



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING

March 25, 2014

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer
Midland*

*Steven M. Weinberg, MD, JD, Member
Colleyville*

*Melinda S. Fredricks, Member
Conroe*

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AGENDA

REGULAR COMMISSION MEETING

10:00 a.m. – March 25, 2014

5806 Mesa Drive
Austin, Texas 78731



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José Cuevas, Jr.
Presiding Officer-Midland

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Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Sherry Cook
Administrator

1.	Call to Order	José Cuevas, Jr.
2.	Approval of Commission Meeting Minutes of January 28, 2014	José Cuevas, Jr.
3.	Commission Report: Administrator and Agency Activities, Budget Issues , Staff Achievements, Legislative Activities	Sherry Cook
4.	Strategic Planning Briefing	Carolyn Beck
5.	Education and Prevention Briefing	Mindy Carroll
6.	Enforcement Administration Audit	Monday Rufus
7.	Approval to Adopt Amendments to Rule §33.31, Administrative Inactivation, Reinstatement and Renewal of a License or Permit	Martin Wilson
8.	Approval to Withdraw Proposed Amendments to Rule §45.73, Label: General	Martin Wilson
9.	Approval to Withdraw Proposed Amendments to Rule §45.82, Prohibited Practices	Martin Wilson
10.	Approval to Withdraw Proposed New Rule §45.92, Prohibited Malt Beverage Labels	Martin Wilson
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16.	Approval to Publish Proposed New Rule §45.94, Verification Regarding Use of Facilities	Martin Wilson
17.	Approval to Publish New Rule §45.95, Agreements Between Manufacturers or Brewers and Retailers	Martin Wilson
18.	Approval to Publish Proposed Amendments to Rule §45.96, Brewpubs	Martin Wilson

19.	Approval to Publish Proposed Amendments to Rule §45.110, Inducements	Martin Wilson
20.	Public Comments	José Cuevas, Jr.
21.	Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Deliberate the Appointment, Employment, Evaluation, Duties of the Position of Administrator (Govt. Code §551.071, §551.074)	José Cuevas, Jr.
22.	Next Meeting Date: May 27, 2014	José Cuevas, Jr.
23.	Adjourn	José Cuevas, Jr.

Note: Items may not necessarily be considered in the order they appear on the agenda. Executive session for advice of Counsel (pursuant to §551.071 of the Government Code) may be called regarding any agenda item. Action may be taken on any agenda item.

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice) (512) 206-3259 (fax). Relay Texas at 1-800-735-2989 (TTY/TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.

MINUTES

REGULAR COMMISSION MEETING

10:00 a.m. – March 25, 2014

5806 Mesa Drive
Austin, Texas 78731



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COMMISSION MEETING MINUTES

March 25, 2014

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, March 25, 2014 at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

**COMMISSIONERS
PRESENT:**

José Cuevas, Jr.
Melinda Fredricks
Steven Weinberg, MD, JD

STAFF PRESENT:

Sherry Cook, Executive Director

Carolyn Beck, Director, Communications & Governmental Relations

Gene Bowman, Director, Audit & Investigations Division

David Brandon, Enterprise Manager, Information Resources Division

Mindy Carroll, Director, Education & Prevention Division

Danita Cotman, Legal Secretary, Legal Division

Julie Davis, Technical Writer, Education & Prevention Division

Luann Dickerson, Executive Assistant, Executive Division

Loretta Doty, Director, Human Resources Division

Shelby Eskew, Director, Business Services Division

Randy Field, Major, Houston Enforcement Division

Diana Figueroa, Executive Assistant, Executive Division

Keon Flowers, Recruiter, Human Resources Division

Kayla Fritz, Education Specialist, Education & Prevention Division

Ruby Gonzalez, Administrative Assistant, Licensing Division

Thomas Graham, Director, Marketing Practices

Toni Hale, Program Specialist, Education & Prevention Division

Amy Harrison, Director, Licensing Division

Emily Helm, General Counsel, Legal Division

Joe Iagnemmo, Web Design Administrator, Information Resources Division

Jacki Jackson, Education Specialist, Education & Prevention Division

Dexter Jones, Assistant Chief, Audit & Investigations Division
Joann Joseph, Assistant Director, Licensing Division
Edward LeBlanc, System Support Specialist, Information Resources
Division
Merideth Munoz, Supervisor, Marketing Practices
Earl Pearson, Assistant Chief, Enforcement Division
Andy Peña, Director, Office of Professional Responsibility/Training
Division
Gloria Darden Reed, Executive Assistant, Executive Division
Carla Rios, Quality Assurance Specialist, Ports of Entry Division
Robert Saenz, Chief of Field Operations
Robin Sanders, Assistant Attorney General, Office of the Attorney
General of Texas
Karen Smithwick, Director, Ports of Entry Division
Ed Swedberg, Assistant Administrator, Executive Division
Todd Talley, Regional Liaison, Field Operations
Jay Webster, Director, Information Resources Division
Martin Wilson, Assistant General Counsel, Legal Division

**GUESTS
PRESENT:**

Dewey Brackin, Attorney, Gardere Wynn Sewell
Lou Bright, General Counsel, Texas Wine and Grape Growers
Association
ML Calcote, Consultant, Republic National Distributing Company
James Davis, Attorney, Locke Lord/The Beer Alliance of Texas
Rick Donley, President, The Beer Alliance of Texas
Jim Dow, Principal, Dow Consulting/Texas Craft Brewers Guild
Robert Gonzales, Certified Public Accountant
Steve Greinert, Consultant, Wholesale Beer Distributors of Texas
Alan Gray, Executive Director, Licensed Beverage Distributors
John Hatch, Partner, Texas Petition Strategies
Steve Koebele, Counsel, GAMA GHRA
Lance Lively, Executive Director, Texas Package Stores Association
Jack Martin, Attorney, Jack Martin & Associates
Matthew Martin, Vice President, Addison Law
Bryan Poff, President, Texas Alcoholic Beverage Consulting
Royce Poinsett, Attorney, Anheuser-Busch
Steve Ross, Communications Coordinator, Texans Standing Tall
Tyler Rudd, Consultant, California Wine Institute
Monday Rufus, Certified Public Accountant
Tom Spilman, Executive Vice President, Wholesale Beer Distributors
of Texas
Keith Strama, General Counsel, Wholesale Beer Distributors
Ralph Townes, Vice President-Governmental Affairs, Glazers

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:04 a.m. by Presiding Officer José Cuevas.

APPROVAL OF COMMISSION MINUTES OF July 23, 2013

Presiding Officer José Cuevas called for approval of the Commission meeting minutes of January 28, 2014. Commissioner Steven Weinberg so moved to approve the minutes as written. Presiding Officer José Cuevas seconded the motion. The motion carried.

COMMISSION REPORT: ADMINISTRATOR AND AGENCY ACTIVITIES, BUDGET ISSUES, STAFF ACHIEVEMENTS, LEGISLATIVE ACTIVITIES

Presiding Officer Cuevas called upon Executive Director Sherry Cook to present the Commission report on Administrator and Agency Activities, Budget Issues, Staff Achievements and Legislative Activities.

Executive Director Cook welcomed Presiding Officer Cuevas, and Commissioners Weinberg and Fredricks back to Austin.

Executive Director Cook began by reporting on significant Agency activities. She stated that she would give an overview of some of the Agency's challenges which are the driving force behind our upcoming Legislative Appropriations Request (LAR). She stated that the Agency is concentrating on working through some high profile lawsuits. She explained that working on these lawsuits involves several resources such as the Attorney General's office and various departments throughout the Agency which ultimately affects the Agency's day to day operations.

