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HOUSE OF REPRESENTATIVES

BY: Romero, Jr.

FLOOR AMENDMENT NO. _____

1 Amend C.S.H.B. No. 1545 (house committee printing) as
2 follows:

3 (1) On page 173, line 7, strike "The holder" and substitute
4 "Notwithstanding any other law, the [The] holder".

5 (2) On page 173, line 20, strike "and" and substitute
6 "[and]".

7 (3) On page 173, line 22, between "62.14" and the period
8 insert the following:

9 ; and

10 (6) engage in activities authorized by Section 102.07

11 (4) Strike page 258, line 22, through page 259, line 4, and
12 substitute the following:

13 Sec. 108.035. PACKAGING OF CERTAIN PROMOTIONAL ITEMS
14 AUTHORIZED. (a) In this section:

15 (1) "Co-pack" means a package:

16 (A) originally bundled and supplied by a
17 manufacturer, distiller, brewer, rectifier, wholesaler, class B
18 wholesaler, or winery or their employee or agent;

19 (B) containing an alcoholic beverage and another
20 item;

21 (C) [~~Notwithstanding any other provision of this~~
22 ~~code, a person who holds a brewer's permit, nonresident brewer's~~
23 ~~permit, manufacturer's license, or nonresident manufacturer's~~
24 ~~license, or the person's agent or employee, may package alcoholic~~
25 ~~beverages in combination with other items if the package is]~~
26 designed to be delivered intact to the ultimate consumer; and

27 (D) in which [~~the wholesaler or distributor and]~~
28 the additional items [~~are branded and]~~ have no value or benefit to
29 the retailer other than that of having the potential of attracting

1 purchases and promoting sales.

2 (2) "Naked bottle" means an alcoholic beverage sold by
3 a member of the wholesaling tier that is similar in all regards to
4 the alcoholic beverage contained in a co-pack sold by that
5 wholesaler, except that it is not packaged with any other item.

6 (b) If any alcoholic beverage is sold to a retailer as a
7 co-pack, the retailer may not separate the other packaged item and
8 sell it by any means other than the way it was originally packaged
9 when received.

10 (c) In order to demonstrate that a nonalcoholic beverage
11 item in a co-pack has no value or benefit to a retailer, the
12 retailer must sell a co-pack at a cost to price ratio that does not
13 exceed the cost to price ratio for a naked bottle received by the
14 retailer from the same wholesaler.

15 (d) Nothing in this section prohibits a supplier from
16 differentiating in the price of a naked bottle and co-pack during
17 the packaging phase of a co-pack by adding cost to the co-pack and
18 increasing the baseline price of the co-pack.

19 (e) A retailer may not be forced, induced, or persuaded to
20 purchase a prescribed number of:

21 (1) co-packs in order to purchase naked bottles; or

22 (2) naked bottles in order to purchase co-packs.

23 (5) Add the following appropriately numbered SECTION to the
24 bill and renumber subsequent SECTIONS of the bill as appropriate:

25 SECTION _____. Subchapter A, Chapter 108, Alcoholic Beverage
26 Code, is amended by adding Sections 108.031, 108.032, 108.033, and
27 108.034 to read as follows:

28 Sec. 108.031. USE OF BRAND NAMES AND INSIGNIA BY INDUSTRY.

29 (a) Advertising of an alcoholic beverage on caps, regalia, or
30 uniforms worn by an employee of a manufacturer, distributor,
31 distiller, or winery shall be limited to:

1 (1) the name and address of the manufacturer,
2 distributor, distiller, or winery; and

3 (2) the brand names, logos, and slogans that appear on
4 the container labels approved by the administrator for the
5 manufacturer's, distributor's, distiller's, or winery's brands of
6 alcoholic beverages.

7 (b) Advertising of an alcoholic beverage on caps, regalia,
8 or uniforms worn by a participant in any game, sport, athletic
9 contest, or revue, when the participant is sponsored by a
10 manufacturer, distributor, distiller, or winery, shall be limited
11 to:

12 (1) the name and address of the manufacturer,
13 distributor, distiller, or winery; and

14 (2) the brand names, logos, and slogans that appear on
15 the container labels approved by the administrator for the
16 manufacturer's, distributor's, distiller's, or winery's brands of
17 alcoholic beverages.

18 (c) Business cards and stationery bearing brand insignia
19 may be used by permittees and licensees who are not retail
20 permittees or licensees. The business cards and stationery may
21 contain:

22 (1) the name and address of the permittee or licensee;

23 (2) the name and address of the business the permittee
24 or licensee represents;

25 (3) the brand insignia of any alcoholic beverage that
26 the permittee or licensee represents or that the permittee or
27 licensee is authorized to sell; and

28 (4) any other logo, slogan, or trademark that appears
29 on the approved label for alcoholic beverages described by
30 Subdivision (3) or a slogan or trademark for those alcoholic
31 beverages that has been approved by the administrator.

1 (d) Advertising of alcoholic beverages on the equipment or
2 service or delivery vehicles of a member of the manufacturing or
3 wholesaling tier shall be limited to:

4 (1) the brand names or logos of the alcoholic
5 beverages sold or represented by the manufacturer, local
6 distributor, or wholesaler;

7 (2) the name and address of the manufacturer, local
8 distributor, or wholesaler; and

9 (3) any slogan for the alcoholic beverages described
10 by Subdivision (1) that has been approved by the administrator.

11 (e) Menu cards, folders, or sheets advertising malt
12 beverages may be furnished to a holder of a retail license or permit
13 by a member of the manufacturing or wholesaling tier if the menu
14 cards, folders, or sheets, at the time of their delivery to the
15 retailer, do not list any food or drink item offered for sale by the
16 retailer. The holder of the retail license or permit shall bear all
17 costs of listing any such food or drink item on the menu cards,
18 folders, or sheets.

19 Sec. 108.032. GIFTS, SERVICES, AND SALES PROMOTING MALT
20 BEVERAGES. (a) This section applies to manufacturers and
21 distributors of malt beverages.

22 (b) Manufacturers and distributors may furnish items
23 designed to advertise or promote a specific product or brand. The
24 items may have a utilitarian function in addition to product
25 promotion. The items may not exceed a value of \$1 per unit
26 wholesale cost.

27 (c) An agent representing a member of the manufacturing or
28 distribution tier may purchase malt beverages for consumers,
29 provided that:

30 (1) the beverages are consumed on a licensed retail
31 premises in the presence of the purchaser; and

1 (2) the amount of the purchase is not excessive.

2 (d) The commission may approve sampling tests of malt
3 beverages designed to determine consumer taste preferences and may
4 impose any conditions the commission determines necessary to
5 implement this subsection.

6 (e) A member of the manufacturing or distribution tier may,
7 as a social courtesy, provide malt beverages and other things of
8 value to unlicensed persons who are not employed by or affiliated
9 with the holder of a retail license or permit.

10 (f) A member of the manufacturing or distribution tier
11 authorized to sell malt beverages to retailers may sell to those
12 retailers promotional items that are designed to:

13 (1) promote a specific product or brand; and

14 (2) be used by the consumer either on or off the
15 retailer's premises.

16 (g) Promotional items authorized by Subsection (f) must
17 bear a manufacturer's logo, brand, or product name and may not be
18 sold for less than the item's regularly published wholesale price.
19 A retailer shall pay for the promotional items in cash on or before
20 delivery of the promotional items.

21 (h) A member of the manufacturing or distribution tier
22 authorized to sell malt beverages to retailers may furnish, give,
23 or sell to retailers interior signs with the primary purpose of
24 advertising a brand or product or the price of a brand or product. A
25 sign furnished by a manufacturer or distributor may not bear the
26 name, logo, or trademark of a specific retailer.

27 (i) A manufacturer or distributor may not paint, improve, or
28 remodel a retailer's building or a part of a retailer's building,
29 inside or out, or finance any improvements to a retailer's
30 building.

