

By: Flores

H.B. No. 2181

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the promotional activities of certain alcoholic
3 beverage license or permit holders.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 102.02, Alcoholic Beverage Code, is
6 amended to read as follows:

7 Sec. 102.02. PROVIDING SAMPLES. Notwithstanding any other
8 provision of this code, the holder of a wholesaler's or nonresident
9 seller's permit or the holder's agent, representative, or employee
10 may furnish or give a sample of liquor to a holder of a permit
11 authorizing the sale of that category of alcoholic beverage at
12 retail if the retail permittee has not previously purchased that
13 brand from that wholesaler or nonresident seller [~~permittee~~]. The
14 wholesaler or nonresident seller may give the retail permittee not
15 more than 750 milliliters of any brand of distilled spirits, not
16 more than three liters of any brand of wine in that package, and not
17 more than one six-pack of any other alcoholic beverage so packaged.
18 The retail permittee or the permittee's agent, servant, or employee
19 may sample the product on the licensed premises only if the
20 wholesaler, the nonresident seller, or the wholesaler's or
21 nonresident seller's agent, servant, or employee is present.

22 SECTION 2. Section 102.07, Alcoholic Beverage Code, is
23 amended by amending Subsections (a), (d), and (e) and adding
24 Subsection (h) to read as follows:

1 (a) Except as provided in Subsections (b), (d), [~~and~~] (g),
2 and (h), no person who owns or has an interest in the business of a
3 distiller, brewer, rectifier, wholesaler, class B wholesaler,
4 winery, or wine bottler, nor the agent, servant, or employee of such
5 a person, may:

6 (1) own or have a direct or indirect interest in the
7 business, premises, equipment, or fixtures of a retailer;

8 (2) furnish, give, or lend any money, service, or
9 thing of value to a retailer;

10 (3) guarantee a financial obligation of a retailer;

11 (4) make or offer to enter an agreement, condition, or
12 system which will in effect amount to the shipment and delivery of
13 alcoholic beverages on consignment;

14 (5) furnish, give, rent, lend, or sell to a retail
15 dealer any equipment, fixtures, or supplies to be used in selling or
16 dispensing alcoholic beverages, except that alcoholic beverages
17 may be packaged in combination with other items if the package is
18 designed to be delivered intact to the ultimate consumer and the
19 additional items have no value or benefit to the retailer other than
20 that of having the potential of attracting purchases and promoting
21 sales;

22 (6) pay or make an allowance to a retailer for a
23 special advertising or distribution service;

24 (7) allow an excessive discount to a retailer; or

25 (8) offer a prize, premium, gift, or similar
26 inducement to a retailer or to the agent, servant, or employee of a
27 retailer.

1 (d) A permittee covered under Subsection (a) [~~of this~~
2 ~~section~~] may offer prizes, premiums, or gifts to a consumer subject
3 to the provisions of this code. Except as provided by Subsection
4 (h), the [~~if the offer is national in scope and legally offered and~~
5 ~~conducted in 30 states or more. The~~] use of rebates or coupons
6 redeemable by the public for the purchase of alcoholic beverages is
7 prohibited. The holder of a winery permit may furnish to a retailer
8 without cost recipes, recipe books, book matches, cocktail napkins,
9 or other advertising items showing the name of the winery
10 furnishing the items or the brand name of the product advertised if
11 the individual cost of the items does not exceed \$1.

12 (e) A permittee covered under Subsection (a) [~~of this~~
13 ~~section~~] may conduct a sweepstakes promotion if no [~~the promotion~~
14 ~~is part of a nationally conducted promotional activity legally~~
15 ~~offered and conducted at the same time in 30 or more states. A~~]
16 purchase or entry fee is [~~may not be~~] required of any person to
17 enter [~~a sweepstakes event authorized under this subsection~~]. A
18 person affiliated with the alcoholic beverage industry may not
19 receive a prize from a sweepstakes promotion.

20 (h) Notwithstanding any other provision of this code, a
21 permittee covered by Subsection (a) may offer a rebate or refund on
22 a product sold or offered for sale by the permittee if the rebate or
23 refund is accomplished by mail or over the Internet. The commission
24 may limit the amount of rebate or refund that may be offered,
25 consistent with industry practices.

26 SECTION 3. Section 108.03, Alcoholic Beverage Code, is
27 amended to read as follows:

1 Sec. 108.03. REGULATION OF PROMOTIONAL ACTIVITIES. (a)

2 The commission shall adopt rules permitting and regulating the use
3 of business cards, menu cards, stationery, service vehicles and
4 equipment, and delivery vehicles and equipment that bear alcoholic
5 beverage advertising. The commission shall also adopt rules
6 permitting and regulating the use of insignia advertising beer,
7 distilled spirits, or wine by brand name on caps, regalia, or
8 uniforms worn by employees of manufacturers, distributors,
9 distillers, or wineries or by participants in a game, sport,
10 athletic contest, or revue if the participants are sponsored by a
11 manufacturer, distributor, distiller, or winery.

12 (b) Subject to this chapter and commission rules, a permit
13 or license holder authorized to manufacture, rectify, bottle, or
14 wholesale alcoholic beverages may:

15 (1) advertise a promotional or sponsorship event to
16 consumers; and

17 (2) include in the advertisement the name and address
18 of a retailer at which the event is held if:

19 (A) the advertisement does not also contain the
20 retail price of a product; and

21 (B) the listing of the event location is the only
22 reference to the retailer in the advertisement and is relatively
23 inconspicuous in relation to the advertisement as a whole.

24 (c) Pictures or illustrations of retail establishments or
25 laudatory references to retailers in manufacturers' or wholesalers'
26 advertisements are not authorized by Subsection (b).

27 SECTION 4. Section 108.061, Alcoholic Beverage Code, is

1 amended to read as follows:

2 Sec. 108.061. CERTAIN [~~NATIONALLY CONDUCTED~~] SWEEPSTAKES
3 PROMOTIONS AUTHORIZED. Notwithstanding the prohibition against
4 prizes given to a consumer in Section 108.06 [~~of this code~~] and
5 subject to the rules of the commission, a manufacturer or
6 nonresident manufacturer may offer a prize to a consumer if the
7 offer is a part of a [~~nationally conducted~~] promotional sweepstakes
8 activity legally offered and no [~~conducted at the same time period~~
9 ~~in 30 or more states.~~ A] purchase or entry fee is [~~may not be~~]
10 required of any person to enter [~~in a sweepstakes authorized under~~
11 ~~this section~~]. A person affiliated with the alcoholic beverage
12 industry may not receive a prize from a sweepstakes promotion.

13 SECTION 5. Sections 36.06 and 37.13, Alcoholic Beverage
14 Code, are repealed.

15 SECTION 6. This Act takes effect September 1, 2005.