Executive Director Cook stated the Agency is continuing to work with stakeholders to approve a series of rules that are intertwined with a pending lawsuit filed by Mark Anthony Brewing; the hearing for this lawsuit is currently set for June 2, 2014.

Executive Director Cook mentioned that TABC was served with a notice of lawsuit by Twin Liquors for a SOAH hearing pending criminal allegations. She stated a hearing date has not been set at this time; however, it is anticipated to be scheduled sometime in April. She also stated specific questions regarding these two lawsuits can be further discussed during the executive session.

Executive Director Cook discussed how the process of rulemaking is very complicated and sometimes it becomes necessary to post, review, withdraw and then repost. She stated that the Agency is working with all interested parties and is committed to making recommendations based on statute.

Executive Director Cook stated the new Special Investigations Unit (SIU) and Financial Crimes Unit (FCU) are up and running. She explained the challenges for these two units and

also Auditing is to identify all the necessary resources needed to focus on the longer term tier violations. She stated the requests are coming in quickly and can easily overload the new units, Assistant Chief of Audit and Investigations, Dexter Jones is in the process of formulating a plan that will leverage Audit personnel to assist in investigations as needed throughout the State. She further stated the work is plentiful and the rate of complaints has amplified relating to organized criminal activity. She emphasized that the team has done a tremendous job managing and conducting operations; however, to fulfill logistics and policy requirements, supervisors from Enforcement have to be pulled to manage investigations. She stated in reallocating those resources it affects Enforcement operations and puts a strain on Enforcement personnel but a balance is being managed. She added other challenges being faced are protecting sensitive data, and ensuring the identities of agents are protected during undercover operations.

Executive Director Cook began her overview of Enforcement Activities explaining that the Agency's focus is now on "cause" (investigative efforts) and away from "effect". She stated during this focus transition, performance measurements goals were affected. She continued explaining that Enforcement Division CPO's are charged with conducting more inspections with an increased focus mainly being conducted at Priority Locations, Minor Stings and Undercover Operations. She stated this activity has caused an increased number of complaints being opened at problem locations which require more in-depth investigations. She noted that each complaint is expected to be resolved within 60 days. She explained that the Enforcement Division gave up 12 positions for the creation of the SIU/FCU units; therefore, this decrease in personnel along with the geographical distances in the Lubbock and San Antonio Districts have caused additional travel expenses for personnel and man-hours to complete the priority inspections, minor stings and undercover operations. Executive Director Cook explained for this reason the Agency is taking a critical look at our work drivers and determining a method of operation that identifies "At Risk" locations to better establish priority locations. She added by doing this the Agency will be able to achieve its performance targets and at the same time implement effective enforcement actions. She stated the Agency will focus on conducting quality inspections versus quantity and continue to encourage compliance behavior. She added that the aging fleet of Agency vehicles has also caused a significant increase in operating costs.

Executive Director Cook began her review over the Business Support Division (BSD) activities. She explained that a demand has been placed on BSD due to managing increased operating costs, and using mainly "manual" processes to conduct BSD functions. She explained that when there is a career ladder change or a raise granted by the legislature, Director Eskew and her team manage these changes for over 600 employees via spreadsheet. Executive Director Cook added this includes time and leave tracking, budget reconciliation and other accounting processes. She further explained that due to the current cumbersome processes used, an automated process is being considered. She added that the automation option is timed with a state project referred to as "Project One" and waivers to deviate have to be requested and granted.

Executive Director Cook's next topic of her presentation was the Information Resources Division (IRD). She discussed IRD's challenges of meeting customer demands for IT services with limited resources. She explained that over the past 10 years the number of

information systems has grown dramatically as well as their complexity and information security threats have grown in number, complexity, and compliance requirements. She further noted that IRD continues to support in-house systems and over the past five years has implemented a number of industry-facing and public-facing systems. However, she stated there has been no commensurate increase in support staff. She continued stating that currently IRD is tracking over 100 technology projects, 25 of which are active projects. She added that the demand for IT services will continue to grow, with technology and automation being the best solution to remedy many issues.

Executive Director Cook briefed the Commissioners on the latest activities of Education and Prevention. She stated there is an opportunity with “Social Norming” as the most effective method to address underage drinking and over consumption of alcohol on college campuses by using social media outlets. She added, coming up with ways to address these issues in a prevention/education format that is effective is probably their most challenging role. She noted that a lot of information that is being “posted” or “tweeted” is “hey come to the party”, and spreads rapid fires, as opposed to messages from prevention groups saying that everyone does not need to drink to excess. She expressed that she is looking forward to this new focus and how it will educate college students and young adults that “over-consumption of alcohol” is not necessary.

Executive Director Cook gave an update on Excise Tax & Marketing Practices stating that in FY 2013 they experienced a 57% increase since FY2009 on the total number of labels approved with a 236% increase in malt beverage labels alone. She explained the introduction of these new businesses into the industry is creating challenges in that the Agency is not as familiar with the laws and rules, and the regulations required to enter into the industry takes more time and has caused some delays. She stated she would go into further detail later in her presentation.

Executive Director Cook discussed how Ports of Entry (POE) and revenue have been a challenge in recent years due to violence, weak economy, and A/B price increases in Mexico and at the duty free stores. She stated however, improvements have begun to be noticed with the addition of the sea ports and the border crossings. Director Smithwick and her team will continue to monitor and focus on areas where the revenue can be maximized with the best use of our labor resources.

Executive Director Cook gave a review of the Office of Professional Responsibility (OPR) activities stating that the challenges for OPR have been technology related. She explained that an important part of their daily interaction with complainants involves clearly understanding what their issues are. She added that after a “refresh,” of their systems they lost the use of their NEC voice security recording capabilities. She further noted that OPR and IRD have been working with the vendor to obtain the required software to resume this function to our office. She stated this is another example of how the Agency depends on technology and when resources are committed to normal operations and future enhancements, Help Desk issues suffer.

Executive Director Cook’s next item of discussion was the Human Resources Division. She stated the number one challenge is the need for an updated human resources management

information system. She explained that this technology is also tied to the initiative under the State Comptroller's Office "Project One". She further explained the timeline for the project which includes several phases, does not begin until next biennium. She stated in addition, HR is getting newly hired staff trained and performing at their full potential. She added, five of the seven HR staff has one year or less of tenure in the Human Resources Division. She also noted that in Human Resources much like other of our Divisions, operate lean. She stated there often isn't someone to cross train to take the place of someone leaving; however, if there is enough notice and vacancies, positions are "double filled" for knowledge transfer.

Executive Director Cook began the review of the Licensing Division, stating their challenge is staying knowledgeable of the increasing complexities of corporate structures and trying to avoid exposure. She explained that when they lose someone who has years of experience, this is not a job you just walk into and hope to be effective. She added she wants to bring awareness to Licensing's challenges and the plans being formulated to address these challenges. She stated those plans will focus on the upcoming legislative cycle and our appropriations requests, in addition to a continued effort in looking for ways to streamline and improve our operations and retain employees.

Executive Director Cook's next item for discussion was the Legislative Appropriations Request (LAR) currently being drafted. She re-emphasized the challenges of not enough resources and employee turnover. She added in a recent Employee Engagement survey taken within the Agency it was learned that civilian employees believe they are under-paid. She further explained that in researching similar functions among comparative state agencies this belief may be correct. She stated that if the Agency can retain its employees so that it is not in a constant training cycle some of the stress will be lifted. She added that the Agency's Justification I section on the LAR is geared toward Career Ladder and Retention Planning, which includes determining turnover rates, how TABC compares to other agencies, who is leaving and why, making adjustments to the current career ladder and employees who are not in a career ladder. She mentioned that also included will be the cost of employee turnover and employment restrictions. She explained that Agency employees are restricted where they can work part-time to subsidize their income due to statute (i.e., they are prohibited from working at an HEB, Walmart or Target because they hold a permit).

