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Local Option Elections and Signage in Unlicensed Establishments

**To: Alcoholic Beverage Industry
All TABC Employees**

As most of you are aware, local option elections affecting previously dry areas have presented a repetitive inquiry from the Industry. “Can distributors furnish signs indicating “Beer Coming Soon” and/or “Neon Signs” in unlicensed establishments? Can they start right away or do they have to wait for the retailer to become permitted by TABC?”

For the purpose of a local option election, the commission considers a retailer “about to be engaged in selling brewery products” as a retailer who intends to sell brewery product in an area declared wet. An area becomes wet upon the entering of the order by the appropriate local authority [See Texas Election Code, Title 17, Chapter 501 Local Option Election On Sale of Alcoholic Beverages, §§501.151- 501.155]. Therefore, it is imperative that the industry wait until the election results have become official before providing signage to a retailer indicating the prospect of the sale of an alcoholic beverage. (For prohibitory elections, the order does not prohibit the sale until 30 days after the entering.)

It is important to note that distributor and wholesalers have the right to refuse to provide signage to a retailer. Upper-tier members are prohibited from using signage or other benefits to leverage shelf space or special treatment at retail locations. Conversely, no retailer may pressure an upper-tier member to provide signage or other inducements in exchange for shelf space or special treatment.

The statutes which directly affect this inquiry are Sections 102.15 and 108.06 of the Alcoholic Beverage Code. **Section 102.15 states “MANUFACTURER OR DISTRIBUTOR: PROHIBITED DEALINGS WITH RETAILER.** No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may: (1) furnish, give, or lend any money or other thing of value to a person engaged **or about to be engaged** in selling brewery products for on-premises or off-premises consumption, or give the person any money or thing of value for his use, benefit, or relief.”

Additionally, Section 108.06 “PRIZES AND PREMIUMS indicates no manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer,

director, or firm member, may offer a prize, premium, gift, or other inducement to a dealer in **or consumer** of brewery products.”

Of importance is the fact that Title 16 Texas Administrative Code Section 45.113(d) relaxes the statute and allows distributors and members of the manufacturing tier to provide interior signs to retailers they are **authorized to sell to**, so long as such signage does not compromise limitations on outdoor advertising ordinarily allowed under Sections 108.52 and 108.53 of the Alcoholic Beverage Code.

In an attempt to strike a balance between activity which has been relaxed under 45.113(d) for licensed retailers and activity which is prohibited to unlicensed retailers about to be engaged in selling brewery products under Sections 102.15 and 108.06 of the Alcohol Beverage Code, it is our opinion that distributors may provide interior branded signs to unlicensed retailers that are about to be engaged in selling brewery products as such items are ordinarily allowed to be given to licensed retailers and the activity would not cause an illegal inducement or benefit thereof.

The placement of these signs shall be at least five feet from any exterior wall facing a street or highway as to limit ordinary vision from outside the building. Distributors and members of the manufacturing tier may provide the interior branded signs to any unlicensed retailer that request such.

Further it is our opinion that non-branded signs which read “Beer Coming Soon” to be placed in the windows of unlicensed retailers shall not be provided to unlicensed retailers about to be engaged in selling brewery products by distributors or members of the manufacturing tier as such activity would compromise Section 108.05 of the Alcohol Beverage Code which prohibits distributors and/or manufacturers from providing advertisement which benefit a specific retailer.

An unlicensed retailer about to be engaged in selling brewery products may independently purchase and/or place their own signage indicating “Beer Coming Soon”; however, this decision should be independent of distributor influence.

Regards,



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