



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Sherry Cook
Administrator

Amended January 19, 2014 – Explicit prohibition set forth by 83rd Legislature
June 3, 2010

MARKETING PRACTICES ADVISORY – MPA038 ***Reach Back Pricing***

To: Alcoholic Beverage Industry

This bulletin is amended to announce a change to Section 102.78 of the Alcoholic Beverage Code (Code). The section has been amended by the 83rd Legislature to clarify the prohibition of reach back pricing practices. Section 102.75(a)(6) states that no manufacturer may, “adjust the price at which the manufacturer sells beer to a distributor based on the price at which a distributor resells beer to a retailer, but a manufacturer is free to set its own price so long as any price adjustment is based on factors other than a distributor’s increase in the price it charges to a retailer and not intended to otherwise coerce illegal behavior under this section.”

In the past, the TABC has initiated administrative action and has issued bulletins in order to deter the practice of illegal “reach-back” pricing. Reach back pricing occurs when manufacturers alter (after the fact) the price they charge to distributors based upon the price the distributor charged to the retailer. Historically, manufacturers have commonly “reached-back” by raising the freight prices it charges to a distributor to recover a portion of any price increase the distributor charged a retailer. Manufacturers would increase their FOB price to a distributor if the distributor set the product price to retailers higher than recommended by the manufacturer. This increase to FOB was in direct relationship with the distributor’s increase in his price to retailer above the manufacturers recommended retailer price. Historically this practice has surfaced cyclically through different methods and it has come to our attention that these illegal pricing practices once again have emerged in the Texas marketplace.

Section 102.75(3) of the Texas Alcoholic Beverage Code provides that no manufacturer shall “fix or maintain the price of which a distributor may re-sell beer,” and Section 102.72(a)(1) of the Texas Alcoholic Beverage Code states that a purpose of Chapter 102 is to ensure that “the beer distributor is free to manage its business enterprise, including the right to independently establish its selling prices.” A distributor cannot independently establish the price of its product if there is a pattern of corresponding price changes by the manufacturer. To clarify, a manufacturer is free to set their own prices; however, their price changes must be based on factors other than a distributor’s increase in the price they charge to a retailer. If the Commission is able to establish a pattern of illegal price changes by the manufacturer that corresponds to the price charged by the distributor to the retailer, the commission will be compelled to pursue administrative action against said manufacturer.

The provisions of the Texas Alcoholic Beverage Code which protect a distributor's right to independently set a price to retailers are critical to maintaining the independence of the distribution tier from the manufacturing tier. The purpose of this letter is to emphasize that the TABC will strictly enforce the provision cited above which make the practice of "reach-back" pricing or any other scheme by which a manufacturer seeks to set the margin of profit for a distributor illegal in Texas. In order to maintain an orderly marketplace, the TABC will aggressively respond to any complaints of illegal pricing practices and may conduct random audits to determine whether illegal pricing practices are occurring the marketplace.

This opinion is 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 bulletin, you may contact me 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 facsimile at 512-206-3349.

Sincerely,



Thomas Graham
Director of Excise Tax and Marketing Practices

cc: Sherry Cook, Administrator
Ed Swedberg, Assistant Administrator
Emily Helm, General Counsel
Robert Saenz, Chief of Field Operations
Executive Management
Regional Personnel