Executive Director Cook stated that during an inter-Agency brainstorming session for the strategic plan, one of the guiding principles added was to "Strive to be a competitive employer". She stated that by focusing on the items addressed in the Justification I section of the LAR, that is the first step in being a competitive employer.

Executive Director Cook explained that the Agency starts off with a deficit within our operating costs as a result from lease increases, longevity/hazardous duty pay increases, lump sum leave payouts, judgments, and two legislative sessions ago a 1% benefit increase and another ½ percent this last session was added. She stated that to make up for this deficit, the vacancy rate is used to offset the excess operating costs. She explained that this helps offset the deficit; however, it appears to the legislature that the Agency isn't filling the vacancies which then puts those budgeted positions at risk for being revoked. She added that additional funds will be requested to cover these increased operating costs.

Executive Director Cook stated that the Agency will be requesting funding to replace the positions taken from Enforcement and Audit to staff the new SIU/FCU investigative units. She added the units have been successful in completing several joint operations and addressing organized criminal activity matters. She stated that funds to outfit the agents with hand held radios are being requested as well as funds to purchase additional 14 fleet vehicles. She stated she hopes to start a replacement cycle for vehicles so that a large amount of funds aren't requested at one time but spread out over a period of time.

Lastly, Executive Director Cook stated the final item on the LAR is the Centralized Accounting and Payroll/Personnel System (CAPPS), the replacement for Project One. She explained that at this time there is no indication that this system will cost the agency monetarily; however, it will require 20-30 hours of dedicated contract or personnel resources. She stated the Agency will need to determine how to not let the short term re-allocation of personnel resources negatively impact the daily operations of the Agency.

Executive Director Cook discussed the Agent Academy scheduled to begin May 5, 2014. She stated fifteen positions were posted which will be allocated along Odessa, Houston, Beaumont, Bryan, Laredo, Victoria and Del Rio. She added that this was the first time NeoGov was used for this process and early indicators have shown it has streamlined how applications are accepted and processed. She noted that among the 211 applicants, 24 applicants were forwarded to the interview phase and 12 candidates were forwarded to the final background stage. Commissioner Weinberg inquired how many agent trainees were wanted for the May academy. Executive Director Cook responded that the maximum number of trainees expected was 15, but anticipated having a minimum of 8. Commissioner Fredricks inquired if it was common to start off with such a large applicant pool and then narrow it down to such a small percent like this current academy. Executive Director Cook stated that it was common, due to lack of qualifications by applicants, and applicants not understanding the job function. Commissioner Weinberg asked if there was diversity in the pool of applicants. Executive Director Cook answered in the affirmative.

Executive Director Cook introduced, Keon Flowers, the Human Resources Recruiter recently hired. She added that Mr. Flowers will be instrumental in filling the current 24 Commissioned and 42 Non-Commissioned vacancies. She stated the Agency is anticipating having a Fall Agent Academy as well, which will fill Commissioned vacancies.

Executive Director Cook's next item for discussion was TABC Vehicle Stop statistics. She explained that though vehicle stops are not our main mission, Commissioned officers at times come across situations which require their involvement such as DWI's, traffic offenses, AB Code offenses, open container violations, assaults, crimes against property and assisting motorists. She further explained that Law Enforcement agencies with a mission to include traffic stop are required to report vehicle stop statistics along with racial profiling information to TCOLE on an annual basis. She added our agency traditionally has participated in this reporting; however, a request was made to make us exempt from reporting our vehicle stops since it is not a main part of our mission. She noted vehicle stops will continue to be monitored within the agency but the main focus will be on the priorities and mission of the Agency. Presiding Officer Cuevas stated that the agents are in unmarked vehicles and do not have the audio/video equipment as other police vehicles to assist during vehicle stops

and though the Agency has an obligation to the public for their safety, this is not the main function of TABC. Chief Robert Saenz of Enforcement stated that in reviewing previous vehicles stops, they did come across stops that were unwarranted. He stated he would like to include a training module into the Learning Management System (LMS) to train agents on vehicle stop criteria to make sure it is understood what warrants a vehicle stop. Commissioner Weinberg inquired whether field agents could contact other law agencies via radio during a vehicle stop and Chief Saenz confirmed that they could. Chief Saenz also mentioned that Enforcement is in the process of updating the Vehicle Stop policy to guide agents in making sound decisions in the event a stop becomes necessary.

Executive Director Cook's next item for discussion was Product Label Application approvals. She reported that during FY2014 the Marketing Practices-Tax Division handled 8,092 product label applications. She added that the average processing time for applications from initial receipt to completion is 13 days, which she hopes to reduce to 10 days. She stated factors that delay application processing time include: applicants new to the industry and unfamiliar with process, incomplete applications, time for testing, and limited staffing. She further explained the average processing time varies greatly by beverage type and by the final status (approved or denied) assigned. She stated applications for Malt Beverage labels, for example, take a longer to process than applications of wine or spirits, because malt beverage products almost always have to be tested in-house prior to label approval by the agency's sole chemist in order to verify alcohol content. Executive Director Cook said applicants can use an independent lab; however, most applications don't include lab analysis results and testing has to be conducted in-house. Presiding Officer Cuevas asked if it was a possibility to request that applicants are *required* to get an independent test analysis done and the results submitted with the application to speed up the process. Thomas Graham, Director of Marketing Practices stated that changes to "require" testing analysis be submitted with the label application would require legislative approval. He stated currently, applicants submitting lab analysis results along with the application, is an option, not a requirement. He further explained the difference in as much of a 10th of a point changes how the beverage will be taxed. Commissioner Weinberg inquired if the label approval application process would be made available on-line. Executive Director Cook responded that it is currently in progress to get the product label application on-line to process all label types and that they anticipate it greatly improving the application processing time. She added they are also defining a "corrections to application" timeline which should reduce the number of applications remaining unprocessed and stagnant.

Executive Director Cook discussed the Ports of Entry update. She stated that for the month of January 2014 compared to January 2013 there was some loss of revenue amongst the ports; however, the difference in loss was made up in the Laredo and Galveston Seaport Ports of Entry. She added she continues to see a pattern of increased revenue for Laredo during 1st Quarter 2014. She explained that due to a ship being unable to port at Galveston Seaport due to fog, it affected our initial 1st Quarter revenue projections. She added temporary employees were sent home until the ship could port which doubled some of our anticipated personnel costs. Presiding Officer Cuevas commented that while the Seaport business is being learned, the revenue expectations will need to be adjusted accordingly. Executive Director Cook also stated that once the Houston Port opens in Fall 2014 that will add an additional revenue source. She added that start-up costs have been minimal so the

numbers are in the black; however, it is too early to project revenue at this point. Commissioner Weinberg inquired whether it is believed that the staffing changes are what affected the increased revenue. Director Smithwick stated that since summer 2013 when the 24/7 shifts on Thursdays, Fridays and Saturdays began, it has positively impacted revenue. Director Smithwick added that the improved economy, increased travel by Mexican nationals, more foot traffic crossing the border, and restaurant owners from Mexico opening locations on the U.S. side have contributed to the increased revenue as well. Director Smithwick noted schedules were adjusted to coincide with the increased traffic during the Easter holiday weekend.

Commissioner Weinberg inquired about the slide in the POE presentation that showed an increase in revenue for the "cigarette container confiscated" that increased from \$1400 last year to \$21,000 this year. Director Smithwick stated the increase was due to an abandoned vehicle in El Paso that was filled with cigarettes, which Customs Border Patrol asked TABC to seize and investigate. She explained that because the product was in our custody, it was reported in our numbers although the product was returned to the owners who later came forward with proper documentation of ownership.

