverage industry or its affiliates as consideration for hosting a tasting.
- The retailer may advertise the tasting at its discretion. However, the retailer must directly bear all cost associated with advertising the tasting.
- If the tasting is held on the premises of an off-premise retailer, any unused portions of authorized alcoholic beverages for the tasting must be discarded or removed from the premises immediately following the tasting.
- Distributor and wholesaler representatives may purchase alcoholic beverages by the glass for consumers during a bar-spend event that takes place at an on-premise retailer, which is authorized by its license or permit to sell the types of beverages being provided per Rules 45.113 and 45.117.

### **Package Stores**

In accordance with § 22.18 and § 24.12 of the Code, holders of a Package Store Permit and Wine-Only Package Store Permit may conduct tastings of products they are authorized to sell to the ultimate consumer on the permitted premises. The following guidelines should be followed.

- Package stores must specifically adhere to all regulations as outlined in § 22.18 and § 24.12.
- Package stores may not receive money or other things of value from upper tier members or their affiliates as consideration for hosting a tasting.

- Wholesaler or distributor representatives may be present during the tasting and may answer questions during the event. However, they may not participate in the opening or pouring of product.
- Any unused portions of alcoholic beverages purchased by upper tier members cannot be given to the package store and must be discarded or removed from the premises immediately following the tasting.

### **"Go Texan" Partner Program**

The holder of a Distiller's and Rectifier's Permit, Winery Permit, Brewer's License, or Brewpub License may conduct product tastings under § 109.541 of the Code. Those tastings must be conducted as part of and under the direction of the "Go Texan" Partner Program under Chapter 46, Agriculture Code, at the State Fair of Texas.

### **Statement From TABC**

This advisory is issued pursuant to § 5.57 of the Code. It represents the opinion of the staff of the Commission. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this advisory, you may contact me in writing at P.O. Box 13127, Austin, TX 78711; by email to [advisories@tabc.texas.gov](mailto:advisories@tabc.texas.gov); or by phone at 512-206-3411.

Sincerely,



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