

TABC TODAY



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December 1997

IN SEARCH OF CLARITY AND CONSISTENCY....



New rules will govern such activities as rotation and restocking of alcoholic beverages.

Restocking and rotation of alcoholic beverages. Inducements. Gifts. Sales. Services. Signs. Hearings. Suspensions. These were some of the topics addressed in the rules recently adopted by TABC Commissioners. The new rules are found at 16 Texas Administrative Code Sections 45.109,

45.110, 45.113 and 45.117.

The adoption of new rules governing marketing practices was the culmination of nearly a year of exhaustive review, analysis and discussions between industry representatives and agency staff. "The goal of this entire project" noted TABC Chairman Allan Shivers, Jr., "was to bring people together from various branches of the industry for the purpose of revising some of our marketing practices rules so that they could be clearer, more consistent and easier to understand by everyone."

On November 24th, the Commission adopted the following rules:

§45.109. This rule governs restocking and rotation of alcoholic beverages. Members of the wholesale tier and those members of the manufacturing tier permitted to sell to retailers, may stock, rotate and rearrange alcoholic beverages they sell provided that competitors' products are not altered or disturbed. Industry members governed by this rule may also organize and construct displays of their product in retail stores, as well as provide shelf plans and schematics to retailers.

§45.110. This rule defines the term "inducement" as it is used in §§102.04, 102.07, 102.12 and 108.06 of the Alcoholic Beverage Code. Following the example of federal rules, the Commission held that an inducement is any pattern of conduct or practice by members of the upper tiers of the alcoholic beverage industry that places the independence of the retailer at risk. This rule also provides specific examples of practices that constitute an inducement, such as purchasing or renting shelf or warehouse space from retailers or providing advertisements that benefit specific retailers. Members of the manufacturing and wholesale tiers may provide food, beverages and entertainment to members of the retail tier up to \$300 per occurrence.

The rule also provides a non-exclusive list of criteria by which the agency will determine whether a given practice constitutes an inducement. Some of these criteria are practices that restrict the ability of a retailer to decide the kind and quantity of products to purchase; practices that commit the retailer to a continuing obligation to purchase a particular product, or practices that involve the upper tier members in the daily operations of a retailer.

§45.113. This rule governs the gifts, services and sales that can be provided to retailers and consumers of beer. It allows novelty items to be given to retailers and consumers; promotional items to be sold to retailers and signs to be furnished, given or sold to retailers. Novelty items are defined as things designed to promote a product and that do not cost more than \$1.00 per unit wholesale cost. Promotional items are defined as things designed to promote a product and that are intended for use by the consumer, on or off the premises. Signs are defined as things with primary purpose of advertisement. In a departure from past rules, the Commission ruled that there will not be a limit on the number and kind of

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signs that can be provided to a retailer.

§45.117. This rule applies similar rules to the liquor industry. For example, members of the liquor manufacturing and wholesale tiers can provide novelty items of limited value to consumers and advertising specialties to retailers. The total cost of advertising specialties provided may not exceed \$87.00 per brand, per year.

Chairman Shivers noted that the Commissioners would revisit the new marketing practices rules in six months to determine if modifications are necessary. "We hope to replace the conflicts and complaints that arose from confusion with the previous rules," said Shivers.

The marketing practices rules take effect January 2, 1998.

Three new rules governing warning signs to be displayed on

certain retail premises, public participation at contested case hearings held by the Commission and administrative suspensions that may be imposed on license and permit holders were also adopted recently. According to General Counsel Lou Bright, "Each rule was adopted as a result of statutory amendments passed during the last legislative session." These rules take effect December 29, 1997.

§33.7. This rule requires each applicant for an original or renewal on premises license or permit to provide the Commission with certain sales data. The data provided will allow the agency to determine if a retail business gets 51% or more of its income from the sale of alcoholic beverages. Those businesses must post a warning sign notifying customers that persons licensed to carry a handgun may not carry their handgun on the premises.

§37.46. This rule allows members of the public a reasonable opportunity to appear in any contested administrative case held by the Commission and speak on any issue related to the hearing.

§37.61 This rule mandates, that in certain circumstances, the agency may deny a licensee or permittee the right to pay a civil fine in lieu of a suspension as punishment for an administrative violation. The Commission may apply this rule when the industry member has violated a Code provision related to breaches of the peace, service to a minor or intoxicated person, gambling or prostitution. In deciding whether to deny the charged party the right to pay a civil penalty, the TABC must consider the type of violations charged, the party's past record and any issues which would either improve or worsen the circumstances. ♦

Administrator's Corner



On the floor, at the corner of my desk, sits a stack of papers that has accumulated over the past several months. Nearly a foot in height, this collection of documents has been gradually generated by the revision of marketing practices rules.