Executive Director Cook detailed the activity for License and Permit Renewal Requests. She stated the number of primary and subordinate licenses/permit application renewals received during the current fiscal year (FY 2014) has declined compared to fiscal year (FY 2012). She added the net loss appears be limited to the retail tier specifically, with far more primary licenses and permits failing to be renewed. She noted that renewals for upper tier license classes are up for both upper tier primaries and subordinates. Executive Director Cook stated that retail subordinate license classes associated with Beer/Beer & Wine retailers have experienced the most significant drop in renewal requests to date. She added the Beer/Beer & Wine Late Hours (BL) suffered the greatest decline in renewals, along with decreases in all subordinate classes. She added Brew Pub (BP) licenses increased by one, Food and Beverage Certificates increased by 97, and Mini Bar permits (MI) had no change.

Executive Director Cook concluded her presentation by informing the Commissioners that TABC is hosting the 80th NCSLA in San Antonio June 16-20, 2014. She anticipates it will be a success.

Presiding Officer Cuevas inquired about recovery dollars by the SIU/FCU units and whether the money seized or made from auction of seized items could be utilized by the Agency or if legislature had to approve the use of funds. Executive Director Cook stated that when TABC works with another agency, a percent is agreed to and designated to our agency or a "cap" is determined. She explained that seized funds fall within restrictions of LBD and that seized funds can only be used toward law enforcement purchases. She added if TABC wanted to exceed our "cap", additional monies could be requested, if no response is received for the additional funds request the request is automatically granted. Presiding Officer Cuevas asked what the recovery dollars by SIU/FCU is anticipated to be. Assistant Chief Jones responded that it is anticipated that recovery dollars could range from \$250,000 to \$500,000.

Presiding Officer Cuevas asked Chief Saenz if he noticed a change in retention or a difference in the caliber of applications being received, since the salary increase for CPO

positions was implemented. Chief Saenz stated that CPOs aren't necessarily being lost to higher paying jobs, he explained that CPOs leave due to wanting to pursue a different job role such as a Game Warden or another career advancing opportunity.

Presiding Officer Cuevas asked Director Harrison what she believed was causing the high turnover and loss of staff in her division. Director Harrison stated she believes it's the pay that makes it unable to retain employees and also the heavy workload. She added they are losing employees to comparable positions in other state agencies. She also noted that her employees try to forego attending training so that they don't get further behind their workload. However, she requires them to go so that they stay current with the necessary training to perform their jobs. Presiding Officer Cuevas inquired other than salary increases, can anything else be done to improve the workload, such as outsourcing the work. Director Harrison stated that due to the complexity of our computer systems and the complexity of the alcoholic beverage code that is not an option. She said that HR is helping to better define the needs of the licensing division. She added the job is not simply data entry where data is entered then reports printed out, she explained that in the Licensing area, data has to be analyzed before being entered into the system then analyzed once again when the data is extracted to be sure no violations are found. She stated that the scanning technology they are utilizing has made a huge impact on their efficiency. Director Harrison informed the Commissioners that she was able to meet their challenge of processing new licenses within 37 days. She added that in meeting this goal, her supplemental and renewals have suffered and those are taking longer to process. She stated she is striving to find a balance but her numbers for processing supplemental and renewal licenses will be up.

Presiding Officer Cuevas asked what the difference in salary was between TABC and comparable positions in other state agencies. Loretta Doty, Director of Human Resources stated when reviewing the retention plan, it was estimated that TABC's pay was between 18 and 25% lower than comparable mid-sized agencies. She noted for a licensing and permit specialist position, the turnover rate was 49% with people leaving after 2 years or less of service. She added that they are looking into starting an intern program for the licensing/permit specialist position and once the internship is completed the option to hire a newly trained intern is available. Director Harrison said the learning curve is about two years to properly train a new employee. She also stated that it has been said that former TABC licensing/permit specialists are making up to 40% more in the private sector. She mentioned that after a new employee completes their 6 month probation period they enter into a mentoring program. She further explained that an experienced employee is paired with a newly hired one to work on complex applications or special projects to ensure it is done correctly. She also said they have training modules in place to build upon what the new hires have learned and develop their knowledge further.

Presiding Officer Cuevas asked Jay Webster, Director of Information Resources to give a staffing update. Director Webster stated that in the past year they have lost three employees, two to retirement and one to getting a better employment opportunity. He further explained that the person that left for the better job opportunity was able to get an almost 40% pay increase with the Texas Lottery Commission (TLC). Commissioner Fredricks asked Director Webster how they are managing the staffing loss. Director Webster stated that they had to bring in contract employees to fill the technical needs. Presiding Officer Cuevas asked how

the TLC could manage such a large technology staffing budget. Director Webster believes they have managed such a large technology staffing budget as part of their retention planning to retain employees. Executive Director Cook added like TABC, the TLC is also restricted to where their employees can gain secondary employment; therefore, their salary pay compensates for that restriction. She also mentioned TLC is allotted a portion of the profits it makes whereas TABC does not keep any of the revenue it makes.

Commissioner Weinberg commented that it seems that several of the issues mentioned today are directly tied to uncompetitive civilian employee salary pay. He said he would like to see a timeline of the LAR process indicating the proposed budget, briefings, due dates, when the budget will be passed and so on, since the time schedule is tight. He said civilian salary pay seems to be a high priority and may need to trump additional FTEs and radios. Executive Director Cook stated she wanted to make the Commissioners aware of the needs now so that they could give their input and recommendations into the LAR process. She added that in April she will be visiting with the legislative members to discuss the agency responsibilities and its challenges, and also to discuss proposed LAR items as they align with the agency mission. She will also reiterate to the legislative members the revenue TABC contributes to the State general revenue which is approximately half a billion annually. She also informed the Commissioners that she will be visiting with them as well to keep them informed of the LAR progress.

Executive Director Cook will present a timeline of the LAR process indicating the proposed budget, briefings, due dates, and when the budget will be passed.

Executive Director Sherry Cook's report is supported by a PowerPoint presentation. (Attachment 1)

STRATEGIC PLANNING BRIEFING

Presiding Officer Cuevas called upon Carolyn Beck, Director of Communications/Government Relations to present the Strategic Planning briefing.

Director Beck said the Executive Team along with the Commissioners reviewed the agency mission and vision statements. She stated it was decided among the group that the agency mission and vision statements would change as follows:

Revised TABC Mission Statement: The mission of TABC is to protect public health and safety and serve the people of Texas through consistent, fair and timely administration of the Alcoholic Beverage Code.

Revised TABC Vision Statement: A safe and responsible healthy Texas served by an innovative Alcoholic Beverage Commission committed to innovative partnerships with our communities and the regulating a responsible and compliant alcoholic beverage industry.

Director Carolyn Beck also stated that the following changes were made to the TABC philosophy:

The Texas Alcoholic Beverage Commission will:

- * apply the Alcoholic Beverage Code in a fair, consistent, and timely manner;
- * exemplify courteous, ethical, and professional behavior;
- * be fiscally responsible and accountable; and
- * be accessible, transparent, efficient and effective.

Director Carolyn Beck also stated the Agency guiding principles wording was improved but basically captured the same principles. She also noted that the Agency Four Cornerstones: Service, Courtesy, Integrity, and Accountability remained the same as they accurately support the agency mission and vision.

Director Carolyn Beck stated that the Executive Team along with the Commissioners were meeting with stakeholders to review external management goals that were developed jointly over two years ago at the adjournment of the commission meeting.

Director Carolyn Beck's report is supported by a PowerPoint presentation. (Attachment 2)

EDUCATION AND PREVENTION BRIEFING

Presiding Officer Cuevas called upon Mindy Carroll, Director of Education and Prevention for her update on the Education and Prevention Division.

