



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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MARKETING PRACTICES BULLETIN – MPB031

Distribution of Non-Alcoholic Products by Alcoholic Beverage Distributors

Dear Alcoholic Beverage Industry Members:

For some time, the distribution tier of the alcoholic beverage industry has sought to increase their ability to market and sell non-alcoholic beverage products. The Texas Alcoholic Beverage Code (Code) regulates both alcoholic and non-alcoholic beverage transactions by prohibiting upper-tier alcoholic beverage members from directly or indirectly engaging in an agreement or an act to provide monetary or non-monetary incentives, deliver or furnish equipment, purchase shelf space or provide any other service or thing of value to a retailer. Conversely, nothing in our statutes precludes an independent non-alcohol manufacturer from directly furnishing equipment, providing services, providing monetary and/or non-monetary incentives or other thing of value to a retailer. This bulletin is intended to state how non-alcoholic beverages may be distributed by licensed distributors without agency administrative action.

Pursuant to §102.07 (a)(2) and §102.15 (1) of the Alcoholic Beverage Code, no upper-tier member may directly or indirectly (i.e. through or on behalf of a third party non-alcohol beverage manufacturer) furnish, give, or lend any money, service or thing of value to a retailer or give the retailer any money, or thing of value for his use or benefit. Further 16 TAC 45.110 (c)(1) and (2) declares that notwithstanding any other provisions, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements include but are not limited to: (1) purchasing or renting shelf, floor or warehouse space from or for a retailer; and/or (2) requiring a retailer to purchase one product in order to be allowed to purchase another product. It is important to note that these prohibitions exist regardless of whether the relationship between an upper-tier member and retailer involves alcohol beverages or not.

In the past, it has been this agency's position that alcoholic beverage distributors and wholesalers who distribute both alcoholic and non-alcoholic beverage products must do so in compliance with the restrictions of the Code. In an effort to allow effective competition between licensed and unlicensed distributors and update agency policy we will no longer pursue administrative cases as they relate to non-alcoholic beverage transactions provided they are not found to directly or indirectly influence alcoholic beverage transactions with retailers. The following practice parameters are provided as guidelines:

- 1) Distributor may make sales for terms other than the cash as defined by the Alcoholic Beverage Code.
- 2) Distributor may pay retailer for shelf space of non-alcohol products.
- 3) Distributor may offer quantity discounts for retail non-alcoholic beverage purchases negotiated directly between the manufacturer and retailer.
- 4) Distributor may sell non-alcoholic beverage promotional items.
- 5) Distributor may furnish, sell, give, rent, or lend any equipment or other items of value relating to non-alcohol products to the retailer.
- 6) Distributor may engage in quota-based retailer incentive programs related to non-alcoholic beverages.
- 7) Distributor may not engage in tie-sales whereby retailer is required to buy non-alcohol product in order to receive an alcoholic product.
- 8) A distributor may cover any portion of the cost for equipment, shelf fees or other expenses incurred by the non-alcohol manufacturer.
- 9) A non-alcohol manufacturer as the brand owner of the non-alcohol product may directly purchase shelf space from the retailer or provide equipment to the retailer or allow the distributor to perform these functions.
- 10) Distributor may utilize joint delivery system to deliver alcohol and non-alcohol on trucks operated under the alcohol corporation.

Note: in order to perform the following actions without prosecution for administrative violation by the agency's field operations staff; distributors must ensure all non-alcoholic beverage sales are made utilizing invoices separate from those for alcoholic beverages.

The Commission will be compelled to take regulatory action against all licensed/permitted parties if the preceding actions are found to influence alcoholic beverage sales in anyway, directly or indirectly as prohibited by §102.07 or §102.15 of the Code. Agency staff will conduct audits and inspection as necessary to ensure compliance.

These guidelines are the opinion of the staff of the Commission, and it should be noted that any permittee/licensee may pursue a different opinion through administrative proceedings with the State Office of Administrative Hearings. The commission will continue to monitor this issue and make necessary regulatory changes as statutorily applicable. 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,



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