



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

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*Administrator*

**March 20, 2014**

**To Texas Brewpubs:**

This letter is intended to clarify certain issues brought to the Commission's attention with regard to new laws that went into effect after the 83<sup>rd</sup> Legislative Session.

**Senate Bill 515 by Senator Kevin Eltife** authorizes a brewpub to manufacture up to 10,000 barrels of malt beverages (beer and ale/malt liquor) annually instead of 5,000. Previously, Texas brewpubs were only authorized to sell their product directly to consumers who visited their establishments. SB 515 authorizes brewpubs to sell their own malt beverages for resale in stores, bars and restaurants. A brewpub (BP) may sell beer produced under the license to the holder of a general, local, or branch distributor's license (BB, BC, BD). (See 74.09 AB Code.) A brewpub may sell ale and malt liquor to the holder of a wholesaler's permit (W), class B wholesaler's permit (X) or a local class B wholesaler's permit (LX).<sup>1</sup> (See 20.01(2) and 74.10 AB Code.)

**In addition to the authority detailed above**, only those brewpubs holding a Wine and Beer Retailer's Permit (BG) **AND** who sell only their own alcoholic beverages to customers in their brewpub are authorized under SB 515 to:

- sell malt liquor or ale produced under the license to retailers and wholesalers authorized to sell them in this state and to qualified persons outside the state; and
- sell beer produced under the license to retailers or to qualified persons for shipment and consumption outside the state. (See 74.08 AB Code.) Whether or not a person is "qualified" is determined by the laws in the recipient's state, which should be determined by contacting that state. For more information regarding sales to retailers, see "Brewpub Sales to Retailers" below.

**NOTE: Senate Bill 515 did not change the fact that a brewpub is considered a retail license.**

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<sup>1</sup> AB Code 74.10 appears to require a brewpub to sell their ale and malt liquor only to the holder of a Local Class B Wholesaler's Permit (LX). However, AB Code 20.01(2) appears to allow the holder of a General Class B Wholesaler's Permit (X) to purchase a brewpub's ale or malt liquor. The Agency will look to the Code in its entirety in order to achieve a just and reasonable result that reflects the circumstances under which SB 515 was enacted (e.g., to allow off-premise sales of brewpub products). The Agency also seeks to avoid unnecessary consequences that would follow from a contrary interpretation (e.g., to require holders of X or W permits to also pay for an LX permit just in order to distribute brewpub products). Nevertheless, the Agency encourages the affected members of the industry to seek statutory clarification of the legislative intent during the 84<sup>th</sup> legislative session. The Agency will revisit the issue after September 01, 2015, if necessary.

## Summary of Authority of a Brewpub

	Sell to consumers	Sell to beer distributors (BB, BC, BD)	Sell to wholesalers (W, X, LX)	Sell to P with LP	Sell to retailers	Sell and ship to qualified persons outside TX
Brewpub with MB or Brewpub with BG who sells others' products	Yes	Yes	Yes	NO	NO	NO
Brewpub with BG who only sells own product	Yes	Yes	Yes	Yes	Yes	Yes

**Product/Label Approval.** A brewpub who wishes to sell their products for resale is required to obtain product and label approval from TABC. An application and two samples must be submitted for each product that requires approval. **(At a minimum, the sample itself should be labeled with the manufacturer and product name.)** A product analysis from an independent laboratory may be submitted in lieu of the actual samples. If a brewpub wishes to distribute outside of Texas, then a federal Tax and Trade Bureau Certificate of Label Approval (COLA) must be submitted with the application for label approval. Please allow up to three weeks for TABC to process the application. For more information and an application form, visit our Label Approval web page. [http://www.tabc.state.tx.us/label\\_approval](http://www.tabc.state.tx.us/label_approval) Until the agency has adopted an on-line label approval system, please allow up to four weeks for processing.