Director Mindy Carroll reviewed the Education/Seller total budget and stated the FY14 Grant Funds equaled \$458,264. She also said that through a partnership with the TxDOT, printing services (valued at \$158,900) were used to print in-house items such as laws, administrative rules, TABC code and other educational printed materials provided to agents and the public. She mentioned that in FY13 331,005 seller servers were trained with 95 approved/participating schools. She mentioned that Julie Davis, who recently transferred from Human Resources, will be handling the video production needs of the division which will give TABC a much better presence online. She also added that newly hired Kayla Fritz will be handling TABC's social media outlets, such as Facebook and Twitter and reaching out to college-age and young adults stressing responsible drinking. She stated that Toni Hale transitioned into the Grants Coordinator role and continues to oversee the divisional project management needs. She reviewed several of the grants that fund programs/projects such as TABC Special Events, TABC Inspection Overtime, EUDL Video on underage drinking in Texas. She also discussed two FY15 Grants written for Traffic Safety: Inspection Overtime/Education and JAG-Specialized Training/Equipment SIU/FCU. She reviewed Seller/Server (SS) certificate sales for both on-line and classroom. She said on-line sales have increased 315% since its inception in 2007 and classroom Seller/Server certificate sales have decreased by 50% since 2007. She mentioned the on-line SS certificate class time was reduced from 4 hour block to a 2 hour block session and it now allows the user to login and logout to allow the users to take the on-line course at their convenience. Director Mindy Carroll reviewed the slides on Industry Program/Private Provider for both on-line and classroom based schools. She added a YouTube channel was created that includes videos on binge drinking, community issues, underage drinking, and videos for our retailers. She

stated a Microsite has also been created that addresses drinking responsibly which is geared toward college-age and young adult drinkers.

Commissioner Fredricks stated that although the Facebook social media may not reach young adults and college-age drinkers directly, it will reach the parents who have some influence.

Director Mindy Carroll also discussed the program on the topic of Responsible consumption, a program that discusses the differences in alcoholic consumption by volume and percentage of alcohol in beverages being consumed. Director Mindy Carroll discussed Retailer Education courses offered. She stated the MAP/SERVE course is taught by agents and auditors in the field and are given upon request or following a violation. She added programs focusing on sell to minors, marketing practices, how to read IDs correctly, drink tampering and special events such as Formula One are also offered. She stated they received positive feedback on the new Mobile Complaint app. She also reviewed the Law Enforcement Education programs including the Sexual Assault-Drug Facilitated Training.

Director Mindy Carroll's report is supported by a PowerPoint presentation. (Attachment 3)

ENFORCEMENT ADMINISTRATION AUDIT

Presiding Officer Cuevas called upon Internal Auditor Monday Rufus, CPA for his presentation on the Enforcement Administration Audit.

Mr. Rufus stated that the evaluation focused on the controls implemented by the Texas Alcoholic Beverage Commission over Enforcement Administration. He added the results of the evaluation disclosed that the Commission has procedures and controls in place for Enforcement Administration. He noted they identified some opportunities for enhancing the controls currently in place and reviewed the four audit objectives.

Mr. Rufus reported there were two findings:

Finding 1: A miscoding of an investigation case in the CrisNet Database (which was corrected during the audit).

Finding 1 Recommendation: The status of inspections and complaints cases should be more closely monitored by Enforcement management to ensure proper and accurate reporting of enforcement cases.

Commissioner Fredricks commented that although this was a miscoded case, had the mistake not been found, it could have had profound ramifications.

Finding 2: Lack of supporting documentation for required minor sting operations letters sent to representatives of locations not selling alcohol to minors

Finding 2 Recommendation: Enforcement management should include in the policies and procedures instructions on how a copy of the letter or a checklist should be saved (electronically or in paper form) after it is sent as evidence of complying with written policies and procedures.

Presiding Officer asked how many letters were not found. Mr. Rufus stated that on the sample pulled, 3 of 5 letters in various districts were not found. Commissioner Fredricks asked if the letters weren't being sent or copies just not found on file. Chief Saenz said copies of the letters weren't consistently mailed or filed; therefore, they are revising the Enforcement policy to include the procedure that a letter will be sent to representatives of locations not selling alcohol to minors and a copy will be kept on file in Enforcement.

Mr. Monday Rufus' report is supported by a PowerPoint presentation. (Attachment 4)

Presiding Officer Cuevas called for a motion on the agenda item. Commissioner Fredricks moved to approve the Texas Alcoholic Beverage Commission's Enforcement Administration Audit as presented by Monday Rufus. Presiding Officer Cuevas asked if there was a second to this motion. Commissioner Weinberg seconded the motion. Presiding Officer Cuevas stated the motion has been made and seconded and the motion passes.

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson for the presentation of the next agenda Item 7.

APPROVAL TO ADOPT AMENDMENTS TO RULE §33.31, ADMINISTRATION INACTIVATION, REINSTATEMENT AND RENEWAL OF A LICENSE AND PERMIT

Assistant General Counsel Martin Wilson presented the agenda item 7, as noted above and stated it is the only amendment up for adoption at this time. He stated it was published on the February 14, 2014 Texas Register and no comments were received. He explained this rule implements Senator Watson's bill from last session and addresses the problem of landlords being unable to rent their property due to pending cases against prior tenants/occupants. He stated this bill will provide some relief to landlords and he also stated voluntary suspension procedures were updated along with how they are processed.

Commissioner Weinberg made a motion to adopt rule §33.31, Administrative Inactivation, Reinstatement and Renewal of a License or Permit. Commissioner Fredricks seconded the motion. Presiding Officer Cuevas stated the motion was made and seconded. He stated all those in favor say "Aye"; all those opposed say "No". The motion passes.

At the request of Assistant General Counsel Martin Wilson, Presiding Officer Cuevas combined agenda items 8 –13.

APPROVAL TO WITHDRAW PROPOSED AMENDMENTS TO RULE §45.73, LABEL: GENERAL

APPROVAL TO WITHDRAW PROPOSED AMENDMENTS TO RULE §45.82, PROHIBITED PRACTICES

APPROVAL TO WITHDRAW PROPOSED NEW RULE §45.92, PROHIBITED MALT BEVERAGE LABELS

APPROVAL TO WITHDRAW PROPOSED NEW RULE §45.93, PROHIBITED PRACTICES AND RELATIONSHIPS FOR MALT BEVERAGES

APPROVAL TO WITHDRAW PROPOSED NEW RULE §45.110, INDUCEMENTS

APPROVAL TO WITHDRAW PROPOSED NEW RULE §45.140, VERIFICATION

Assistant General Counsel Martin Wilson stated the above set of rules being requested to be withdrawn are ones that were previously published and most of these were the results of petitions, they are related to the private brand issue. He further explained the rules have several components, and they were published for comments, received comments, discussed with individuals, they were discussed in stakeholders meetings and public hearings. He noted that the rules have served their purpose to receive public comments. He proposed that items 8-13 be withdrawn so that the new revised rules proposed for publication in items 14-19 in the next agenda item can be published.

Presiding Officer Cuevas stated there was one person whom signed up for public speaking, Attorney James Davis, Locke Lord/The Beer Alliance of Texas.

Mr. James Davis wanted to express to the Commissioners that he agreed with the withdrawal of the proposed items.

Commissioner Weinberg made a motion to withdraw rule items 8 - 13 as noted above. Commissioner Fredricks seconded the motion. Presiding Officer Cuevas stated the motion was made and seconded. He stated all those in favor say "Aye", all those opposed say "No". The motion passes.

At the request of Assistant General Counsel Martin Wilson, Presiding Officer Cuevas combined agenda items 14 –19.

APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO RULE §45.73, LABEL: GENERAL

APPROVAL TP PUBLISH PROPOSED AMENDMENTS TO RULE §45.82, PROHIBITED PRACTICES

APPROVAL TO PUBLISH PROPOSED NEW RULE §45.94, VERIFICATION REGARDING USE OF FACILITIES

APPROVAL TO PUBLISH NEW RULE §45.95, AGREEMENTS BETWEEN MANUFACTURERS OR BREWERS AND RETAILERS

APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO RULE §45.96, BREWPUBS

APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO RULE §45.110, INDUCEMENTS

Assistant General Counsel Martin Wilson stated that a public hearing has been set to receive oral comments on these rules on April 30, 2014, at 1:30pm in the Commission Meeting Room on the first floor of the Texas Alcoholic Beverage Commission Headquarters, 5806 Mesa Drive, Austin, Texas.

Assistant General Counsel Martin Wilson stated proposed rules 14 and 15 are essentially deleting references to special or private brands, to prohibit labels indicating that the beverage is owned or licensed by or exclusively used by a retailer, and to define the word “exclusively” as used in the section. He added the amendment also prohibits brewers and manufacturers from furnishing anything of value to retailers of their products. He stated the commission believes that a malt beverage label that is identified with a specific retailer under certain circumstances is a form of advertising for the retailer. He added brewers and manufacturers cannot provide advertising for a specific retailer because it is a thing of value to the retailer. He further explained discussions, which have spanned over three years, have been extensive on these rules.

Assistant General Counsel Martin Wilson moved to item 16, §45.94 Verification Regarding Use of Facilities. He stated this rule requires that a person who holds a Chapter 12 or 13 permit or a Chapter 62 or 63 license, must annually verify to the commission that a brewing or manufacturing facility owned or controlled by that person “is not used to produce malt beverages primarily for a specific retailer or the retailer’s affiliates”. He added the code requires the commission to adopt a form for the verification. He notes that if this rule passed verification would be filed by September 1 of each year by each permittee and license required.

Assistant General Counsel Martin Wilson stated item 17, requires that agreements between the manufacturing and retail tiers are generally prohibited unless otherwise allowed and must be filed with the commission. He added the agreements would be required to be filed by September 1, 2015 if the rule is passed. He stated the two categories exempt from this new proposed filing rule relate to horseracing and track promotions and pre-arrangement promotions which are already addressed in the sections 102.7 and 102.15 of the code. He noted the Alcoholic Beverage Code does not otherwise appear to allow agreements between brewers or manufacturers and Texas retailers. He also added that if there are agreements that are questionable, the Agency has a right under the code to investigate and determine if it is appropriate or legal. He noted that although the agreements would be due to be filed by September 1, 2015, the commission has the right to prosecute should it find an illegal or inappropriate agreement before that date. He explained that malt beverage distributors have requested that the commission require the filing of agreements between brewers or manufacturers and retailers. He further explained the underlying concern is that

if producers and retailers are able to agree on certain terms regarding the retailer's sale of a product, the middle tier distributors can effectively be squeezed from both above and below in the supply chain, thereby reducing their independence.

Assistant General Counsel Martin Wilson stated item 18 which relates to Brewpubs. He stated the rule prohibits a Brewpub retailer from partaking in contract brewing as they are not in the manufacturing tier. He explained the new rule makes clear that Brewpubs are to follow the same labeling restrictions as Brewers and Manufacturers. He added with the exception of restrictions on trade names/trademarks, Brewpubs are classified as retailers. He noted that Brewpubs can use its own name, trade name or trademark to its product, but that it may not sue the name, trade name or trademark of another retailer.

Assistant General Counsel Martin Wilson also stated item 19 is similar to the proposed changes to language in rules 14 and 15 as it relates to advertising on a label and benefits to the retailer. He added the proposed changes to rule §45.110 were made to accommodate the judge's order on the *Authentic Beverages Company, Inc. vs TABC* case and makes the rule constitutional. He explained the commission amended the language to eliminate the per se prohibition on advertising that benefits a specific retailer, and to replace it with a prohibition on such advertising that is a product of unauthorized activity by and among members of different tiers. He stated it will address issues between the manufacturer/wholesale tier and retail tier.

Presiding Officer Cuevas inquired about item 17 and determining if existing agreements/contracts were legal. Assistant General Counsel Martin Wilson stated that if this rule is passed, the commission can request that all the agreements are filed with the Agency. He added once these agreements are on file, the commission can review them and determine if they are legal or illegal.

Commissioner Weinberg inquired from Assistant General Counsel Martin Wilson if he was comfortable with the rules being presented today. Assistant General Counsel Martin Wilson answered in the affirmative.

Presiding Officer Cuevas asked Assistant General Counsel Wilson whether he thought manufacturers, brewers or retailers would be forthcoming if they believed they would be punished for illegal or inappropriate contracts. Assistant General Counsel Wilson explained that prior to September 1, 2015 agreements brought to our attention would be reviewed and discussed with the manufacturer, brewer or retailer. He added if an illegal or inappropriate contract was found, it should be cancelled immediately and any fine or prosecution action would need to be determined as deemed necessary on an individual basis. Commissioner Fredricks asked if there were any existing contracts that brought this new rule to be proposed. Assistant General Counsel Martin Wilson stated that this rule was proposed based on petitions from the Wholesale Distributors of Texas and Beer Alliance. Commissioner Weinberg inquired from General Counsel Helm whether Legal had the staff to handle reviewing agreements filed. General Counsel Helm said the first step would be an investigation by Enforcement, Auditors or SIU to determine if there are any violations. She stated depending on the findings would determine Legal's involvement.

APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO RULE §45.73, LABEL: GENERAL

Presiding Officer Cuevas called for a motion on agenda item 14. Commissioner Weinberg moved that we publish the proposed amendments to Rule §45.73, Label: General in the *Texas Register*, for a 30-day comment period. Commissioner Fredricks seconded the motion. Presiding Officer Cuevas stated the motion was made and seconded. He stated all those in favor say “Aye”, all those opposed say “No”. The motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO RULE §45.82, PROHIBITED PRACTICES

Presiding Officer Cuevas called for a motion on agenda item 15. Commissioner Weinberg moved that we publish the proposed amendments to Rule §45.82, Prohibited Practices in the *Texas Register*, for a 30-day comment period. Commissioner Fredricks seconded the motion. Presiding Officer Cuevas stated the motion was made and seconded. He stated all those in favor say “Aye”, all those opposed say “No”. The motion passes.

APPROVAL TO PUBLISH PROPOSED NEW RULE §45.94, VERIFICATION REGARDING USE OF FACILITIES

Presiding Officer Cuevas called for a motion on agenda item 16. Commissioner Weinberg moved that we publish the proposed amendments to Rule §45.94, Verification Regarding Use of Facilities in the *Texas Register*, for a 30-day comment period. Commissioner Fredricks seconded the motion. Presiding Officer Cuevas stated the motion was made and seconded. He stated all those in favor say “Aye”, all those opposed say “No”. The motion passes.

APPROVAL TO PUBLISH NEW RULE §45.95, AGREEMENTS BETWEEN MANUFACTURERS OR BREWERS AND RETAILERS

Presiding Officer Cuevas called for a motion on agenda item 17. Commissioner Weinberg moved that we publish the proposed amendments to Rule §45.95, Agreements Between Manufacturers or Brewers and Retailers in the *Texas Register*, for a 30-day comment period. Commissioner Fredricks seconded the motion. Presiding Officer Cuevas stated the motion was made and seconded. He stated all those in favor say “Aye”, all those opposed say “No”. The motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO RULE §45.96, BREWPUBS

Presiding Officer Cuevas called for a motion on agenda item 18. Commissioner Weinberg moved that we publish the proposed amendments to Rule §45.96, Brewpubs in the *Texas Register*, for a 30-day comment period. Commissioner Fredricks seconded the motion. Presiding Officer Cuevas stated the motion was

made and seconded. He stated all those in favor say "Aye", all those opposed say "No". The motion passes.

APPROVAL TO PUBLISH PROPOSED AMENDMENTS TO RULE §45.110, INDUCEMENTS

Presiding Officer Cuevas called for a motion on agenda item 19. Commissioner Weinberg moved that we publish the proposed amendments to Rule §45.110, Inducements in the *Texas Register*, for a 30-day comment period. Commissioner Fredricks seconded the motion. Presiding Officer Cuevas stated the motion was made and seconded. He stated all those in favor say "Aye", all those opposed say "No". The motion passes.

PUBLIC COMMENTS

Presiding Officer Cuevas opened the floor comments before the Commission. No one came forward to address the Commission.

EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING AND ANTICIPATED LITIGATION AGAINST THE AGENCY AND TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION, DUTIES OF THE POSITION OF ADMINISTRATOR (GOVT. CODE §551.071, §551.074)

Presiding Officer Cuevas announced that the regular open session of the Texas Alcoholic Beverage Commission will be recessed at this time 12:50 p.m., March 25, 2014 and an Executive session will be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to deliberate the appointment, employment, evaluation, duties of the position of administrator (govt. Code §551.071, §551.074).

Presiding Officer Cuevas announced that the Texas Alcoholic Commission has concluded its Executive session and is now in open regular session. The date is March 25, 2014 and the time is 2:15 p.m. No final action, decision or vote was made in executive session.

NEXT MEETING DATES: Thursday, May 29, 2014

ADJOURN

Presiding Officer José Cuevas called for a motion to adjourn. Commissioner Weinberg made a motion. Presiding Officer Cuevas seconded. The motion was made and seconded. The motion passes. Presiding Officer José Cuevas announced that the meeting was adjourned at 2:17 p.m.

Attachment 1

**Commission Report: Administrator and Agency
Activities, Budget Issues, Staff Achievements,
Legislative Activities**



Sherry Cook
Administrator

COMMISSIONER
STEVEN WEINBERG, MD, JD

CHAIRMAN
JOSE CUEVAS, JR.

COMMISSIONER
MELINDA S. FREDRICKS



Challenges Facing TABC

- Legal: On-Going Litigation
- Complicated Rule Review
- Special Investigation Unit/Financial Crimes Unit/Auditing
- Enforcement Activities
- Business Services Division - Lack of Automation
- Information Resources Division
- Education and Prevention
- Excise Tax & Marketing Practices
- Ports of Entry
- OPR – Technology Dependencies
- Human Resources Division
- Licensing Division



Legislative Appropriations Request – Draft FY 2016-17

I. Career Ladder / Retention Plan

- Turnover Rates
- Employees Lost to Other Agencies
- Who is Leaving and Why
- Begin Career Ladder at II instead of I
- Non-Career Ladder Retention
- Cost to Train Civilian Employees from Turnover
- Employment Restrictions

II. Operating Costs

- Building Lease Increases
- Long/Hazardous Pay Increases
- Lump Sum Terminations
- Judgments
- 1% Insurance Costs
- 0.5% Insurance Costs

III. Public Safety

- Replace FTEs for SIU/FCU
 - 5 Agent III
 - 5 Agent II
 - 2 Sergeants
 - 4 Auditors
- Radios

IV. Vehicles (14)

Additional over the biennium

V. IT - CAPPS



Agent Trainee Hiring/Academy

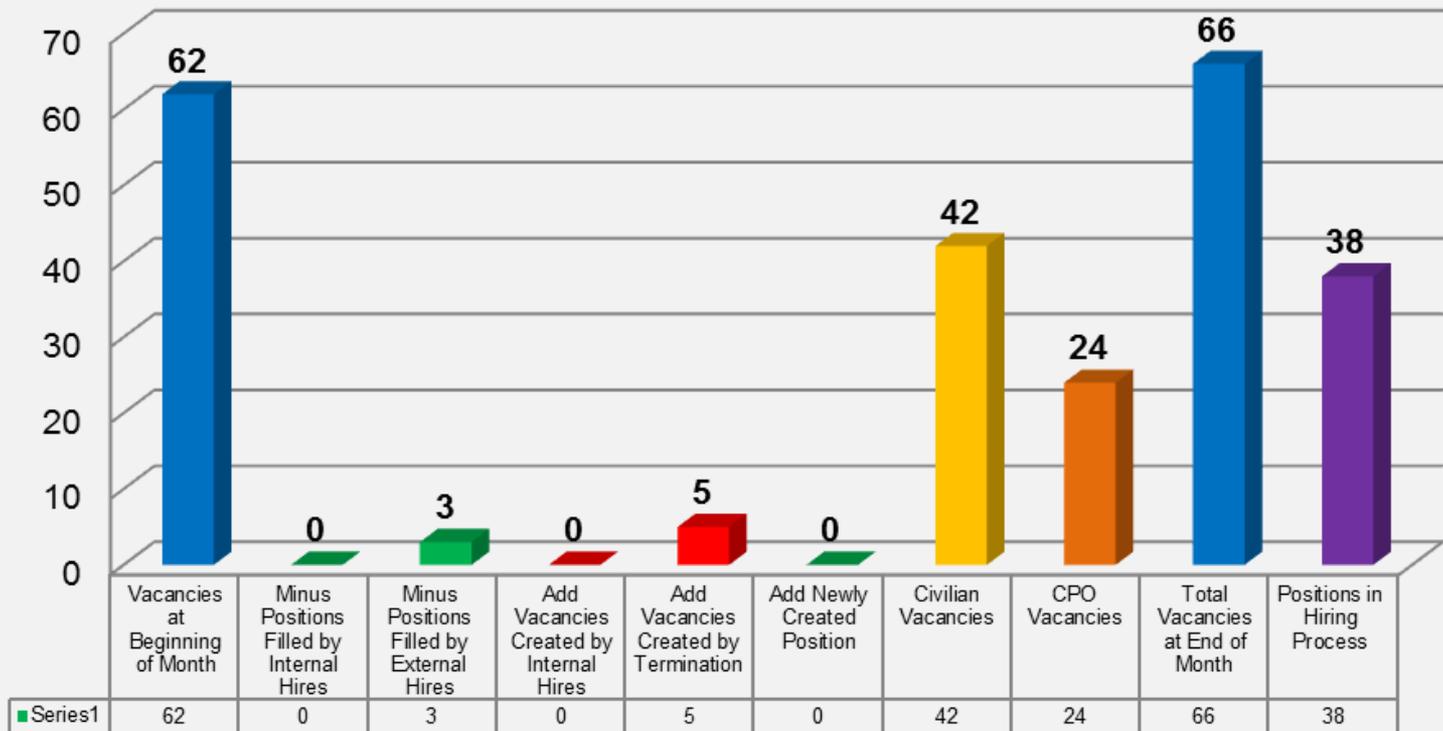
Agent Trainee:

- Fifteen positions posted 1/13/2014 through 2/3/2014 for locations:
Odessa, Houston, Beaumont, Bryan, Laredo, Victoria and Del Rio
 - 211 applications received
 - 106 were forwarded to Criminal/Credit & Driver's License Phase
 - 88 were forwarded to the testing phase.
 - 24 applicants were forwarded to the interview phase
- After interviews, 12 candidates were forwarded to background
- The start date of the academy is scheduled for May 5, 2014.
- Current Vacancies:
 - Commissioned **24**
 - Non-Commissioned **42**
- New agency recruiter in Human Resources

