

**NOTICE OF INTENT**  
**Department of Revenue**  
**Office of Alcohol and Tobacco Control**

Regulation IX – Prohibition of Certain Unfair Business Practices  
(LAC 55:VII.317)

Under the authority of R.S. 26:150 and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950, et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.317 relative to unfair business practices.

This proposed amendment to the above-referenced rule is offered under authority of R.S. 26:150 to promulgate rules relative to unfair business practices to provide for regulations for the use of advertisements (including social media advertisements), sponsorships, retailer trade associations, third party promotional companies, reasonable retail entertainment and events at unlicensed venues.

**Title 55**  
**PUBLIC SAFETY**  
**Part VII. Alcohol and Tobacco Control**

**Chapter 3. Liquor Credit Regulations**

**§ 317. Regulation IX — Prohibition of Certain Unfair Business Practices**

A. Definitions

Advertisement – includes any written or verbal statement, illustrations, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic, or other matter accompanying the bottle, representations made on cases or in any billboard, sign, other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include: (a) Any label affixed to any bottle of distilled spirits or container or wine or malt beverages; or any individual covering carton, or other container of the bottle or container which constitute a part of the labeling under federal law and regulations; or (b) Any editorial or other reading material (i.e. news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permittee, and which is not written by or at the direction of the permittee.

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Retailer Trade Association – an association or similar designation with a majority of its members holding a state retail alcoholic beverage permit that is registered and in good standing with the Louisiana Secretary of State as a non-profit entity who has applied with and received approval from the Internal Revenue Service as a 501(c)(6) tax exempt organization in good standing.

Social Media Advertisement – any advertisement disseminated by social network services, video sharing sites, blogs, microblogs, links and Quick Response Codes.

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B. ...

C.1. – C.2.b. ...

c. Outside Signs. The furnishing of outside signs by an industry member to licensed retail dealers is prohibited. It is unlawful for an industry member to, directly or indirectly, give, rent, loan, sell or in any other manner provide a retail dealer with any form of outside signage except as expressly allowed by the alcoholic beverage control laws and regulations.

i. This prohibition shall not be construed to apply to any advertising, branding or labeling artwork that is smaller than, proportionate in size and affixed to any equipment supplied to the holder of a Type A, B, or C special event permit holder in accordance with Subsection F of Section 323 of this Chapter.

C.2.d. – e.vi. ...

vii. In conjunction with events held on regular licensed retail premises, all restrictions on advertising and signage will remain in full force and effect, except that temporary paper signs and posters may be used inside the premises to advertise the event for not more than 24 31 days prior to the event. A wholesaler or manufacturer may list the name and address of one or more retail dealers and the date and time of one or more events in a social media advertisement for not more than 31 days prior to the event provided that (a) the social media advertisement does not also contain the retail price for any product; (b) the retail dealer shall not provide the industry member with anything of value as a condition to having its business listed in the social media advertisement; and (c) the wholesaler or manufacturer does not directly or indirectly, incur any cost or expend anything of value in connection with the social media advertisement.

C.2.f. – h.v. ...

vi. A wholesaler or manufacturer may promote a sampling event by listing the name and address of one or more retail dealers and the date and time of one or more sampling events in a social media advertisement for not more than 31 days prior to the sampling provided that (a) the social media advertisement does not also contain the retail price for any product; (b) the retail dealer shall not provide the industry member with anything of value as a condition to having its business listed in the social media advertisement; and (c) the wholesaler or manufacturer does not directly or indirectly, incur any cost or expend anything of value in connection with the social media advertisement.

vii. Industry members may use a third-party promotional company to conduct product samplings under the following conditions:

(a). the industry member has a written contractual agreement with the third party promotional company that clearly defines the scope of the activities to be conducted by the promotional company on behalf of the industry member and the contractual agreement is provided to the office of alcohol and tobacco control prior to any representation by the third party promotional company on behalf of the licensed industry member;

(b). the third party promotional company shall comply with all provisions of the alcoholic beverage control laws and regulations including, but not limited to, the provisions of this Section;

(c). violations of the alcoholic beverage control laws or regulations by a third party promotional company or any of its representatives shall be considered the industry member's act for purposes of penalties or suspension or revocation of the industry member's alcoholic beverage permit;

(d). the third party promotional company shall not be directly or indirectly owned, created, operated, inappropriately influenced, or controlled by an alcoholic beverage retail dealer licensed by the state of Louisiana or any person holding an interest therein;

(e). the industry member or third party promotional company shall not give the retail dealer anything of value, unless otherwise allowed in the alcoholic beverage control laws and regulations;

(f). the name and permit number of the industry member and the name of the third party promotional company shall be provided on all documents required to be submitted to the office of alcohol and tobacco control by this Section;

(g). the industry member shall ensure that all agents of the third party promotional company possess valid Louisiana responsible vendor certifications prior to conducting any samplings of alcoholic beverages on the industry member's behalf;

(h). the third party promotional company shall not offer for sale or solicit any orders for the sale of any alcoholic beverages produced or supplied by the industry member; and

(i). any sampling conducted by a third party promotional company on behalf of an industry member shall count as a sampling conducted by the industry member.