This stack of paper in itself is not so impressive, because like any other good governmental body we generate our fair share of paper. What is impressive about this collection of paper that has come to occupy a special place in my office is that it represents countless hours of labor and compromise. The alcoholic beverage industry of our state is to be commended for its contribution in this effort.

Industry representatives attended our work sessions during the months that the Texas legislature was in

session. They attended meetings during weeks that their children were getting married. They were here in bad weather days that made their normal day trip a three or four hour adventure. They took part in the deliberations when they should have been addressing serious business concerns and when they would have probably preferred to be addressing serious recreational concerns.

For the most part, every participant represented their level of the industry in a business-friendly, professional manner that made the entire experience enjoyable and productive. On behalf of the staff and commissioners, let me express our appreciation to each person who participated in this project:

Fred Marosko, Package Stores
Mike McKinney, Beer Distributors
Rick Donley, Harris Co. Beer Distributors
Glen Garey, Restaurant Assn.
Gordon Johnson, Attorney, Miller
John Skimp, Gambrinus Brewing
Lutz Issleib, Pearl Brewing
Ed Howard, DISCUS
David Strain, Frio Brewing

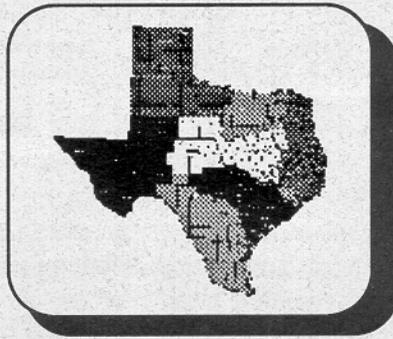
Jack Roberts, Attorney, Anheuser-Busch
Galt Graydon, Attorney, Coors Brewing
Robert Arendt, Stroh Brewing
Charles Carmouche, Fiesta Mart
Chuck McGrigg, Wine Institute
Hack Branch, Beer Distributor
Don Gidden, Beer Distributor
Wade Spillman, Attorney, Beer Wholesalers
Chuck Courtney, Retailers Assn.
Henry Brooks, Beer Distributor
Doug Dubois, Petroleum and Convenience
Stores Assn.
John Gillis, Beer Distributor
Beverly Lopez, Southland Corp.
Gary Owens, Randall's
Robert Livingston, Coors Brewing
Chuck Wright, Stroh Brewing
Don Hansen, Hotel & Motel Assn.
Ed Auler, Wineries of Texas
Rick Johnson, Food Industry Assn.
Louis DeLeon, Anheuser-Busch Brewing
John Rydman, Spec's Liquor
Brad Shields, Seagrams
Lisa Allen, Wine and Grape Growers Assn.
Joe Williams, Gulf Coast Grocery

Although there are some who are disappointed with the outcome, I hope you will still accept our sincere appreciation for your contributions and our best wishes for a great holiday season!

Doyne Bailey

And Then There Were Eight...

On September 1, 1997, agency's four-region (19-district) command structure was replaced with one consisting of eight regions (17 districts). Over time, the number of enforcement districts within the various enforcement regions will be further reduced to a total of 16. In announcing these changes, Enforcement Chief Greg Hamilton said, "Its no secret that the number of our upper and middle level field supervisors has been greatly reduced in recent years while the organizational structure of the Enforcement Division has remained the same. The purpose of this reorganization is improve field operations by better matching Enforcement's organizational structure with its available command resources. The result will be a flatter organization in which supervisors are more equitably distributed across the state in response to the service needs of the public and in which responsibilities are more evenly divided at each level of the organization."



"Customer service will improve as a result of these changes," said Chief Hamilton, "because supervisors will be better placed to respond to customer needs and service requests, and the elimination of an intermediate level of bureaucracy should speed communications, decision making and service delivery, while permitting us to have more agents serving our customers."

With the exception of improved service delivery, the reorganization will have no effect on agency customers. No offices will be closed. Citizens in 95% of the state will receive TABC field services from the same offices and the same people that have served them in the past. While there have been changes in some office service areas, most have been brought about by adding new outpost offices for increased customer convenience. ♦

SAVE for Retailers

The TABC recently appointed a committee to develop a new education program for alcoholic beverage retailers. It will be called Project SAVE for Retailers. Committee members include Lieutenant Christina Guerra, Chairperson, San Antonio; Donelda Nix, Galveston; Jack Jett, Jasper; James White, Big Springs; Salvador Moralez, El Paso; Robert Russell, Amarillo; Gregg Wallace, Wichita Falls and Gayle Casel, Dallas.

With the new program, licensees and permittees will be able to schedule a TABC agent to speak to their employees about alcoholic beverage laws which concern retailers. The program will be tailored to the type of license or permit and will cover topics such as: consumption laws, hours of sale and delivery, TABC inspections, administrative and criminal cases, intoxicated persons, minors and fake ID's. Optional components will be available upon request.

The new program is scheduled to be available in May, 1998. Currently, retailers may request a speaker from their local district office to come and speak with their employees on laws and other topics. ♦

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Dialing For Dollars: The El Paso Experiment

Teens reporting violations of state alcoholic beverage laws related to minors and getting a monetary reward for the information. Sounds a little far-fetched? Well, its a new approach to target illegal underage drinking in El Paso. The program, modeled after a similar initiative the agency is using in Odessa, is being set up in cooperation with Crime Stoppers, which would take the calls and pass information to TABC agents.

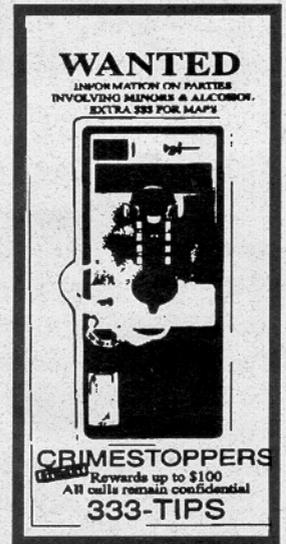
According to El Paso Sergeant Ruben Suarez, the commission has been working for about a year to develop the program. The only thing holding up the new effort is the funding to pay for the rewards, about \$25 for each tip. Numerous

student organizations and community groups have been approached for possible funding.

"Many times, school security guards will confiscate fliers at local schools that announce upcoming drinking parties and forward them to our agents to investigate," says Suarez. "These parties are a big problem because they often result in situations where young people drink alcoholic beverages and endanger themselves even more by driving," he adds.

As with the agency's "Turn In A Party" program in Odessa, the new program would offer young students a radically different way to take action against underage drinking without the fear of retribution. "It also gives young

people an avenue to help their friends without worrying about what others will say about them," notes Odessa Lieutenant Dyer Lightfoot. ♦



Commission Targets "King of Herbs"

Known as the "king of herbs", ginseng is regarded as an elixir vitae and the most precious nutritional supplement from China. Most of us have encountered ginseng flavored items at the market place. Recently, however, the Texas Department of Health has asked wholesalers to voluntarily stop distributing a ginseng extract product containing various levels of alcohol.

Sold in small test tube type containers, approximately three inches in height and one-fourth in diameter, the liquid ginseng is extracted from the roots of the plant and some believe it provides an "energy boost." Labels do not indicate that the products contain alcohol, an omission that may violate the state's Food, Drug and Cosmetics Act as well as the Alcoholic Beverage Code.

"Laboratory analysis by our lab revealed alcoholic contents ranging from 0.6% to 15.7% of alcohol by volume. A 15.7% level would be equal to nearly 32 proof. Beer, legal at 5% would be only 10 proof," notes Allen Johnson, Director of TABC's

Marketing Practices Section. He added that these products have been found primarily in independently owned convenience stores and gas stations and are often displayed next to candy, gum and other products aimed at minors. Some of these products, with an alcoholic potency three times that of beer, are obviously accessible to minors. TABC agents have visited with the wholesale distributors to also request voluntary withdrawal of the products from the market. Agents continue to look for the products during routine inspections.

Among the dangerous products are: Renshenfengwanguiang Ginseng and Foyal Jelly in a honey base; Ginseng Royal Jelly; Panax Ginseng Extractum-oral; Panax Ginseng Extract-liquid; Doctor Chan's High Potency Ginseng (in mint chocolate, amaretto, mocha and strawberry cream flavors); and Extra Strong Ginseng Extractum.

"These items do not meet statutory requirements as to label approval, container size, lab analysis, statutory course of distribution or permit authorization," said Johnson. ♦

"Hot Links" Offer Useful Information

www.tabc.state.tx.us

There's a new link to information on the new laws on underage drinking and driving ("Zero Tolerance"). There's also electronic availability of our Code and Rules in ASCII text, WordPerfect version 6.0 and Adobe Acrobat. You've heard alot about Project SAVE and now you can link up to information on this educational program as well as a list of presenters across the state. Recently, we've added a new link to current license/permit public information available in an electronic, downloadable format, by individual Texas county, by specific license type and by the entire state. For the interested job seeker, we've got a new link to information on current career opportunities available at TABC. Since going online back in March, we've had nearly 10,000 visits to our web site and are averaging 36 "hits" per day. "We're continuing to find ways of providing useful information to consumers via our Internet web site and we welcome ideas and suggestions from our *TABC Today* readers," says Director of Information Resources Jay Webster. ♦

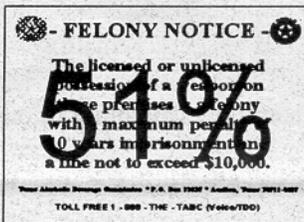


A Sign of Things to Come

Retailers have historically been required to post various types of signs at their businesses.

