



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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MARKETING PRACTICES BULLETIN – MPB030

16 TAC 45.121 Credit Law Requirements

Dear Alcoholic Beverage Industry Members:

This bulletin is intended to announce amendments to 16 TAC 45.121 Credit Law Requirements.

Due to a combination of factors, specifically Sunset recommendations, agency strategic plan management goals and HB2560, the commission adopted changes to 16 TAC 45.121 on July 28, 2009, with an effective date of September 5, 2009.

Primary changes to credit law requirements are as follows:

- Industry will be required to submit notices of default and notice of payments through the commission's web-based reporting system.

The web-based reporting system is accessible through the TABC website at <https://www.tabc.texas.gov/tabcinternetlogin/login.aspx>.

TABC will provide regional training seminars to assist the industry in acclimating to the new system. Dates and times for the training seminars will be published on the TABC website.

- Retailers may view pending notices of defaults from the delinquent date through the publication date on the commission's public inquiry system.
- Notices of defaults may be entered from the delinquent date through the day before the publication of the delinquent list.
- The publication and effective dates will be one in the same.

Delinquent List for the delivery period of the 1st – 15th will be published and effective on the 5th of the following month.

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Delinquent List for the delivery period of the 16th – end of the month will be published and effective on the 20th of following month.

- Sellers may accept payment of any form prior to the statutory delinquent dates of the 10th and 25th of the month. Sellers may only accept cash or cash equivalent as payments after the statutory delinquent dates of the 10th and 25th of the month.

It will be a violation of the credit law requirements if a seller accepts a payment other than cash or cash equivalent after the delinquent due date. [The commission may consider mitigating or aggravating circumstances to determine the appropriate sanction.]

Product purchased from the 1st – 15th may be paid for with any form of payment through the delinquent date of the 25th. Payments made after the 25th and up to the day before the publication date of the 5th must be paid in cash or cash equivalent.

Product purchased from the 16th through the end of the month may be paid with any form of payment through the delinquent date of the 10th. Payments made after the 10th and up to the day before the publication date of the 20th must be paid in cash or cash equivalent.

- The commission will pursue administrative action for violations of the credit law requirements. The commission may consider whether violations are the result of a cascading event or single incident

It should be noted that the initial act of being delinquent will be considered a violation under the new rule.

An administrative letter will be sent to all retailers for the first six acts of being delinquent. The commission will not impose an administrative penalty or suspension until the 7th and subsequent delinquent acts.

All notices of defaults for the respective delivery period must be made to the commission prior to the publication of the delinquent list. Any notice received after the publication date will be considered as reported late and will be subject to administrative action.

- We will allow an adjustment period through January 2010 before implementing the administrative process. This will enable the industry to make necessary changes to their business practices.

- The following statutory changes went into effect on May 20, 2009, as a result of House Bill 2560. This law has no grandfather clause attached to it.

The commission or administrator may not accept the voluntary cancellation or suspension of a permit or allow a permit to be renewed or transferred if the permit holder is delinquent in the payment of an account for liquor under this section.

- A person whose permit is canceled by the commission or whose permit has expired is not eligible to hold any other permit or license under this code until the person has cured any delinquency of the person under this section.

To ensure a smooth transition from the current process to the new system all notices of defaults and notices of payment prior to September 1, 2009, will still need to be faxed, emailed or mailed to the commission for manual processing.

The commission will closely monitor and review the effect of these changes on the industry throughout the adjustment period. We hope this notification will assist you in evaluating your business practices and making necessary changes to adapt to the provisions of the new rule. If you would like additional information or have questions regarding this bulletin, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by phone at 512-206-3302 or by facsimile at 512-206-3212.

Kind Regards,



Dexter K. Jones
Assistant Chief of Compliance and Director of Marketing Practices

xc: Alan Steen, Administrator
Executive Management
Regional Personnel

Attachments:
16 TAC 45.121 Credit Law Requirements
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§45.121. Credit Restrictions and Delinquent List for Liquor.

(a) Purpose. This rule implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) Alcoholic beverage—As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including , money order, cashier's check, certified check or completed electronic funds transfer.

(3)~~[(2)]~~ Delinquent payment—A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the day it is required to be paid by §102.32(c) of the Code.

(4)~~[(3)]~~ Event—A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) ~~[(4)]~~ Incident—A single delinquent payment.

(6) ~~[(5)]~~ Retailer—A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees.

(7) ~~[(6)]~~ Seller—A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license is cancelled for cause, voluntarily cancelled, expires, suspended or placed in suspension while on the delinquent list will ~~may~~ be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this rule, the Retailer

includes all persons who were owners, officers, directors[, equity interest holders,] and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission ~~[on the forms provided]~~ on the commission's web based reporting system at www.tabc.state.tx.us ~~[/creditlaw/reporting.]~~

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission on or before the date the delinquent list is published. ~~[within two business days from the date the violation is discovered by the Seller.]~~

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquency List until the Release Date on Delinquent List, or the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) is prohibited from purchasing or accepting delivery of alcoholic beverages from any source to any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List, based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(i.) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(ii) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(iii) bank statement or records showing bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid, or

(iv) bank statement or records showing the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more ~~repeat~~ violations of this section. The commission may consider whether the ~~repeat~~ violation(s) is/are the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.texas.gov>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) The Delinquent list will be published the 5th ~~[26th]~~ day of the month for purchases made from the 1st to the 15th day of the preceding month, for which payment was not made on or before the 25th day of the preceding month. The Delinquent list will be published the 20th ~~[14th]~~ day of the month for purchases made between the 16th and the last day of the preceding month for which payment was not made on or before the 10th day of the month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly ~~[continuously each day the commission is open during normal business hours]~~ to reflect reports of ~~[violations and]~~ payments submitted. ~~[The Release Date is the date a payment is published submitted to the Delinquent List.]~~

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent list that would otherwise fall on a Saturday, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.

Payment Calendar

Process Under New Rule:

