

TABC GUIDE FOR
**MANUFACTURERS,
WHOLESALERS,
DISTRIBUTORS &
RETAILERS**

OF ALCOHOLIC BEVERAGES
IN TEXAS

September 2013



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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Save a Life[™]

Texas Department of Transportation

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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www.tabc.texas.gov

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The guide was prepared by the TABC staff as a starting point for research by industry members. Staff has found that the answer to a question is frequently affected by the individual factual circumstances that provide the context for the question and therefore it is often impossible to provide a definitive answer that applies in all situations. Industry members should not rely on or make business decisions based solely on the statements in this guide.

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CHAPTER I: HISTORY OF THE ALCOHOLIC BEVERAGE INDUSTRY IN TEXAS

The Texas Alcoholic Beverage Commission (formerly the Texas Liquor Control Board) was created in 1935.

Under the *Texas Alcoholic Beverage Code §5.31(a)*, the TABC "shall inspect, supervise and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling and distributing alcoholic beverages, and the possession of alcoholic beverages for the purpose of sale or otherwise."

The *Texas Alcoholic Beverage Code §1.03* states, "This code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance and safety of the people of the state. It shall be liberally construed to accomplish this purpose."

In 2007, based on a recommendation by the Sunset Commission, the following was added to the agency's mission in the *Texas Alcoholic Beverage Code §5.31(b)*: "The commission shall:

1. protect the public safety by deterring and detecting violations of this code;
2. promote legal and responsible alcohol consumption;
3. ensure fair competition within the alcoholic beverage industry;
4. ensure consistent, predictable, and timely enforcement of this code;
5. ensure a consistent, predictable, and timely licensing and permitting process;
6. promote and foster voluntary compliance with this code; and
7. communicate the requirements of this code clearly and consistently."

PROHIBITION

In 1918, the Texas Legislature ratified the 18th Amendment to the United States Constitution and immediately passed new state laws, thus beginning the "Grand Experiment" of prohibition.

U.S. CONSTITUTION - AMENDMENT XVIII

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

At the time of adoption of the statewide prohibition laws, 199 out of 254 counties in Texas had been voted dry under local option laws; 43 were practically dry; and only 10 counties were without prohibition areas.

The prohibition law lacked public sentiment necessary for proper enforcement, and ultimately, the opponents of prohibition won out.

In 1933, Congress amended the Volstead Act (known as the National Prohibition Act) to permit the sale of beer up to 4% alcohol by volume; and in August 1933, the voters in Texas adopted an amendment to the State Constitution legalizing the sale of beer.

The 21st Amendment to the United States Constitution, which repealed the 18th Amendment, became effective December 15, 1933. The 44th Legislature then submitted an amendment to the voters repealing state prohibition, and the voters ratified it in August 1935.

Texas communities reverted back to the wet/dry status maintained prior to Prohibition.

U.S. CONSTITUTION - AMENDMENT XXI

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

CREATION OF THE AGENCY

When the 21st Amendment to the U.S. Constitution repealed national prohibition, it delegated responsibility for regulation of the alcoholic beverage industry to the individual states. This is probably the only remaining right guaranteed more or less exclusively to the states.

Shortly after the adoption of the 21st Amendment, the Texas Legislature, meeting in special session, enacted the Texas Liquor Control Act that created the Texas Liquor Control Board. The LCB, as it came to be commonly known, began its existence on November 16, 1935, charged with the administration of

the new act. The name of the agency was changed January 1, 1970, to the Texas Alcoholic Beverage Commission and, on September 1, 1977, the recodified Texas Liquor Control Act took effect as the *Texas Alcoholic Beverage Code*.

The *Texas Alcoholic Beverage Code* authorizes the Texas Alcoholic Beverage Commission to:

- Grant, refuse, suspend, or cancel permits and licenses in all phases of the alcoholic beverage industry;
- Supervise, inspect, and regulate the manufacturing, importation, exportation, transportation, sale, storage, distribution, and possession of alcoholic beverages;
- Assess and collect fees and taxes;
- Investigate for violations of the *Texas Alcoholic Beverage Code* and assist in the prosecution of violators;
- Seize illicit beverages;
- Adopt standards of quality and approve labels and size of containers for all alcoholic beverages sold in Texas;
- Pass rules to assist the agency in all of the above.

THREE TIER SYSTEM

After the repeal of Prohibition, Texas adopted a Three-Tier System of distributing alcohol to regulate the manufacturing, distribution, and retail sales of alcoholic beverages. The three-tier system creates the strict separation between the different levels of the industry. The three tiers are:

- Manufacturers
- Distributors/Wholesalers
- Retailers

The three-tier system removes the manufacturer one level from the retailer to insulate and protect the retailer against control by a large dominant supplier. The three-tier system:



- Avoids the overly aggressive marketing and sales practices of the pre-Prohibition era;
- Generates tax revenues that can be collected efficiently from the industry;
- Facilitates state and local control.

It is the public policy of this state to maintain and enforce the three-tier system and thereby prevent anti-competitive practices such as the creation or maintenance of a “tied house”. The *Texas Alcoholic Beverage Code §102.01* prohibits a “tied house”:

(a) In this section, “tied house” means any overlapping ownership or other prohibited relationship between those engaged in the alcoholic beverage industry at different levels, that is, between a manufacturer and a wholesaler or retailer, or between a wholesaler and a retailer, as the words “wholesaler,” “retailer,” and “manufacturer” are ordinarily used and understood, regardless of the specific names given permits...

LIQUOR BY THE DRINK

In 1971, the Texas Legislature responded to a public referendum by creating a mixed beverage permit allowing sales of liquor by the drink in areas specifically authorized by local option election. With the new permit came the mixed beverage gross receipts tax at the rate of 10 percent. A gross receipts tax is a tax imposed on the amount received from the sale, preparation or service of mixed beverages and from the sale, preparation or service of ice or nonalcoholic beverages that are sold, prepared or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the mixed beverage permittee.

SUNSET REVIEW

House Bill 1445 of the 73rd Legislature, 1993, enacted recommendations from the Sunset Review of the Texas Alcoholic Beverage Commission. The legislature's action demonstrated its belief in the need for a separate alcoholic beverage regulatory agency. Emerging from the process, the Texas Alcoholic Beverage Commission was continued for 12 years with two significant functional changes:

Effective January 1, 1994, responsibility for the collection and verification of the mixed beverage gross receipts tax was transferred to the Office of the Comptroller of Public Accounts.

Effective April 1, 1994, responsibility for the enforcement of the Bingo Enabling Act was transferred to the Texas Lottery Commission. The Texas Alcoholic Beverage Commission had assumed short-term responsibility for the regulation of bingo from the Office of the Comptroller of Public Accounts in January 1990.

The Sunset Commission again reviewed the agency in 2004; however, the bill containing their recommendations did not pass during the 79th Legislative Session. Instead, TABC was continued for another two years.

Although the Sunset bill did not pass, the Sunset Report recommended that the agency focus on public safety issues. As a result, in 2005, the agency requested, and was granted, over 100 additional FTE's to increase enforcement efforts focused on reducing DWI arrests, accidents, and fatalities in Texas. Of that amount, 59 enforcement agents were hired, and a new education and prevention division was created. An additional 27 compliance auditors were hired, which allowed the compliance division to assume administrative tasks previously conducted by enforcement agents. (Difficult budget times during the 82nd and 83rd Legislative sessions resulted in lost funding for many of these positions.) Additionally, enforcement efforts became more focused on at-risk locations, increasing the efficiency and effectiveness of operations.

Following another Sunset Review in 2006, Senate Bill 904 passed during the 80th Legislative Session, continuing the agency for another 12 years. Following is a summary of the major aspects of the Sunset bill:

1. Update TABC's mission to better reflect the agency's role in protecting public safety and regulating the modern alcoholic beverage industry.
2. Ensure TABC's enforcement efforts are fair, consistent, and focused on public safety.
3. Reduce TABC's regulation of certain business practices that duplicate federal requirements, impose unnecessary costs and delays on the industry, and create excessive burdens for the agency.
4. Require TABC to develop a formal process for making and communicating policy decisions regarding marketing practices regulations.
5. Require the agency to create a more formal and consistent approach to investigating and resolving complaints against its employees.
6. Ensure licensees have access to online license application, renewal, and fee payment.
7. Require establishments that serve alcohol to post signs warning the public of the risks of drinking alcohol during pregnancy.
8. Expand TABC's authority to take enforcement action against establishments that sell or serve alcohol during prohibited hours.

TABC TODAY

EXECUTIVE DIVISION

An Executive Director, appointed by the three-member governing board, directs the daily operations of the Texas Alcoholic Beverage Commission (TABC). The Executive Director is responsible for employing staff to ensure that the policies established by the TABC and the laws enacted by the legislature are implemented in an efficient and cost-effective manner.

Assisting with that responsibility is the Deputy Executive Director, general counsel, the office of professional responsibility, and the office of communications and governmental relations.

Executive
512-206-3221

Office of Professional Responsibility (Internal Affairs)
512-206-3405
opr@tabc.texas.gov

Communications and Governmental Relations
512-206-3347

Training (Internal)
512-206-3440

OFFICE OF THE GENERAL COUNSEL

The General Counsel is appointed by the three-member governing board and advises the TABC on all legal matters. The General Counsel also oversees the Legal Division.

General Counsel
512-206-3491

Legal Division
512-206-3490

Open Records

The Office of the General Counsel also houses the Open Records Department. Open Records requests may be submitted in many ways.

By mail to: Legal Division
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711

In person at: Suite 380
5806 Mesa Drive
Austin, Texas 78731

By e-mail to: open.records@tabc.texas.gov

By fax to: (512) 206-3226

LICENSING

The licensing division investigates and processes applications for all phases of the alcoholic beverage industry, including the manufacture, sale, purchase, transportation, storage, and distribution of alcoholic beverages. The division must ensure that each applicant qualifies to hold such license/permit and adheres to all applicable regulatory requirements. Approximately 75,000 licenses and permits are issued each year by division personnel.

512-206-3360
licensing@tabc.texas.gov

MARKETING PRACTICES

The marketing practices department oversees regulation of the provisions of the *Texas Alcoholic Beverage Code* and *Texas Administrative Rules* pertaining to the marketing and commerce of alcoholic beverage products and the inter-industry relationship between manufacturers, wholesalers and retailers.

512-206-3411
marketing.practices@tabc.texas.gov

EXCISE TAX

The tax division is charged with the oversight of the taxing authority of the

agency. Personnel receive, process and audit monthly excise tax reports to ensure taxes have been paid and that other reporting requirements are in adherence with the *Texas Alcoholic Beverage Code*. The division also oversees the testing and labeling of alcoholic beverage products in Texas and is responsible for oversight of the promotion of alcoholic beverage products in Texas.

512-206-3342

excise.tax@tabc.texas.gov

FIELD OPERATIONS (ENFORCEMENT, AUDITING AND INVESTIGATIONS, PORTS OF ENTRY)

The field operations division is responsible for the criminal and administrative enforcement of the state's alcoholic beverage laws. Certified peace officers, known as TABC agents, and civilian compliance auditors inspect premises licensed by the agency and investigate alleged violations of the *Texas Alcoholic Beverage Code* and other state laws.

Both enforcement agents and auditors provide training to permit holders and their employees upon request as well as in response to age law violations by the permittee. In addition, presentations are delivered to schoolchildren, ranging from middle schools to university settings. Finally, they provide presentations to civic organizations and other law enforcement agencies in an attempt to promote a better understanding of the law and the roles and responsibilities of the agency.

The Ports of Entry Division is also part of Field Operations and is responsible for ensuring compliance with personal importation laws and the collection of taxes and fees on alcoholic beverages and cigarettes brought into Texas from Mexico. Cigarette taxes are collected on behalf of the Office of the Comptroller of Public Accounts. Agency Tax Compliance Officers are stationed at all major border bridge crossings along the Texas-Mexico border. In 2014, tax collection at seaport facilities will be implemented.

Auditing and Investigations

512-206-3300

Enforcement

512-206-3400

Ports of Entry

512-206-3351

poe@tabc.texas.gov

EDUCATION AND PREVENTION

The education and prevention staff oversee agency programs involving educating the public, retailers and their employees of the laws associated with consuming alcoholic beverages. They lead the agency's efforts to prevent illegal underage drinking, illegally making alcohol available to minors, as well as driving while intoxicated. This division includes the regulation of Seller/Server Training programs.

512-206-3420

education@tabc.texas.gov

BUSINESS SERVICES

The business services division is responsible for all fiscal operations of the agency, including revenue processing, accounts payable, payroll, time and leave accounting, maintenance of the general ledger, research and planning, as well as preparation and oversight of the agency's legislative appropriations request, annual financial report, and performance reports. The general services section of business services is responsible for staff support functions of purchasing, historically under utilized business (HUB) program coordination, records retention coordination, real and personal property management, facilities leasing, fleet management, mail center operations, and warehousing.

512-206-3225

INFORMATION RESOURCES

The information resources division is responsible for developing and maintaining the core technology applications for the agency. Additionally, the division establishes and supports the technology infrastructure that facilitates agency operations, and is charged with researching and analyzing how to apply new technologies to solve business problems.

512-206-3450

HUMAN RESOURCES

The human resources division manages employment-related activities, including recruitment, selection, benefits and compensation, employee relations, classification, risk management, and implementation of the agency's equal employment opportunity program.

512-206-3220

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CHAPTER II - MANUFACTURING TIER MEMBERS

Manufacturers may sell alcoholic beverages to other manufacturers, wholesalers/distributors, retailers and consumers depending on their license/permit type.

There are some manufacturing tier members that have the ability to sell directly to retailers.

In addition, breweries and beer manufacturers who produce less than 125,000 barrels annually may obtain a Self-Distribution License and/or Permit and sell up to 40,000 barrels annually directly to retailers. (See the *Texas Alcoholic Beverage Code Chapters 12 and 62* for 83rd Legislature change.)

SECTION I: GIFTS, SERVICES & SALES

The *Texas Alcoholic Beverage Code* prohibits many gifts, services, and promotions offered to retailers by the manufacturing tier.

Different restrictions apply to wholesalers and manufacturers of liquor (distilled spirits, wine, malt liquor and ale) than to beer distributors and manufacturers.

This section highlights those prohibitions and differences.

DISTRIBUTORS, MANUFACTURERS & RETAILERS (BEER)

Retailers may not accept, purchase or borrow from a manufacturer or distributor (beer):

- equipment
- fixtures
- supplies
- prizes
- premiums
- gifts
- other inducements

PERMISSIBLE PROMOTIONAL ITEMS FOR BEER

Distributors and manufacturers:

- may sell promotional items (things designed to promote a specific product or brand) for use by the consumer either on or off the retailer's premises.

Items:

- must bear a manufacturer's logo, brand, or product name;

- may not be sold for less than the manufacturer's regularly published wholesale price; and
- must be paid for in cash on or before delivery.

BEER SIGNS PROVIDED TO RETAILERS

Distributors (and manufacturers authorized to sell to retailers) may furnish, give or sell interior signs to retailers if:

- a sign's primary purpose is to advertise a brand, product, or price;
- the sign does not bear the name, logo or trademark of a specific retailer; and
- the distributor does not paint, improve or remodel a retailer's buildings or parts of buildings, inside or out, or finance any building improvements.

BEER SERVICES PROVIDED TO RETAILERS

Distributors and manufacturers may:

- service and repair promotional items and signs furnished or sold to the retailer;
- furnish meeting rooms to retailers on the distributor's or manufacturer's premises providing nothing more than product samples with food to accompany the samples; and
- furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, coil cleaning service needed for proper delivery and dispensing of draft malt beverages.

WHOLESALE, LIQUOR MANUFACTURERS & RETAILERS (DISTILLED SPIRITS, MALT LIQUOR, WINE & ALE)

A retailer may not accept, purchase or borrow from a wholesaler or any of their agents, affiliates, officers, directors or firm members:

- equipment
- fixtures
- supplies
- prizes
- premiums
- gifts
- other inducements

ADVERTISING SPECIALTIES FOR LIQUOR

Manufacturers and wholesalers may give advertising specialties to retailers. Advertising specialties are things designed to advertise or promote a specific product or brand.

The *Texas Alcoholic Beverage Commission Administrative Rule §45.117* regulates advertising specialties.

- They may have a utilitarian (useful) function in addition to product promotion.
- The total cost to retailer shall not exceed \$101.00 per brand, per retailer, per calendar year.
- Different upper-tier permittees may not work together to pool their dollar limitations to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.
- A manufacturer may however, pool the dollar amounts for its own brands to give an advertising specialty provided the aggregate value of the advertising specialty does not exceed \$101.00 per brand.

NOVELTY ITEMS FOR LIQUOR AND BEER

Manufacturers and wholesalers may:

- give consumers novelty items of limited value designed to promote a specific product or brand.
 - Novelty items may only be distributed to consumers 21 years of age or older.
 - Novelty items cannot be used to induce consumers to purchase alcohol. They must upon request be given to legal age consumers regardless of whether or not the consumer is participating in the promotion.
 - Beer novelty items may not be more than \$1.00 per unit wholesale cost.
 - Liquor novelty items must be of limited value.

Upper-tier members may offer items to consumers that are valued over \$1.00 per unit (beer) or more than a limited value (liquor). There are only two ways to do this:

1. Sweepstakes *Texas Alcoholic Beverage Commission Administrative Rule §45.106*. (Distributors cannot offer sweepstakes.)
2. Discount Coupons *Texas Alcoholic Beverage Commission Administrative Rule §45.101(c)*. Members of the manufacturing and wholesaling tiers can provide coupons to the consumer for items the manufacturer produces with the exception of alcoholic and non-alcoholic beverages. For example, a manufacturer or wholesaler could offer the consumer a coupon for a discount on a t-shirt or glassware. The manufacturer or wholesaler who provided the coupon must redeem the coupon without going through the retailer. It cannot be redeemed at a retailer's location. An alcoholic beverage purchase cannot be required

to redeem or receive the coupon.

Upper-tier members may not give novelty items to retailers or retail employees. (i.e. T-shirts, hats and other gifts).

BEER AND LIQUOR FOR CONSUMERS

Beer and liquor may be purchased for consumers (by members of the manufacturing and wholesaling tiers) if:

- beverages are consumed at the retailer’s licensed premises in the purchaser’s presence; and
- purchases are not excessive.

Members of the manufacturing and wholesaling tiers may prearrange promotions with the retailer and preannounce the promotion to the consumer.

SERVICES TO RETAILER

Liquor manufacturers and wholesalers may service and repair items furnished to retailers as allowed in the *Texas Alcoholic Beverage Commission Administrative Rule §45.109*. For example, they may:

- service and repair promotional items and signs furnished or sold to the retailer; and
- furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, coil cleaning service needed for proper delivery and dispensing of draft malt beverages.

Upper-tier members may provide retailers with “display enhancement/enhancer items” including televisions, grills, etc. provided these items are used for the sole purpose of product promotion. However, “enhancer items” may only be provided to the retailer on a temporary basis of not more than 30 days.

SECTION II: INDUCEMENTS

PROHIBITED ACTIVITIES

Inducements are defined as any practice not offered to all retailers in the local market on the same terms without business reasons to justify the difference in treatment. Manufacturers, distributors or wholesalers may *not* offer inducements, such as:

- purchasing or renting floor, shelf or warehouse space to or from the retailer;
- requiring a retailer to purchase one product in order to purchase another product at the same time;
- providing or purchasing, in whole or in part, any type of advertising

- benefiting any retailer;
- furnishing service trailers with equipment to a retailer; or
- furnishing transportation or other things of value to organized groups of retailers.

APPROVED ACTIVITIES

Manufacturers, distributors and wholesalers may provide food, beverages and entertainment to retail tier members, if:

- food and beverages are consumed in the presence of the manufacturing or wholesale tier member; and
- food, beverages and entertainment cost no more than \$500 per occasion.

Manufacturing and wholesale tier members may:

- advertise in convention programs;
- sponsor functions or meetings; and otherwise
- participate in meetings and conventions of trade associations of general membership.

SECTION III: PROMOTIONAL PERMITS (PR)

The *Texas Alcoholic Beverage Code Chapter 50* regulates promotional permits. The holder of a promotional permit may, on behalf of a distiller, brewer, rectifier, manufacturer, winery or wine bottler with whom the promotional permit holder has entered into a contract, engage in activities to promote and enhance the sale of an alcoholic beverage in this state. This includes activities that take place on the premises of the holder of a permit or license under the *Texas Alcoholic Beverage Code*.

The holder of a promotional permit may not hold an interest, directly or indirectly, in a permit or license issued under the *Texas Alcoholic Beverage Code* other than a contract to promote and enhance the sale of alcoholic beverages as authorized by the *Texas Alcoholic Beverage Code Chapter 50*.

Persons that own a portion of an alcoholic beverage business may not be a promotional permit holder.

Persons that work for a distributor or manufacturer are not eligible to obtain the promotional permit or work for a promotional permit holder.

All agents, servants or employees that are participating in a promotional event must have an employment card. The card must contain:

- name of employee, agent or servant;
- effective date of employment;

- name of the promotional permit holder; and
- the promotional permit number.

The card must be kept on the person during promotional events and available for inspection by any authorized representative of the Texas Alcoholic Beverage Commission or other law enforcement personnel.

SECTION IV: CO-PACKS

The *Texas Alcoholic Beverage Commission Administrative Rules §45.120* regulates Co-Packaging of Alcoholic Beverages. The *Texas Alcoholic Beverage Code §102.07(a)(5)* defines co-packs as alcoholic beverages packaged in combination with other items if the package is designed to be delivered intact to the ultimate consumer and the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

If an alcoholic beverage is sold by a wholesaler/distributor as a “co-pack”, no retailer may separate the other packaged item and sell it by any other means other than the way it was originally packaged when received. The 83rd Legislature legalized co-packaging of beer.

SECTION V: COUPONS

Members of the manufacturing and wholesaling tiers can provide coupons to the consumer for items the manufacturer produces with the exception of alcoholic and non-alcoholic beverages. For example, a manufacturer or wholesaler could offer the consumer a coupon for a discount on a t-shirt or glassware. The manufacturer or wholesaler who provided the coupon must redeem the coupon without going through the retailer. It cannot be redeemed at a retailer’s location. An alcoholic beverage purchase cannot be required to redeem or receive the coupon.

For questions or assistance:

marketing.practices@tabc.texas.gov or (512) 206-3411

SECTION VI: LABEL/PRODUCT APPROVAL

The Texas Alcoholic Beverage Commission regulates every phase of the business relating to alcoholic beverages, including labeling. A certificate of label approval, issued by TABC, is required for all alcoholic beverages marketed in the State of Texas.

By law, no person may ship or cause to be shipped into the State of Texas any alcoholic beverage unless the product has received label approval from TABC. The label approval process may only be completed after the appropriate TABC license or permit is issued.

The manufacturer, brewer, winery, distiller, or owner of the product when it becomes a marketable product is responsible for completing the label approval process. Each product will fall into one of the following classes:

- Beer – a malt beverage containing four percent of alcohol by weight or less;
- Ale/Malt Liquor – a malt beverage containing more than four percent of alcohol by weight;
- Wine – a product obtained from the fermentation of sound ripe grapes, fruits, berries, or honey; or
- Distilled Spirit – alcohol or liquor produced in whole or in part by the process of distillation.

APPLICATIONS

The current versions of the label approval applications may be found on the TABC website at http://www.tabc.texas.gov/forms/label_approval.asp. Please use Form C-270DS for distilled spirit labels, C-270W for wine labels, and C-270MB for malt beverage labels.

PRODUCT SAMPLES

Product samples may be required when applying for label approval.

- Malt Beverage: All new product label approvals will require product samples for analysis. In lieu of samples, an analysis stating the alcohol content both by volume and by weight may be provided from an independent laboratory. Analyses from the brewery will not be accepted. For label revisions or size additions, a product sample or independent laboratory analysis will be required if the product test result on file at TABC is more than 5 years old. If the manufacturer is unsure of the date of the last test result, they may contact TABC at label.approval@tabc.texas.gov. The alcohol content on file will be listed on the certificate of label approval. A Certificate of Label Approval (COLA) from the Alcohol and Tobacco Tax and Trade Bureau (TTB) is required with all applications for label approval unless the product will only be sold in Texas.
- Spirits: A Certificate of Label Approval (COLA) from the Alcohol and Tobacco Tax and Trade Bureau (TTB) is required. However, product samples are not mandatory for Texas label approval.

- Wine: A product sample will be required if the alcohol content is less than 7% alc/vol and there is no TTB COLA available. A TTB COLA is required if the alcohol content is over 7%.

Samples must be sent/delivered to:

TABC - Labeling, Suite 210
5806 Mesa Drive
Austin, TX 78731

Note: It is illegal to send alcoholic beverages through the U.S. Postal Service. Most large carriers (FEDEX, UPS, etc.) have the appropriate permits to transport alcohol in Texas, but manufacturers must confirm this prior to shipment.

LABEL APPROVAL CERTIFICATES

Label approval certificates will be sent through the U.S. postal service. To view labels approved since May 2005, go to the Approved Label/Product Inquiry database at <https://label.tabc.texas.gov>.

For more detailed information on label approvals, see the *TABC Administrative Rules Chapter 45*. Information about the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) rules for federal Certificates of Label Approval (COLA) may be found on the TTB website at <http://www.ttb.gov/labeling>.

APPROVED LABEL DATABASE INQUIRY

The TABC gives consumers access to a list of what alcoholic beverage products are legal for sale in Texas and those products' alcohol content. The database includes all alcoholic beverages that have had labels approved since 2005. Consumers can search the database by permit number, brand name, trade (manufacturer) name, type of product, approval date, or percent alcohol by volume. Each record includes all of this information and an image of the approved label. To access the database go to: <https://label.tabc.texas.gov>.

For assistance:

label.approval@tabc.texas.gov or (512) 206-3410

SECTION VII: MANUFACTURERS ENGAGED IN RETAILER ACTIVITIES

By law, some manufacturers in Texas engage in retailer activities.

BREWERS AND MANUFACTURERS

- Brewers and manufacturers that produce malt beverages can hold a Brewers (B) or Manufacturers (BA) license or both. The *Texas Alcoholic Beverage Code Chapter 12* states that brewers can produce ale or malt beverages with more than 4.0 percent alcohol by weight. The *Texas Alcoholic Beverage Code Chapter 62* states that manufacturers can produce malt beverages up to 4.0 percent alcohol by weight. Those that produce more than 225,000 barrels annually are held to the three tier system.
- Brewers and manufacturers that produce less than 225,000 barrels annually may sell up to 5,000 barrels for on-premises consumption of their product if produced on the premises to the ultimate consumer.
- In addition, brewers and manufacturers that produce less than 125,000 barrels may self-distribute 40,000 barrels of their product direct to retailers if they have the appropriate license. Brewers must have a Brewer’s Self Distribution Permit (DA) and manufacturers must have a Manufacturer’s Self Distribution License (DB).

DISTILLERIES

Distilleries located in wet areas may sell distilled spirits manufactured by the permit holder to the ultimate consumer:

- for consumption on the licensed premises (up to 3,000 gallons annually); and
- for consumption off the premises
 - in unbroken packages containing not more than 750 ml
 - up to 3,500 gallons annually
 - no more than two 750 ml bottles or the equivalent to the same consumer in a 30-day period.

The bottle must “bear a notice affixed to the bottle that” says the bottle is commemorative, states the month and year the bottle is sold and is signed by an agent/employee of the permit holder.

Hours of sale are the same as a Mixed Beverage or Package Store Permit, depending on whether the sale is for on-premises or off-premises consumption.

Distilleries may not engage in shipping or delivery or buying for someone else.

If an employee of a distillery holds a Distiller’s Agent’s Permit, they may conduct free tastings for consumers at package stores.

WINERIES

- Wineries (G) are governed by the *Texas Alcoholic Beverage Code Chapter 16* and are allowed to produce, bottle, label and package

wine to sell to wholesalers or retailers and with some restrictions, the ultimate consumer. Wineries may sell to the ultimate consumer for both on and off premises consumption. The combination of wine shipped to consumers and sold for off-premises consumption may not exceed 35,000 gallons annually. Wineries may obtain a Winery Festival Permit (GF) and sell to the ultimate consumer at civic or wine festivals, farmers markets, or other special events. Wineries can operate in dry areas and ship wine directly to the ultimate consumer in both wet and dry areas. Shipments to the same ultimate consumer may not exceed nine gallons per calendar year or 36 gallons in a 12-month period.

Wineries may also:

- Give wine away to the ultimate consumer on or off of their premises;
- Sell wine out of state to qualified entities or individuals;
- Purchase wine to sell in Texas directly from permit holders who can sell wine - wholesalers, non-resident sellers, and other wineries included; and
- Import, buy or sell fruit brandy to fortify wine.

SALES AND CONSUMPTION AT WINERIES

Texas Alcoholic Beverage Code §105.08

Wineries may sell wine and a customer may consume wine on the premises of a winery:

Monday-Saturday:	8 A.M. to midnight
Sunday:	10 A.M. to midnight
New Year's Day:	Midnight to 2 A.M.

For all retailers, consumption is legal until 2:15 A.M. if the community has extended hours, with or without a late hours permit.

SECTION VIII: MARKETING PRACTICES ADVISORIES

The agency bulletins and advisories are developed to improve internal and external communications and ensure a more consistent interpretation and application of the statutes across the state. The advisories and bulletins reflect our staff opinions on inquiries presented to us after taking into consideration the specific circumstances involved and the relevant statutes. We will continuously review these opinions and issue new advisories as necessary to reflect revised statutes, changing circumstances, and industry trends. Bulletins and advisories can be found on our home page under the bulletins section at: http://www.tabc.texas.gov/marketing_practices/advisories.asp.

For assistance:

marketing.practices@tabc.texas.gov or (512) 206-3411

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CHAPTER III - DISTRIBUTOR/WHOLESALER TIER MEMBERS

Manufacturers may sell alcoholic beverages to other manufacturers, wholesalers/distributors, retailers and consumers depending on their license/permit type. Wholesalers and distributors may sell to other wholesalers/distributors and retailers.

The difference between distributors and wholesalers is the products sold.

Distributors = Beer (no more than 4% alcohol by weight)

Wholesalers = All other alcoholic beverages (over 4% alcohol by weight)

The alcoholic beverages are taxed when the beverages are sold to the retail level.

SECTION I: CASH AND CREDIT LAWS

CASH LAW

Malt beverage (beer, ale, malt liquor) purchases must be paid in cash (no credit) on or before delivery. Cash laws that apply to a package store apply to a local distributor's permittee and their sales to private club, mixed beverage and mixed beverage with food and beverage permittees.

Distributors and wholesalers are required to report to TABC any retailers who do not pay cash for beer.

CREDIT LAW

Payment of distilled spirits and wine purchases made:

- from the 1st through 15th day of a month is due on or before the 25th day of that month; and
- from the 16th through the last day of a month is due on or before the 10th day of the following month.

An account is not delinquent if the payment is received by the wholesaler no later than the fourth business day after the date payment is due.

If a retailer becomes delinquent, the wholesaler must report this to the Texas Alcoholic Beverage Commission. Local distributor's permittees and other wholesalers can do this by entering the data into the TABC Cash Credit Law system or by completing the necessary forms available on the TABC website at http://www.tabc.texas.gov/forms/credit_law.asp.

DELINQUENT PERMITTEE LIST

The TABC compiles and publishes the Credit Law Delinquent List twice a month, listing all retailers who are delinquent. This list is available on the TABC website at http://www.tabc.texas.gov/credit_law/complete_delinquent_list.asp.

Wineries, wholesalers and local distributors may not sell wine and distilled spirits to these permittees until they have paid for the product and have been released by the TABC Audit and Investigations Division.

SECTION II: EXCISE TAX

The alcoholic beverages become taxable when the beverages are sold to the retail level.

The *Texas Alcoholic Beverage Code Chapters 201 and 203* require that taxes be paid on the “first sale” of alcohol in Texas. This is known as “excise tax”.

TABC receives and processes monthly excise tax reports and ensures that proper taxes have been paid.

The alcoholic beverages are also taxable when the beverages are sold at the retail level. The Comptroller of Public Accounts maintains the Gross Receipts/ Mixed Beverage Tax and the Sales and Use Tax. Information on this tax can be found on the Comptroller’s web site at <http://www.window.state.tx.us/taxes/>.

SECTION III: GIFTS, SERVICES & SALES

The *Texas Alcoholic Beverage Code* prohibits many gifts, services and promotions offered to retailers by the distributing or manufacturing tier.

Different restrictions apply to wholesalers and manufacturers of liquor (distilled spirits, wine, malt liquor and ale) than to beer distributors and manufacturers.

This section highlights those prohibitions and differences.

DISTRIBUTORS, MANUFACTURERS & RETAILERS (BEER)

Retailers may not accept, purchase or borrow from a manufacturer or distributor (beer):

- equipment
- fixtures
- supplies
- prizes
- premiums
- gifts
- other inducements

PERMISSIBLE PROMOTIONAL ITEMS

Distributors and manufacturers:

- may sell promotional items (things designed to promote a specific product or brand) for use by the consumer either on or off the retailer's premises.

Items:

- must bear a manufacturer's logo, brand or product name;
- may not be sold for less than the manufacturer's regularly published wholesale price; and
- must be paid for in cash on or before the delivery.

BEER FOR CONSUMERS

Beer may be purchased for consumers (by distributor's or manufacturer's agents) if:

- beverages are consumed at the retailer's licensed premises in the presence of the purchaser; and
- purchases are not excessive.

BEER SERVICES PROVIDED TO RETAILERS

Distributors and manufacturers may:

- service and repair promotional items and signs furnished or sold to the retailer;
- furnish meeting rooms to retailers on the distributor's or manufacturer's premises providing nothing more than product samples with food to accompany the samples; and
- furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, coil cleaning service needed for proper delivery and dispensing of draft malt beverages.

Distributors and manufacturers authorized to sell to retailers may furnish draft beer dispensing equipment for use at temporary events, provided that such equipment may not be given in exchange for an exclusive sales privilege.

WHOLESALE, LIQUOR MANUFACTURERS & RETAILERS (DISTILLED SPIRITS, MALT LIQUOR, WINE & ALE)

A retailer may not accept, purchase or borrow from a wholesaler or any of their agents, affiliates, officers, directors or firm members:

- equipment
- fixtures
- premiums
- gifts

- supplies
- prizes
- other inducements

ADVERTISING SPECIALTIES FOR LIQUOR

Manufacturers and wholesalers may sell advertising specialties to retailers. Advertising specialties are things designed to advertise or promote a specific product or brand.

The *Texas Alcoholic Beverage Commission Administrative Rule §45.117* regulates advertising specialties.

They may have a utilitarian (useful) function in addition to product promotion.

The total cost to retailer shall not exceed \$101.00 per brand, per retailer, per calendar year.

The *Texas Alcoholic Beverage Administrative Rules §45.117* states that different upper-tier permittees may not work together to pool their dollar limitations to provide a retailer with advertising specialties in excess of the maximum permitted.

NOVELTY ITEMS FOR LIQUOR AND BEER

Manufacturers and wholesalers may:

- purchase liquor/beer for self or others if consumed on the premises in the purchaser's presence;
- prearrange promotions with the retailer and preannounce the promotion to the consumer; and
- give consumers novelty items of limited value designed to promote a specific product or brand. Novelty items:
 - may only be distributed to consumers 21 years of age or older;
 - cannot be used to induce consumers to purchase alcohol;
 - must upon request be given to legal age consumers regardless of whether or not the consumer is participating in the promotion;
 - must be of limited value.

Upper-tier members often want to offer items to consumers that are valued over the limited value. There are only two ways to do this:

1. Sweepstakes *Texas Alcoholic Beverage Commission Administrative Rule §45.106*.
2. Discount Coupons *Texas Alcoholic Beverage Commission Administrative Rule §45.101(c)*.

Upper-tier members may not give novelty items to retailers or their employees. (i.e. T-shirts, hats and other gifts). Upper-tier members may sell these items to retailers, but the price is limited to the cost of the item to the upper-tier member.

SERVICES TO RETAILER

Liquor manufacturers and wholesalers may service and repair items furnished to retailers as allowed in the *Texas Alcoholic Beverage Commission Administrative Rule §45.109*. For example, they may:

- service and repair promotional items and signs furnished or sold to the retailer; and
- furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, coil cleaning service needed for proper delivery and dispensing of draft malt beverages.

Upper-tier members may provide retailers with “display enhancement/enhancer items” including televisions, grills, etc. provided these items are used for the sole purpose of product promotion. However, “enhancer items” may only be provided to the retailer on a temporary basis of not more than 30 days.

LIVE SAMPLES

Liquor wholesalers may give a limited amount of ale/malt liquor (one six pack of twelve ounce per brand) or wine or distilled spirits (not to exceed 750mL) to a retailer to sample. It must be a product that the retailer has never purchased. The wholesaler must be present when the bottle is opened and sampled. If the wholesaler then leaves the rest of the bottle with the retailer, the bottle must be immediately removed from the premises of the licensed establishment.

Live samples of beer are not permitted.

SECTION IV: ON-PREMISE PROMOTIONAL ACTIVITIES

On-premise promotional activities are more prevalent in today’s competitive industry. Upper-tier members and retailers alike work very hard to advertise their products and services. *TABC Administrative Rules §45.113(b)* governs on-premise promotions.

Distributors may furnish novelty items and beer to consumers.

1. Novelty items 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. Such items may not exceed:
 - Beer novelty items may not be more than \$1.00 per unit

wholesale cost.

- Liquor novelty items must be of limited value.
- 3. Beer may be purchased for consumers provided that such beverages are consumed at retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and distribution tier participating in promotions authorized by this paragraph must hold an agent's beer license.
- 4. The Executive Director may grant specific approval for sampling tests designed to determine consumer taste preferences. The Executive Director may impose such conditions as he/she deems necessary.
- 5. Manufacturers and distributors may, as a social courtesy, give beer and other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

Wholesalers and distributors may prearrange a promotional activity.

Notwithstanding any other provision, a permittee may:

1. Preannounce a promotion to a consumer; and
2. Preannounce the purchase of alcoholic beverages to a consumer.
 - Alcoholic beverages may be purchased for consumers provided that such beverages are consumed on retailer licensed premises in the presence of the purchaser.
 - Such purchases shall not be excessive.

All members of the manufacturing and wholesaler tiers participating in a promotional activity must hold an agent's permit or manufacturer's agent's permit.

SECTION V: PROMOTIONAL PERMITS

The *Texas Alcoholic Beverage Code Chapter 50* regulates promotional permits. The holder of a promotional permit may, on behalf of a distiller, brewer, rectifier, manufacturer, winery or wine bottler with whom the promotional permit holder has entered into a contract for the purposes of this chapter, engage in activities to promote and enhance the sale of an alcoholic beverage in this state, including activities that take place on the premises of the holder of a permit or license under the *Texas Alcoholic Beverage Code*.

The holder of a promotional permit may not hold an interest, directly or indirectly, in a permit or license issued under the *Texas Alcoholic Beverage Code* other than a contract to promote and enhance the sale of alcoholic beverages as authorized by this chapter.

Persons that own a portion of an alcoholic beverage business may not be a

promotional permit holder.

Persons that work for a distributor or manufacturer are not eligible to obtain the promotional permit or work for a promotional permit holder.

All agents, servants or employees that are participating in a promotional event must have an employment card. The card must contain:

- name of employee, agent or servant;
- effective date of employment;
- name of the promotional permit holder; and
- the promotional permit number.

The card must be kept on the person during promotional events and available for inspection by any authorized representative of the Texas Alcoholic Beverage Commission or other law enforcement personnel.

SECTION VI: TEMPORARIES

Members of the manufacturer and wholesale tiers, as a social courtesy, may provide liquor or other things of value to unlicensed persons who are not affiliated or employed with the holder of a retail license or permit or to a charity that may obtain a temporary permit or license.

The *Texas Alcoholic Beverage Code §109.58* states that the TABC by Rule may set definite limitations consistent with the general provisions of the Code that relax the restrictions of this code with respect to making a gift to civic, religious or charitable organizations by the liquor and wine industry.

While a distributor may give beer to an unlicensed group, the distributor may only deliver beer to licensed locations; therefore, unlicensed groups must pick up the donated beer from the distributor.

There are several provisions in the *Texas Alcoholic Beverage Code* that prohibit gifts to retailers by members of the manufacturing and wholesaling tiers. However, the law provides a means for members of the manufacturing and wholesaling tiers to contribute to charitable causes while upholding the three tier laws. It has been the TABC's discretion to allow members of the manufacturing and wholesaling tiers to contribute cash only "no strings attached" donations to bona fide charitable organizations regardless of the charitable organizations permit/license status.

GIFTS TO UNLICENSED ORGANIZATIONS (BEER)

1. Unlicensed means the charity does not have a permit or license

- authorizing the sale or service of alcoholic beverages.
2. Manufacturers and distributors may donate money, beer or other things of value to an unlicensed civic, religious or charitable organization.
 3. Beer may only be given for consumption in a wet area.
 4. Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor (the charity) or cause in a manner at least equal to or greater than the advertising of the industry donor. This presumes that the unlicensed charity would contact a licensed retailer to handle alcohol sales during the charitable event.
 5. Distributors and manufacturers authorized to sell to retailers may furnish draft beer dispensing equipment to a permitted charity for use at a temporary charity event.
 6. Manufacturers, distributors and their employees and agents may not serve or dispense malt beverages at temporary events.

GIFTS TO UNLICENSED ORGANIZATIONS (LIQUOR)

1. “Unlicensed” means the charity does not have a permit or license authorizing the sale or service of alcoholic beverages.
2. Manufacturers and wholesalers may donate money, liquor or other things of value to an unlicensed civic, religious or charitable organization.
3. Liquor may only be given for consumption in a wet area.
4. Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor (the charity) or cause in a manner at least equal to or greater than the advertising of the industry donor.

NON-PROFIT ORGANIZATION VS. FOR-PROFIT RETAILER

The statutes and regulatory provisions relating to such entities clearly distinguish the two and make a profound statement that a licensed retailer shall not directly nor indirectly derive any benefit from alcoholic beverage sponsorship of charitable events.

PRODUCT EXCLUSIVITY

There are no laws or rules that prohibit a retailer at its own discretion from selling particular brands or one brand of alcohol during a non-profit event. To determine the legality of such an act, the TABC must look at all factors relating to the retailer’s decision to only sell particular brands or one brand. Some factors that TABC considers are:

1. Did the industry sponsor or affiliate influence the retailer?

2. Did the industry sponsor or affiliate provide incentives to the retailer?
3. Did the industry sponsor or affiliate conspire with the charitable entity to coerce the retailer to sell one brand?

The retailer must be able to justify its decision to carry only one brand.

EXCLUSIVE ADVERTISING

If the entire area where the charitable event is to take place is permitted, then an industry sponsor may not enter into an agreement with a charitable entity for exclusive rights to advertising upon a retailer's premises.

An industry sponsor may enter into an agreement with a charitable entity (independent of the retailer) for areas that are not covered by a permit/license. **(The 200 foot rule as defined by the *Texas Alcoholic Beverage Code §108.53* is not applicable at charitable events.)**

Despite any agreement between charitable entity and industry sponsor, a retailer reserves the right to hang or post any advertising sign which identifies the brands or alcohol available for sale during the event.

No industry member nor charitable organization may restrict the retailer's right to advertise its products.

SECTION VII: COUPONS

Members of the manufacturing and wholesaling tiers can provide coupons to the consumer for items the manufacturer produces with the exception of alcoholic and non-alcoholic beverages. For example, a manufacturer or wholesaler could offer the consumer a coupon for a discount on a t-shirt or glassware. The manufacturer or wholesaler who provided the coupon must redeem the coupon without going through the retailer. It cannot be redeemed at a retailer's location. An alcoholic beverage purchase cannot be required to redeem or receive the coupon.

SECTION VIII: INDUCEMENTS

PROHIBITED ACTIVITIES

Inducements are defined as any practice not offered to all retailers in the local market on the same terms without business reasons to justify the difference in treatment. Manufacturers, distributors or wholesalers may not offer inducements, such as:

- purchasing or renting floor, shelf or warehouse space to or from the retailer;

- requiring a retailer to purchase one product in order to purchase another product at the same time;
- providing or purchasing, in whole or in part, any type of advertising benefiting any retailer;
- furnishing entertainment or recreation to retailers or their employees and agents;
- furnishing service trailers with equipment to a retailer; or
- furnishing transportation or other things of value to organized groups of retailers.

APPROVED ACTIVITIES

Manufacturers, distributors and wholesalers may provide food, beverages and entertainment to retail tier members, if:

- food and beverages are consumed in the presence of the manufacturing or wholesale tier member; and
- food, beverages and entertainment cost no more than \$500 per occasion.

Manufacturing and distribution tier members may:

- advertise in convention programs;
- sponsor functions or meetings and otherwise; and
- participate in meetings and conventions of trade associations of general membership.

SECTION IX: STOCKING & ROTATING

The *Texas Alcoholic Beverage Commission Administrative Rule 45.109* regulates stocking and rotating products.

A distributor or wholesaler may:

- stock a retailer's shelves with brands of products they have the authority to sell;
- move product they sold from the storeroom to shelves/displays and rotate old product forward;
- rotate the stock of their brand;
- put prices on the stock;
- reset or rearrange alcoholic beverages of their product only;
- provide retailers with shelf plans or schematics; and
- organize and construct displays of alcoholic beverages.

Note: Displays must be accessible to the consumer.

These activities may only be performed during the hours when the sale or

delivery of specific alcoholic beverages are legal. They may also be performed for malt beverages and wine from 5:00 a.m. to 12:00 noon on Sunday.

Products provided by other industry members must not be altered or disturbed.

The wholesale tier member may only move product they sell. If a competitor's product shows up in another wholesale tier member's shelf area and it's a small amount (1-bottle, 1 six-pack) that a customer may have placed there, they may move it.

Competitor's products can be moved to the back room from an end-cap display if the retailer is allowing the distributor to setup there. Product cannot be moved to another display or restocked if it is not their product.

If it looks like a competitor has taken over some of the shelf space assigned to a wholesaler/distributor, contact the retailer. It may have been re-set. Re-sets are legal if done in accordance with the *Texas Alcoholic Beverage Administrative Rule §45.109*.

SECTION X: DAMAGED PRODUCTS (CHIPS & FLATS)

Chips & Flats is a term used to describe damaged products such as broken bottles or carbonated alcoholic beverages that have gone flat.

The *Texas Alcoholic Beverage Code* states that a distributor, winery or wholesaler cannot refund or exchange products sold to a retailer, with the exception of the circumstances listed in *§104.05(d) and (e)*. See relevant sections of the *Texas Alcoholic Beverage Code* below.

In accordance with *§104.05(d)*, alcoholic beverages may be replaced with like product, provided the product was damaged upon or prior to delivery or was unfit for consumption upon delivery, or is determined to be a consumer safety issue caused during the manufacturing process. TABC shall be notified immediately regarding any consumer safety issues that result in an exchange.

In accordance with *§104.05(e)*, malt beverages that have not passed their expiration date may be replaced with like product, as long as the amount does not exceed 25 cases of 24 12-ounce containers.

In addition, the TABC will not consider the following a violation of the *Texas Alcoholic Beverage Code*: Within 48 hours time after delivery to a retailer, a refund or credit may be provided for a delivery that was inconsistent with the order originally placed by the retailer. Seller's to retailers should provide retailers with a credit memo or exchange receipt stating the reason and date of the exchange. This document shall be kept on the retailer's premises for

inspection by authorized Texas Alcoholic Beverage Commission employees and other law enforcement personnel.

However, the TABC will be compelled to take regulatory action against all involved parties in cases where the seller's actions relating to §102.07 (a)(4) allow a retailer to exchange product or obtain a refund or credit for reasons other than those stated above.

SECTION XI: CONSIGNMENT SALES

The *Texas Alcoholic Beverage Code* §101.68 states that a person commits an offense if he is a party to, or directly or indirectly interested in or connected with, a consignment sale of an alcoholic beverage.

The *Texas Alcoholic Beverage Code* §1.04(2) defines consignment sales as:

- (A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;
- (B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;
- (C) the delivery of alcoholic beverages to a factor or broker;
- (D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;
- (E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or
- (F) any other type of transaction which may legally be construed as a consignment sale.

SECTION XII: SALES AND DELIVERIES

SALE AND DELIVERY OF BEER BY DISTRIBUTOR'S LICENSEE TO RETAILERS

General, local or branch distributor's license:

Monday-Saturday:	24 hours a day
Sunday:	12:00 midnight to 1:00 a.m. and 12:00 noon to 12:00 midnight

SALE AND DELIVERY OF LIQUOR BY WHOLESALER’S PERMITTEE TO RETAILERS

Monday-Saturday:	24 hours a day
Sunday and Christmas Day:	No Sale or Delivery

SALE AND DELIVERY BY LOCAL DISTRIBUTOR’S PERMITTEE TO RETAILERS

Monday-Saturday:	5:00 a.m. to 9:00 p.m.
Sunday, Christmas Day or any day on which a package store permittee is prohibited from selling liquor:	No Sale or Delivery

SECTION XIII: IDENTIFICATION STAMPS

Distilled spirits containers must have a serially numbered identification stamp issued by the TABC or other identification approved by the TABC when sold to the mixed beverage permittee, mixed beverage with a food and beverage permittee or the private club permittee. **Note:** The Local Distributor’s Permit holder affixes the stamp.

The local distributor shall:

- Store prestamped merchandise separately from all other merchandise.
- Keep a record of stamp usage showing the quantity of identification stamps received and serial numbers of stamps affixed, lost, damaged, etc.
- Record serial numbers of stamps on the invoice.
- Issue an original and one copy of an invoice when selling distilled spirits to mixed beverage, mixed beverage with a food and beverage and private club permittees. Give one copy of the invoice to the permittee receiving the liquor and keep one copy.
- Keep all invoices and stamp transaction records on the licensed premises for four years. Upon request, any record must be made available to a TABC representative within a reasonable time.
- Upon cancellation of any Local Distributor’s Permit, all unaffixed identification stamps on hand must be returned to the TABC.
- For more information or questions about the content of invoices and records for ID stamps, contact the local TABC Office.

Mixed beverage, mixed beverage with a food and beverage and private club permittees are prohibited from possessing identification stamps unless they are affixed to a bottle or container.

SECTION XIV: SIGNS

TABC regulates signage provided by upper-tier members to retailers to ensure that the signs are not used to illegally influence retailers.

TABC Administrative Rule §45.113(d) governs signage for beer. **There is no equivalent Rule for liquor; however, TABC applies this section to liquor as it relates to the relationship between a retailer and upper tier member.**

The *Texas Alcoholic Beverage Commission Administrative Rule §45.113(d)(2)* defines a sign as:

“...a thing whose primary purpose is the advertisement of a brand or product or price thereof.”

Distributors and members of the manufacturing tier authorized to sell to retailers may furnish, give or sell interior signs to retailers. However, a sign furnished by a distributor or authorized member of the manufacturing tier may not bear the name, logo or trademark of a specific retailer.

No manufacturer or distributor may paint, improve or remodel a retailer’s buildings or parts of buildings, inside or out, or finance any improvements thereto.

The following are examples of illegal improvements or remodeling when it comes to signage:

- Custom signage (Interior or Exterior)
- Building permanent structures
- Supplying materials that add value to the premise

SECTION XV: OUTDOOR ADVERTISING

The *Texas Alcoholic Beverage Code §108.51* defines and regulates “outdoor advertising.” Outdoor advertising means any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building but within five feet of an exterior wall facing a street or highway so that it is visible by a person of ordinary vision from outside the building. Outdoor advertising does not include advertising appearing on or in:

- radio or television;
- a public vehicular conveyance for hire, (pedicabs, buses, taxicabs);
- a race car while participating at a professional racing event or at a permanent motorized racetrack facility;
- a boat participating in a racing event or a boat show;
- an aircraft;
- a bicycle or on the clothing of a member of a bicycle team participating in an organized bicycle race; or
- a newspaper, magazine or other literary publication published periodically.

The *Texas Alcoholic Beverage Code §108.53* states that no person may erect a billboard or electric sign advertising an alcoholic beverage within 200 feet of a retail establishment authorized to sell that beverage unless he has first obtained a permit for the purpose from the TABC. No permit is required for a billboard or electric sign that is not located within 200 feet of a retail establishment authorized to sell the advertised alcoholic beverage.

A “billboard” is defined as a structure directly attached to the land, a house or a building having one or more spaces used to display a sign or advertisement of an alcoholic beverage or a person engaged in the manufacture, sale or distribution of alcoholic beverages, whether or not the structure is artificially lighted. “Billboard” does not include a bench or a wall or other part of a structure used as a building, fence, screen, front or barrier.

An “electric sign” is defined as a structure or device other than an illuminated billboard by which artificial light produced by electricity is used to advertise the alcoholic beverage business by a person who manufactures, sells or distributes alcoholic beverages or to advertise an alcoholic beverage.

SECTION XVI: MARKETING PRACTICES ADVISORIES

The agency bulletins and advisories are developed to improve internal and external communications and ensure a more consistent interpretation and application of the statutes across the state. The advisories and bulletins reflect our staff opinions on inquiries presented to us after taking into consideration the specific circumstances involved and the relevant statutes. We will continuously review these opinions and issue new advisories as necessary to reflect revised statutes, changing circumstances, and industry trends. Bulletins and advisories can be found on our home page under the bulletins section at: http://www.tabc.texas.gov/marketing_practices/advisories.asp.

For assistance:

marketing.practices@tabc.texas.gov or (512) 206-3411

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CHAPTER IV - RETAILERS

Retailers are permit/license holders that sell to the end consumer for consumption of the alcohol on or off the premises depending on the type of permit/license held.

PART ONE: LICENSES & PERMITS

SECTION I: OFF-PREMISES LICENSES & PERMITS

BEER RETAILER'S OFF-PREMISE LICENSE (BF)

Texas Alcoholic Beverage Code Chapter 71

SALES FOR BEER RETAILER'S OFF-PREMISE LICENSE HOLDERS

These retailers may sell beer:

Monday-Friday:	7 A.M. to midnight
Saturday:	7 A.M. to 1 A.M. (Sunday)
Sunday:	noon to midnight

DELIVERIES FOR BEER RETAILER'S OFF-PREMISE LICENSE HOLDERS

These retailers may accept beer deliveries from beer distributors:

Monday-Friday:	5 A.M. to midnight
Saturday:	5 A.M. to 1 A.M. (Sunday)
Sunday:	noon to midnight (Beer may be stocked or rotated by beer distributor from 5 A.M. to midnight on Sunday but may not be delivered until noon.)

AUTHORIZED ACTIVITIES FOR BEER RETAILER'S OFF-PREMISE LICENSE HOLDERS

- These retailers are authorized to possess and sell beer **to go** only. **Note:** Look carefully on the label for the word “beer” or the alcohol content which should be less than 4% alcohol by weight or 5.1% alcohol by volume.
- These retailers, their employees and customers may not consume any alcoholic beverages or possess an open container of alcoholic beverages on the premises except during an authorized tasting.

WINE & BEER RETAILER'S OFF-PREMISE PERMIT (BQ)

Texas Alcoholic Beverage Code Chapter 26

SALES FOR WINE & BEER RETAILER'S OFF-PREMISE PERMIT HOLDERS

These retailers may sell beer, ale, and malt liquor. Retailers may also sell wine not to exceed 14% or 17% alcohol by volume. The maximum alcohol content that the wine retailers are authorized to possess and sell will be indicated on the face of the retailer's permit. See **AUTHORIZED ACTIVITIES** in this section to determine which amount applies to the retailer's situation.

Monday-Friday:	7 A.M. to midnight
Saturday:	7 A.M. to 1 A.M. (Sunday)
Sunday:	noon to midnight

DELIVERIES FOR WINE & BEER RETAILER'S OFF-PREMISE PERMIT HOLDERS

These retailers may accept deliveries of beer, ale, malt liquor and wine:

Monday-Friday:	7 A.M. to midnight
Saturday:	7 A.M. to 1 A.M.
Sunday:	noon to midnight

Texas Alcoholic Beverage Code §105.02. HOURS OF SALE: WHOLESALERS AND LOCAL DISTRIBUTORS TO RETAILERS. (a) A holder of a wholesaler's permit may sell, offer for sale, or deliver liquor to a retailer anytime except Sunday and Christmas Day.

Texas Alcoholic Beverage Code §105.051. SALE OF BEER BY DISTRIBUTOR'S LICENSEE. The holder of a general, local, or branch distributor's license may sell, offer for sale, or deliver beer 24 hours a day Monday through Saturday and between midnight and 1 A.M. and between noon and midnight on Sunday.

AUTHORIZED ACTIVITIES FOR WINE & BEER RETAILER'S OFF-PREMISE PERMIT HOLDERS

- These retailers are authorized only to possess and sell beer, ale, malt liquor, and wine not to exceed 14% or 17% alcohol by volume as stipulated on their permit.
- These retailers may sell alcoholic beverages **to go** only.
- These retailers, their employees and customers may not consume or possess an open container of alcohol on the premises except during an authorized tasting.

- The face of the permit will designate “Wine 14%” or “Wine 17%” to indicate the upper limit of alcohol content for wine sales.

If permit location is in a precinct, city or county:	Then retailers may:
wet for all types of alcoholic beverages (i.e., distilled spirits, beer, wine)	sell wine 17% or less
where a local option election was held after Aug. 31, 1999, and wine and beer were approved	sell wine 17% or less
wet for beer and wine only and the election was held before Sept. 1, 1999	sell wine 14% or less

WINE SAMPLING FOR WINE & BEER RETAILER’S OFF-PREMISE PERMIT HOLDERS

Neither retailers, their employees, nor customers may consume or possess an open container of alcohol on the premises of Wine and Beer Retailer’s Off-Premise Permit holder . There are some exceptions to this restriction that these retailers should become acquainted with:

- A wholesaler and/or their representative may provide these retailers with a sample of a product that may legally be sold in their store and retailers may open and consume that sample only in the presence of the wholesaler and/or his representative. These retailers must not have purchased the product in the past and any remaining product must be removed from their premises when the wholesaler and/or his representative leave. The *Texas Alcoholic Beverage Code* §102.02 provides these retailers with the specific amounts that may be made available to them for sampling.
- These retailers may remove wine from their inventory and they or their employee may open, touch, or pour wine, make a presentation or answer questions at a wine sampling. This wine sampling must be free of charge to their customers and the wine must come from their inventory.
- These retailers may allow a Non-Resident Sellers Permittee (S) who owns a winery located outside the State of Texas to conduct a wine sampling on their premises with wine they have in inventory. The Non-Resident Seller must purchase the wine from these retailers for the sampling. (*Texas Alcoholic Beverage Code* §37.01)
- These retailers may allow a Texas winery to conduct a wine sampling on their licenses premises with wine from their inventory or with wine

produced and supplied by the Texas winery.

To request additional information, contact the local TABC office. Local TABC office contact information may be found at http://www.tabc.texas.gov/contact_us/local_field_office.asp.

PACKAGE STORE PERMIT (P)

Texas Alcoholic Beverage Code Chapter 22

SALES FOR PACKAGE STORE PERMIT HOLDERS

Package stores *must be closed* during hours when liquor sales are prohibited by law. These retailers may sell distilled spirits, wine, ale and malt liquor:

Monday-Saturday:	10 A.M. to 9 P.M.
Sunday:	Closed (Also closed on Thanksgiving Day, Christmas Day, and New Year's Day. If Christmas Day or New Year's Day falls on Sunday, then retailers must close the following Monday.)

Note: These retailers may sell beer if they hold a Beer Retail Dealer's Off-Premise License (BF). Sales hours are the same as for liquor.

DELIVERIES FOR PACKAGE STORE PERMIT HOLDERS

Texas Alcoholic Beverage Code §105.01. HOURS OF SALE: LIQUOR. (a) Except as provided in Sections 105.02, 105.03, 105.04, and 105.08, no person may sell, offer for sale, or deliver any liquor:

- (1) on New Year's Day, Thanksgiving Day, or Christmas Day;
- (2) on Sunday; or
- (3) before 10 a.m. or after 9 p.m. on any other day.

(b) When Christmas Day or New Year's Day falls on a Sunday, Subsection (a) of this section applies to the following Monday.

Texas Alcoholic Beverage Code §105.02. HOURS OF SALE: WHOLESALERS AND LOCAL DISTRIBUTORS TO RETAILERS. (a) A holder of a wholesaler's permit may sell, offer for sale, or deliver liquor to a retailer anytime except Sunday and Christmas Day.

(b) A local distributor's permittee may sell, offer for sale, or deliver liquor to a retailer between 5 a.m. and 9 p.m. on any day except:

- (1) Sunday;
- (2) Christmas Day; or
- (3) a day on which a package store permittee is prohibited from selling

liquor.

AUTHORIZED ACTIVITIES FOR PACKAGE STORE PERMIT HOLDERS

- These retailers are authorized only to possess and sell distilled spirits, ale, malt liquor, and wine *not to exceed 24%* alcohol by volume. If they hold a Beer Retailer's Off-Premise License (BF), they may sell beer.
- Package store permit holders may sell alcoholic beverages **to go** only.
- Wholesalers and those who sell to retailers may restock and rotate alcoholic beverages, and construct displays:
 - *only* during hours when specific alcoholic beverage sales and deliveries are legal;
 - for malt liquor and wine from 5 A.M. to noon on Sunday.

These retailers, their employees and customers may not consume or possess an open container of alcohol on the premises of a Package Store Permit holder. There are some exceptions to this restriction that retailers should become acquainted with:

- A wholesaler and/or their representative may provide these retailers with a sample of a product that may legally be sold in their store and these retailers may open and consume that sample only in the presence of the wholesaler and/or his representative. These retailers must not have purchased the product in the past and any remaining product must be removed from their premises when the wholesaler and/or his representative leave. The *Texas Alcoholic Beverage Code §102.02* provides these retailers with the specific amounts that may be made available to them for sampling. Samples of these products may not be given to customers.
- These retailers may allow a Non-Resident Sellers Permittee (S) who owns a winery located outside the State of Texas to conduct a wine sampling on their premises with wine they have already purchased. The wine must be purchased by the Non-Resident Seller from these retailers.
- These retailers may allow a Texas winery to conduct a wine sampling on their licensed premises with wine from their inventory or with wine produced and supplied by the Texas winery.

PACKAGE STORE TASTING PERMIT (PS)

Texas Alcoholic Beverage Code Chapter 52

The holder of a Package Store Tasting Permit (PS) may allow a non-resident seller, manufacturer, brewer, non-resident manufacturer, non-resident brewer and distillery to conduct a sampling of their product on the retailer's premises providing the product used for the sampling is purchased from the PS. The following PS sampling restrictions apply to both manufacturing tier members

and PS permit holders when conducting a tasting on the PS premises.

These retailers must:

- post written notice on licensed premises no later than 48 hours before product tasting and state:
 - type and brand of alcohol to be tasted
 - date and hours of tasting
 - address of premises where tasting will occur
- keep a copy of the notification on the premises for inspection during all tasting hours; and
- at the end of the tasting, remove the empty or open containers from the premises or store in a locked, secure area on the premises.

These retailers may **not**:

- offer at one time more than 20 different products for tasting;
- charge for sample serving;
- serve minors or intoxicated persons;
- serve more than:
 - one-half ounce of distilled spirits
 - one ounce of wine
 - one ounce of beer and coolers
- advertise except by direct mail, on-site, e-mail, or permit holder's Internet website/social media site;
- allow anyone other than the permittee, permittee's agent or employee, or the holder of a nonresident seller's or manufacturer's agent's permit or that permit holder's agent or employee to dispense alcoholic beverages.

LOCAL DISTRIBUTOR'S PERMIT (LP)

Texas Alcoholic Beverage Code Chapter 23

If a retailer holds a Local Distributor's Permit (LP) with a Package Store Permit (P), special privileges are granted to sell distilled spirits, wine, beer, ale and malt liquor to holders of Mixed Beverage (MB), Private Club (N, NE, NB), and Mixed Beverage Permit with Food and Beverage (RM).

SALES FOR LOCAL DISTRIBUTOR'S PERMIT HOLDERS

These retailers may sell alcoholic beverages to any type of mixed beverage permittees and private clubs:

Monday-Saturday:	5 A.M. to 9 P.M.
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Sunday:	Closed (Also closed on Thanksgiving Day, Christmas Day, and New Year’s Day. If Christmas Day or New Year’s Day falls on Sunday, then retailers must close the following Monday.)
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DELIVERIES FOR LOCAL DISTRIBUTOR’S PERMIT HOLDERS

These retailers may:

- deliver alcoholic beverages to MB permittees and private clubs during the same hours retailers may sell if they hold a Local Cartage Permit (E)
- accept deliveries of alcoholic beverages from liquor wholesalers, beer distributors and wineries:

Monday-Saturday:	5 A.M. to 9 P.M.
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These retailers may **not**:

- sell or deliver on a day in which a package store is not allowed to sell liquor; or
- deliver less than 2.4 gallons of distilled spirits in a single delivery.

AUTHORIZED ACTIVITIES FOR LOCAL DISTRIBUTOR’S PERMIT HOLDERS

These retailers may:

- sell and distribute alcoholic beverages to holders of Mixed Beverage, Mixed Beverage with Food and Beverage and Private Club Permits; and
- rent or sell to any type of mixed beverage, mixed beverage with food and beverage and private club permittees any equipment, fixtures, or supplies used to sell or dispense distilled spirits.

IDENTIFICATION STAMPS FOR LOCAL DISTRIBUTOR’S PERMIT HOLDERS

Distilled spirits containers must have a serially numbered identification stamp issued by the TABC or other identification approved by the TABC when sold to the mixed beverage permittee, mixed beverage with food and beverage permittee or the private club permittee. **Note:** The Local Distributor’s Permit holder affixes the stamp to the bottle.

The local distributor shall:

- Store prestamped merchandise separately from all other merchandise.
- Keep a record of stamps showing the quantity of identification stamps received, quantity of stamps issued, lost, stolen or destroyed and balance of stamps on hand after each transaction.
- Record serial numbers of stamps issued and the quantity of stamps

issued on the invoice.

- Issue an original and one copy of an invoice when selling distilled spirits to mixed beverage, mixed beverage with food and beverage and private club permittees. Give one copy of the invoice to the permittee receiving the liquor, and keep one file copy.
- Keep all invoices and stamp transaction records on the licensed premises for four years. Upon request, any record must be made available to a TABC representative within a reasonable time.
- Upon cancellation of any Local Distributor’s Permit, all unaffixed identification stamps on hand must be returned to the TABC.
- For more information or questions about the content of their invoices and records for ID stamps, contact the TABC Audit Unit.

Mixed beverage, mixed beverage with food and beverage and private club permittees are prohibited from possessing identification stamps unless they are affixed to a bottle or container.

WINE ONLY PACKAGE STORE PERMIT (Q)

Texas Alcoholic Beverage Code Chapter 24

SALES FOR WINE ONLY PACKAGE STORE PERMIT HOLDERS

If retailers hold only a Wine Only Package Store Permit (Q), they may sell wine, not to exceed 24% alcohol by volume, and malt liquor and ale:

Monday-Saturday:	10 A.M. to 9 P.M.
Sunday:	Closed (Also closed on Thanksgiving Day, Christmas Day, and New Year’s Day. If Christmas Day or New Year’s Day falls on Sunday, then retailers must close the following Monday.)

Note: These retailers may sell beer, if they also hold a Beer Retailer’s Off-Premise License (BF).

If retailers hold a Beer Retailer’s Off Premise License (BF) and a Wine Only Package Store Permit (Q), sales hours for wine, beer, ale and malt liquor are:

Monday-Friday:	7 A.M. to midnight (wine up to 17%, beer, malt liquor and ale)
	7 A.M. to 10 P.M. (wine containing more than 17% alcohol by volume)

Saturday:	7 A.M. to 1 A.M. (Sunday) (wine 17% or less, beer, malt liquor and ale) 7 A.M. to 10 P.M. (wine containing more than 17%)
Sunday:	noon to midnight (wine 17% or less, beer, malt liquor and ale) No sales of wine more than 17% alcohol by volume.

DELIVERIES FOR WINE ONLY PACKAGE STORE PERMIT HOLDERS

These retailers may accept deliveries of ale, malt liquor and wine from liquor wholesalers, and wineries. If these retailers also hold a Beer Retailer's Off-Premise License (BF), they may accept deliveries of beer from beer distributors:

Monday-Friday:	5 A.M. to midnight (beer) 5 A.M. to 9 P.M. (wine, malt liquor and ale except Sunday and Christmas Day)
Saturday:	5 A.M. to 1 A.M. (beer only) 5 A.M. to 9 P.M. (wine, malt liquor and ale)
Sunday:	noon to midnight (beer only)
Restocking:	5 A.M. to midnight with a BF license (beer, ale, malt liquor) Wine may be restocked and rotated by the seller. 5 A.M. to 9 P.M. without a BF license (ale, malt liquor, and wine) may be restocked and rotated by the seller. Wine, malt liquor and ale may <i>not</i> be delivered on Sunday.

AUTHORIZED ACTIVITIES FOR WINE ONLY PACKAGE STORE PERMIT HOLDERS

- A package store tasting permit is required in order to conduct tastings.
- These retailers are authorized only to possess and sell wine, not to exceed 24% alcohol by volume, ale and malt liquor, and beer if they hold a Beer Retailer's Off-Premise License (BF).
- These retailers, their employees and their customers may not consume

any alcoholic beverages or possess an open container of alcoholic beverages on the premises.

- A wholesaler and/or their representative may provide these retailers with a sample of a product that may legally be sold in their store and they may open and consume that sample only in the presence of the wholesaler and/or his representative. These retailers must not have purchased the product in the past and any remaining product must be removed from their premises when the wholesaler and/or his representative leave. The *Texas Alcoholic Beverage Code §102.02* provides retailers with specific amounts that may be made available to them for sampling.
- These retailers may:
 - sell alcoholic beverages **to go** only;
 - allow a Non-Resident Seller’s Permittee (S) who owns a winery located outside the State of Texas to conduct a wine sampling on their premises. Products sampled must be purchased from the retailer;
 - allow a Texas winery to conduct a wine sampling on their licensed premises with wine purchased from the retailer or with wine supplied by the winery; and
 - remove wine from their inventory and retailers or their employee may open, touch, or pour wine, make a presentation, or answer questions at a wine sampling. This wine sampling must be free of charge to their customers and the wine must come from their inventory.

PACKAGE STORE TESTING PERMIT (PS)

If a Wine-Only Package Store Permit holder holds a Package Store Tasting Permit (PS), they may offer restricted samplings of alcoholic beverages that they are authorized to sell except that no beer may be offered for tastings. Ale, malt liquor, and wine products may be offered and these retailers must:

- post written notice on licensed premises no later than 48 hours before product tasting and state:
 - type and brand of alcohol to be tasted
 - date and hours of tasting
 - address of premises where tasting will occur
- keep a copy of the notification on the premises for inspection during all tasting hours; and
- at the end of the tasting, remove the empty or open containers from the premises or store in a locked, secure area on the premises.

Wine-Only Package Store Permit holders may not:

- offer at one time more than 20 different products for tasting;
- charge for sample serving;

- serve minors or intoxicated persons;
- serve more than:
 - one ounce of wine
 - one ounce of ale or malt liquor
- advertise except by direct mail, on-site, e-mail, or permit holder’s Internet website/social media site; or
- allow anyone other than the permittee, permittee’s agent or employee, or the holder of a nonresident seller’s or manufacturer’s agent’s permit or that permit holder’s agent or employee to dispense alcoholic beverages.

SECTION II: ON-PREMISES LICENSES & PERMITS

BEER RETAILER’S ON-PREMISE LICENSE (BE)

Texas Alcoholic Beverage Code Chapter 69

SALES FOR BEER RETAILER’S ON-PREMISE LICENSE

These retailers may sell beer:

Monday-Friday:	7 A.M. to midnight
Saturday:	7 A.M. to 1 A.M. (Sunday)
Sunday:	noon to midnight 10 A.M. to noon (if beer is served with food to the customer)

If a Beer Retailer’s On-Premise License holder also holds a *Retail Dealer’s Late Hours License*:

- sales hours are extended until 2 A.M. every night;
- because of city ordinances or county commissioner’s court orders in some areas of the state, a retailer’s sales hours may be extended anytime between midnight and 2 A.M.; and
- with a late hours license retailers may not sell **to go** after midnight, Sunday through Friday, and after 1 A.M. on Sunday morning.

CONSUMPTION FOR BEER RETAILER’S ON-PREMISE LICENSE

Customers may consume beer on a Beer Retailer’s On-Premise License holder’s premises from:

Monday-Friday:	7 A.M. to 12:15 A.M.
Saturday:	7 A.M. to 1:15 A.M. (Sunday)

Sunday:	noon to 12:15 A.M. 10 A.M. to noon (if beer is served with food to the customer)
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For all retailers, consumption is legal until 2:15 A.M. if the community has extended hours, with or without a late hours permit.

DELIVERIES FOR BEER RETAILER'S ON-PREMISE LICENSE HOLDERS

These retailers may accept beer deliveries from beer distributors:

Monday-Friday:	5 A.M. to midnight
Saturday:	5 A.M. to 1 A.M. (Sunday)
Sunday:	noon to midnight 5 A.M. to noon (beer may be stocked/rotated but not delivered until noon)

AUTHORIZED ACTIVITIES FOR BEER RETAILER'S ON-PREMISE LICENSE HOLDERS

These retailers are authorized to possess and sell beer only for consumption on or off premises.

Note: Look carefully on the label for the word “beer” or the alcohol content which should be less than 4% alcohol by weight or 5.1% alcohol by volume.

BREW PUB LICENSE (BP)

Texas Alcoholic Beverage Chapter 74

SALES FOR BREWPUB LICENSE HOLDERS

May sell or offer without charge, malt liquor, ale or beer produced by the holder of the Brewpub License as allowed by the holder's primary permit or license. The primary permit or license must be:

- Wine and Beer Permit (BG);
- Mixed Beverage Permit (MB);
- Mixed Beverage Permit with Food and Beverage (RM); or
- Beer Retailer's On Premises License (BE) - beer only.

For **DELIVERIES** and/or **CONSUMPTION** refer to primary permit or license type.

AUTHORIZED ACTIVITIES FOR BREWPUB LICENSE HOLDERS

- Brewpubs may produce no more than 10,000 barrels of malt liquor, ale and beer annually for each licensed brewpub established, operated, or maintained by the license holder in Texas.
- Brewpubs that hold a Beer and Wine Permit (BG) and sell only malt beverages produced on the premises may sell up to 1,000 barrels of their product annually direct to Texas retailers or 2,500 barrels annually for all brewpubs operated by the same licensee if their product is the only product offered for sale at their licensed premises. They may sell their product to qualified persons outside the state.
- Brewpubs with a BG, MB, or RM may manufacturer, brew, bottle, can, package, and label malt liquor, ale and beer.
- Brewpubs with a BE may not manufacture, brew, bottle, can, package, label, sell or offer without charge malt liquor or ale.
- Brewpub permit holders may deliver to another location malt liquor, ale, or beer manufactured by them for purposes of submitting the malt liquor, ale or beer for an evaluation at an organized malt liquor, ale, or beer tasting competition or review and may dispense without charge the malt liquor, ale or beer manufactured by the holder to those attending the event.

WINE & BEER RETAILER'S PERMIT (BG)

Texas Alcoholic Beverage Code Chapter 25

SALES FOR WINE & BEER RETAILER'S PERMIT HOLDERS

These retailers may sell beer, ale, malt liquor, traditional port and sherry. They may also sell wine not to exceed 14% or 17% alcohol by volume. Retailers holding this permit may also sell traditional port or sherry for on-premise consumption only up to 24% alcohol by volume. See **Authorized Activities** in this section for an explanation of which amount refers to a retailer's situation.

Monday-Friday:	7 A.M. to midnight
Saturday:	7 A.M. to 1 A.M. (Sunday)
Sunday:	noon to midnight 10 A.M. to noon (if the alcoholic beverage is served with food to the customer)

If a Wine and Beer Retailer's Permit holder also holds a *Retail Dealer's Late Hours License*:

- sales hours are extended until 2 A.M. every night;
- because of city ordinances or county commissioner's court orders

in some areas of the state, a retailer’s sales hours may be extended between midnight and 2 A.M.; and

- with a late hours license, retailers may not sell **to go** after midnight, Sunday through Friday, and after 1 A.M. Sunday morning.

CONSUMPTION FOR WINE & BEER RETAILER’S PERMIT HOLDERS

The customers of a Wine and Beer Retailer’s Permit holder may consume these beverages from:

Monday-Friday:	7 A.M. to 12:15 A.M.
Saturday:	7 A.M. to 1:15 A.M. (Sunday)
Sunday:	noon to 12:15 A.M. 10 A.M. to noon (if the alcoholic beverage is served with food to the customer)

For all retailers, consumption is legal until 2:15 A.M. if the community has extended hours, with or without a late hours permit.

DELIVERIES FOR WINE & BEER RETAILER’S PERMIT HOLDERS

These retailers may accept deliveries of beer, ale, malt liquor and wine from beer distributors, liquor wholesalers, and wineries:

Monday-Friday:	5 A.M. to midnight (beer) 5 A.M. to 9 P.M. (wine, ale and malt liquor except Sunday and Christmas Day)
Saturday:	5 A.M. to 1 A.M. (beer only) 5 A.M. to 9 P.M. (wine, ale and malt liquor)
Sunday:	noon to midnight (beer only) 5 A.M. to midnight (beer, ale, malt liquor and wine not to exceed 17% alcohol by volume may be restocked and rotated.

AUTHORIZED ACTIVITIES FOR WINE & BEER RETAILER’S PERMIT HOLDERS

These retailers are authorized only to possess and sell beer, ale, malt liquor, traditional port, sherry (24%), and wine not to exceed 14% or 17% alcohol by volume.

- These retailers may sell beer, ale, malt liquor, and wine, not to exceed 14% or 17% alcohol by volume, **to go** or for on-premises consumption.
- If a Wine and Beer Retailer’s Permit holder sells for off-premises consumption, they need to ensure the product is not opened and consumed on the premises.
- These retailers may sell traditional port and sherry (up to 24% alcohol by volume) only for on-premises consumption.
- Wine, malt liquor, ale and traditional port and sherry may be purchased only from a wholesale dealer and wineries.
- The permit will show “*Wine 14%*” or “*Wine 17%*” to indicate the upper limit of alcohol content for wine sales.

If permit location is in a precinct, city or county:	Then retailers may:
that is wet for all types of alcoholic beverages (i.e., <i>distilled spirits, beer, wine</i>)	sell wine <i>not more than 17%</i> alcohol by volume.
where a local-option election was held after Aug. 31, 1999, and wine and beer were approved	sell wine <i>not more than 17%</i> alcohol by volume.
wet for beer and wine only and the election was held before Sept. 1, 1999	sell wine 14% or less by volume.

MIXED BEVERAGE PERMIT (MB) AND MIXED BEVERAGE PERMIT WITH FOOD AND BEVERAGE (RM)

Texas Alcoholic Beverage Code Chapter 28

SALES FOR HOLDERS OF MIXED BEVERAGE PERMIT AND MIXED BEVERAGE PERMIT WITH FOOD AND BEVERAGE

Holders of a Mixed Beverage Permit and a Mixed Beverage Permit with Food and Beverage may sell distilled spirits, beer, malt liquor, ale and wine for **on-premise consumption only**:

Monday-Friday:	7 A.M. to midnight
Saturday:	7 A.M. to 1 A.M. (Sunday)
Sunday:	noon to midnight 10 A.M. to noon (if the alcoholic beverage is served with food to the customer)

Note: If a Mixed Beverage Permit holder or Mixed Beverage Permit with Food and Beverage holder also holds a Mixed Beverage Late Hours Permit (LB), their sales hours are extended until 2 A.M. every night.

DELIVERIES FOR HOLDERS OF MIXED BEVERAGE PERMIT AND MIXED BEVERAGE PERMIT WITH FOOD AND BEVERAGE

These retailers may accept deliveries of alcoholic beverages from beer distributors, wine wholesalers, wineries, and holders of Local Distributor's Permit (LP):

Monday-Friday:	5 A.M. to midnight (beer from distributors) 5 A.M. to 9 P.M. (distilled spirits, wine, ale and malt liquor from wholesale dealers except Sunday, Christmas Day, and New Year's Day. If Christmas or New Year's Day falls on Sunday, then close the following Monday.)
Saturday:	Saturday: 5 A.M. to 1 A.M. (beer only) 5 A.M. to 9 P.M. (distilled spirits, wine, ale and malt liquor)
Sunday:	noon to midnight (beer from a beer distributor only)

CONSUMPTION FOR HOLDERS OF MIXED BEVERAGE PERMIT AND MIXED BEVERAGE PERMIT WITH FOOD AND BEVERAGE

For **on-premises only**, the customers of a Mixed Beverage Permit holder and Mixed Beverage Permit with Food and Beverage holder may drink mixed beverages, wine, beer, ale, and malt liquor from:

Monday-Friday:	7 A.M. to 12:15 A.M.
Saturday:	7 A.M. to 1:15 A.M. (Sunday)
Sunday:	noon to 12:15 A.M. 10 A.M. to noon (if served with food to the customer)

For all retailers, consumption is legal until 2:15 A.M. if the community has extended hours, with or without a late hours permit.

AUTHORIZED ACTIVITIES FOR HOLDERS OF MIXED BEVERAGE PERMIT AND MIXED BEVERAGE PERMIT WITH FOOD AND BEVERAGE

- These retailers are authorized only to possess and sell for on-premises consumption the following if purchased from a beer distributor, liquor wholesaler or holder of a Local Distributor’s Permit (LP):
 - distilled spirits;
 - beer;
 - malt liquor;
 - ale; and
 - wine.
- Their customers may not:
 - bring alcoholic beverages on the premises; or
 - take alcoholic beverages off the premises unless
 - » it is the remainder of an opened bottle of wine served with a meal;
 - » the retailer holds a Brewpub License and sold their own product **to go**;
 - » the permittee is a hotel and the beverage is in an open container and appears to be possessed for percent consumption.

IDENTIFICATION STAMPS FOR HOLDERS OF MIXED BEVERAGE PERMIT AND MIXED BEVERAGE PERMIT WITH FOOD AND BEVERAGE

- These retailers may *not* have distilled spirits on the premises in any container that does not have an identification stamp affixed by a local distributor’s permittee.
- Identification stamps on distilled spirits bottles must be defaced or mutilated immediately after emptying.
- These retailers may **not** possess a bottle with a stamp that has been mutilated, marked or damaged substantially. *Mutilate* means to scratch, cut, tear, or abrade in a manner that inflicts obvious damage to the stamp but does not totally remove or obliterate the stamp.
- Marking a stamp with ink, dye, or other material is not authorized as a method for invalidating the stamp.
- If the bottles are locked into a dispensing machine that prevents refilling of the bottle, the stamp is **not** required to be defaced until the machine has been unlocked and the bottle removed.
- These permittees commit a separate offense for each empty bottle found in which the stamp has not been defaced.

Mixed beverage, mixed beverage with food and beverage and private club permittees are prohibited from possessing identification stamps unless they are affixed to a bottle or container.

CATERER'S PERMIT (CB)

Texas Alcoholic Beverage Code Chapter 31

A Caterer's Permit (CB):

- is issued to a mixed beverage and mixed beverage with food and beverage permittee;
- allows permittee to cater functions away from his or her basic premises and sell or serve mixed beverages if the location being catered is in an area wet for mixed beverages;
- is not valid if the Mixed Beverage Permit (MB) or Mixed Beverage Permit with Food and Beverage (RM) is not valid;
- is **not** authorized for repetitive use at a single location in lieu of a permanent license or permit; and
- may not be used for a location with a suspended license or permit.

Caterers must:

- purchase all alcoholic beverages from authorized sources in the county of the Mixed Beverage Permit(MB) or Mixed Beverage Permit with Food and Beverage (RM);
- return all surplus alcoholic beverages to the mixed beverage premises after the event; and
- hold a Beverage Cartage Permit (PE) to transport liquor legally.

Alcoholic beverages must be transported to the catered location by:

- Mixed Beverage or Mixed Beverage with Food and Beverage permittee holding a Beverage Cartage Permit; or
- Wholesaler's, Local Distributor's or Beer Distributor's Permit holders.

EVENTS

Before catering an event, the permittee must submit a catering request to the local TABC district office. The request includes:

- Caterer's Permit number;
- trade name of the Mixed Beverage Permit or Mixed Beverage Permit with Food and Beverage associated with the Caterer's Permit;
- event location;
- dates and times;
- brief description of the catered event;
- contact information; and
- notifications and approvals by local authorities, if required, must be attached.

The *Texas Alcoholic Beverage Commission Administrative Rule §33.12(h)* states that the TABC administrator or his designated representative shall refuse to issue a catering certificate or repetitive catering certificates to anyone if there is

reason to believe the issuance of a certificate is detrimental to the public.

PENDING APPLICATIONS

Caterer’s Permits may be used to cater at a location with a pending application to sell alcoholic beverages, under certain conditions.

The pending application:

- must be for an on-premises permit;
- may not be under any type of protest; and
- must be completed, fees and surcharges paid, and determined all qualifications have been met.

Under these conditions, a Caterer’s Permit is:

- limited to 10 consecutive days, including the first day of use; and
- void when original license or permit is issued, regardless of the number of days it has been used.

Upon issuance of the original license/permit, all alcohol must be removed and transported to the MB location.

PRIVATE CLUB PERMITS (N, NB, NE)

Texas Alcoholic Beverage Code Chapter 32

Note: Private Club Permit holders must provide regular food service to their members and guests.

HOURS OF SERVICE FOR PRIVATE CLUB PERMIT HOLDERS

Private Club Permit holders may serve distilled spirits, beer, malt liquor, ale and wine to club members or guests:

Monday-Friday:	7 A.M. to midnight
Saturday:	7 A.M. to 1 A.M. (Sunday)
Sunday:	noon to midnight 10 A.M. to noon (if the alcoholic beverage is served with food to the customer)

If a Private Club Permit holder also holds a Private Club Late Hours Permit (NL), service hours are extended until 2 A.M. every night.

CONSUMPTION FOR PRIVATE CLUB PERMIT HOLDERS

Members may drink alcoholic beverages on the premises:

Monday-Friday:	7 A.M. to 12:15 A.M.
Saturday:	7 A.M. to 1:15 A.M. (Sunday)
Sunday:	noon to 12:15 A.M. 10 A.M. to noon (if served with food to the member)

For all retailers, consumption is legal until 2:15 A.M. if the community has extended hours, with or without a late hours permit.

DELIVERIES FOR PRIVATE CLUB PERMIT HOLDERS

Dry area: May not accept deliveries. These retailers must have a Beverage Cartage Permit (PE) and must pick up purchases from holders of Local Distributor's Permits (LP) and beer distributors.

Wet area: These retailers may accept deliveries of alcoholic beverages from beer distributors and holders of Local Distributor's Permit:

Monday-Friday:	5 A.M. to midnight (beer from beer distributors) 5 A.M. to 9 P.M. (distilled spirits, wine, beer, ale and malt liquor from LP/package store except Sunday, Thanksgiving, Christmas Day, New Year's Day or the following Monday if Christmas Day or New Year's Day falls on Sunday.)
Saturday:	5 A.M. to 1 A.M. (beer distributors only) 5 A.M. to 9 P.M. (distilled spirits, wine, beer, ale and malt liquor from LP/package store except Sunday, Thanksgiving, Christmas Day, New Year's Day. If Christmas or New Year's Day falls on Sunday, then close the following Monday.)
Sunday:	noon to midnight (beer distributors only)

AUTHORIZED ACTIVITIES FOR PRIVATE CLUB PERMIT HOLDERS

- Private Club Registration Permit (N) holders are authorized only to possess and serve distilled spirits, beer, malt liquor, ale and wine for

on-premises consumption by their members.

- Private club wine and beer permittees are restricted to serving wine, beer and ale and malt liquor for on-premises consumption by their members.

IDENTIFICATION STAMPS FOR PRIVATE CLUB PERMIT HOLDERS

- These retailers may **not** have on the premises distilled spirits in any container that does not have an identification stamp affixed by a local distributor's permittee.
- Identification stamps on distilled spirits bottles must be defaced or mutilated immediately after emptying.
- These retailers may **not** possess a bottle with a stamp that has been mutilated, marked or damaged substantially. *Mutilate* means to scratch, cut, tear, or abrade in a manner that inflicts obvious damage to the stamp but does not totally remove or obliterate the stamp.
- The marking of a stamp with ink, dye, or other material is not authorized to invalidate the stamp.
- If bottles are locked into a dispensing machine that prevents bottle refilling, the stamp does not need to be defaced until the machine has been unlocked and the bottle removed.
- The Private Club Permit holder commits a separate offense for each empty bottle found in which the stamp has not been defaced.

Mixed beverage, mixed beverage with food and beverage and private club permittees are prohibited from possessing identification stamps unless they are affixed to a bottle or container.

GUESTS

Guests are limited to those brought by a member or temporary member onto the premises or the member has made prior arrangements with management.

A member, but not a temporary member, can make prior arrangements with the club so the member's guest may be served without the member being present. **Note:** No guest shall be permitted to pay by cash or otherwise for any service of alcoholic beverages.

A hotel manager who is a member of a private club located within the hotel may issue a guest card to a hotel patron staying overnight or longer. Guests may be served alcoholic beverages in the club or holder's hotel room, but guests may **not** pay by cash or otherwise at the time of service in the club.

Alcoholic beverage charges must be billed to the hotel manager's account at the hotel and shall be collected by the hotel manager with any other hotel

charges including those for hotel room use when the patron leaves the hotel.

MEMBERSHIP BOOK

A well-bound membership book must:

- be kept on the private club premises; and
- show
 - full name
 - address
 - date applied
 - initial membership number issued in sequence
 - date member was removed from membership.

Note: If a membership card is issued, the same information in the bound book must be on the membership card.

TEMPORARY MEMBERSHIPS

Texas Alcoholic Beverage Code §32.09

Temporary memberships:

- are sold to individuals who do not want to be a regular member; and
- are prepaid and must be ordered from TABC in a minimum quantity of 50.

Temporary members:

- may have up to three guests;
- may enjoy the club's services and privileges for a period of not more than three days;
- shall pay the club a fee of \$3.00;
- must be on the premises; and
- must order and pay for alcoholic beverages for any guests.

Note: Remember the Three 3s—3 days, \$3, 3 guests!

COMPUTERIZED MEMBERSHIP ROSTER

Upon TABC approval, private clubs may keep membership records on a computerized membership roster.

Clubs wanting to use a computerized record-keeping system must submit *Form C-310, Request for Approval of Machine Bookkeeping System*, to the local TABC Audit Unit for approval.

A computerized membership roster is *not* a private club membership card. Being a member of one private club that uses this method gives that person

absolutely *no* membership privileges in *any other* private club. The card simply provides an electronic way to check if that person is a member of a private club.

To determine if a patron is a member of a private club using a computerized system, club employees should:

- look at a current membership roster;
- see if the patron has a card and, if so, enter the patron's card number into a terminal or computer; and
- confirm the patron is a club member at that location and, if so, the patron may be served.

If the patron is *not a current member* of that particular private club and wants to be served:

- prepare preliminary application; or
- issue a temporary membership card.

If the person is *not a club member* but is enrolled in the system database (sometimes used by private club permittees):

- print a preliminary membership application with the person's address; and
- have the preliminary member sign the application.

If a person is *not enrolled in the computer system*:

- manually prepare a preliminary membership application and require the prospective member to sign the application form.

If the computer system *incorrectly verifies* that a patron is a current club member and the club serves the patron:

- the club is violating the law for serving alcoholic beverages to a non-member.

Clubs must:

- keep rosters current; and
- make records for private clubs available for TABC inspection upon request.

Note: If used by a private club, the computer database company should send:

- rosters to the club regularly (at least once a month correct to the last day of the preceding month); and
- minutes and applications frequently (usually daily).

LOCKER SYSTEM

Texas Alcoholic Beverage Code §32.05

In this locker storage system:

- the club rents lockers to members where alcoholic beverages may be stored for consumption by members and guests; and
- members must pre-purchase and own all alcoholic beverages.

POOL SYSTEM

Texas Alcoholic Beverage Code §32.06

In this pool storage system:

- all members participate equally in the original purchase of alcoholic beverages; and
- the replacement of all alcoholic beverages shall be paid either by:
 - money assessed equally from each member and collected in advance; **or**
 - the establishment of an alcoholic beverage replacement account in which a designated percentage of each charge for the service of alcoholic beverage is deposited into the account.

For more information on accounting and deposit requirements, refer to the *Texas Alcoholic Beverage Code §32.06*.

For information on record-keeping requirements, contact the local TABC office and request *Form C-304, Requirement for Records Private Club*. Form C-304 may also be found on the TABC website at <http://www.tabc.texas.gov/forms/compliance.asp>.

PRIVATE CLUB REGISTRATION PERMIT (N)

Texas Alcoholic Beverage Code §32.01(a)

Private Club Registration Permit (N) allows for:

- alcoholic beverages belonging to club members to be stored, possessed, and mixed on the club premises and served (not sold) for on-premises consumption;
- a set number of members for a predetermined fee or unlimited membership based on a set fee; and
- alcoholic beverages to be served by the drink or in sealed, unsealed, or broken containers of any legal size only to club members and their families and guests.

A person who orders wine with food and has a portion of the open container remaining may remove the open wine container from the premises.

Note: No one may *take* any other type of alcoholic beverage from the premises where served or *bring* any uninvoiced alcoholic beverages onto the premises. [*Texas Alcoholic Beverage Code §32.15*]

PRIVATE CLUB BEER AND WINE (NB)

Texas Alcoholic Beverage Code §32.01(b)

Private Club Beer and Wine Permit authorizes the same activities except the club may only serve beer, wine, and malt liquor.

PRIVATE CLUB EXEMPT (NE) - FRATERNAL/VETERANS ORGANIZATION

Texas Alcoholic Beverage Code §32.11

This permit authorizes alcoholic beverages belonging to club members to be stored, possessed, and mixed on club premises and served only for on-premises consumption.

Private club exempt permittees:

- do *not* have to pay a permit fee, provide regular food service, or have a locker system or pool system;
- may have guests pay in cash for alcoholic beverages; and
- use any club funds owned jointly, including revenue from the service of alcoholic beverages, to replenish their joint stock of alcoholic beverages.

FRATERNAL ORGANIZATIONS

The *Texas Alcoholic Beverage Code §32.11* defines a *Fraternal Organization* as:

- any chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization or Texas state fraternal organization that as the owner, lessee or occupant has operated an establishment for fraternal purposes for at least one year.

American national fraternal organizations must:

- operate in no fewer than 31 states having at least 300 local units in those 31 states; **and**
- have been in active, continuous existence for at least 20 years.

Texas state fraternal organizations must:

- actively operate in at least two state counties having at least 10 local units in those two counties; **and**
- have been in active, continuous existence for at least five years.

VETERANS ORGANIZATIONS

Composed of current or former members of the U.S. armed forces organized for patriotic and public service purposes including:

- American Legion
- Jewish War Veterans

- Veterans of Foreign Wars
- American GI Forum
- Disabled American Veterans
- Catholic War Veterans
- any veterans organization chartered by the U.S. Congress (See http://www1.va.gov/vso/rpt_chartered.cfm for more information.)

The permit fee imposed by the *Texas Alcoholic Beverage Code §32.02* and provisions of *§§32.03 and 32.10* requiring regular food service and prohibiting guests from paying in cash do not apply to a private club established by a fraternal or veterans organization. The private club is also exempt from *§§32.05 and 32.06* and the members of the club may use any club funds owned by them jointly, including revenue from the service of alcoholic beverages, to replenish their joint stock of alcoholic beverages. A fraternal or veterans organization that holds a permit under this chapter and the private club established under the permit are considered separate entities for the purposes of determining compliance with and enforcing this code. The fraternal or veterans organization shall establish a membership committee for the permitted entity for the purposes of *§§32.03(c) and (d)*. Membership in the private club is governed by the code. Membership in the fraternal or veterans organization is not subject to the requirements of this code.

SECTION III: MISCELLANEOUS LICENSES & PERMITS

FOOD AND BEVERAGE CERTIFICATE (FB)

Texas Alcoholic Beverage Commission Administrative Rule §33.5

USE

A holder of a retail dealer’s on-premise license (includes BE, BG) may be issued a food and beverage certificate by the commission if food service is the primary business being operated on the premises by the permittee. A holder of a Mixed Beverage Permit (MB), Mixed Beverage Permit with Food and Beverage (RM), or a Private Club Registration Permit (N) may be issued a food and beverage certificate by the commission if they maintain food service. In this case, the food service does not have to be the primary business being operated on the premises by the permittee. For a MB with a FB, RM or N with a FB, alcohol sales cannot exceed 50% of total sales.

MISUSE

A certificate may be canceled at any time if the commission finds that the holder of the certificate is not operating primarily as a food service establishment. It shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent

of the gross receipts of the premises. The commission may impose a fine on the holder of a food and beverage certificate not operating as a food service establishment and may, upon finding that the permittee knowingly operated under a food and beverage certificate while not complying with the Texas Alcoholic Beverage Code, cancel the licensee's retail dealer's on-premise license.

LICENSEE RESPONSIBILITIES

Definitions:

- Food service - cooking or assembling food on premise primarily for on-premise consumption. Commercially pre-packaged items which require no cooking or assembly and which may be purchased off-premise do not constitute food service under this section;
- Entree - main dish of a meal;
- Multiple entrees - no fewer than eight different entrees per meal period must be available to customers; and
- Food service facilities - a portion of the licensed premises where food is stored and prepared primarily for on-premise consumption.

An applicant must meet the following conditions to qualify for a food and beverage certificate:

- with respect to retail dealer's on-premise licenses and wine and beer retailer's permits, the applicant's primary business on the premises must be food service and with respect to mixed beverage permits and private club registration permits, the applicant must maintain food service on the premise;
- submit a sworn statement attesting that food service is maintained on the premises and for holders of wine and beer retailer's permits and retail dealer's on-premise licenses, food service is the primary business on the premises;
- multiple entrees must be available to customers;
- food service facilities must be maintained on the premises;
- the hours of operation for sale and service of food and alcoholic beverages must be the same except that food may be sold or served before or after the legal hours for sale of alcoholic beverages; and
- if the applicant is a hotel that maintains separate area restaurants, lounges or bars, food service facilities must exist for each of the licensed premises.

The applicant shall furnish the following, as well as any other information as may be deemed reasonably necessary by the commission:

- the menu or, if no menu is available, a listing of the food and beverage items;

- hours of operation of food service and hours of operation for sale or service of alcoholic beverages;
- sales data or, if not available, projection of sales. The projection or data should include sufficient breakdown of revenues of food, alcoholic beverages and other major categories at the location;
- listing of equipment used in preparation and service of food versus the equipment used in preparation and service of alcoholic beverages; and
- copies of floor plans of the licensed premises indicating areas devoted primarily to the preparation and service of food and those devoted primarily to the preparation and service of alcoholic beverages.

Applicants for renewal of food and beverage certificates whose primary permits are a wine and beer retailer's permit or a retail dealer's on-premise license shall submit sales information and other information or documents required by the commission to indicate the business at the licensed location is a food service establishment with food service facilities for the preparation and service of multiple entrees. In verifying that the certificate holder is maintaining food service as the primary business on the premises, the commission may examine all books, papers, records, documents, supplies and equipment of the certificate holder.

CERTIFICATES

There is an annual certificate fee for each location owned by the licensee or permittee.

The certificate shall be posted in a conspicuous place adjacent to the primary permit or license at all times on the licensed premises.

The original certificate will expire upon expiration of the primary permit or license. No prorated certificate fees will be given and no refunds made for issuance of the food and beverage certificate for less than one year.

REPETITIVE CATERER'S CERTIFICATE

Texas Alcoholic Beverage Commission Administrative Rule §33.12

USE

A Repetitive Caterer's Certificate is used:

- by a caterer's permittee who frequently caters functions at the same location; and
- as an extension of the permittee's Mixed Beverage Permit or Mixed Beverage Permit with Food and Beverage.

MISUSE

Note: The TABC may deny the use of a Caterer’s Certificate or a Repetitive Catering Certificate if it is determined that its use would be detrimental to the public or acts as a means to circumvent the intent of the statute in its licensing requirements.

PERMITTEE RESPONSIBILITIES

Any act prohibited on the premises of a Mixed Beverage Permit or Mixed Beverage Permit with Food and Beverage is prohibited on the premises of the catered event.

Accordingly, violations on the temporary location may cause suspension or cancellation of the permittee’s Mixed Beverage Permit or Mixed Beverage Permit with Food and Beverage.

The permittee must:

- maintain control over the temporary location as with the basic location;
- not allow any other person or organization to use the Caterer’s Permit for a set fee or in any other way;
- retain all profits and losses from the sales or service of alcohol; and
- collect tax for all beverages sold at a catered function as if sold on the premises of the mixed beverage permittee or mixed beverage with food and beverage permittee.

CERTIFICATES

Repetitive Catering Certificates:

- are:
 - sequentially numbered
 - completed by the permittee before the event
 - posted at the event site in a conspicuous place
- show:
 - location
 - Caterer’s Permit number
 - trade name of mixed beverage permittee or mixed beverage with food and beverage permittee associated with Caterer’s Permit
 - date and time of the event
 - description of the event

Note: Holders of Repetitive Catering Certificates shall deliver or mail copies of the Repetitive Catering Certificates to the TABC district office in which a catered event occurred within seven calendar days of the event which is catered.

