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## WHOLESALE BEER DISTRIBUTORS OF TEXAS

March 27, 2014

To: WBDT Members

From: Tom Spilman

Subj: Payment for Brands

WBDT has been asked by several parties to recirculate the October 2013, letter from TABC Administrator Sherry Cook regarding payment for brands. Most importantly she states:

The provision in SB 639 dealing with the right of a manufacturer or distributor to enter into contractual agreements involving ordinary business transactions set out undefined examples including: allowances, rebates, refunds, services, capacity, advertising funds, promotional funds, or sports marketing funds. The TABC understands that these examples do not constitute an independent source of authority for these types of agreements, **which are allowed only if they are authorized elsewhere in the Code.**

TABC also understands that any type of agreement, including agreements listed in Code §102.75(b), that allows payment in exchange for territorial rights is prohibited by 102.75(a)(7). Of course, TABC will consider all the facts and the totality of the circumstances surrounding a questioned agreement that provides for a payment by the distributor to the manufacturer to determine whether the manufacturer would have agreed to the territorial assignment without the payment.

WBDT has been informed that several craft breweries continue to request that distributors violate the law and are now asking for agreements to limit profits or agree to certain long-term price commitments in exchange for a territorial assignment.

Most of you will remember that the board has discussed these types of illegal agreements on several occasions, and it is the position of WBDT that any attempt to circumvent the new law through any scheme to agree to set prices or reduce profit margin violates the new provisions in Section 102.75. WBDT believes such a scheme also violates the provisions of the Code requiring that distributors be able to independently price their beer and prohibit a manufacturer from "fixing or maintaining the price at which a distributor may resell beer."

Please continue to keep us updated on the various illegal proposals by the brewers. When appropriate and with your consent, your reports enable us to keep the TABC up to speed on what is going on in the marketplace.