C.2.i. – n. ...

o. Retail Trade Associations. Industry members may participate in the activities of a retailer-affiliated trade association, as defined in this Section, only in the following ways:

i. by advertising in convention publications and/or programs, if the advertising fees are the same rate offered to all other participants at the event;

ii. by being an associate member;

iii. by renting display booth space if the rental fee is the same as paid by all exhibitors at the event;

iv. by purchasing tickets to functions and paying registration fees if the payments or fees are the same as paid by all attendees, participants or exhibitors at the event;

v. by exhibiting their products and offering single serve portions of their products at no cost for immediate consumption on the premises of the exhibition without having to obtain a special event permit;

vi. all state and parish or municipal excise taxes due shall be paid prior to the provision of any products for consumption at exhibition events;

vii. the industry member shall provide the office of alcohol and tobacco control with written notice of the location, date(s) and time(s) it intends to exhibit any product no less than five (5) business days prior to the exhibition; and

viii. the industry member's participation with a retailer trade association shall not benefit one or more of the trade association's members to the exclusion, in whole or in part, of the other retail members.

p. Reasonable Retail Entertainment. The furnishing of food and beverages, entertainment and recreation by an industry member to a retail dealer or its owners, officers, members, directors, stockholders, employees, agents, managers, or subsidiaries is prohibited except under all of the following conditions:

i. the value of food, beverages, entertainment and recreation shall not exceed \$500.00 per person on only one occasion per week;

ii. the providing industry member must accompany the receiving retail member to the event at which the food, beverages, entertainment and/or recreation are provided;

iii. in the course of providing food, beverages, entertainment or recreation under this rule, upper tier industry members may only furnish local transportation;

iv. food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this regulation; and

v. each industry member shall keep complete and accurate business records and/or other documents reflecting all expenses incurred for retailer entertainment for two years.

q. Events at Unlicensed Venues. The provisions of R.S. 26:287 and this Section shall not be construed to prohibit an alcoholic beverage manufacturer, wholesale dealer or retail dealer from sponsoring, providing sponsorship signs, promoting or advertising an alcoholic beverage brand or product, or purchasing, displaying, and/or transmitting indoor or outdoor signs or other advertising and marketing products at a premises that does not hold a retail alcoholic beverage permit, or for any event at such premises, by agreement with the owner, operator, promoter, lessee, a party with a right of use, or management company of the unlicensed venue if all alcoholic beverages are sold and/or served at the premises by a person holding a Class A –Caterer's permit issued in accordance with these regulations and all of the following conditions apply:

i. the caterer is engaged to provide food and beverage concession services pursuant to a written agreement with the owner, operator, promoter, lessee or management company of the premises where alcoholic beverages are sold and/or served;

ii. the caterer receives no monetary benefit, directly or indirectly by any scheme or device or in any form or degree from the manufacturer, wholesaler, or retailer in connection with the provision or purchase of sponsorship, signs, advertising or marketing products from the owner, operator, promoter, lessee, party with a right of use, or management company of the premises. The provision of indoor or outdoor signs or other advertising or marketing products, including mobile dispensing equipment which display the name, logo, or other branding of an alcoholic beverage manufacturer, or wholesaler pursuant to an advertising or sponsorship agreement with the owner, operator promoter, lessee, a party with a right of use or management company of the premises, and the use of proceeds of a manufacturer's, or wholesaler's, purchase of indoor or outdoor signs or other advertising and marketing products from the owner, operator, promoter, lessee, a party with a right of use or management company of the premises conducting events to enhance or otherwise benefit an event or the venue conducting events shall not be construed to be a direct or indirect monetary benefit to the caterer or any retail dealer located on or around the premises of the event or venue;

iii. the caterer is not owned, in whole or in part, by the owner, operator, promoter, lessee or management company of the premises, or a subsidiary, agent or manager of the event or premises that is a direct recipient of such monetary benefit as defined in this subparagraph;

iv. the owner, operator, promoter, lessee or management company of the premises shall not directly or indirectly control or otherwise influence the quantity or brand of alcoholic beverages bought or sold by the caterer unless the caterer is owned, in whole or in part, by the owner of the premises who is not the direct recipient of such monetary benefit as defined in this subparagraph; and

v. no part of the cost of an advertisement, sponsorship or promotion authorized by this subparagraph may be charged to or paid by a wholesale dealer unless the wholesaler either contracts directly with the owner, operator, promoter, lessee or management company of the unlicensed premises for the advertisement, sponsorship, or promotion or the wholesaler is a party to the advertising, sponsorship or promotion agreement between the manufacturer and the owner, operator, promoter, lessee or management company of the unlicensed premises.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:150.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Alcoholic Beverage Control, LR 4:463 (November 1978), amended LR 5:11 (January 1979), amended by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 17:607 (June 1991), LR 20:671 (June 1994), amended by the Department of Revenue and Taxation, Office of Alcoholic Beverage Control, LR 22:116 (February 1996), LR 26:2631 (November 2000), LR 28:1484 (June 2002), LR 31:1344 (June 2005), amended by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 35:89 (January, 2009), LR 38:1286 (May 2012), LR 38:2938 (November 2012)

#### **Family Impact Statement**

The proposed rulemaking has no known impact on family formation, stability, or autonomy, as described in LSA-R.S. 49:972.

#### **Poverty Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

#### **Small Business Statement**

The proposed rulemaking will have no adverse impact on small businesses as described in LSA-R.S.49:965.2 *et seq.*

#### **Public Comments**

Interested persons may submit written comments until 4:00pm on October 30, 2015 to Commissioner Troy M. Hebert, Office of Alcohol and Tobacco Control, P.O. Box 66404, Baton Rouge, LA 70896 or by email to [troy.hebert@atc.la.gov](mailto:troy.hebert@atc.la.gov).

#### **Public Hearing**

A public hearing will be held on Friday, October 30, 2015 at 4:00 p.m. in the Office of Alcohol and Tobacco Control at 8585 Archives Avenue, Ste. 305 Floor in Baton Rouge, Louisiana.

Troy Hebert  
Commissioner