TEMPORARY LICENSES AND PERMITS

USE

Temporary licenses or permits are:

- an extension of the basic permit;
- issued in areas wet for the type of alcohol to be sold;
- for picnics, celebrations, and similar events;
- issued for locations away from a retailer's premises; and
- issued to entities with licenses or permits authorizing:
 - on-premises alcohol sales and consumption
 - sales of same beverages as those under the basic permit.

For example:

- A retailer's on-premises licensee may be issued a *Temporary License (BH)* for the sale of beer.
- A mixed beverage permittee, mixed beverage with food and beverage permittee or wine and beer retailer's permittee may be issued a *Temporary Wine and Beer Retailer's Permit (BH/HP)* for the sale of wine and beer.
- A mixed beverage permittee or mixed beverage with food and beverage permittee may be issued a *Daily Temporary Mixed Beverage Permit (TB)*.
- A private club registration permittee may be issued a *Daily Temporary Private Club Permit (TN)*.

VIOLATIONS

On-premises violations may result in the same penalties as the basic license or permit as if they had occurred on the retailer's main premises.

RETAILER RESPONSIBILITIES

Retailers issued temporaries must maintain control over:

- temporary location;
- use of license or permit; and
- sale of alcoholic beverages.

These retailers **may not** allow another entity or organization to use their temporary license or permit.

RESTRICTIONS & REQUIREMENTS

TEMPORARY LICENSE (BH)

Texas Alcoholic Beverage Code Chapter 72

- Allows beer sales to the ultimate consumer for on-premises or off-premises consumption;
- Fees plus surcharges apply;
- Is valid for four days; and
- Is issued only to current retail permit holders.

TEMPORARY WINE AND BEER RETAILER'S PERMIT (BH/HP)

Texas Alcoholic Beverage Code Chapter 27 Subchapter A

- Allows sales of beer, ale, wine and malt liquor (not to exceed 14% or 17% alcohol by volume depending on the local option status) to the ultimate consumer for on-premises or off-premises consumption;
- Is issued to nonprofit historic preservation organizations existing for 30 years or more;
- Fees plus surcharges apply; and
- Is valid for three days.

SPECIAL THREE-DAY WINE AND BEER PERMIT (SB)

Texas Alcoholic Beverage Code Chapter 27 Subchapter B

- Is issued to nonprofit charitable, civic or religious organizations;
- Allows sales of beer, ale, wine and malt liquor (not to exceed 14% or 17% alcohol by volume depending on the local option status) to the ultimate consumer only for on-premises consumption;
- Fees plus surcharges apply; and
- Is valid for three days.

DAILY TEMPORARY MIXED BEVERAGE PERMIT (TB)

Texas Alcoholic Beverage Code Chapter 30

- Issued to:
 - holders of Mixed Beverage Permit and Mixed Beverage Permit with Food and Beverage
 - organizations for specific charitable or civic purposes
 - a political party or association supporting a candidate for public office or a ballot measure
 - religious organizations, or a fraternal organization in existence for more than five years and has a regular membership;
- Limited to 10 permits per year for organizations other than a mixed beverage permittee and mixed beverage with food and beverage

- permittee;
- Allows sales for all types of beverages to the ultimate consumer for on-premises consumption and must be in an area wet for on-premises consumption of all alcoholic beverages; and
- Fees plus surcharges apply.

DAILY TEMPORARY PRIVATE CLUB PERMIT (TN)

Texas Alcoholic Beverage Code Chapter 33

- Issued to holders of Private Club Permits where events are sponsored by:
 - organizations formed for specific charitable or civic purposes
 - political parties or associations supporting a candidate for public office or a ballot measure
 - religious organizations
 - fraternal organizations in existence for more than five years and with a regular membership;
- Serves all types of beverages to club members and their guests for on-premises consumption only; and
- Fees plus surcharges apply.

Note: The TABC cannot issue more than two Daily Temporary Private Club Permits to the same sponsoring party, association or organization during a 12-month period.

TEMPORARY CHARITABLE AUCTION PERMIT (CA)

Texas Alcoholic Beverage Code Chapter 53

- Allows for auctions of alcoholic beverages donated (beer may be purchased or donated) to charitable organizations for off-premises consumption;
- Issued to tax exempt organizations designated Section 501(c)(3) by the IRS;
- Fees plus surcharges apply;
- Is valid for no more than five days; and
- Is valid only in areas wet for the sale of the type of alcohol being auctioned.

Permittee:

- may not pay a commission or allowance to another to
 - conduct an auction or
 - arrange the donation of the alcohol being auctioned
- must provide to TABC local district office auction's
 - date
 - time

- location
- inventory of alcohol to be auctioned

Auction:

- must occur in an area wet for the type of alcoholic beverage being auctioned
- may occur on the premises of another licensee or permittee *if*
 - auction products are segregated from other alcoholic beverage inventory
 - auctioned products are immediately removed from the premises after the auction

SECTION IV: RENEWALS

One of the features of TABC: Online allows holders of specific license and permit types to renew their licenses and permits online. This feature eliminates the hand-delivery, mail process, and check-writing, as the system is quick and accepts credit cards, debit cards, and electronic checks. Over time, TABC will systematically bring their more complex licenses and permits online.

To use the online system go to <http://www.tabc.texas.gov/PublicInquiry/OnlineServices.aspx>. License and permit holders must register in the system, which verifies the individual's identity and authorization. That person can then add authorized representatives, such as an employee or a Licensing Service, who can renew licenses and permits on the owner's behalf.

PERMITS OR LICENSES

Permits or licenses:

- generally expire two years after the date of the license or permit (*Texas Alcoholic Beverage Code §§11.09 and 61.03*); and
- have the expiration date printed on the front.

For example, if the issue date of a license is July 7, 2013, the license expires July 6, 2015.

The TABC, at its discretion, may issue a permit or license with an expiration of one year. License and permit fees are not pro-rated and are non-refundable.

SECONDARY PERMITS

All secondary permits expire when the primary permit or license expires.

CHANGING EXPIRATION DATES

Changing expiration dates:

- fees apply;
- allows licensees/permittees to coordinate expiration dates if they hold more than one permit or license; and
- allows the TABC to authorize a license or permit for less than one year.

Note: There is no refund or abatement of the license or permit fee for the unused portion of the year. A permit period may be changed to a shorter period but not a longer period.

GRACE PERIOD

(Texas Alcoholic Beverage Code §6.04 AND 16 TAC §33.6)

PURPOSE

The grace period:

- allows a license or permit to be renewed up to 30 days after the expiration date;
- allows the licensee or permittee to file a renewal instead of an original application during those 30 days;
- does not allow a licensee or permittee to operate during those 30 days unless all fees and forms are filed; and
- requires payment of the renewal application, bond, state fee, surcharge plus \$100 fee per expired license or permit held on or before the 30th day.

RENEWAL FORM

OBTAINING FORMS

As a courtesy, TABC mails a preprinted renewal form to the licensee or permittee approximately 30 days before the expiration date of the permit or license.

If a retailer does not receive a renewal form, he or she may find blank forms at <http://www.tabc.texas.gov/forms/licensing.asp>.

PERMITTEE RESPONSIBILITIES

Permittees must renew their permit before it expires whether they received a preprinted renewal form or not.

Note: Failure to receive a preprinted renewal does not exempt retailers from

the requirement to renew their permit before it expires.

CHANGES

Permittees should:

- include correct mailing addresses, telephone numbers, and email addresses on the renewal form; and
- submit renewals with changes of addresses, officers and stockholders to their local TABC office.

FEE PAYMENTS

Local city or county fees vary from area to area. Check with the city or county before paying such fees.

FILING RENEWALS

All renewal applications must be accompanied by the proper fees, surcharges and bonds if required.

Mail application renewals either address below:

TABC Licensing Division
Austin Headquarters
P.O. Box 13127
Austin, TX 78711

TABC Licensing Division
Austin Headquarters
5806 Mesa Drive
Austin, TX 78731

Permit renewals may also be delivered to the local TABC office.

CONTINUING TO OPERATE

CONDITIONS

Licenses or permittees may continue to operate if:

- application has not been denied;
- required renewal forms were submitted to TABC before expiration; and
- state fees, surcharges and local fees were paid before expiration.

POSTING RENEWALS

To show the license or permit is current the permit or license holder must post proof of payment next to the expired license or permit so it is visible for inspection. The local government may have additional requirements in this area.

VOLUNTARY SUSPENSION OR VOLUNTARY CANCELLATION

VOLUNTARY CANCELLATION

To voluntarily cancel a license or permit:

- the licensee or permittee must sign his or her name to the back of the license or permit and indicate the words “voluntarily canceling.”

Note: If received *blank* on the back, the Licensing Division will assume the licensee or permittee is placing the license or permit *in suspense*.

EFFECTIVE DATE

The effective date of voluntary suspension or voluntary cancellation is:

- when the license or permit is received in Austin Headquarters Licensing Division *unless* the licensee or permittee specifically requests an effective date on the back of the license.

PART TWO: TRANSPORTATION

SECTION I: ON-PREMISES RETAILERS

- Certain on-premises retailers need permits to transport alcoholic beverages.
- Holders of Mixed Beverage (MB), Mixed Beverage with Food and Beverage (RM), Private Club (N), and Private Club Beer and Wine (NB) permits must have a Beverage Cartage Permit (PE) to transport alcoholic beverages.
- Wine and beer retailers and beer retailer permittees may transport beer without a permit but not ale or wine.
- No retailer may transport alcoholic beverages between two stores under the same ownership.

BEVERAGE CARTAGE PERMIT (PE)

Texas Alcoholic Beverage Code Chapter 44

A Beverage Cartage Permit:

- is needed to transport alcoholic beverages by the holders of a Mixed Beverage Permit, Mixed Beverage Restaurant with Food and Beverage, or Private Club Registration Permit; and
- allows those retailers to pick up or transfer alcoholic beverages from place of purchase to licensed premises.

MIXED BEVERAGE (MB)

Alcoholic beverages:

- may be acquired by the transporter only on the written order of the mixed beverage permittee; and
- must be with a written statement/invoice furnished and signed by the local distributor showing
 - name and address of seller and purchaser
 - origin and destination of the shipment
 - permit number and other required information.

Note: The person responsible for the alcoholic beverages during transportation must show the written statement to TABC representatives or other law enforcement personnel on demand.

PRIVATE CLUB PERMIT (N, NB, NE)

A Private Club Permit holder may transport alcoholic beverages to club premises from the place of purchase if that club holds a Beverage Cartage Permit.

A private club may allow only an employee to transport alcoholic beverages to the club. The transporter:

- may acquire alcoholic beverages only on the written order of the club officer or manager holding the permit; and
- must have with the alcoholic beverages a written statement/invoice signed by the local distributor showing
 - name and address of seller and purchaser
 - origin and destination of shipment
 - permit numbers
 - quantity, brand and class of alcoholic beverages
 - total price of brand
 - any other required information.

Note: The person responsible for the alcoholic beverages during transportation must show the written statement to TABC representatives or other law enforcement personnel on demand.

SECTION II: OFF-PREMISES RETAILERS

LOCAL CARTAGE PERMIT (E)

Purpose

A Local Cartage Permit (E) allows for transportation of alcoholic beverages:

- by the holders of Package Store (P), Wine-Only Package Store (Q) and Local Distributor's (LP) Permits; and
- between two stores under the same ownership for Package Stores (P) and Wine-Only Package Stores (Q).

Holders of:

- Beer Retail Dealer's Off-Premise License (BF) and a Wine and Beer Retailer's Off-Premise Permit (BQ) cannot obtain a Cartage Permit but may only transport beer; and
- Package Store Permit and Wine-Only Package Store Permit can obtain a Local Cartage Permit.

Transportation

Only the holder of a Local Cartage Permit or common Carrier's Permit may transport liquor:

- in the most direct route from the shipping store to the receiving store
but
- not to a location outside the county where the shipment originated.

Note: It is unlawful for a Local Cartage Permit holder to transfer liquor to any address other than that of the receiving store shown on the invoice.

PACKAGE STORE (P)

The owner of more than one package store who is also the holder of a Local Cartage Permit may:

- transfer alcoholic beverages between any of his or her stores covered by the Package Store Permits in the same county.
- deliver alcoholic beverages to a retailer in the same county (if the package store also holds a local distributor permit).
- deliver alcoholic beverages direct to a customer in the same county, in the same city, or within two miles of the city limits in response to a bona fide order placed by phone, fax, mail, e-mail or internet.

A package store permit holder may also use the holder of a Carrier Permit to ship wine to a customer in the same county, the same city, or within two miles of the city limits, in response to a bona fide order placed in person or by phone,

fax, mail, e-mail or internet.

WINE ONLY PACKAGE STORE (Q)

The owner of more than one wine only package store who is also the holder of a Local Cartage Permit and who has designated one of his or her licensed premises as a place of storage may:

- transfer alcoholic beverages from the designated storage location to any of his or her stores covered by a Wine Package Store Permit in the same county; and
- transfer alcoholic beverages from any of his or her stores covered by a Wine Package Store Permit in the same county to the designated storage location.

A wine only package store who is also the holder of a Local Cartage Permit may deliver alcoholic beverages direct to a customer in the same county, in the same city, or within two miles of the city limits, in response to a bona fide order placed by phone, fax, mail, e-mail or internet.

A wine only package store permit holder may also use the holder of a Carrier Permit to ship wine to a customer in the same county, the same city, or within two miles of the city limits in response to a bona fide order placed in person or by phone, fax, mail, e-mail or internet.

OFF-PREMISES BEER TRANSPORTATION

No license or permit is required.

Licenses (BE, BG, BF, BQ):

- may deliver beer to consumers only where beer sales are legal, only in the county where the licensee's premises are located; but
- only in response to a bona fide order placed in person or by phone, fax, mail, e-mail or internet.

The holder of a brewpub license who is authorized to sell directly to a retailer may deliver beer (not ale) that was manufactured on the premises to the retailer.

LIQUOR PERMANENT TRANSFER RECORDS

Permittees are required to make and keep a permanent record of the liquor transfer including:

- date;
- store where the liquor was transferred; and
- manner in which the liquor was transported.

SECTION III: DRY AREAS

Alcoholic beverages may be transported in a dry area by a retailer:

- with the proper permits;
- from a location where it is legal to purchase to a location where it is legal to serve; and
- with a written statement (invoice) showing:
 - where and from whom the alcoholic beverages were purchased
 - who purchased the alcoholic beverages
 - destination of alcoholic beverages
 - permit number.

PART THREE: PURCHASES & SALES

SECTION I: PURCHASES

BEER PURCHASES

RETAILERS

Beer retailers:

- may purchase beer from an authorized beer distributor, manufacturer or brewpub; and
- may **not** purchase beer from another retailer (e.g. at discount wholesale club or a grocery store).

Mixed beverage, mixed beverage restaurant with food and beverage and private club registration permittees may purchase beer from:

- a local distributor's permittee (a package store that holds an LP permit);
- the holder of a distributor's license; and
- an authorized manufacturer or brewpub.

Damaged beer may be replaced only at the time of delivery as long as the damage is not caused by the retailer. Contact the local TABC office about disposing of beer damaged from natural disasters, fires, or other catastrophes.

CASH LAW

Beer, ale and malt liquor purchases must be paid in cash (no credit) on or before delivery. Cash laws that apply to a package store apply to a local distributor's permittee and their sales to mixed beverage, mixed beverage with food and beverage and private club permittees.

Licenses/permits can be suspended if:

- retailers or any of their employees pay by a check dishonored for any reason (i.e., insufficient funds, no signature, or unauthorized signature).

If the returned check was the result of a bank error:

- get and complete a form from the local TABC Audit Unit; and
- have bank officials notarize the form stating bank error.

Distributors and wholesalers are required to report to the TABC:

- any retailers, mixed beverage permittees, mixed beverage with food and beverage permittees and private club permittees who do not pay cash for beer, ale or malt liquor.

LIQUOR PURCHASES

Distilled spirits and wine may be purchased only from a wholesaler with the following exceptions.

Mixed beverage permittees and mixed beverage with food and beverage permittees:

- must purchase distilled spirits from a local distributor's permittee (a package store that holds an LP permit) in the same county; and
- may purchase wine, ale and malt liquor from any authorized seller.

Private club registration permittees must purchase distilled spirits and wine only from a local distributor's permittee (a package store that holds an LP permit).

CREDIT LAW

Payment of distilled spirits and wine purchases made:

- from the 1st through 15th day of a month is due on or before the 25th day of that month; and
- from the 16th through the last day of a month is due on or before the 10th day of the following month.

An account is not delinquent if the payment is received by the wholesaler no later than the fourth business day after the date payment is due.

Local distributor's permittees and other wholesalers must report to the TABC permittees who do not pay for distilled spirits and wine as required by law.

DELINQUENT PERMITTEE LIST

TABC publishes a delinquent list of permittees who fail to pay for alcoholic beverages as required by the *Texas Alcoholic Beverage Code*. This list is published on the TABC website at http://www.tabc.texas.gov/credit_law/complete_delinquent_list.asp.

Wholesalers and local distributors may not sell alcoholic beverages to these permittees until they have paid for the product in a timely manner and have been released by the TABC Audit Unit.

MIXED BEVERAGE AND MIXED BEVERAGE WITH FOOD AND BEVERAGE

Mixed beverage permittees and mixed beverage with food and beverage permittees:

- must purchase distilled spirits from a local distributor's permittee (LP) in the same county; or
- in a county without LPs may purchase mixed beverages in the nearest county where LPs are located;
- transport them to permittee's premises if he or she has a Beverage Cartage Permit (PE).

SECTION II: SALES

PROHIBITED SALES

The *Texas Alcoholic Beverage Code* does not allow consignment sales. The *Texas Alcoholic Beverage Code §1.04(2)* defines consignment sales as:

- the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;
- the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;
- the delivery of alcoholic beverages to a factor or broker;
- any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;
- any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or

- any other type of transaction which may legally be construed as a consignment sale.

RETAILER RESPONSIBILITIES

A retailer may **not**:

- take an order and collect payment for alcoholic beverages, then give the order to another retailer for delivery; or
- deliver an alcoholic beverage when the order and payment were received by another retailer.

Note: The TABC considers these acts as allowing permit or license use by someone other than the holder.

Retailers must not sell, serve or deliver alcoholic beverages to intoxicated persons.

Intoxication means not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination; OR having a blood alcohol content (BAC) of 0.08 or more.

PENALTIES

With criminal negligence selling alcoholic beverages to an intoxicated or insane person or a habitual drunkard is a criminal offense punishable by:

- a fine of not less than \$100 nor more than \$500; and/or
- confinement in jail for not more than one year.

EFFECTS OF ALCOHOL

Alcohol affects people differently. Some signs of possible intoxication may include:

Coordination

- Stands with feet wide apart for balance
- Leans against counter, wall or other support
- Fumbles with wallet or money
- Slurs or trips over words when ordering
- Clumsy actions (i.e., drops or picks up change in a clumsy way)

Inattention

- Forgets to take change after purchase
- Lights the wrong end of cigarette
- Difficulty remembering names/details

Reduced Judgment/Inhibition

- Becomes overly excited
- Giggles/laughs for no apparent reason
- Speaks loudly/profanely
- Throws objects

Mannerisms/Appearance

- Untidy/disheveled clothing
- Smells of stale alcohol
- Disoriented
- Frequently rubs hands through face and hair
- Sometimes has involuntary eye movement

Reflexes

- Slow, deliberate movements of hands, arms, and body
- Slow or no reaction
- Slow or no response to questions

Vision

- Closes or covers one eye to remove double-vision
- Red/watery eyes
- Droopy eyelids/tired appearance
- Squints continuously

MINORS

Never sell alcohol to minors. No exceptions.

OFFENSES

Sale of an alcoholic beverage to a minor or making alcohol available to a minor is a Class A misdemeanor punishable by:

- a fine not to exceed \$4,000; and/or
- confinement in jail for a term not to exceed one year.

Criminal offenses occur when someone with criminal negligence:

- sells an alcoholic beverage to a minor; or
- makes an alcoholic beverage available to a minor.

Someone who sells an alcoholic beverage to a minor does not commit an offense if the minor falsely represents himself or herself to be 21 years old or older by displaying an apparently valid proof of identification that contains a physical description and photograph consistent with the minor's appearance, purports to establish that the minor is 21 years of age or older, and was issued by a governmental agency. The proof of identification could be a:

- driver's license or identification card issued by the Texas Department of Public Safety;
- any other photo ID issued by a U.S. state or federal governmental agency;
- United States passport; or
- military identification card.

Best Practice: Off-premises establishments should keep detailed keg sales records. Copy an ID card and keep with date, time and product description. If no copy machine is available, write driver's license number, name, address, and birth date.

A retailer has the right to establish policies and procedures that are more strict than the laws of the State.

POSSESSION

A minor is younger than 21 years of age and may not possess alcoholic beverages, except:

- in the scope of employment (as authorized by code);
- in the *visible* presence of an adult parent, a legal, court-appointed guardian, or legal-aged spouse; or
- if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the *Texas Alcoholic Beverage Code* (Minor Stings).

SECTION III: FALSE IDENTIFICATION

FAKE DRIVER'S LICENSES AND IDS

Fake IDs are illegal to use, to possess, or to manufacture. If purchased online or from a vendor, the document must indicate "not a government document."

Codes and Rules	What It Means & Key Points
<p>Sec. 521.453. FICTITIOUS LICENSE OR CERTIFICATE. (Texas Transportation Code)</p> <p>(a) Except as provided by Subsection (f), a person under the age of 21 years commits an offense if the person possesses, with the intent to represent that the person is 21 years of age or older, a document that is deceptively similar to a driver's license or a personal identification certificate unless the document displays the statement "NOT A GOVERNMENT DOCUMENT" diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height.</p> <p>(b) For purposes of this section, a document is deceptively similar to a driver's license or personal identification certificate if a reasonable person would assume that it was issued by the department, another agency of this state, another state, or the United States.</p>	<ul style="list-style-type: none">• It is a Class C misdemeanor to possess with the intent to use, circulate, or pass a fictitious or counterfeit Texas Driver's License or Identification Card.• Private citizens are not legally authorized to confiscate an ID.

Codes and Rules	What It Means & Key Points
<p>Sec. 521.456. DELIVERY OR MANUFACTURE OF COUNTERFEIT INSTRUMENT. (Texas Transportation Code)</p> <p>(a) A person commits an offense if the person possesses with the intent to sell, distribute, or deliver a forged or counterfeit instrument that is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a Class A misdemeanor.</p> <p>(b) A person commits an offense if the person manufactures or produces with the intent to sell, distribute, or deliver a forged or counterfeit instrument that the person knows is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a felony of the third degree.</p> <p>(c) A person commits an offense if the person possesses with the intent to use, circulate, or pass a forged or counterfeit instrument that is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a Class C misdemeanor.</p> <p>(d) For purposes of this section, “instrument” means a driver’s license, driver’s license form, personal identification certificate, stamp, permit, license, official signature, certificate, evidence of fee payment, or any other instrument.</p>	<ul style="list-style-type: none"> • It is a felony to manufacture or produce with the intent to sell, distribute or deliver any counterfeit or forged Texas Driver’s License or Identification Card. • It is a Class A misdemeanor to possess with the intent to sell, distribute, or deliver a forged or counterfeit Texas Driver’s License or Identification Card.

Codes and Rules	What It Means & Key Points
<p>Sec. 521.451. GENERAL VIOLATION. (Texas Transportation Code)</p> <p>(a) Except as provided by Section 521.452, a person may not:</p> <ol style="list-style-type: none"> (1) display, cause or permit to be displayed, or have in the person's possession a driver's license or certificate that the person knows is fictitious or has been altered; (2) lend the person's driver's license or certificate to another person or knowingly permit another person to use the person's driver's license or certificate; (3) display or represent as the person's own a driver's license or certificate not issued to the person; (4) possess more than one currently valid driver's license or more than one currently valid certificate; or (5) in an application for an original, renewal, or duplicate driver's license or certificate: <ol style="list-style-type: none"> (A) provide a false name, false address, or a counterfeit document; or (B) knowingly make a false statement, conceal a material fact, or otherwise commit fraud. <p>(b) An offense under this section is a Class A misdemeanor.</p> <p>(c) If conduct that constitutes an offense under Subsection (a) also constitutes an offense under Section 106.07, Alcoholic Beverage Code, the actor may be prosecuted only under Section 106.07, Alcoholic Beverage Code.</p>	<ul style="list-style-type: none"> • It is a Class A misdemeanor to possess a fake or altered ID, to lend or let another person use your driver's license or ID, or to use another person's drivers license or ID. • It is a Class A misdemeanor to possess more than one valid driver's license or ID. • It is a Class A misdemeanor to provide false information when applying for a driver's license or ID.

HOW TO WATCH FOR FAKE IDs

Watch for the following warning signs to identify fake or altered IDs:

- Fuzzy printing on any numbers or letters or red eyes in the photo;
- The words "this is not a valid ID", "for amusement purposes only" or "Not a Government Document";
- An ID marked as a "duplicate" might indicate that the original license holder requested a second license for someone else.

If the retailer suspects that the ID is forged, they can ask about details like middle initials, address, and zip code. They can also ask for a second or even third form of ID. Questions that are answered with a hesitating response can mean a forgery.

Note: Even if an ID is a fake or does not belong to the person presenting it, the retailer is not legally authorized to confiscate an ID.