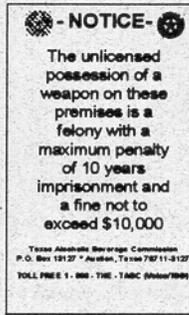
The last legislative session amended the code to clarify the conflicts of required signs in reference to the unlicensed and licensed possession of a handgun on a retail premise.

Retail on-premise accounts which do not hold a food and beverage certificate and receive **51% or more** of their gross receipts of the premises from the sale or service of alcoholic beverages are now required to post the "51%" sign.



On-premise retailers who hold a food and beverage certificate or receive **less than 51%** of their gross receipts from

the sale or service of alcoholic beverages and all off-premise retailers must post the "notice" sign.



Beginning in January, 1998, as new permits/licenses are issued or current permits/licenses are renewed, the TABC will send you the required signs for posting based on the type of permit/license you hold or the information you provide on your application. The package should be received within 2-3 weeks after you receive your permit or license. Failure to post the required signs may be punishable as a misdemeanor as well as an administrative violation.

In addition, the signs are required to be posted in English and Spanish at each entrance by which the public may enter. The initial mailing will include only

one set of the signs. If you need additional signs, you may obtain those from your local TABC office AFTER you have received the original package. ♦

DO YOU HAVE ALL REQUIRED SIGNS POSTED?

Type Sign	Complaint Sign	Consuming On-Premise	51%	Notice
Off-Premise Retailer	X	X		X
On-Premise Retailer without Food and Beverage Certificate And Sells 51% Alcoholic Beverages	X		X	
On-Premise Retailer with Food and Beverage Certificate or has less than 51% Alcoholic Beverage sales	X			X

"Eight-Liners" and Gambling in Texas: A Task Force Approach

In October, Governor Bush appointed a task force on illegal gambling chaired by Senator David Sibley of Waco with Representative Allen Place of Gatesville as vice chairman. Also named were Representative Terry Keel and persons representing the Texas Lottery Commission, the Department of Public Safety and Assistant Administrator Randy Yarbrough representing TABC.

The governor expressed his concern about illegal gambling creeping into the state and has charged the task force with examining current laws to determine their effectiveness and to make recommendations on clarification and strengthening the law to prevent casino-type gambling.

Of great concern is the proliferation of electronic games such as "eight-liners" or other similar games which operate like Las Vegas slot machines but pay out in coupons. There is much debate as to what is illegal and what is okay, but one thing everyone agrees upon is that anyone paying out cash to redeem the coupons is in violation of the Penal Code and, if they have an alcoholic beverage license or permit, they are in violation of the Alcoholic Beverage Code and may have their license suspended or canceled. The administrative penalty for illegal gambling is a minimum of 15 days license suspension to cancellation for the first offense and cancellation for any subsequent offense.

At issue is the exemption which was written into the Penal Code to allow bona fide amusement machines such as "claw" machines which dispense stuffed animals or other merchandise as prizes.

If you currently have casino-type devices in your establishment, you should make sure they are being operated in a manner which is legal or risk subjecting your license or permit to possible suspension or cancellation.

If you have any questions, please feel free to contact the TABC's general counsel or your attorney. ♦

You Asked...questions about alcoholic beverage regulations

Can you sell a beer and a shot of Schnapps (or another type of chaser) at the same time to a customer? What about during happy hours?

You may sell two drinks to a customer at the same time as long as you charge the proper amount for each drink. During a period of reduced drink prices (happy hour), you may not serve or sell two or more drinks to a customer for the price of one. During happy hour, you may not deliver more than two drinks to a single customer at one time. (Rule §45.103)



Can you sell a drink for half price? Can you have a cover of \$5 or \$10 and offer 70¢ drinks or reduced price drinks?

You may sell a drink for half price if the price is not under cost and if it isn't an inducement to become intoxicated. You may not sell or offer to sell alcoholic beverages at a price fixed on an "all you can drink"

basis. You are cautioned that any promotion resulting in intoxicated patrons is a violation.

You may not assess an entry fee, door charge, cover charge or buy-in related to the reduced prices of an alcoholic beverage. Such assessments shall be presumed to be related to reduced prices on alcoholic beverages if they coincide with the lower drink price promotion unless the reduced price promotion is regularly and uniformly carried on when no cover charge is assessed.

Also, you may not increase a door charge to more than the amount charged prior to the period of reduced drink prices. You may have door charges or cover charges for the cost of entertainment, food specials or for any other purpose not connected with reduced alcohol prices. This charge may run at the same time as the period of reduced drink prices. (Rule §45.103)



Allan Shivers, Jr., Chairman
Roy Orr, Commissioner
Martha Dickie, Commissioner
Doyne Bailey, Administrator

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