

The Texas Alcoholic Beverage Commission (TABC) adopts an amendment to rule 16 TAC §45.117, relating to Gifts and Advertising Specialties. The amendment is adopted without changes to the proposed text as published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6988). The amended rules will not be republished.

**REASONED JUSTIFICATION.** The amendment to §45.117 allows TABC to increase or decrease the total amount of advertising specialties furnished to a retailer under §102.07(b) of the Alcoholic Beverage Code by order of the executive director instead of through formal rulemaking. The amendment does not change the total amount of advertising specialties currently allowed under law. Rather, it aligns the process for setting the amount with the process contemplated in §102.07(b), which specifically states that the executive director may change the amount not more than once a year. Under the amendment, any order issued by the executive director must be published in the *Texas Register* and on the agency's website.

**SUMMARY OF COMMENTS.** TABC did not receive any comments on the proposed amendment.

**STATUTORY AUTHORITY.** TABC adopts the amendment under §5.31 of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

**CERTIFICATION.** The amendment, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<rule>

**§45.117. Gifts and Advertising Specialties.**

(a) General

(1) This section is enacted pursuant to Alcoholic Beverage Code §§102.07(b), 102.07(d), 108.042 and 109.58.

(2) This section applies to buyers, sellers, and consumers of liquor.

(b) Gifts to consumers. Holders of distiller's and rectifier's, winery, nonresident seller's, and wholesaler's permits may furnish gifts to consumers.

(1) The gifts shall be offered consistently with the restrictions contained in Alcoholic Beverage Code §102.07(d).

(2) The items given may be novelty items of limited value. Such items shall be designed to promote a specific product or brand and may have a utilitarian function in addition to product promotion.

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and wholesaler tiers participating in promotions

authorized by this paragraph must be an employee or agent of a member of the manufacturing tier, a distributor, or a promotional permit holder.

(4) Holders of distiller's and rectifier's, winery, nonresident seller's, and wholesaler's permits may, as a social courtesy, provide liquor or other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Gifts to Retailers. Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may furnish advertising specialties to retailers.

(1) Advertising specialties are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed the amount set by order of the executive director in accordance with Alcoholic Beverage Code §102.07(b) per brand per calendar year. The executive director's order shall be published in the *Texas Register* and on the commission's website. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) Signs provided to retailers.

(1) Wholesalers may furnish, give or sell interior signs to retailers.

(2) A sign is a thing whose primary purpose is the advertisement of a brand or product or the price thereof.

(3) A sign furnished by a wholesaler may not bear the name, logo or trademark of a specific retailer.

(4) No wholesaler may paint, improve, or remodel a retailer's buildings or parts of buildings, inside or out, or finance any improvements thereto.

(e) Service provided to retailer.

(1) Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may service and repair items furnished to retailers and under the provisions of this rule.

(2) Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may furnish meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except samples of the permit holder's product or food provided as a courtesy in accompaniment to such samples.

(3) The holder of a wholesaler's permit, or the permit holder's employee or agent, may furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of wine.

(f) Gifts to Unlicensed Organizations. Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may donate money, liquor or other things of value to unlicensed civic, religious, or charitable organizations.

(1) Liquor may only be given for consumption in wet areas.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.