HELPFUL HINTS

- Add 21 to the birth date on the license instead of trying to subtract it. For example, if the ID has a birthdate of 09/10/1991 then add 21 to the year. The result is 09/10/2012.
- Keep a pad and pencil or calculator next to the cash register and use it to calculate the customer's age.
- Keep a calendar next to the cash register to:
 - write the latest birth date for legal alcohol consumption. (*For example:* if today's date is 12/15/2012, subtract 21 from the year and write 12/15/1991 on the calendar.)
 - compare birthday on the license with that on the calendar every time an ID is checked
 - Remember, it's 18 for tobacco and 21 for alcohol.

PART FOUR: AT-RISK RETAILERS

SECTION I: RISK-BASED FOCUS

During the 2005 and 2007 review of TABC by the Sunset Commission, Sunset staff recommended that TABC use their resources more efficiently and effectively by focusing on high-risk locations. As a result, TABC agents and audit staff began conducting more frequent inspections on TABC-licensed locations that have a recent violation history. These permit holders became known as “priority locations.”

When a licensed establishment is involved in certain administrative or criminal violations, it indicates a risk to public safety. TABC refers to these breaches of the law as “public safety violations,” and they include incidents involving:

- Minors;
- Intoxicated Persons;
- Drugs;
- Human Trafficking;
- Breaches of the Peace (fighting); and
- Sales or consumption of alcoholic beverages during prohibited hours.

A location that is cited for a public safety violation is included on the agency's Priority List, and risk-based inspections are conducted to ensure that the Priority Location complies with the law.

If an agent issues more than one citation on one occasion, this will only count as one violation for the purpose of the Priority List.

TABC's Field Operations Division monitors the occurrence of these public safety violations. Agents will work with license and permit holders in an effort to eliminate the public safety risk.

SECTION II: PRIORITY LOCATION CLASSIFICATION

PRIORITY ONE. A location will be classified as Priority One when an agent issues an administrative notice for a public safety violation.

PRIORITY TWO. A location will be classified as Priority Two when:

- the location was previously classified as Priority One and completes three consecutive inspections in which no additional public safety violations are found;
- the location was previously classified as Priority Three and an agent issues one or more additional citations for a public safety criminal violation committed on the licensed premises; or
- the location is not classified as a Priority Location and an agent issues a citation for a public safety criminal violation committed on the licensed premises (felony committed by any person, or class A or B misdemeanor committed by the permittee).

PRIORITY THREE. A location will be classified as Priority Three when:

- the location was previously classified as Priority Two and it has been six months since the last public safety violation;
- the location has had criminal or administrative violations filed for offenses related to gambling, prostitution, lewd conduct, or other vice related offenses; or
- the location was not previously classified as a Priority Location and an agent issues a citation for a public safety criminal violation committed on the licensed premises (misdemeanor usually committed by someone other than the permittee).

PRIORITY FOUR. A location will be classified as Priority Four when:

- the location has two or more warnings for a public safety or vice related offense; or
- the location has two or more complaints for a public safety or vice related offense.

PRIORITY FIVE. A location will be classified as Priority Five when:

- the location has been assigned to an Agent for a Risk Assessment.

SECTION III: PRIORITY CLASSIFICATION - WHAT TO EXPECT

When a location is first classified as a Priority One or Two Location, an agent will attempt to arrange a meeting with the permittee or licensee.

The agent will explain the following topics:

- the purpose of risk-based enforcement;
- the Priority List;
- the reason the location is on the Priority List;
- the general inspection schedule for the different levels of the Priority List; and
- the possibility that some inspections may be conducted undercover.

The agent will offer education to the license or permit holder, as well as suggestions of “best practices” and others ways to prevent violations of the law.

TABC will allow time for the license or permit holder to make operational changes before conducting follow-up inspections.

SECTION IV: PRIORITY CLASSIFICATION - INSPECTION FREQUENCY

A location classified as Priority One will be inspected at least once every 14 days until it has undergone three inspections with no public safety violations found. At that time, the location will become a Priority Two.

A location classified as Priority Two will be inspected at least once a month until six months have passed since the last public safety violation. At that time, the location will become a Priority Three.

A location classified as Priority Three will be inspected at least once every three months until it has been 12 months since the last public safety violation, or administrative case related to gambling, prostitution, lewd conduct, or other vice related offense. At that time, the location will drop off the Priority List.

A location classified as Priority Four will be inspected at least once every six months until it has been 12 months since the last warning for a public safety or vice related offense. At that time, the location will drop off of the Priority List.

A location classified as a Priority Five will be inspected at least once after a Risk Assessment has been assigned to an Agent. At that time, the location will drop

off of the Priority List.

Inspections may be conducted in an open or undercover capacity.

PART FIVE: SECURITY

Licensees and permittees may hire personnel to protect their property against damage and promote public safety. It is up to the licensee or permittee if they would like to use “staff” or security guards to provide “security” at their establishments.

Texas Law mandates that all security guards be licensed in the State.

All security licenses in the state of Texas are handled through the Texas Department of Public Safety, Private Security Bureau (PSB). PSB regulates the entire private security industry. Licenses need to be renewed every two years. Applicants must be employed or in the process of being employed by a licensed security company before a license application can be processed.

The Texas Alcoholic Beverage Commission strongly recommends that licensees or permittees contact the Texas Department of Public Safety, Private Security Bureau at (512) 424-7293 for information and updates before employing anyone to work in a “security” or “bouncer” type capacity.

Additional information can be found at: <http://www.txdps.state.tx.us/rsd/psb/>.

PART SIX: MARKETING PRACTICES

SECTION I: ADVERTISING

Permittees or licensees may advertise by:

- radio;
- television;
- newspaper;
- internet;
- social media site;
- signs;
- outdoor advertising;
- printed or graphic material;
- periodicals and other publications.

Permittees or licensees may **not** advertise by:

- sound truck on a public street, alley or sidewalk;
- handbills distributed on a public street, alley or sidewalk.

INTERNET ADVERTISING

Retailers may advertise on the internet via their website or through third party advertising, unless the advertising is funded directly or indirectly by an upper-tier member.

All retailer advertising on the internet must conform with the on-premises promotion restrictions outlined in the *Texas Alcoholic Beverage Commission Administrative Rules §45.103*, coupon and inducement restrictions in *§45.101*, and sweepstakes and giveaway restrictions in *§45.106*.

Social Media Advertising

Federal Alcohol Administration Act (FAA Act)

27 CFR parts 4, 5, and 7

Industry members may create pages on social media sites, have videos on video sharing sites, create and edit blogs or microblogs, or provide links and quick response codes (QR Codes) to increase brand awareness or brand loyalty in an interactive manner. The Alcohol and Tobacco Tax and Trade Bureau (TTB) and TABC view these as advertisements if they fall within the FAA Act's regulatory definition of advertisements. These sites and advertising methods must follow the FAA Act, TTB and any state regulations. All mandatory statements set by the TTB must appear on the page. Any information or images shared are considered part of the advertisement including those posted by the industry member or those posted by a third party and are subject to regulation.

Mobile Applications are considered by the TTB to be consumer specialist advertisement which is defined in the FAA Act, 27 CFR 6.84(b)(2) as, "...items that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors." Accordingly, under §§ 4.62(c)(2), 5.63 (3)(2), and 7.52(c)(2), the only mandatory statement required to appear in the app is the company name or the brand name of the product.

Refer marketing questions related to the FAA Act to the TTB at (202) 453-2250 or by email at alfd.ttb.gov – Marketing Compliance Office. For additional information related to social media advertising refer to Industry Circular Number 2013-01 published May 13, 2013 by the Department of Treasury – TTB. http://www.ttb.gov/industry_circulars/archives/2013/13-01.html

OUTDOOR ADVERTISING

Outdoor advertising means a sign:

- on the outside of a building;
- inside the building and within five feet of a door or window that can be

seen from the outside.

Permissible outdoor advertising includes billboards and electric signs.

Retailers are required to contact the local TABC office for approval before the sign is erected to ensure it is in compliance with the *Texas Alcoholic Beverage Code*.

The *Texas Alcoholic Beverage Code §108.52(i)* states that anyone engaged in the manufacture, sale or distribution of alcoholic beverages may advertise on the outside of a public transportation passenger vehicle or a vehicle for hire. A public transportation passenger vehicle includes a vehicle operated by a political subdivision that charges passengers a fee. A vehicle for hire includes a van, taxi, limousine, pedicab or any other transportation vehicle available to the public for hire.

SIGN PLACEMENT

A retailer may put up one sign per location, unless the building faces more than one street or highway.

If a retailer's building faces more than one street or highway, the retailer may erect a sign:

- at each entrance;
- on the sides of the building.

If the retailer's trade name or corporate name includes an alcoholic beverage name, then the retailer may place another sign stating the type of beverage.

For example, if the trade name is Joe's Liquor Barn, the retailer may also have another sign stating: Liquor, Wine and Beer.

APPROVED WORDING FOR SIGNS

The *Texas Alcoholic Beverage Code* restricts wording for outdoor signs based on the type of license or permit. Approved wording for signs include:

License or Permit	Approved Wording
Beer Retailer's On-Premise (BE)	"Beer"
Beer Retailer's Off-Premise (BF)	"Beer" or "Beer to Go"
Wine & Beer Retailer's Permit (BG)	"Beer" or "Beer, Wine, Ale" or "Beer & Wine"

Wine & Beer Retailer's "Beer" Off-Premise (BQ)	"Beer" "Beer & Wine" "Beer, Wine & Ale to Go"
Package Store (P)	"Package Store" or "Liquors" or "Wines & Liquors"
Package Store (P) with a (BF)	"Package Store" or "Wines, Liquors & Beer" or "Wine, Liquors & Beer to Go"
Wine-Only Package Store (Q)	"Wine" or "Wines"
Wine-Only Package Store (Q) with (BF)	"Wines & Beer" or "Wine & Beer" or "Wine & Beer to Go"

ILLEGAL SIGNS

With the exception of a Mixed Beverage Permit and Mixed Beverage Permit with Food and Beverage, illegal outdoor advertising includes signs with:

- brand names;
- prices;
- lettering more than 12" in height;
- statements influencing a customer's decision to purchase an alcoholic beverage. *For example, "Cold Beer" or "Coldest Beer in Town."*

The *Texas Alcoholic Beverage Code §108.07* states that the provisions of this code applicable to outdoor advertising and to advertising in or on the premises do not apply to establishments for which a Mixed Beverage Permit or Mixed Beverage Permit with Food and Beverage has been issued. The TABC should promulgate reasonable rules relating to that type of advertising, and violation of any of those rules is a violation of this code.

TABC Administrative Rule 45.105 states:

"the holder of any permit allowing the sale or service of mixed beverages may not advertise any price for an alcoholic beverage on any sign, billboard or marquee, or other display located on the licensed premises in such a manner that the price may be read by persons outside of the premises."

SECTION II: GIFTS, SERVICES & SALES

The *Texas Alcoholic Beverage Code* prohibits many gifts, services and promotions offered to retailers by the distributing or manufacturing tier.

Different restrictions apply to wholesalers and manufacturers of liquor (distilled spirits, wine, malt liquor and ale) than to beer distributors and manufacturers.

This section highlights those prohibitions and differences.

DISTRIBUTORS, MANUFACTURERS & RETAILERS (BEER)

Retailers may not accept, purchase or borrow from a manufacturer or distributor (beer):

- equipment
- fixtures
- supplies
- prizes
- premiums
- gifts
- other inducements

PERMISSIBLE PROMOTIONAL ITEMS

Distributors and manufacturers:

- may sell promotional items (things designed to promote a specific product or brand) for use by the consumer either on or off the retailer's premises.

Retail employees:

- may not wear clothing items such as shirts or caps because they are for use by the consumer. (Retail employees may wear and use branded items if purchased on their own.)

Items:

- must bear a manufacturer's logo, brand or product name;
- may not be sold for less than the manufacturer's regularly published wholesale price; and
- must be paid for in cash on or before the delivery.

BEER FOR CONSUMERS

Beer may be purchased for consumers (by distributors or manufacturers) if:

- beverages are consumed at the retailer's licensed premises in the presence of the purchaser; and
- purchases are not excessive.

SIGNS PROVIDED TO RETAILERS

Distributors (and manufacturers authorized to sell to retailers) may furnish, give or sell interior signs to retailers if:

- a sign's primary purpose is to advertise a brand, product or price;
- the sign does not bear the name, logo or trademark of a specific retailer; and

- the distributor does not paint, improve or remodel a retailer's buildings or parts of buildings, inside or out, or finance any building improvements.

SERVICES PROVIDED TO RETAILERS

Distributors and manufacturers may:

- service and repair promotional items and signs furnished or sold to the retailer;
- furnish meeting rooms to retailers on the distributor's or manufacturer's premises providing nothing more than product samples with food to accompany the samples are dispensed; and
- furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, coil cleaning service needed for proper delivery and dispensing of draft malt beverages.

WHOLESALE, LIQUOR MANUFACTURERS & RETAILERS (DISTILLED SPIRITS, MALT LIQUOR, WINE & ALE)

A retailer may not accept, purchase or borrow from a wholesaler or any of their agents, affiliates, officers, directors or firm members:

- equipment
- fixtures
- supplies
- prizes
- premiums
- gifts
- other inducements

ADVERTISING SPECIALTIES

Advertising specialties promote a specific product or brand. Wholesalers and liquor manufacturers may furnish advertising specialties to a retailer if:

- total cost does not exceed \$101 per brand per calendar year; and
- dollar limitations are not pooled to provide a retailer with advertising specialties in excess of this amount.

LIQUOR/NOVELTY ITEMS

Liquor manufacturers and wholesalers may:

- give consumers novelty items of limited value designed to promote a specific product or brand;
- purchase liquor for self or others if consumed on the premises in the purchaser's presence; and
- prearrange promotions with the retailer and give advance notice to the consumer. The retailer may also give advance notice to the consumer.

SERVICES TO RETAILER

Liquor manufacturers and wholesalers may service and repair items furnished to retailers as allowed.

The holder of a wholesaler's, general class B wholesaler's, local class B wholesaler's permit, or the permit holder's 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.

SECTION III: INDUCEMENTS

PROHIBITED ACTIVITIES

Inducements are defined as any practice not offered to all retailers in the local market on the same terms without business reasons to justify the difference in treatment. Manufacturers, distributors or wholesalers may **not** offer inducements, such as:

- purchasing or renting floor, shelf or warehouse space to or from the retailer;
- requiring a retailer to purchase one product in order to purchase another product at the same time;
- providing or purchasing, in whole or in part, any type of advertising benefiting any retailer;
- furnishing service trailers with equipment to a retailer; or
- furnishing transportation or other things of value to organized groups of retailers.

APPROVED ACTIVITIES

Manufacturers, distributors and wholesalers may provide food, beverages and entertainment to retail tier members, if:

- food and beverages are consumed in the presence of the manufacturing or wholesale tier member;
- food, beverages and entertainment cost no more than \$500 per occasion; and
- they furnish only ground transportation associated with these events.

Manufacturing and distribution tier members may:

- advertise in convention programs;
- sponsor functions or meetings and otherwise; and
- participate in meetings and conventions of trade associations of general membership.

Upper-tier members shall keep complete and accurate records of all expenses

incurred for retailer entertainment for two years.

SECTION IV: HAPPY HOUR

ON-PREMISES PROMOTIONS

The TABC rule concerning on-premises promotions prohibits practices that result in excessive consumption of alcoholic beverages by consumers. Promotions resulting in public intoxication may violate the rule.

RETAILER PROHIBITIONS

Retailers may **not**:

1. serve or sell two or more drinks at a price less than the number of containers actually sold—“two for the price of one”;
2. increase the amount of alcohol without proportionally increasing price;
3. serve more than one free drink a day to any identifiable segment of population;
4. sell an undetermined quantity of alcohol for a fixed price—“all you can drink”;
5. sell alcoholic beverages at a reduced price to consumers paying a fixed “buy-in” price;
6. sell alcoholic beverages at a price based on the amount consumed;
7. sell alcoholic beverages at a reduced price after 11 P.M.;
8. sell or serve more than two drinks to a single customer at a time;
9. impose an entry fee or cover charge due to reduced or low drink prices;
10. conduct or sponsor contests or allow any person on the premises to conduct, sponsor or participate in contests which are determined by the amount of alcohol consumed or if alcohol is given as a prize;
11. engage in practices that are reasonably calculated to induce consumers to drink to excess.

Note: Items 1–7 do **not** apply if licensed premises are used for private parties agreed upon by the permittee.

RETAILER ACTIVITIES

A retailer may:

- offer free or reduced-price food or entertainment as long as the offer is not based on the purchase of alcoholic beverages;
- include alcoholic beverages as part of a meal or hotel package;
- sell or serve a bottle of wine to a consumer during the service of a meal;

- sell or serve alcoholic beverages in pitchers, buckets or carafes to two or more consumers at a time.

SECTION V: STOCKING AND ROTATING

A distributor or wholesaler may:

- stock a retailer's shelves with brands of products they have the authority to sell;
- rotate the stock of their brand;
- put prices on the stock;
- reset or rearrange alcoholic beverages of their product only;
- provide retailers with shelf plans or schematics;
- organize and construct displays of alcoholic beverages.

Note: Displays must be accessible to the consumer.

SECTION VI: DAMAGED PRODUCTS (CHIPS & FLATS)

Chips & Flats is a term used to describe damaged products such as broken bottles or carbonated alcoholic beverages that have gone flat.

The *Texas Alcoholic Beverage Code* states that a distributor, winery or wholesaler cannot refund or exchange products sold to a retailer, with the exception of the circumstances listed in *Section 104.05(d) and (e)*. See relevant sections of the *Texas Alcoholic Beverage Code* below.

In accordance with *§104.05(d)*, alcoholic beverages may be replaced with like product, provided the product was damaged upon or prior to delivery or was unfit for consumption upon delivery, or is determined to be a consumer safety issue caused during the manufacturing process. (Wholesalers, distributors or wineries shall notify TABC immediately regarding any consumer safety issues that result in an exchange.)

In accordance with *§104.05(e)*, malt beverages that have not passed their expiration date may be replaced with like product, as long as the amount does not exceed 25 cases of 24 12-ounce containers.

In addition, the TABC will not consider the following a violation of the *Texas Alcoholic Beverage Code*: Within 48 hours time after delivery to a retailer, a refund or credit may be provided for a delivery that was inconsistent with the order originally placed by the retailer. Distributors, wholesalers or wineries should provide retailers with a credit memo or exchange receipt stating the reason and date of the exchange. This document shall be kept on the retailer's premises for inspection by authorized Texas Alcoholic Beverage Commission

employees and peace officers certified by the Texas Commission on Law Enforcement (TCLE).

However, the TABC will be compelled to take regulatory action against all involved parties in cases where the distributor's, wholesaler's or winery's actions relating to *Section 102.07 (a)(4)* allow a retailer to exchange product or obtain a refund or credit for reasons other than those stated above.

Section 1.04. Definitions.

(2) "Consignment sale" means:

(A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;

(B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;

(C) the delivery of alcoholic beverages to a factor or broker;

(D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;

(E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or

(F) any other type of transaction which may legally be construed as a consignment sale.

Section 101.68. Consignment Sale Prohibited.

A person commits an offense if he is a party to, or directly or indirectly interested in or connected with, a consignment sale of an alcoholic beverage.

Section 102.07. Prohibited Dealings With Retailer Or Consumer.

(a), no person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, nor the agent, servant, or employee of such a person, may:

(4) make or offer to enter an agreement, condition, or system which will in effect amount to the shipment and delivery of alcoholic beverages on consignment.

Section 104.05. Sale In Original Packaging.

(d) Nothing in this code prevents a retailer from making a claim for the replacement of alcoholic beverages delivered to the retailer by a wholesaler or distributor in a damaged condition. A wholesaler or distributor may not give a refund for or replace alcoholic beverages that were damaged while in the possession of the retailer.

(e) To assure and control product quality, the holder of a distributor’s license, wholesaler’s permit, or class B wholesaler’s permit, at the time of a regular delivery, may withdraw, with the permission of the retailer, a quantity of beer, ale, or malt liquor in its undamaged original packaging from the retailer’s stock, if:

(1) the distributor, wholesaler, or class B wholesaler replaces the stock with beer, ale, or malt liquor of identical brands, quantities, and packages as the beer, ale, or malt liquor withdrawn;

(2) the stock is withdrawn before the date considered by the manufacturer of the product to be the date the product becomes inappropriate for sale to a consumer; and

(3) the quantity of stock withdrawn does not exceed the equivalent of 25 cases of 24 12-ounce containers.

(f) A consignment sale of an alcoholic beverage is not authorized under Subsection (e) of this section.

Note: Nothing in the *Texas Alcoholic Beverage Code* prohibits a consumer from returning an open or unopened alcoholic beverage to a retailer. Whether to allow returns is up to the retailer and their store policy.

SECTION VII: CO-PACKS

The *Texas Alcoholic Beverage Commission Administrative Rules §45.120* regulates co-packaging of alcoholic beverages. The *Texas Alcoholic Beverage Code §102.07(a)(5)* defines co-packs as alcoholic beverages packaged in combination with other items if the package is designed to be delivered intact to the ultimate consumer and the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

If an alcoholic beverage sold by a wholesaler/distributor as a “co-pack”, no retailer may separate the other packaged item and sell it by any means other than the way it was originally packaged when received.

SECTION VIII: COUPONS

Members of the manufacturing and wholesaling tiers can provide coupons to the consumer for items the manufacturer produces with the exception of alcoholic and non-alcoholic beverages. For example, a manufacturer or wholesaler could offer the consumer a coupon for a discount on a t-shirt or glassware. The manufacturer or wholesaler who provided the coupon must redeem the coupon without going through the retailer. It cannot be redeemed at a retailer’s location. An alcoholic beverage purchase cannot be required to redeem or receive the coupon.

SECTION IX: MARKETING PRACTICES ADVISORIES

The agency bulletins and advisories are developed to improve internal and external communications and ensure a more consistent interpretation and application of the statutes across the state. The advisories and bulletins reflect our staff opinions on inquiries presented to us after taking into consideration the specific circumstances involved and the relevant statutes. We will continuously review these opinions and issue new advisories as necessary to reflect revised statutes, changing circumstances, and industry trends. Bulletins and advisories can be found on our home page under the bulletins section at: http://www.tabc.texas.gov/marketing_practices/advisories.asp.

For assistance:

licensing@tabc.texas.gov or (512) 206-3360
marketing.practices@tabc.texas.gov or (512) 206-3411

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CHAPTER V- INSPECTIONS AND INVESTIGATIONS

SECTION I: INSPECTIONS

AUTHORITY

An authorized TABC representative or any law enforcement personnel may enter licensed premises at any time to:

- conduct an investigation; or
- inspect and perform duties imposed by the *Texas Alcoholic Beverage Code*.

Premises means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises directly/indirectly under control by the same person.

RETAILER RESPONSIBILITIES

The retailer may:

- not interfere with or refuse an inspection of the licensed premises;
- face criminal and administrative action for refusing an inspection.

To assist with the inspection, a retailer should:

- know what type of license they have;
- have proper warning signs posted;
- know where their records are;
- have keys to everything.

FIREARM POSSESSION

Firearms may be possessed on the licensed premises by:

- licensee/employee supervising business operations;
- on-duty uniformed DPS licensed security guard;
- TCLE certified peace officer;
- licensed concealed handgun holder, if not otherwise prohibited.

Note: Retailers that have a firearm on the premises should inform the agent or investigator immediately.

SECTION II: INVESTIGATIONS

TABC conducts several types of investigations at on-premise and off-premise locations, routine or otherwise, to determine if *Texas Alcoholic Beverage Code* violations have occurred.

COMPLAINT INVESTIGATIONS

TABC investigates all complaints received on alleged alcoholic beverage law violations and other offenses occurring on licensed premises.

TABC receives complaints by:

- phone;
- letter;
- in person;
- 1-888-THE-TABC complaint line;
- Internet; and
- mobile application.

TABC receives complaints on:

- sale to minors;
- breach of the peace;
- lewd conduct (prostitution);
- marketing practices and happy hour violations;
- intoxicated persons;
- prohibited hours violations;
- human trafficking;
- drugs, gambling;
- loud noise; and
- other violations of law.

TABC receives complaints from:

- citizens and parents;
- law enforcement agencies;
- competitors;
- anonymous tips; and
- retailer's ex-employees.

COMPLAINT PROCESS

Once received, a complaint:

- is forwarded to the appropriate local office for investigation;
- is entered into the TABC database;
- is investigated regardless of the source;
- will be "worked" by an agent on at least two separate occasions; and
- may lead to inspections, surveillance, minor stings or other means to ensure the licensed permit holder complies with the law.

If a violation is observed during the investigation, appropriate criminal or administrative charges are pursued.

If a complaint cannot be substantiated, the investigation will be closed.

Note: The agency is required by law to let the complainant know the investigation outcome, if requested.

SOURCE INVESTIGATIONS

INTOXICATED DRIVERS

Every year thousands of people in Texas are injured or killed by drunk drivers. Many minors are found to be driving while intoxicated or are involved in alcohol-related accidents.

A source investigation attempts to determine the source of alcoholic beverages consumed by:

- an intoxicated driver involved in an accident with a major injury or death; or
- a minor involved in an alcohol-related accident.

An investigation determines whether the source violated the law when providing alcoholic beverages.

Sources include:

- retailer (on-premises or off-premises);
- anyone purchasing for or giving alcohol to a minor;
- bootlegger.

ACCIDENT REPORTS

TABC investigates DWI accident reports resulting in serious injuries or death, and those involving minors who have been drinking. Reports come from:

- DPS;
- other law enforcement agencies; and
- media including newspapers, TV or radio.

INVESTIGATION PROCESS

TABC investigators review:

- police offense reports;
- witness statements;
- receipts for purchases; and
- blood alcohol level at the accident.

