



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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MARKETING PRACTICES BULLETIN – MPB035

16 TAC 45.131 Cash Law Requirements

Dear Alcoholic Beverage Industry Members:

This bulletin is intended to announce amendments to 16 TAC 45.131 Cash Law Requirements. Due to a combination of factors, specifically Sunset recommendations and agency strategic management goals, the commission adopted changes to 16 TAC 45.131 on November 9, 2009.

The rule will become effective November 29, 2009. We encourage you to become familiar with the entire rule and make necessary adjustments to your business practices that will enable you to comply with the requirements.

Primary changes to cash law requirements are as follows:

- Industry will be required to submit notices of dishonored checks or drafts through the commission's web-based reporting system.

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

Sellers who cannot access the commissions web based system must submit a request for exception to the commission using Form *C-815*.

If an exception is granted, sellers will be required to report cash law violations by submitting an affidavit of insufficient payment using Form C-809 with copies of the dishonored check(s). *This form will need to be submitted to the appropriate TABC regional office within two business days from the date the violation is discovered by the seller.* *FORM C-809 may be submitted via Email, Facsimile or Mail. Further information will be disclosed in your approval letter.*

TABC has provided regional training seminars to assist the industry in acclimating to the new system. If you did not attend a training seminar and/or did not receive a login ID or password to access the web-based system, please contact your local TABC Compliance Office.

- Invoices must be signed by the seller and retailer to verify receipt of beverages, accuracy of invoice and seller's acknowledgement of payment received on or before the delivery date.
- Seller and retailer must retain invoices for four years from the date of delivery for audit purposes.
- Invoices may be retained, signed and retained in an electronic or internet based inventory system. They may be retained on or off the licensed premise provided records can be accessed from the licensed premise and made available to the commission during normal business hours.
- Notices of dishonored checks or drafts must be entered within two days of notice of dishonor.

It will be a violation of the cash law requirements if a seller fails to report a violation. [The commission may consider mitigating or aggravating circumstances to determine the appropriate sanction.]

- Local Distributor's Permit Holders ["LP"] must sell all malt beverages (beer, ale and malt liquor) for cash terms only.
- Statutory provisions in §102.31 of the Alcoholic Beverage Code ["the Code"] do not directly address the sale of ale and malt liquor, by a General Class B Wholesaler [X], Wholesaler [W] or Local Class B Wholesaler [LX] permit holder who also hold a General Distributor's [BB], Branch Distributor's [BC], or Local Distributor's [BD] license, to retailer's authorized to purchase ale and malt liquor. However, longstanding industry practice has been to sell ale and malt liquor for cash terms only and report payment failures to the Commission as cash law violations. The commission will regulate the sale of ale and/or malt liquor under the cash law provisions of §102.31 of the Code through the 82nd legislative session. Notwithstanding any subsequent statutory amendments to § 102.31 that address this matter, the commission will review this issue and make necessary regulatory changes as applicable.
- The commission will *pursue* administrative action for violations of the cash law rules. The commission may consider whether violations are the result of a cascading event or single incident

Each failed payment is considered a separate cash law violation. An administrative warning letter will be sent to all retailers advising them of the first six cash law violations within a 12 month period. The commission will not initiate an administrative penalty or suspension until the 7th and subsequent cash law violations [see penalty chart].

Cash Law Penalty Chart	1 st (e.g. 7th violation will result in 1st administrative suspension or civil penalty)	2 nd (e.g. 8th violation will result in 2nd administrative suspension or civil penalty)	3 rd (e.g. 9th violation will result in 3rd administrative suspension or civil penalty)
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

- The commission will allow an adjustment period through January 2010 before implementing the administrative process. The Commission will implement the administrative process on February 01, 2010. At that time we will begin tracking and sending administrative warning notices for cash law violations. Industry members should immediately begin to examine and make necessary changes to business practices to ensure compliance prior to the implementation of the administrative process and enforcement of the rules.
- Oversight of the cash law processing system will be managed by the Austin Regional Office.

The commission will closely monitor and review the impact of these changes to ensure the desired result of voluntarily compliance. Your input and insights are a valuable component of our review and we encourage you to submit comments and suggestion. 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 512-206-3300 or by facsimile at 512-206-3212.

Kind Regards,



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Executive Management
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Attachment: 16 TAC 45.131 Cash Law Requirements

§45.131. Payment Regulations for Malt Beverages

(a) Purpose. This rule implements §§102.31, 11.61(b)(2), 11.66, 28.12, 61.72 and 61.73 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) 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.

(2) Cash payment--United States Currency and coins, or a cash equivalent financial transaction or instrument.

(3) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in one or more incidents to one or more Sellers.

(4) Incident--One financial transaction or instrument made by a Retailer that fails to provide payment in full for malt beverages delivered by a Seller to the Retailer.

(5) Malt beverages--Ale or malt liquor containing more than four percent of alcohol by weight and beer containing one-half of one percent or more of alcohol by volume and not more than four percent alcohol by weight.

(6) Retailer--A license or permit holder and their agents, servants and employees, authorized to sell malt beverages for on or off-premise consumption to an ultimate consumer.

(7) Seller--A general, local or branch distributor license holder, or a local distributor's permit holder and their agents, servants, employees, or a subsidiary or affiliate, authorized to sell malt beverages to a retailer.

(c) Invoices. A delivery of malt 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 malt beverages, the price, the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of malt beverages and accuracy of invoice and by the Seller to acknowledge payment was received on or before the delivery.

(2) The Seller and Retailer must retain invoices for four years from the date of delivery.

(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, as long as the records can be accessed from the licensed premise and made available to the commission during normal business hours.

(d) Cash Payment Violation. A Retailer who fails to make a cash payment to a Seller for the delivery of malt beverages violates this section unless an exception applies.

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

(2) For purposes of this section, the Retailer includes all persons who are or were owners, officers, directors, managers or shareholders of the Retailer at the time a cash payment violation occurs.

(e) Reporting Violation; Failure to Report.

(1) A report of a violation must be submitted electronically on the forms provided on the commission's web based reporting system at www.tabc.texas.gov.

- (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 under this subsection must be made to the commission within two business days from the date the violation is discovered by the Seller.
- (4) A Seller who fails to report a violation as required by this subsection is in violation of this section.
- (f) Exception. A Retailer who wishes to dispute a violation of this section, based on a good faith dispute between the Retailer and the Seller may submit supporting documents and a detailed written statement to the commission with a 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:
 - (A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;
 - (B) 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
 - (C) bank statement or records showing bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or
 - (D) 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) The Retailer must immediately submit a notice of resolution of a dispute to the commission under this subsection.
- (g) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §§11.61, 28.12, 61.71, 61.73 or 61.74 of the Code for repeat violations of this section. The commission may consider whether the repeat violations are the result of an event or incident when initiating an action under this subsection.
- (h) Calculation of Time. Sundays and legal holidays are not counted in determining time periods under this section.

Note: New Rule Adopted: November 9, 2009; Effective: November 29, 2009