

By: Whitmire

S.B. No. 1628

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Subtitle A, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 54 to read as follows:

CHAPTER 54. PROMOTIONAL PERMIT

Sec. 54.001. AUTHORIZED ACTIVITIES. The holder of a promotional permit may, on behalf of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler with whom the promotional permit holder has entered into a contract for the purposes of this chapter:

(1) engage in activities to promote and enhance the sale of an alcoholic beverage in this state, including activities that take place on the premises of the holder of a permit or license under this code; and

(2) assist a permit or license holder in the sale or service of alcoholic beverages on the premises of a permit or license holder.

Sec. 54.002. FEE. (a) The annual state fee for a promotional permit is \$300.

(b) A local fee may not be charged for the application or issuance of a promotional permit.

Sec. 54.003. SELLER TRAINING PROGRAM REQUIRED. (a) The

1 holder of a promotional permit shall ensure that each of the permit
2 holder's employees who conduct activities authorized under this
3 chapter attends a commission-approved seller training program.

4 (b) The holder of a promotional permit shall maintain
5 adequate records establishing that the employees of the permit
6 holder have attended a commission-approved seller training
7 program.

8 Sec. 54.004. PROHIBITED ACTIVITIES. The holder of a
9 promotional permit may not:

10 (1) sell or offer to sell alcoholic beverages to a
11 person under the age of 21; or

12 (2) hold an interest, directly or indirectly, in a
13 permit or license issued under this code other than a contract to
14 promote and enhance the sale of alcoholic beverages as authorized
15 by this chapter.

16 SECTION 2. Section 102.02, Alcoholic Beverage Code, is
17 amended to read as follows:

18 Sec. 102.02. PROVIDING SAMPLES. Notwithstanding any other
19 provision of this code, the holder of a wholesaler's or nonresident
20 seller's permit or the holder's agent, representative, or employee
21 may furnish or give a sample of liquor to a holder of a permit
22 authorizing the sale of that category of alcoholic beverage at
23 retail if the retail permittee has not previously purchased that
24 brand from that wholesaler or nonresident seller [~~permittee~~]. The
25 wholesaler or nonresident seller may give the retail permittee not
26 more than 750 milliliters of any brand of distilled spirits, not
27 more than three liters of any brand of wine in that package, and not

1 more than one six-pack of any other alcoholic beverage so packaged.
2 The retail permittee or the permittee's agent, servant, or employee
3 may sample the product on the licensed premises only if the
4 wholesaler, the nonresident seller, or the wholesaler's or
5 nonresident seller's agent, servant, or employee is present.

6 SECTION 3. Section 102.07, Alcoholic Beverage Code, is
7 amended by amending Subsections (a), (d), and (e) and adding
8 Subsection (h) to read as follows:

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

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

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

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

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

22 (5) furnish, give, rent, lend, or sell to a retail
23 dealer any equipment, fixtures, or supplies to be used in selling or
24 dispensing alcoholic beverages, except that alcoholic beverages
25 may be packaged in combination with other items if the package is
26 designed to be delivered intact to the ultimate consumer and the
27 additional items have no value or benefit to the retailer other than

1 that of having the potential of attracting purchases and promoting
2 sales;

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

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

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

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

20 (e) A permittee covered under Subsection (a) [~~of this~~
21 ~~section~~] may conduct a sweepstakes promotion if no [~~the promotion~~
22 ~~is part of a nationally conducted promotional activity legally~~
23 ~~offered and conducted at the same time in 30 or more states. A~~]
24 purchase or entry fee is [~~may not be~~] required of any person to
25 enter [~~a sweepstakes event authorized under this subsection~~]. A
26 person affiliated with the alcoholic beverage industry may not
27 receive a prize from a sweepstakes promotion.

1 (h) Notwithstanding any other provision of this code, a
2 permittee covered by Subsection (a) may offer a rebate or refund on
3 a product sold or offered for sale by the permittee if the rebate or
4 refund is accomplished by mail or over the Internet. The commission
5 may limit the amount of rebate or refund that may be offered,
6 consistent with industry practices.

7 SECTION 4. Section 108.03, Alcoholic Beverage Code, is
8 amended to read as follows:

9 Sec. 108.03. REGULATION OF PROMOTIONAL ACTIVITIES. (a)
10 The commission shall adopt rules permitting and regulating the use
11 of business cards, menu cards, stationery, service vehicles and
12 equipment, and delivery vehicles and equipment that bear alcoholic
13 beverage advertising. The commission shall also adopt rules
14 permitting and regulating the use of insignia advertising beer,
15 distilled spirits, or wine by brand name on caps, regalia, or
16 uniforms worn by employees of manufacturers, distributors,
17 distillers, or wineries or by participants in a game, sport,
18 athletic contest, or revue if the participants are sponsored by a
19 manufacturer, distributor, distiller, or winery.

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

23 (1) advertise a promotional or sponsorship event to
24 consumers; and

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

27 (A) the advertisement does not also contain the

1 retail price of a product; and

2 (B) the listing of the event location is the only
3 reference to the retailer in the advertisement and is relatively
4 inconspicuous in relation to the advertisement as a whole.

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

8 SECTION 5. Section 108.061, Alcoholic Beverage Code, is
9 amended to read as follows:

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

21 SECTION 6. Sections 36.06 and 37.13, Alcoholic Beverage
22 Code, are repealed.

23 SECTION 7. This Act takes effect September 1, 2005.