Investigators:

- reconstruct a time-line of the person's activities before the accident;

- determine amount of alcohol consumed at a retail establishment before the accident; and
- conduct a keg investigation to determine how minors got kegs.

Note: Off-premises establishments should keep detailed keg sales records.

VIOLATIONS

If a proven violation involved providing alcoholic beverages to a person in an accident, consequences may include:

- criminal charges against the bartender, clerk or person who provided the alcohol illegally;
- possible administrative charges against a licensee or permittee if they were considered at fault;
- civil action by the person(s) harmed or their families. **Note:** This is the “dram shop” law which can result in substantial financial liability to a person or licensee/permittee.

BREACH INVESTIGATIONS

DEFINITION

A breach investigation involves a disturbance, fight, shooting or violent act on a licensed premises.

REPORTING A BREACH OF THE PEACE

The *Texas Alcoholic Beverage Commission Administrative Rules §35.32* requires TABC license and permit holders to report to the Texas Alcoholic Beverage Commission **as soon as possible but within 24 hours** any incident on the licensed premises where a person shoots, stabs, causes serious* bodily injury to, or murders a person.

***Serious** bodily injury is defined in the *Texas Penal Code §1.07* as “bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”

Unless required by the previous section to report within 24 hours, TABC license and permit holders are required to report to the Texas Alcoholic Beverage Commission **as soon as possible but within five days** any incident on the licensed premises where either:

1. Law enforcement or emergency medical services personnel respond to the premises of a permit or license; OR
2. A disturbance is created on the premises by a person who does **any of**

the following:

- a. Causes bodily injury to another person;
- b. Threatens another person with a weapon;
- c. Discharges a firearm on the premises of the permit or license; or
- d. Destroys the permittee's or licensee's property, if the incident is reported by the permittee or licensee to a law enforcement agency.

An incident described in (1) and (2) above only has to be reported if it:

- a. Occurs at a time when the permittee or licensee or any person allowed by the permittee or licensee is on the premises; and
- b. Interferes with, interrupts, or intrudes upon the operation or management of the licensed premises.

Reports shall be made:

1. in person at any TABC office;
2. by fax to the appropriate TABC office;
3. on the TABC website; or
4. by email to breachofpeace@tabc.texas.gov.

The Executive Director or their designee may require, in writing, that a permittee or licensee make any breach of peace reports in a specific manner as instructed, if the permittee or licensee has previously violated the *Texas Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(31)*.

INVESTIGATION CRITERIA

TABC investigates to determine if the breach:

- occurred on a licensed premises under the control of the license or permit holder. *Premises* is defined as:
the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.
- was not beyond the control of the licensee/permittee.
- was caused by improper on-premises supervision.

CONTROLLING BREACHES

If a licensee or permittee receives warning of a potential problem that requires action, the retailer must stop the breach or prevent it from escalating.

The responsibility of a licensee or permittee is defined by the *Texas Alcoholic Beverage Code* to include an agent, servant or employee.

The licensee or permittee must be alert to situations indicating a breach, such as:

- loud argument before a fight;
- knowing “bad blood” exists between customers;
- customer told licensee or permittee that other customers were threatening each other; or
- knowing a customer possessed a weapon.

Improper supervision of people on the premises may lead to a breach of the peace if the licensee or permittee:

- did not act upon customer activities as needed;
- allowed an argument to continue resulting in a fight; or
- did not summon the police to prevent the breach.

License and permit holders should wonder:

- What warning signs could signal a problem?
- What corrective action could be taken to prevent further problems?

The TABC or Executive Director without a hearing may, for investigative purposes, summarily suspend a permittee/licensee for not more than seven days if the TABC or Executive Director finds that a shooting, stabbing, or murder has occurred on the licensed premises which is likely to result in a subsequent act of violence.

PROTEST INVESTIGATIONS

REASONS

The *Texas Alcoholic Beverage Code* allows protests of an application for an original or renewal license or permit:

- for any lawful reason; and
- based on business operations, location, and public health, safety and welfare issues.

PROCESS

Once received, TABC agents:

- investigate protests;
- gather factual information which may be used in a hearing;
- remain impartial;
- ensure applicants meet all the qualifications to hold a permit or license; and
- forward investigations to TABC Legal Division for review.

HEARINGS

The TABC Legal Division decides if legal grounds exist to schedule a hearing.

If a protest is set for a hearing, a new license or permit will not be issued until a final judgment is rendered.

If a protest is on an existing business, it cannot be closed down until the judgment is rendered.

INFORMATION GATHERED

Information gathered in a protest investigation includes:

- sworn petition and affidavits provided by the people protesting;
- records of past violations kept by the TABC and local law enforcement agencies; and
- factual information supporting or not supporting the legal grounds stated in the protest.

For assistance:

questions@tabc.texas.gov or contact the local TABC office.

To find the local office, go to:

http://www.tabc.texas.gov/contact_us/local_field_office.asp.

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CHAPTER VI - VIOLATIONS AND PENALTIES

SECTION I: CRIMINAL & ADMINISTRATIVE CASES

CRIMINAL CASES & PENALTIES

CLASS C MISDEMEANOR

For Class C misdemeanor violations:

- the accused will either be ticketed or arrested;
- the ticket is filed in municipal or justice of the peace court;
- a fine of up to \$500 may be assessed;
- the defendant may do community service or attend an alcohol awareness course;
- the judge must suspend the defendant's driver's license for some offenses.

CLASS A OR B MISDEMEANOR

For Class A or Class B misdemeanor violations:

- the accused is usually arrested;
- a criminal case is filed in county court;
- a judge may assess a fine up to:
 - \$4,000, one year in jail, or both for a Class A misdemeanor
 - \$2,000, six months in jail, or both for a Class B misdemeanor.

FELONIES

For felony violations:

- the accused is arrested;
- a criminal case is filed in district court;
- the accused is fined, given a prison term or both.

ADMINISTRATIVE CASES & PENALTIES

Administrative actions may require a license or permit to be refused, suspended or canceled. (*Texas Alcoholic Beverage Code §5.35*)

ADJUDICATION PROCESS

The agent or TABC representative may issue a warning ticket for the offense or make an administrative case.

If an administrative case is made:

- an administrative notice is issued to the retailer. **Note:** An administrative notice letter may also be mailed to retailer.
- an agent or representative prepares and forwards case to the supervisor.
- the supervisor contacts the retailer for a meeting to discuss options.

The administrative case may be restrained (or not carried forward) if:

1. the person selling is not the owner or an officer of the company;
2. the person selling holds a current seller-server training certificate from a TABC approved school;
3. all employees engaged in the sale, service, or delivery of alcoholic beverages, as well as their immediate managers, are certified by a TABC approved seller-server school within 30 days of their hire date;
4. the employer has written policies for responsible alcohol service and ensures that each employee has read and understands these policies;
5. the employer does not directly or indirectly encourage the employee to violate the law; and
6. there are not more than two of these types of violations within a twelve month period.

An employer may be considered to encourage employee violations if the permittee fails to:

- adopt policies and procedures to prevent
 - sales and service of alcoholic beverages to minors and intoxicated persons
 - consumption of alcoholic beverages by minors and intoxicated persons
- ensure employees
 - possess valid certificates of seller training
 - read and understand policies and procedures

Qualifying for an restrained administrative case under these circumstances is called “Safe Harbor.”

UNCONTESTED CHARGES

The retailer may:

- choose not to contest the charge; and
- sign a waiver and agreement accepting a penalty or suspension.

If a waiver is signed, the the permit or license will be suspended for a number of days. (*Texas Alcoholic Beverage Code §11.61 and §11.64*).

The retailer may have the option of paying a civil penalty in lieu of suspension.

For certain health, safety and welfare violations, the TABC may require the retailer to serve a suspension.

Civil penalties range from \$150 to \$25,000 per day of suspension (*Texas Alcoholic Beverage Code §11.64*).

HEARINGS

If retailer requests a hearing, it is held in:

- the county of the premises;
- the closest office of the State Office of Administrative Hearings (SOAH);
or
- any location agreed upon by both parties.

Note: Ten days notice of hearing is required. (*Texas Alcoholic Beverage Code §11.63*)

Hearings are:

- conducted by administrative law judges for SOAH (*Texas Alcoholic Beverage Code §5.43*);
- decided on a preponderance of evidence with the findings and recommendations forwarded to TABC.

APPEALS

The retailer has a right to appeal the administrative law judge's decision. TABC is the sole defendant. Neither party is entitled to a jury.

The appeal:

- is filed in the county of residence for the licensee or permittee; and
- must be filed within 30 days of TABC's order effective date.

The case:

- must be tried within 20 days of filing; and
- is decided based on the substantial evidence rule.

Note: Pending trial, the court may modify or suspend TABC's order. (*Texas Alcoholic Beverage Code §11.67*)

CONDUCT SURETY BOND FORFEITURE

A conduct surety bond is forfeited if the license or permit:

- is canceled for cause; or

- incurs three or more violations after Sept. 1, 1995.

The retailer:

- is notified by TABC of intent to revoke;
- may request a hearing within 30 days of TABC notification to determine if criteria exists to revoke.

A Retail Dealer's On-Premise licensee or a Wine and Beer Retailer's permittee who operates in Harris, Dallas, Tarrant or Bexar Counties, and does not hold a Food and Beverage Permit, will be subject to the following bond forfeitures for violations of the *Texas Alcoholic Beverage Code*:

The bond is forfeited to the TABC on the suspension of the license or permit for the first time under Section 11.61 or Section 61.71. Before the suspended license or permit may be reinstated, the licensee or permittee must furnish a second surety bond, similarly conditioned, in an amount greater than the initial surety bond, the amount to be determined by the TABC. If the same license or permit is suspended under Section 11.61 or Section 61.71 a second time, the bond is again forfeited to the TABC. Before the suspended license or permit may be reinstated, the licensee or permittee shall furnish a third surety bond, similarly conditioned, in an amount greater than the second surety bond, the amount to be determined by the TABC. If the same license or permit is suspended under Section 11.61 or Section 61.71 a third time, the bond is again forfeited to the TABC and the license or permit shall be cancelled by the TABC.

CIVIL LIABILITIES/DRAM SHOP

A civil lawsuit may be filed (under *Chapter 2 of the Texas Alcoholic Beverage Code*) and license or permit canceled if:

- a retailer or employee sold/served alcoholic beverages to an obviously intoxicated person;
- a person was intoxicated to the extent he or she presented a clear and present danger to self or others; and
- the individual's intoxication was a proximate cause of the damages suffered.

Note: No other statute may be used to bring civil action against the retailer for this type of situation.

This statute does **not** prevent a lawsuit or criminal case against the intoxicated individual who caused the damages.

SECTION II: SANCTIONS AND PENALTIES

Texas Alcoholic Beverage Commission Administrative Rules Chapter 34

Agents, auditors or other specifically designated TABC personnel may offer settlements to persons charged with violating the provisions of the *Texas Alcoholic Beverage Code* or *TABC Administrative Rules*.

Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart.

The chart has two categories:

1. health, safety and welfare violations in which a 36-month history of the retail account (at that location) is considered;
2. major regulatory violations, in which a 24-month history of the retail account (at that location) is considered.

STANDARD PENALTY CHART

Any person responsible for assessing a penalty for a violation may deviate from the standard penalty chart if aggravating or mitigating circumstances are involved.

HEALTH, SAFETY AND WELFARE VIOLATIONS			
An act or failure to act which results in a violation of the code or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties.			
DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Minor Related Offenses			
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), <i>Alcoholic Beverage Code</i> .	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Sale of an alcoholic beverage to a minor in violation of §106.03, <i>Alcoholic Beverage Code</i> .	8-12 days \$300 per day	16-24 days \$300 per day	48-Cancel \$300 per day

Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the <i>Texas Penal Code</i>) in violation of §§22.12 and 28.11, <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury, death or involving a deadly weapon (as defined in the <i>Texas Penal Code</i>) in violation of §§22.12, 28.11, 69.13 and 71.09, <i>Alcoholic Beverage Code</i> .	25-35 days \$300 per day	Cancel	Cancel
Failure to report a breach of the peace in violation of <i>Alcoholic Beverage Code</i> §§11.61(b)(21), 61.71(a)(31).	2-5 days \$300 per day	4-10 days \$300 per day	12-Cancel \$300 per day
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics by a licensee or permittee or possession of any equipment used or designed for the administering of a narcotic in violation of §104.01, <i>Alcoholic Beverage Code</i> , or Title 16, §35.41(27), <i>Texas Administrative Code</i> .	25-35 days \$300 per day	Cancel	Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, <i>Alcoholic Beverage Code</i> .	8-12 days \$300 per day	16-24 days \$300 per day	Cancel
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, <i>Alcoholic Beverage Code</i> .	17-25 days \$300 per day	34-50 days \$300 per day	Cancel

Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a) (11) or §104.01, <i>Alcoholic Beverage Code</i> and TABC Administrative Rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), <i>Alcoholic Beverage Code</i> .	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, <i>Alcoholic Beverage Code</i> . Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §§11.61(b)(22), 61.71(a) (18) or 105.06, <i>Alcoholic Beverage Code</i> .	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), <i>Alcoholic Beverage Code</i> .	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day
The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a) (17), <i>Alcoholic Beverage Code</i> by committing the below listed violations. Requires detail on offenses. Examples (not limited to the following offenses):			
Possession of any gambling paraphernalia or device.	5-7/\$300	10-14/\$300	Cancel
Gambling on a licensed premises.	8-12/\$300	16-24/\$300	Cancel
Keeping a gambling place.	13-18/\$300	26-36/\$300	Cancel
Prostitution.	5-7/\$300	10-14/\$300	Cancel
Promotion of prostitution.	13-18/\$300	26-36/\$300	Cancel

Prohibited Activities by Persons Younger Than 18 (See AB Code 106.15, <i>Penal Code</i> 43.05, <i>Penal Code</i> 43.25 or <i>Penal Code</i> 43.251).	Cancel	Cancel	Cancel
Obscenity.	8-12/\$300	16-24/\$300	Cancel
Violation of city codes (relating to health, safety and welfare).	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
MAJOR REGULATORY VIOLATIONS			
An act or failure to act which results in a violation of a major regulatory provision of the code or rules will be assessed sanctions and penalties as follows:			
DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, <i>Alcoholic Beverage Code</i> .	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), <i>Alcoholic Beverage Code</i> .	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, <i>Alcoholic Beverage Code</i> .	Original suspension plus 8-13 days \$300 per day	Original suspension plus 16-26 days \$300 per day	Cancel
Subterfuge – Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, <i>Alcoholic Beverage Code</i> .	Cancel		

Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, <i>Alcoholic Beverage Code</i> .	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, <i>Alcoholic Beverage Code</i> and agency rule §41.50.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Knowingly possess uninvoiced alcoholic beverages in violation of §28.06, <i>Alcoholic Beverage Code</i> and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, <i>Alcoholic Beverage Code</i> .	Cancel		
Sale of any unauthorized alcoholic beverage in violation of §11.01, <i>Alcoholic Beverage Code</i> .	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §§69.12 or 61.71(a)(9), <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Permitting an open container on the premises of any off-premise license or permit in violation of §§71.01 or 24.09, <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Purchase of an alcoholic beverage from an unauthorized source in violation of §§61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, <i>Alcoholic Beverage Code</i> .	6-8 days \$300 per day	12-16 days \$300 per day	Cancel

Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, <i>Alcoholic Beverage Code</i> .	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Purchasing alcoholic beverages while on the “delinquent list” in violation of §102.32(d), <i>Alcoholic Beverage Code</i> .	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Selling an alcoholic beverage away from a licensed premises in violation of §61.06, <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Storage of alcoholic beverages off a licensed premises in violation of §69.10, <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Making false or misleading statements in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), <i>Alcoholic Beverage Code</i> .	Cancel		
Sale or delivery of unauthorized alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the <i>Alcoholic Beverage Code</i> . §§11.01, 19.01, 61.01 or 62.01	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations; Failure to notify the Commission of a delinquent account in violation of §102.32, <i>Alcoholic Beverage Code</i> ; Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, <i>Alcoholic Beverage Code</i> .	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day

Improper record keeping in violation of agency rules §§41.49, 41.50, 41.51, 41.52 and §§32.03, 32.06, <i>Alcoholic Beverage Code</i> , including invoices, membership records, pool and replacement accounts.	2-4 days \$300 per day	4-8 days \$300 per day	12-24 days \$300 per day
Knowingly filed false report, application, form, or record. §§11.61, 61.71, 62.05, 64.04, or 203.09	Cancel		
Knowingly failed to keep record or file return in manner required. §§61.71, 61.74, 62.05, 64.04, 203.09, or 206.01	6-12 days \$300 per day	12-24 days \$300 per day	Cancel
Retail cash/credit laws violation of cash or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32.	2-5 days \$300 per day	4-10 days \$300 per day	12-30 days \$300 per day
Failed to present program curriculum as approved. §50.4(g).	\$450-\$600	\$900-\$1,200	Cancel
Program taught in ineffective manner. §50.4.	\$450-\$600	\$900-\$1,200	Cancel
Failed to use certified trainer. §50.6(a).	\$2,250-\$3,000	\$4,500-\$6,000	Cancel
Had more than 50 trainees in a session. §50.4(e).	\$450-\$600	\$900-\$1,200	Cancel
Failure to schedule sessions or cancel sessions in a timely manner. §50.4(a).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600
Failure to properly test. §50.4(j)-(n).	\$1,500-\$2,250	\$3,000-\$4,450	Cancel
Certifying a trainee who had not successfully completed a full session and/or passed the final test. §50.5(b)(2).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600
Licensee/Permittee programs certifying non-employees. §50.4(d).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600
Failed to distribute certificates to trainees. §50.4(r).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600
Trainer taught in a language that was not authorized. §50.6(a).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600

Violation of requirements for school/ program approval. §50.3(a)-(h).	Cancel		
Violated a provision of Section 50.5(b) (Program). §50.5(b).	Cancel		
Violated a provision of Section 50.7 (Trainer). §50.7.	Cancel		
Make false or misleading statements, reports, or representations to the Commission. §50.5(b)(2).	\$1,500- \$2,250	\$3,000- \$4,450	Cancel
Failure to timely file or properly prepare the report of seller training. §50.5(b)(4).	\$750- \$1,050	\$1,500- \$2,100	Cancel
Failure to properly prepare and issue certificates. §50.4(r).	\$450-\$600	\$900- \$1,200	Cancel

For assistance:

Contact the Legal Division at (512) 206-3490 or Field Operations at (512) 206-3400.

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CHAPTER VII - VICE-RELATED OFFENSES

SECTION I: TEXAS ALCOHOLIC BEVERAGE CODE

VICE-RELATED OFFENSES

Vice-related offenses impact retailers in two ways:

1. criminal charges that may result in a fine and/or the arrest of all persons involved;
2. administrative charges resulting in the suspension, cancellation or civil penalty (fine) levied against the permit or license.

These offenses include but are not limited to:

- public lewdness;
- prostitution;
- promotion of prostitution;
- compelling prostitution;
- gambling offenses; and
- drug offenses.

SUSPENSIONS/CANCELLATIONS

The TABC may suspend for not more than 60 days or cancel an original or renewal permit or license if:

- the place and manner in which permittee or licensee conducts his or her business warrants cancellation;
- suspension of the permit or license based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. [*Texas Alcoholic Beverage Code, §§11.61(b)(7) and 61.71(a)(17)*]

CONDUCT PROHIBITIONS

No person, agent or employee authorized to sell beer at retail may engage in or permit conduct on the retailer's premises that:

- is lewd, immoral or offensive to the public decency;
- permits possession of narcotic equipment used or designed for administering a narcotic, or permitting a person to do so. [*Texas Alcoholic Beverage Code, 104.01(9)*]

DEFINITIONS

The *Texas Alcoholic Beverage Commission Administrative Rules* §35.41 defines:

- (a) *lewdness* as lewd or vulgar entertainment or acts—any sexual offenses

contained in the *Texas Penal Code, Chapter 21* or any public indecency offenses contained in the *Texas Penal Code, Chapter 43*. [See *Texas Alcoholic Beverage Code, §104.01(6)*]

(b) *narcotic* as any substance defined in the *Health & Safety Code, §481.002(5),(6),(7), or (26)* [See the *Texas Alcoholic Beverage Code, §104.01(9)*]

SECTION II: PENAL CODE DEFINITIONS

LEWD CONDUCT

Texas Penal Code Chapter 21

Deviate Sexual Intercourse:

- any contact between any part of the genitals of one person and the mouth or anus of another person;
- penetration of the genitals or anus of another person with an object.

Sexual contact:

- touching another person's private parts with intent to arouse or gratify the sexual desire of any person.

Sexual intercourse:

- penetration of female sex organ by male sex organ.

PUBLIC LEWDNESS

Texas Penal Code §21.07

Class A misdemeanor offenses for public lewdness are committed if a person:

- knowingly engages in publicly lewd acts; or
- is reckless about whether someone present will be offended or alarmed by his or her:
 - sexual intercourse
 - deviate sexual intercourse
 - sexual contact or
 - act involving contact between the person's mouth or genitals and anus or genitals of an animal or fowl.

PROSTITUTION

Texas Penal Code §43.02

A prostitution offense is committed if a person knowingly:

- offers to engage, agrees to engage, or engages in sexual conduct for a fee;
- solicits another in a public place to engage in sexual conduct (including

sexual contact, deviate sexual intercourse) for hire.

An offense under this section is a Class B misdemeanor, unless the actor has a previous conviction under this section, in which case the offense is a Class A misdemeanor. (*Texas Penal Code §43.03*)

Promotion of Prostitution

Texas Penal Code §43.03

Class A misdemeanor offenses for promotion of prostitution occur when a person acting other than as a prostitute:

- receives compensation for personally rendered prostitution services;
- knowingly
 - receives money or other property in agreement to participate in the proceeds of prostitution
 - solicits another to engage in sexual conduct with another person for compensation.

Aggravated Promotion of Prostitution

Texas Penal Code §43.04

A third-degree felony offense for aggravated promotion of prostitution occurs when a person knowingly:

- owns;
- invests in;
- finances;
- controls;
- supervises; or
- manages a prostitution enterprise that uses two or more prostitutes.

Compelling Prostitution

Texas Penal Code §43.05

A second degree felony for compelling prostitution occurs when a person knowingly causes another by force, threat, or fraud to commit prostitution.

A first degree felony for compelling prostitution occurs when a person knowingly causes a person younger than 17 years of age to commit prostitution by any means.

GAMBLING

Definitions

Texas Penal Code §47.01

Bet:

- an agreement to win or lose something of value solely or partially by chance.

Note: Bet does not include contracts of indemnity or guaranty, or life, health, property or accident insurance.

Private Place:

- a place where the public has no access and excludes:
 - streets;
 - highways;
 - restaurants;
 - taverns;
 - nightclubs;
 - schools;
 - hospitals;
 - common areas of apartment houses, hotels, motels, office building, transportation facilities, and shops.

Gambling Device:

- electronic, electromechanical, or mechanical contrivance that for consideration gives the opportunity to obtain anything of value determined solely or partially by chance, even though accompanied by some skill.

A gambling device does not include a contrivance designed solely for bona fide amusement purposes that awards prizes from a single play of the game or device:

- having a wholesale value of no more than 10 times the amount charged to play the game once; or
- five dollars, whichever is less.

Gambling Paraphernalia:

- any book, instrument, or apparatus by which bets are or may be recorded or registered. *For example:* Football pot cards.

Gambling Place:

- any real estate, building, room, tent, vehicle, boat or other property whatsoever used:
 - in making and settling bets;

- in bookmaking;
- in conducting a lottery;
- to play gambling devices.

Bookmaking :

To receive and record or forward:

- more than five bets in 24 hours;
- bets or offers to bet totaling more than \$1,000 in 24 hours;
- a bet or offer to bet from three or more persons.

SECTION III: OFFENSES

GAMBLING

Texas Penal Code §47.02

A Class C misdemeanor offense occurs if a person:

- makes a bet on the partial/final result of a game or contest or on the performance of a participant in a game or contest;
- plays and bets for money or other thing of value at any game played with cards, dice, balls or any gambling device.

However, it is a defense to prosecution that:

- the actor engaged in gambling in a private place;
- no person received any economic benefit other than personal winnings;
- except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants;
- the actor reasonably believed the conduct
 - was permitted under the Bingo Enabling Act, Charitable Raffle Enabling Act, or the Texas Racing Act
 - consisted entirely of participation in the state lottery;
- a person played for something of value other than money using an electronic, electromechanical or mechanical contrivance excluded from the definition of “*gambling device*”;
- the conduct consisted entirely of a drawing conducted by the Parks and Wildlife Department.

GAMBLING PROMOTION

Texas Penal Code §47.03

A Class A misdemeanor offense generally occurs when a person intentionally or knowingly for gain:

- operates or participates in the earnings of a gambling place;
- engages in bookmaking;
- becomes a custodian of anything of value bet or offered to be bet or

sells chances on the result or margin of victory in any game.

KEEPING A GAMBLING PLACE

Texas Penal Code §47.04

A Class A misdemeanor occurs when a person knowingly uses or permits another to use as a gambling place any property owned, leased or rented with the expectation that it be used for gambling, such as:

- real estate;
- building;
- room;
- tent;
- vehicle;
- boat.

NARCOTICS

DEFINITION

Narcotic is any substance in *Texas Controlled Substances Act §§481.002(5)(6)(7) or (26)* including:

- controlled substances;
- counterfeit substances which are controlled substances that bear actual or simulated trademarks other than actual manufacturer or distributor of the substance;
- marijuana.

