



INDUSTRY ADVISORY
Amendments to the ABC Act
AB-1245 and SB-1246

On January 1, 2009, both AB-1245 (Torrico, Chapter 629) and SB-1246 (Negrete-McLeod, Chapter 395) become effective. The purpose of this advisory is to communicate the Department's intent to undertake rule-making to amend Rule 106 (Title 4, California Code of Regulations, Section 106). As the Department has evaluated the new provisions to determine how they will be implemented, certain inconsistencies and challenges have been identified. As explained in detail below, these issues will need to be addressed through amendment to the regulation in order for the statutory changes to be implemented as intended.

AB-1245:

This bill amends Business and Professions Code Section 25600. The relevant provisions in Section 25600 are as follows (with the amended language underlined):

(b) (1) Except as provided in paragraph (2), no rule of the department may permit a licensee to give any premium, gift, or free goods of greater than inconsequential value in connection with the sale or distribution of beer. With respect to beer, premiums, gifts, or free goods, including advertising specialties that have no significant utilitarian value other than advertising, shall be deemed to have greater than inconsequential value if they cost more than twenty-five cents (\$0.25) per unit, or cost more than fifteen dollars (\$15) in the aggregate for all those items given by a single supplier to a single retail premises per calendar year.

(2) (A) No rule of the department may impose a dollar limit for consumer advertising specialties furnished by a beer manufacturer to the general public other than three dollars (\$3) per unit original cost to the beer manufacturer who purchased it.

In relevant part, the Department's Rule 106 presently states the following:

(e)(2)(C) Consumer advertising specialties furnished by a beer supplier to a retailer or to the general public shall not exceed \$0.25 per unit original cost to the supplier who purchased it, or \$15.00 in the aggregate for all such items given by a single beer supplier to a single retail premises per calendar year.

Because Section 25600 as amended supersedes Rule 106 to the extent they are inconsistent, any limitation in Rule 106 limiting consumer advertising specialties in an amount other than \$3.00 is void as applied to beer manufacturers. However, this does not mean that the limit as to beer manufacturers is automatically increased to \$3.00. Rather, until the Department amends Rule 106

to change the limitations on the value of consumer advertising specialties, beer manufacturers are restricted by Section 25600—which does not allow for anything to be given away unless expressly authorized by statute or Department rule. The Department recognizes that this is a significant departure from the status quo and would also be contrary to the intent of the bill. As such, until either Section 25600 or Rule 106 is amended, the Department intends to exercise its prosecutorial discretion by not pursuing disciplinary action against any beer manufacturer that gives away consumer advertising specialties that comply with current law (i.e., such items cost less than \$0.25).

SB-1246:

This bill adds Section 25611.3 to the ABC Act and provides as follows:

A beer wholesaler may sell or rent exterior signs advertising beer for use at any on-sale or off-sale retail premises. Exterior signs include, but are not limited to, signs, inflatables, and banners used to advertise a beer manufacturer's product. Exterior signs must be sold or rented at not less than cost, as defined in Section 17026. An exterior sign that is customized for a retailer must be sold, and may not be rented.

While the intent of this provision was to supersede Rule 106(c)(2) to the extent it requires exterior signs to be sold at not less than the current market price for such signs, it does not actually do so. Rather, this new section provides only that such signs must be rented or sold at not less than cost as defined in Business and Professions Code Section 17026. To the extent that this valuation is less than current market price, then the requirement to sell at not

less than current market price remains. If the cost valuation is greater than current market price, then the sign must be sold at or above such valuation.

With respect to both AB-1245 and SB-1246, the Department intends to undertake rule-making to amend Rule 106. It is anticipated that this process will commence prior to the end of this year. However, unless and until Rule 106 is amended to give effect to the intent behind these provisions, licensees are potentially subject to disciplinary action if they engage in activities contrary to the advice given herein. Rule-making is controlled by the requirements of the Government Code and can take up to, and in some cases in excess of, one year.

If you have any questions regarding this advisory, please contact the Department's Trade Enforcement Unit at (916) 419-2500.