



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

*Texans Helping Businesses & Protecting Communities*

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February 2nd, 2010

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MARKETING PRACTICES ADVISORY – MPA036

## **Product Displays & Enhancement Items**

To: Upper-tier Members and Retailers

### **Scope of the Advisory**

This advisory provides guidance to industry members in the wholesale and manufacturing tiers authorized to organize and construct in-store displays of alcoholic beverage products they sell to retailers.

### **Source of Law**

Alcoholic Beverage Code § 102.20 allows distributors and wholesalers to restock displays and rotate alcoholic beverages in-stock at a retailer's premises from the retailer's storeroom, salesroom, display counter, or cooler. Rule § 45.109 implements the statutory provision and extends the authority to manufacturing tier members who are authorized to sell directly to retailers. These permit/license holders may (with the retailer's permission) stock, rotate, affix prices, and reset or rearrange alcoholic beverages at the retailer's premises. The rule also allows these permittees and licensees to organize and construct displays that are accessible to consumers. Generally, alcoholic beverages sold by other industry members may not be altered or disturbed when conducting these activities. However, products of other industry members that are arranged on floor or endcap displays may be moved with the retailer's permission as needed to perform display construction or organization. These activities may only take place at the retailer's premises during the legal hours of sale or delivery for the type of alcoholic beverage being restocked or placed on a display. Specifically, for wine and malt beverages, these activities may also take place between 5 a.m. and noon on Sundays.

### **Enhancement Items**

In constructing the authorized displays, distributors, wholesalers, and manufacturers may also provide retailers with temporary display enhancement items. Display enhancement/enhancer items may include: televisions, grills, etc., provided that these items are used for the sole purpose of product promotion. Upper-tier members are not authorized to leave display enhancement/enhancer items on the retail premises for an extended period of time or allow the retailer to keep these items.

Temporary display enhancement items must be returned to the wholesaler, distributor, or manufacturer that provided the item. Code §§ 102.07 and 102.15 prohibit upper-tier members from furnishing, lending, renting, or selling anything of value to a retailer, including but not limited to items used in the construction of product displays. TABC

1

generally views items provided for a period longer than 30 days as going beyond the scope of these authorizations and considers the practice as an unlawful provision of something of value to a retailer in violation of Code §§ 102.07 and 102.15, unless the specific promotion is set to last longer than that period (e.g. seasonal displays). Nonetheless, upper-tier members who construct displays and provide enhancement items should ensure that the display item(s) are not given or left with the retailer after the conclusion of the promotional event.

Below is a non-exhaustive list of examples for practices TABC views as going beyond the scope of these authorizations (and thus an administrative violation) when providing product display enhancement items:

- Metal racks with generic signage (not thematic) should not be utilized in the same place in-store with the same product for longer than 30 days.
- Product display enhancement items must be removed from the retailer's licensed premise at the conclusion of the promotional event. Abandoned display enhancement items at the retailer's location are considered a benefit and violate Code §§ 102.07 and 102.15.
- The distributor, wholesaler, or manufacturer is responsible for constructing and maintaining the product display enhancement items. The enhancement items should contain and be restocked with alcoholic beverage products that are part of the promotional event.
- Thematic product display enhancement items that are still present at the retail location well after the promotional event has ended. For example, a football-themed product display enhancement item that remains in a retail location after football season is over is considered an illegal benefit.
- Equipment utilized by the retailer for use other than as part of the product display is prohibited. As part of the product display, a branded television could operate a branded, commercial loop to promote the brand. If the branded television is being used for standard broadcast that would be prohibited.
- Refrigeration equipment that is plugged in and used to cool beverages.

#### **Statement From TABC**

This advisory is issued pursuant to Alcoholic Beverage Code §5.57. 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,



Thomas Graham  
Director of Tax & Marketing Practices