NARCOTIC OFFENSES

Narcotic offenses in *Texas Alcoholic Beverage Code §104.01(9)* include:

- possession of narcotics or any equipment used or designed for administering narcotics or allowing a person on the licensed premises to do so by:
 - a licensee or permittee
 - an employee or agent of a licensee or permittee
- sale or delivery, or permitting the sale or delivery of narcotics by:
 - licensees or permittees
 - employees or agents of a licensee or permittee
- sale, delivery or possession by the:
 - license or permit holder
 - employee of license or permit holders of equipment used or designed for administering narcotics

Note: It is a violation to permit these offenses on the premises under the licensee's or permittee's control. An employee's action is considered the same

as if the actual permit or license holder committed the act.

For assistance:

Contact the local TABC office. To find the local office, go to:
http://www.tabc.texas.gov/contact_us/local_field_office.asp.

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CHAPTER VIII - GENERAL INFORMATION

SECTION I: CRIME & SAFETY TIPS

RETAILERS

To protect employees and businesses, the Texas Alcoholic Beverage Commission recommends following these safety tips:

- Participate in TABC or local law enforcement programs.
- Contact
 - the local TABC office for information on training programs.
 - the local police department to see if the area has crime prevention programs to help retailers and their employees remain safe.
- Make sure the business has plenty of interior and exterior lighting, including all areas of the parking lot.
- Install a surveillance camera (video) system in the store and parking lot as a crime deterrent. If a crime occurs, the system can help with apprehending the violators or in identifying vehicle license plates and descriptions of drivers.
- Equip the store's rear door with a self-locking mechanism to ensure employees cannot leave the door unlocked.
- Remove graffiti and gang signatures from property as soon as possible.
- Become familiar with the local law enforcement officers patrolling near the business. Crime is less likely the more visible the police are at a location.
- In the event of a theft or other crime, ***do not place yourself or your employees at risk***. Try to get the license plate number and a physical description of the violator. Telephone police and be immediately available to provide information.

OFF-PREMISES ESTABLISHMENTS

- Make sure windows and doors are unobstructed by signs, shelves and other things so the public and law enforcement have a clear view of the interior and transactions.
- Keep one door of a double front door locked if not in violation of the local fire code. Do not leave it propped open. Don't let the thief have an easy way in and out of the store.
- Position merchandise displays away from the door to deter theft. The more difficult it is for someone to steal from an establishment, the less likely they will make the attempt.
- Install a 24-hour monitored alarm system with a panic or robbery alarm to give law enforcement immediate notice of a problem. Post signs at store entrances notifying customers of the monitored alarm

- system.
- Post a sign in view of customers stating money is deposited into a safe and the clerk can only make change for a certain amount, such as \$20.

SECTION II: EMPLOYEE AGE REQUIREMENTS

OFF-PREMISES RETAILERS

(Texas Alcoholic Beverage Code §§22.13, 26.04, 106.09 and 16 TAC §35.21)

Generally, no retailer may employ someone under 18 to sell, prepare, serve, or otherwise handle alcoholic beverages, or to assist in doing so. Several exceptions to this law apply to most off-premises retailers.

Package Store (P)	21 is minimum age to work on premises in any capacity or to deliver alcohol off premises. Note: Does not apply to someone who: <ul style="list-style-type: none"> • is employed by the person’s parent or legal guardian to work in a package store owned by the parent or legal guardian
Retail Dealer’s Off-Premise License (BF)	No minimum age (Unless a Wine-Only Package Store permit is held.)
Wine & Beer Retailer’s Off-Premise Permit (BQ)	No minimum age
Wine-Only Package Store (Q)	16 years old; any capacity

ON-PREMISES RETAILERS

(Texas Alcoholic Beverage Code §§25.10, 61.71(a)(12), 106.09 and 16 TAC §35.21)

A license or permit may be suspended or cancelled if a retailer employs anyone under 18 to sell, prepare, serve, or handle alcoholic beverages or assist in doing so.

Assist means retailers may employ someone under 18 to work on or about the premises where alcoholic beverages are sold—as long as the person does not have direct and immediate connection with alcoholic beverage sales or delivery. Those younger than 18 may **not**:

- take orders;
- bring alcohol out of the storeroom;
- stock cold boxes or other bar areas; or
- deliver drinks to tables or waiters and waitresses.

A holder of a permit or license providing for the on-premises consumption of alcoholic beverages may employ someone under 18 to work in a capacity other than selling, preparing, or serving alcoholic beverages.

Legal jobs include:

- washing dishes;
- playing music;
- sweeping floors;
- busing tables;
- jobs in which an employee has no contact with alcoholic beverages for human consumption (*e.g.* scientific or cosmetic purposes).

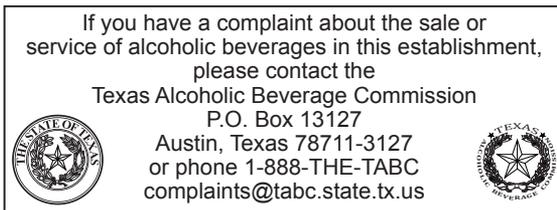
Note: If a permittee or licensee also holds a Food and Beverage Certificate, then anyone younger than 18 may work as a cashier if alcoholic beverages are served by persons 18 years or older.

SECTION III: SIGNS

The local district office provides these signs in English and Spanish free of charge to retailers.

PUBLIC INFORMATION SIGN

Retailers must provide and prominently display (near the door or cash register) a sign that includes this information:



This sign must be:

- no smaller than 6 inches by 3-1/2 inches;
- large enough in lettering or type size to be conspicuous and readily legible; and
- made of sturdy material (paper weight of no less than 65# stock).

CONSUMPTION WARNING SIGN - OFF-PREMISES

PURPOSE

This sign gives notice that it is unlawful to consume alcoholic beverages on the

licensed premises.

OFF-PREMISES REQUIREMENTS

Off-premises retailers must prominently display this sign on the premises in letters at least two inches high:



WEAPONS WARNING SIGN - OFF-PREMISES

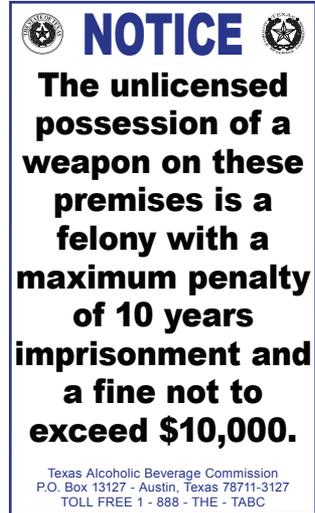
PURPOSE

This sign gives notice that it is unlawful to carry a weapon on the premises unless the person is licensed to carry the weapon under the concealed handgun law.

OFF-PREMISES REQUIREMENTS

Off-premises retailers must:

- prominently display this sign on the premises at each public entrance;
- make sign at least 6 inches high and 14 inches wide; and
- use contrasting colors.



HEALTH RISK WARNING SIGN - ON-PREMISES

PURPOSE

This sign informs the public of the risks of drinking alcohol during pregnancy.

ON-PREMISES REQUIREMENTS

On-premises retailers must:

- make sign not less 8.5 inches by 11 inches in size;
- make sign in English and Spanish, in bold black type on a white surface, or other clearly legible graphic design, with a font or type set size of not less than 28 point Arial or Helvetica; and



- display this sign on the door to each restroom on the permitted premises at a level where the sign can be easily seen by persons exiting the restroom. Hotels need to display the sign on restroom doors in public or common areas.

51% WEAPONS WARNING SIGN - ON-PREMISES

PURPOSE

This sign gives notice that it is unlawful to carry a weapon on the premises.

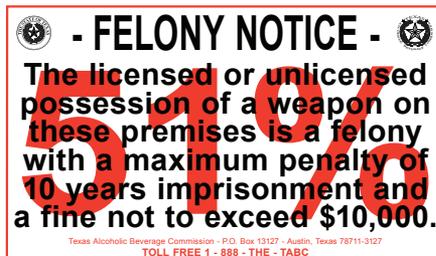
ON-PREMISES REQUIREMENTS

On-premises retailers must post one of two different weapons signs. If:

- the retailer does *not* hold a Food and Beverage Certificate, and their alcoholic beverage sales are 51% or more of their business, they use the “51% Weapons Warning Sign”;
- a retailer holds a Food and Beverage Certificate or makes less than 51% of their income from the sale of alcoholic beverages, they use the “Notice Weapons Warning Sign”.

On-premises retailers must:

- prominently display this sign on the premises at each public entrance;
- make sign at least 6 inches high and 14 inches wide;
- use contrasting colors; and
- post the 51% sign at each entrance of place of business.



On-premises licensees and permittees must keep detailed records for four years to substantiate the alcoholic beverage sales ratio breakdown between:

- food;
- alcoholic beverages; and
- other major sales categories.

Note: These records may be examined by a TABC representative.

HUMAN TRAFFICKING WARNING SIGN - ON-PREMISES AND OFF-PREMISES

PURPOSE

This sign gives notice that it is unlawful to consume alcoholic beverages on the licensed premises.

REQUIREMENTS

Holders of the following licenses/permits are required to display the Human Trafficking Warning Sign on their licensed premise in a conspicuous manner clearly visible to the public and employees.

- Wine and Beer Retailer's Permit (BG)
- Wine and Beer Retailer's Off-Premise Permit (BQ)
- Mixed Beverage Permit (MB/RM)
- Private Club Registration Permit (N)
- Retailer Dealer's On-Premise License (BE)
- Retailer Dealer's Off-Premise License (BF)

Those licensees/permittees that hold a Food and Beverage Certificate are exempt from this requirement.

The sign must be:

- at least 8.5 inches high and 11 inches wide; and
- in English, which covers approximately two-thirds of the sign and in Spanish, which covers the remaining one-third of the sign.



SECTION IV: TABC PROGRAMS

Please contact the local TABC office for information about programs which combat alcoholic beverage violations. Some of these are:

- **Marketing Practices Program** - This program was designed by TABC Marketing Practices staff for all members of the alcoholic beverage industry. It serves as a general overview for all tiers and promotes voluntary compliance with the *Texas Alcoholic Beverage Code* through education and training. It consists of five different modules:
 - Marketing Practices - General Overview;
 - Marketing Practices - Distributors;
 - Marketing Practices - Media Advertising;
 - Marketing Practices - Wholesaler Samplings; and
 - Marketing Practices - Beer Manufacturers.
- **Manager's Awareness Program (MAP)** - This program was designed by TABC staff for owners and managers of licensed establishments. This program serves as a road map to deter violations and promote voluntary compliance with the *Texas Alcoholic Beverage Code* through education and training. Hosted by the TABC, this two-hour program

addresses common issues such as those related to minors and intoxicated persons. Training opportunities are available for on- and off-premises license holders throughout the state.

- **Cops in Shops (CIS)** - During Cops In Shops operations, TABC agents, with the cooperation of retailers and their employees, pose as customers or employees of an establishment and apprehend underage violators as they attempt to purchase alcoholic beverages. TABC agents also have a secondary, educational role, which is to share their expertise with the retailer's employees on such subjects as false or fake ID's, the signs of intoxication, and the physical and behavioral characteristics of minors.
- **Operation Fake Out** - To counter the use of fake ID's by underage drinkers, the TABC has developed Operation Fake Out. Operation Fake Out is a cooperative venture involving the alcoholic beverage retailers, the TABC, the Texas Department of Public Safety, U.S. Secret Service and whenever possible, local law enforcement.

TABC agents with expertise in detecting fake ID's work alongside the employees of participating on-premises retailers. The establishment's doorman checks an ID presented and passes it to the TABC agent. The TABC agent re-checks the ID to detect tell-tale imperfections and then closely compares the person to the physical description and photo. Those found to be using fake or altered ID's are arrested and transported to jail.

- **Check the Label, Check the ID** - Many malt beverages on the market today don't look like traditional beer or malt liquor products. The cans and bottles are similar to non-alcoholic containers, and the difference may go unnoticed.

Retailers, parents and teachers should be aware that many alcoholic beverages don't appear to be alcoholic, and it's worth taking a second look. All alcoholic beverages are required to state the alcohol content on the label.

TABC promotes safe and responsible practices related to alcoholic beverages by raising awareness. Retailers have a responsibility to check the label and check the ID.

- **S.E.R.V.E. Program** - The Service Education to Reduce Violations by Employees (S.E.R.V.E.) Program was designed by Texas Alcoholic Beverage Commission (TABC) staff for employees of licensed establishments. This program provides education to deter violations

and promote voluntary compliance with the *Texas Alcoholic Beverage Code* to both on-premise and off-premise locations. Hosted by the TABC, this one hour program addresses common issues such as those related to minors and intoxicated persons. Training opportunities are available for employees throughout the state.

The program is designed to give employees the knowledge, skills and abilities to provide responsible alcohol sales and service, and to deter violations. Some of the topics covered are:

- identifying situations concerning minors, intoxicated persons;
- laws governing minors, intoxicated persons;
- civil liability (also known as dram shop liability) and relevant case studies;
- seller/server training certification;
- identifying fake or altered IDs;
- legally defensible identification.

The goal of the SERVE program is to help employees provide responsible alcoholic beverage sales and service.

- **At-Risk Program** - The At-Risk program is designed for owners and managers of on-premises licensed establishments only. This program provides education to deter violations and promote voluntary compliance with the *Texas Alcoholic Beverage Code*. This one hour program addresses common issues for on-premises locations that are considered “At Risk” by providing information on Breach of Peace, Risk Management Policies, Emergency Services, Security Staff and Fire Safety.
- **Inspection Awareness & Safety Campaigns** - TABC agents routinely inspect licensed premises and inspect or patrol other locations looking for violations of the *Texas Alcoholic Beverage Code* and other state laws. These inspection and patrol activities constitute a major portion of the TABC’s overall enforcement effort and result in a substantial share of the criminal and administrative violations found by enforcement agents.

SECTION V: SELLER/SERVER TRAINING

This program is provided by third party providers. TABC regulates these providers. People who sell and serve alcohol have a tremendous responsibility to help ensure public safety. The Texas Alcoholic Beverage Commission strongly believes that *trained* sellers, servers, and managers are better able to identify

and prevent sales of alcoholic beverages to minors, intoxicated persons, and non-members of a private club.

Seller Training Programs

Seller/server training courses are provided by certified private businesses or retailers that meet TABC requirements. Individuals who successfully complete an approved program are issued a certificate that is good for a period of two years unless earlier revoked. The TABC has adopted rules or policies establishing the minimum requirements for approved seller training programs. Upon application, the TABC approves seller training programs meeting such requirements that are sponsored either privately, by public community colleges, or by public or private institutions of higher education that offer a four-year undergraduate program and a degree or certificate in hotel or motel management, restaurant management, or travel or tourism management. *Texas Alcoholic Beverage Code §106.14 (b)*

The TABC may approve a seller training program sponsored by a licensee or permittee for the purpose of training its employees whether or not such employees are located at the same premises. The licensee or permittee must employ at least 150 persons at any one time during the license or permit year who sell, serve, or prepare alcoholic beverages. *Texas Alcoholic Beverage Code §106.14 (c)*

The TABC may approve a seller training program conducted by a hotel management company or a hotel operating company for the employees of five or more hotels operated or managed by the company if:

1. The seller training program is administered through the corporate offices of the company; and
2. The hotels employ a total of at least 200 persons at one time during the license or permit year who sell, serve, or prepare alcoholic beverages. *Texas Alcoholic Beverage Code §106.14 (d)*

The TABC Seller Training course is offered in several formats. A student can take a course through their employer, an In-House Seller Server School, or through a private company authorized to provide the training either in a classroom or online setting.

An internet-based seller server school holds a primary or branch Seller Server School Certificate issued by the TABC to a school offering an interactive course on the internet or intranet that has been approved to offer instruction and issue seller server certificates; and does not qualify for either a Classroom-Based Seller Server School Certificate or an In-House Seller Server School Certificate. Internet-based seller server training is done at an individual pace

and certifies one person at a time.

A Classroom-Based Seller Server School holds a primary or branch Seller Server School Certificate issued by the TABC to a school that has been approved to offer instruction and issue seller server certificates; and does not qualify for either an In-House Seller Server School Certificate or an Internet-Based Seller Server School Certificate. A classroom-based seller server course may certify up to 50 people at a time in one class.

Retailers that do not meet minimum requirements or do not wish to open their own school may use an approved TABC Program to certify employees. A list of TABC approved programs is provided on the TABC website at http://www.tabc.texas.gov/training_and_certification/approved_seller_training_schools.asp. Courses are available either in a classroom or online setting.

Retailers who qualify may open their own Internet-Based (can include Intranet) or Classroom-Based school. To apply for a school, retailers must follow the *TABC Administrative Rules Chapter 50*.

In-House Seller Server School Certificates are issued by the TABC to a school sponsored or operated by a retail permittee or licensee and that has authority to offer instruction on either a classroom basis or a computer basis and to issue seller server certificates.

Approved TABC Seller Server Trainers must apply and be associated with an already approved TABC Seller Server Training school, or have an application submitted for a school. In order to qualify to become a trainer, an individual must:

- Be at least 21 years of age or older;
- Complete an online trainer certification course and pass a trainer exam with a score of at least 80%;
- Have 2 years of teaching or training experience; or
- 15 hours of secondary education in a related field.

Course Content

The classes are required to cover the following information. All laws and definitions covered in the course are specific to Texas regulations.

- The definition of intoxication.
- Texas law pertaining to intoxicated persons.
- Texas law pertaining to minors.
- Texas law pertaining to legally defensible identification.
- How to detect intoxication.
- How to detect minors.
- How to detect improper identification.

- How to monitor customer behavior.
- How to use a chart showing the effects of alcohol based on: the size, type and number of drinks; body weight; the sex of the drinker; and the passage of time.
- The dangers of alcohol poisoning.
- Intervention pertaining to intoxication.
- Intervention pertaining to minors.
- Sanctions for employee violations.
- Any other topics identified by the TABC as appropriate, giving due consideration to developments in the law, society, and the alcoholic beverage industry.

Additional information on the Mandatory Course Curriculum can be found in the *TABC Administrative Rules §50.3*.

Safe Harbor

State law does not require those who sell or serve alcoholic beverages to be certified or licensed. However, requiring employees to be seller/server certified is one of the criteria for an establishment to qualify for “Safe Harbor” if an employee sells or serves alcoholic beverages to a non-member of a private club, a minor or an intoxicated person. If all employees are seller/server certified, the permittee’s alcoholic beverage license might be protected from a fine, suspension, or cancellation. Only employees certified by an approved TABC program will meet this qualification. In order to qualify for “Safe Harbor”:

- The person selling must not be the owner or an officer of the company;
- The person selling must hold a current seller-server training certificate from a TABC approved school;
- All employees engaged in the sale, service, or delivery of alcoholic beverages, as well as their immediate managers, must be certified within 30 days of their hire date;
- The employer must have written policies for responsible alcohol service and ensure that each employee has read and understands these policies;
- The employer must not directly or indirectly encourage the employee to violate the law; and
- There are not more than three of these types of violations within a twelve month period.

For additional information about Safe Harbor, refer to the *TABC Administrative Rule §34.4*.

Verifying Employee Certification

Employers can verify employee certifications online at: <https://online.tabc.texas.gov/datamart/searchTrainee.do>.

Select “Certificate Inquiry” then enter the employee’s social security number and date of birth. All Seller Training programs are required to have student data entered within 14 days of the student completing the class. When a certificate is lost or an individual needs proof that they are certified, TABC will email or send them proof from our website.

If an employer cannot find the employee when using the TABC website, contact Seller Training staff at 512-206-3420 or seller.training@tabc.texas.gov. Seller Training staff can research the certification. In some instances, the employee is in the database but does not appear due to a typographical error on either the employee’s social security number or date of birth. Seller training staff will advise on how to correct this information and will provide proof of certification to the employer.

It is important for the employer to take the responsibility and verify the certification of an employee in order to ensure the certificate the employee provided is valid. If an employee provides a fraudulent or forged certificate to their employer and the employer did not verify the certification on the TABC website, the employer will still be held accountable for the actions of that employee and “Safe Harbor” will not apply.

Trainees do not have to provide their social security number to be seller server certified. However, TABC cannot validate their certification. If the trainee refused to provide the information, the retailer would need to contact the school providing the program for validation or proof of certification. Trainee information not in the TABC database and that cannot be validated by TABC is not honored by the TABC.

SECTION VI: PUBLIC INFORMATION

PUBLIC INQUIRY SYSTEM

A great deal of information about TABC license and permit holders can be found on the Public Inquiry System on the TABC website. Reports can be created in .xls, .pdf., or .csv formats.

Alcoholic Beverage industry members or the public can:

- Check the status of pending, active or inactive licenses/permits;
- Search for a create lists of licenses/permits with administrative

Please include an e-mail address and phone number in the text of the request to ensure that a response is received.

What The Request Should Include

Please include the following information to help ensure you receive the information you want:

- Your name and mailing address;
- Your telephone number (so we can contact you directly if we have a question about your request);
- The trade name or corporate name of the licensee or permittee or;
- The license or permit number or;
- The street address of the business;
- Please indicate if you want certified copies of the documents.

The agency’s charges for copies are based on the schedule recommended by the Texas Building and Procurement Commission.

SECTION VII: LICENSE AND PERMIT DESCRIPTIONS

The following permits and licenses are authorized by the Texas Alcoholic Beverage Commission.

LIQUOR PERMITS	TABC CODE CHAPTER
Agent’s Manufacturing Warehousing Permit (AW)	Chapter 55
Agent’s Permit (A)	Chapter 35
Airline Beverage Permit (AB)	Chapter 34
Beverage Cartage Permit (PE)	Chapter 44
Bonded Warehouse Permit (J)	Chapter 46
Bonded Warehouse Permit Dry Area (JD)	Chapter 46
Brewer’s Permit (B)	Chapter 12
Brewer’s Self Distribution Permit (DA)	Chapter 12
Carrier’s Permit (C)	Chapter 41
Caterer’s Permit (CB)	Chapter 31
Daily Temporary Mixed Beverage Permit (per day) (TB)	Chapter 30
Daily Temporary Private Club Registration Permit (TN)	Chapter 33
Direct Shipper’s Permit (DS)	Chapter 54
Distiller’s & Rectifier’s Permit (D)	Chapter 14
Food and Beverage Certificate (FB)	Chapter 25

Special Three-Day wine and Beer Permit (SB)	Chapter 27
Forwarding Center Authority (FC)	Rule 35.6
Industrial Permit (I)	Chapter 38
Local Cartage Permit (E)	Chapter 43
Local Cartage Transfer Permit (ET)	Chapter 42
Local Distributer's Permit (LP)	Chapter 23
Local Industrial Alcohol Manufacturer's Permit (LI)	Chapter 47
Manufacturer's Agent's Permit (T)	Chapter 36
Market Research Packager's Permit (MR)	Chapter 49
Minibar Permit (MI)	Chapter 51
Mixed Beverage Permit (MB)	Chapter 28
Mixed Beverage Permit w/ Food and Beverage (RM)	Chapter 28
Mixed Beverage Late Hours Permit (LB)	Chapter 29
Nonresident Brewer's Permit (U)	Chapter 13
Nonresident Seller's Permit (S)	Chapter 37
Package Store Permit (P)	Chapter 22
Package Store Tasting Permit (PS)	Chapter 52
Wine Only Package Store Permit (Q)	Chapter 24
Passenger Train Beverage Permit (PT)	Chapter 48
Private Carrier's Permit (O)	Chapter 42
Private Club Exemption Certificate Permit (NE)	Chapter 32
Private Club Registration Permit (N)	Chapter 32
Private Club Beer and Wine Permit (NB)	Chapter 32
Private Club Late Hours Permit (NL)	Chapter 33
Private Storage Permit (L)	Chapter 45
Promotional Permit (PR)	Chapter 50
Public Storage Permit (K)	Chapter 45
Wholesaler's Permit (W)	Chapter 19
General Class B Wholesaler's Permit (X)	Chapter 20
Local Class B Wholesaler's Permit (LX)	Chapter 21
Wine and Beer Retailer's Permit Excursion Boat (V)	Chapter 25
Wine and Beer Retailer's Permit Railway Car (Y)	Chapter 25
Wine Bottler's Permit (Z)	Chapter 18
Wine Permit (G)	Chapter 16

Winery Festival Permit (GF)	Chapter 17
Winery Storage Permit (GS)	Chapter 45
Distiller's Agent's Permit (DK)	Chapter 36
BEER LICENSES	TABC CODE CHAPTER
Agent's Beer License (BK)	Chapter 73
Branch Distributor's License (BC)	Chapter 66
General Distributor's License (BB)	Chapter 64
Importer's License (BI)	Chapter 67
Importer's Carrier's License (BJ)	Chapter 68
Local Distributor's License (BD)	Chapter 65
Manufacturer's License (BA)	Chapter 62
Manufacturer's Self Distribution License (DB)	Chapter 62
Manufacturer's Warehouse License (MW)	Chapter 62
Nonresident Manufacturer's License (BS)	Chapter 63
Food and Beverage Certificate (FB)	Chapter 25
Brewpub License (BP)	Chapter 74
Beer Retailer's Off Premise License (BF)	Chapter 71
Beer Retailer's On Premise License (BE)	Chapter 69
Retail Dealer's On Premise Late Hours License (BL)	Chapter 70
Storage License (SL)	Chapter 75
Temporary License (BH)	Chapter 72
Temporary Charitable Auction Permit (CA)	Chapter 53
Wine and Beer Retailer's Permit (BG)	Chapter 25
Wine and Beer Retailer's Off Premise Permit (BQ)	Chapter 26
Temporary Wine and Beer Retailer's Permit (BH/HP)	Chapter 27