**Territorial Agreement.** A brewpub owner who wishes to sell their malt beverages through a distributor or wholesaler is required to file a territorial agreement with TABC. Each brewpub is required to designate territorial limits in Texas within which each of their brands may be sold by distributors and/or wholesalers. At a minimum, the agreement should define the exact territory, designate the parties to the agreement, identify the brands covered by the agreement, and be signed and dated. A brewpub may not assign all or any part of the same sales territory to more than one distributor/wholesaler. Please note that newly enacted Senate Bill 639 prohibits manufacturers of malt beverages, including brewpubs, from accepting payment in exchange for an agreement setting forth territorial rights.

**Reporting Requirements.** TABC will not require additional reports to be filed by brewpubs; however, an updated excise tax reporting form is now available on the TABC website.

## Brewpub Sales to Retailers

Only those brewpubs holding a Wine and Beer Retailer's Permit (BG) **AND** who sell only their own alcoholic beverages to customers in their brewpub are authorized under SB 515 to sell those products directly to retail locations (up to 1,000 barrels annually or 2,500 barrels annually for all brewpubs operated by the same licensee), and to any qualified person outside of Texas. This is in addition to having the authority to sell their products to beer distributors/wholesalers. The 1,000 barrels that can be sold direct to retailers are included in the 10,000 barrels that can be produced annually. This is not an additional 1,000 barrels. **A brewpub that intends to sell their own product directly to retailers will note it on the license application at renewal.**

**Product Transport by Brewpubs Selling to Retailers.** A brewpub that wishes to sell their product to a retailer has two options with regard to transporting ale/malt liquor. Beer is legal for the brewpub (or anyone) to transport without a permit.

1. **Hire a company that holds a Carrier Permit (C).** If a brewpub wishes to sell to a retailer and transport any ale or malt liquor, they may choose to hire the holder of a TABC Carrier Permit to transport it.
2. **Obtain a Private Carrier's Permit (O).** A brewpub who sells to a retailer may obtain a Private Carrier's Permit to transport ale or malt liquor. The fee for a two-year Private Carrier's Permit is \$60. The surcharge is \$252. All requirements of holding an O permit apply.

**Advertising / Marketing.** SB 515 grants brewpubs the authority to produce and sell their product. SB 515 does not grant brewpubs the authority to market and promote their product like an upper tier member, such as conducting tastings, bar spending, soliciting orders off the brewpub premises, or engage in other agent's activities. If you have advertising or marketing questions, call your local TABC office or contact TABC's Excise Tax and Marketing Practices Director Thomas Graham or Merideth Munoz.

## **For additional information, please contact the following:**

Inquiries to TABC may be directed to the following e-mail addresses:

Marketing.Practices@tabc.state.tx.us

Excise.Tax@tabc.state.tx.us

Label.Approval@tabc.state.tx.us

Licensing@tabc.state.tx.us

Questions@tabc.state.tx.us

Or to the following people:

Thomas Graham, Director of Excise Tax and Marketing Practices, 512-206-3411

Merideth Munoz, Supervisor of Excise Tax and Marketing Practices, 512-206-3338

Carolyn Beck, Governmental Relations, 512-206-3347

Sincerely,



Carolyn R. Beck  
Governmental Relations

**Disclaimer:**

*The information contained in this letter is current as of March 20, 2014, but is subject to change at any time. TABC 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 letter.*

*This letter should not be considered as legally binding either by the TABC or anyone subject to TABC's regulation. Industry members are bound by and are responsible for adhering to the Texas Alcoholic Beverage Code and the Texas Alcoholic Beverage Commission Administrative Rules, both of which may be found on the TABC website at: <http://www.tabc.state.tx.us/laws/index.asp>.*

*The statements in this letter have not been approved by the Commissioners and do not constitute statements of general applicability that implement, interpret or prescribe law or policy. Nor do the statements in this guide constitute statements of general applicability that describe the procedure or practice requirements of TABC.*