31 (j) A member of the manufacturing or distribution tier may:

1 (1) service and repair promotional items and signs
2 furnished or sold under this section;

3 (2) furnish a meeting room to a retailer on the
4 manufacturer's or distributor's licensed premises but may not
5 provide anything to retailers except samples of the manufacturer's
6 or distributor's products or food provided as a courtesy to
7 accompany those product samples; and

8 (3) furnish and install shanks, washers, hose and hose
9 connections, tap rods, and tap markers and provide coil cleaning
10 service necessary for the proper delivery and dispensing of draft
11 malt beverages.

12 (k) A member of the manufacturing or distribution tier may
13 donate money, malt beverages, or other things of value to a civic,
14 religious, or charitable organization that does not have a permit
15 or license authorizing the sale or service of alcoholic beverages
16 subject to the following:

17 (1) malt beverages may be given for consumption only
18 in a wet area;

19 (2) advertising of an event sponsored by an
20 organization receiving a donation shall include promotion of the
21 organization sponsor or cause in a manner equal to or greater than
22 the advertising of the manufacturer and distributor making the
23 donation;

24 (3) a manufacturer or distributor authorized to sell
25 malt beverages to retailers may furnish equipment for dispensing
26 malt beverages for use at a temporary event, provided that the
27 equipment may not be given in exchange for an exclusive sales
28 privilege; and

29 (4) a manufacturer or distributor, or an employee or
30 agent of a manufacturer or distributor, may not serve or dispense
31 malt beverages at the organization's temporary event.

1 Sec. 108.033. GIFTS, SERVICES, AND ADVERTISING SPECIALTIES
2 PROMOTING LIQUOR. (a) This section applies to manufacturers and
3 wholesalers of liquor.

4 (b) A member of the manufacturing or wholesaling tier may
5 furnish gifts to consumers subject to the limits provided by this
6 code. The items given may be novelty items of limited value that
7 are designed to promote a specific product or brand and may have a
8 utilitarian function in addition to product promotion.

9 (c) An agent representing a member of the manufacturing or
10 wholesaling tier may purchase liquor for consumers, provided that:

11 (1) the liquor is consumed on a permitted retail
12 premises in the presence of the purchaser; and

13 (2) the amount of the purchase is not excessive.

14 (d) A member of the manufacturing or wholesaling tier may,
15 as a social courtesy, provide liquor or other things of value to
16 unlicensed persons who are not employed by or affiliated with the
17 holder of a retail license or permit.

18 (e) A member of the manufacturing or wholesaling tier may
19 furnish advertising specialties to retailers that are designed to
20 advertise or promote a specific product or brand. The items may
21 have a utilitarian function in addition to product promotion. The
22 total cost of all advertising specialties provided to a retailer
23 may not exceed \$101 per brand per calendar year. The dollar
24 limitations may not be pooled to provide a retailer with
25 advertising specialties that exceed the maximum value permitted
26 under this subsection.

27 (f) A member of the manufacturing or wholesaling tier may
28 service and repair an item furnished to a retailer under this
29 section.

30 (g) A member of the manufacturing or wholesaling tier may
31 furnish a meeting room to a retailer for purposes of product

1 promotion but may not provide anything to retailers except samples
2 of the manufacturer's or wholesaler's products or food provided as a
3 courtesy to accompany those product samples.

4 (h) The holder of a wholesaler's or general class B
5 wholesaler's permit or the permit holder's agent may furnish and
6 install shanks, washers, hose and hose connections, tap rods, and
7 tap markers and provide coil cleaning service necessary for the
8 proper delivery and dispensing of wine.

9 (i) A member of the manufacturing or wholesaling tier may
10 donate money, liquor, or other things of value to a civic,
11 religious, or charitable organization that does not have a permit
12 or license authorizing the sale or service of alcoholic beverages.
13 Liquor may be given for consumption only in a wet area. Advertising
14 of an event sponsored by an organization receiving a donation shall
15 include promotion of the organization sponsor or cause in a manner
16 equal to or greater than the advertising of the manufacturer or
17 wholesaler making the donation.

18 Sec. 108.034. REVIEW OF CERTAIN LIMITS ON PROMOTIONAL
19 ITEMS. Not less than once every fifth calendar year, the commission
20 by rule or order shall adjust the dollar limit set by Sections
21 102.07(b), 108.032, and 108.033.