



TABC

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August 11, 2011

MARKETING PRACTICES BULLETIN – MPB0047

Bulletin created through the application of the Marketing Practices Policy Decision Process, Policy #MP-01

Split Case Fees – Wine and Distilled Spirits

To: Alcoholic Beverage Industry

Recently we were petitioned by industry members to provide an opinion on the legality of industry members charging a “split case fee” to retailers. A split case fee is a fee charged to the retailer by the local distributor or wholesaler for orders that require them to break apart or separate a case of product to provide the retailer with a partial case. **Please note distributors and wholesalers may sell beer, ale and/or malt liquor only in unbroken original packages and therefore this bulletin does not apply {Section 64.01(2) & 21.01(3) AB Code}.**

To issue a ruling on this matter, a review of Alcoholic Beverage Code, Sections 102.12, 102.07, 102.15 and 108.06 was conducted. These sections, paralleled with 16 (TAC) Section 45.110 prohibit members of the manufacturing, local distributor or wholesaler tier from engaging into any practice which restricts retailer independence. Conversely, nothing in the statute would prevent a wholesaler or local distributor from assessing split case fee as a part of routine sales. However such practice if used in a discriminatory manner, whereby the surcharge is not assessed fairly to all retailers in the same local market on the same terms without a prudent business reason, may be subject to regulatory action. For example, the fee cannot be charged to one retailer and waived for another who purchases the same amount of product. This action would be discriminatory and thus a violation of 16 (TAC) Section 45.110.

This opinion is 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,

Thomas Graham
Marketing Practices Supervisor

cc: Alan Steen, Administrator
Sherry Cook, Asst. Administrator
Joel Moreno, Chief of Field Operations
Steve Greinert, Director of Tax and Marketing Practices
Executive Management
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P.O. Box 13127 • Austin, Texas 78711-3127 • (512) 206-3333 • www.tabc.state.tx.us

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