

By: Smith

H.B. No. 2084

A BILL TO BE ENTITLED

1 AN ACT
2 relating to marketing items provided by manufacturers,
3 wholesalers, and distributors of alcoholic beverages to retailers
4 or consumers.

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

6 SECTION 1. Section 102.04(b), Alcoholic Beverage Code, is
7 amended to read as follows:

8 (b) Except as permitted in Section 23.01 or 108.035 [~~of this~~
9 ~~code~~], no person to whom this section applies may:

10 (1) have a direct or indirect interest in the
11 business, premises, equipment, or fixtures of a mixed beverage
12 establishment;

13 (2) furnish or lend any money, service, or other thing
14 of value to a mixed beverage permittee or guarantee the fulfillment
15 of a financial obligation of a mixed beverage permittee;

16 (3) enter or offer to enter into an agreement,
17 condition, or system which in effect amounts to the shipment and
18 delivery of alcoholic beverages on consignment;

19 (4) furnish, rent, lend, or sell to a mixed beverage
20 permittee any equipment, fixtures, or supplies used in the selling
21 or dispensing of alcoholic beverages;

22 (5) pay or make an allowance to a mixed beverage
23 permittee for a special advertising or distributing service, or
24 allow the permittee an excessive discount;

1 (6) offer to a mixed beverage permittee a prize,
2 premium, or other inducement[~~, except as permitted by Section~~
3 ~~102.07(b) of this code~~]; or

4 (7) advertise in the convention program or sponsor a
5 function at a meeting or convention or a trade association of
6 holders of mixed beverage permits, unless the trade association was
7 incorporated before 1950.

8 SECTION 2. Sections 102.07(a) and (d), Alcoholic Beverage
9 Code, are amended to read as follows:

10 (a) Except as provided in Subsections [~~(b),~~] (d)[~~]~~ and (g)
11 and Section 108.035, no person who owns or has an interest in the
12 business of a distiller, brewer, rectifier, wholesaler, class B
13 wholesaler, winery, or wine bottler, nor the agent, servant, or
14 employee of such a person, may:

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

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

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

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

23 (5) furnish, give, rent, lend, or sell to a retail
24 dealer any equipment, fixtures, or supplies to be used in selling or
25 dispensing alcoholic beverages[~~, except that alcoholic beverages~~
26 ~~may be packaged in combination with other items if the package is~~
27 ~~designed to be delivered intact to the ultimate consumer and the~~

1 ~~additional items have no value or benefit to the retailer other than~~
2 ~~that of having the potential of attracting purchases and promoting~~
3 ~~sales];~~

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

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

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

10 (d) [~~A permittee covered under Subsection (a) may offer~~
11 ~~prizes, premiums, or gifts to a consumer.~~] The use of rebates or
12 coupons redeemable by the public for the purchase of alcoholic
13 beverages is prohibited. The holder of a winery permit may furnish
14 to a retailer without cost recipes, recipe books, book matches,
15 cocktail napkins, or other advertising items showing the name of
16 the winery furnishing the items or the brand name of the product
17 advertised if the individual cost of the items does not exceed \$1.

18 SECTION 3. Subchapter A, Chapter 108, Alcoholic Beverage
19 Code, is amended by adding Section 108.035 to read as follows:

20 Sec. 108.035. CERTAIN MARKETING ITEMS OF LIMITED VALUE
21 AUTHORIZED. (a) Notwithstanding any other provision of this code,
22 a person who holds a brewer's permit, nonresident brewer's permit,
23 distiller's and rectifier's permit, winery permit, wine bottler's
24 permit, wholesaler's permit, general class B wholesaler's permit,
25 manufacturer's license, nonresident manufacturer's license, or
26 general distributor's license, or the agent or employee of the
27 person, may:

1 (1) offer to consumers branded prizes, premiums, or
2 gifts, including novelty items, that:

3 (A) are designed to advertise or promote a
4 specific product or brand;

5 (B) have a limited value, which the commission
6 may establish by rule; and

7 (C) are not prohibited by Section 102.07(d);

8 (2) package alcoholic beverages in combination with
9 other items if the package is designed to be delivered intact to the
10 ultimate consumer and the additional items are branded and have no
11 value or benefit to the retailer other than that of having the
12 potential of attracting purchases and promoting sales; and

13 (3) provide a retailer with branded advertising
14 specialties designed to advertise or promote a specific product or
15 brand, the value of which may not exceed \$101 per retailer, per
16 brand, per calendar year.

17 (b) Persons authorized to provide advertising specialties
18 under Subsection (a)(3) may not pool or combine their dollar
19 limitations to provide a retailer with advertising specialties
20 valued in excess of the maximum permitted by that subdivision.

21 (c) Not more than once a year, the administrator on the
22 administrator's own motion or on the motion of a permittee or
23 licensee may increase or decrease the total amount of advertising
24 specialties permitted under Subsection (a)(3) by not more than six
25 percent based on the consumer price index and previous adjustments,
26 if any. For the purposes of this subsection, "consumer price index"
27 means the annual average over a calendar year of the consumer price

1 index (all items, United States city average) published monthly by
2 the Bureau of Labor Statistics, United States Department of Labor,
3 or its successor in function.

4 SECTION 4. Section 108.06, Alcoholic Beverage Code, is
5 amended to read as follows:

6 Sec. 108.06. PRIZES AND PREMIUMS. No manufacturer or
7 distributor, directly or indirectly, or through a subsidiary,
8 affiliate, agent, employee, officer, director, or firm member, may
9 offer a prize, premium, gift, or other inducement to a retailer
10 [~~dealer in or consumer of brewery products~~].

11 SECTION 5. Section 102.07(b), Alcoholic Beverage Code, is
12 repealed.

13 SECTION 6. This Act takes effect September 1, 2013.