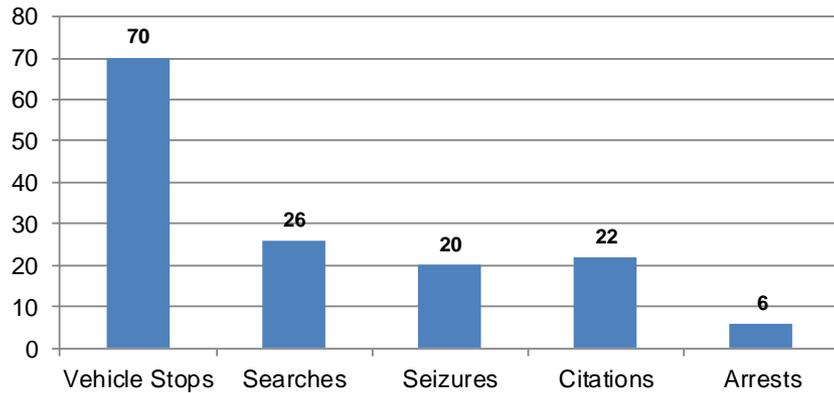


Vacancy Status

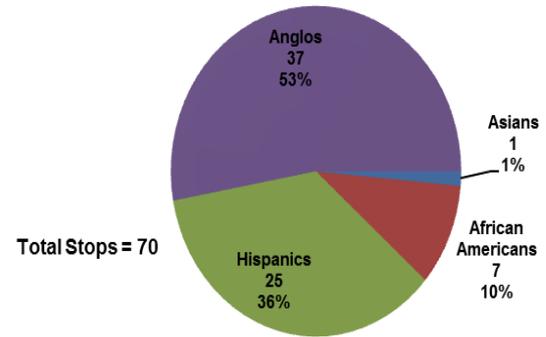
February 2014 Vacancies



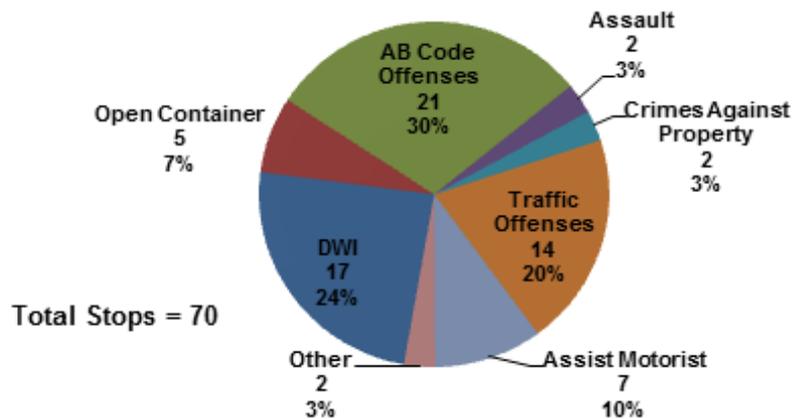
TABC Vehicle Stops & their Results CY 2013



CY 2013 Vehicle Stops by Driver Ethnicity



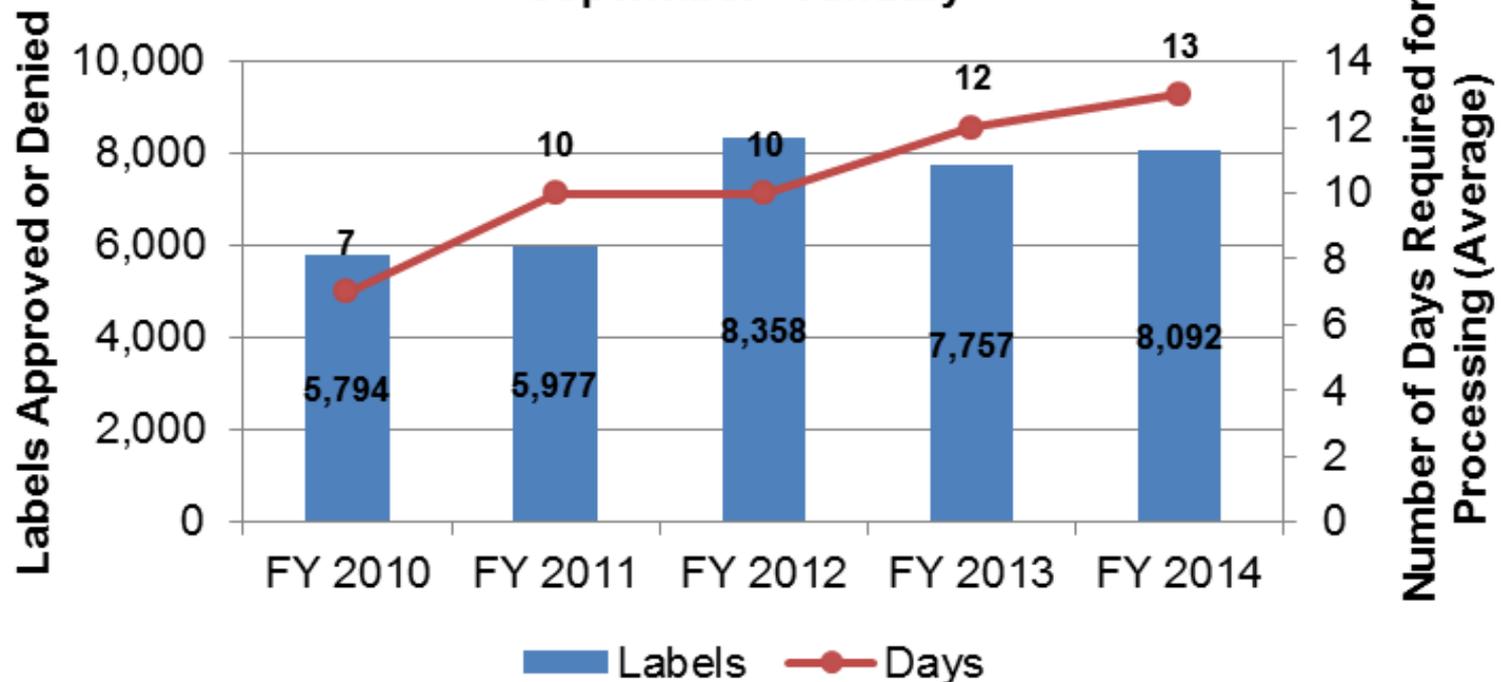
Reasons Cited for TABC Vehicle Stops CY 2013



Trends

Trends

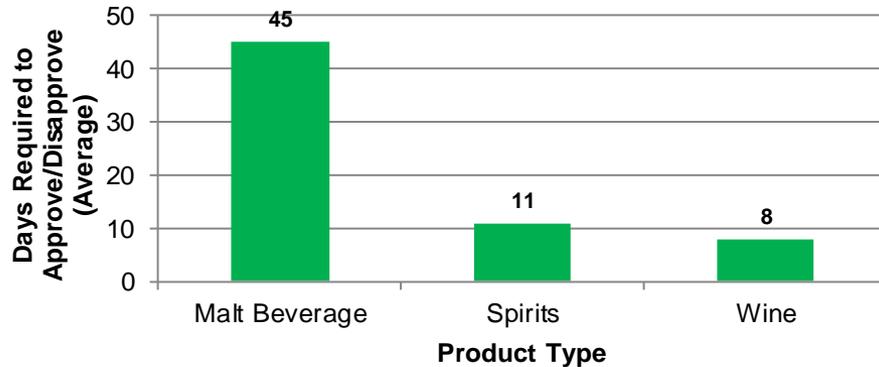
Product Labels Applications Approved or Denied and Average Processing Time
September - January





Days Required to Process Product Labels by Product Type

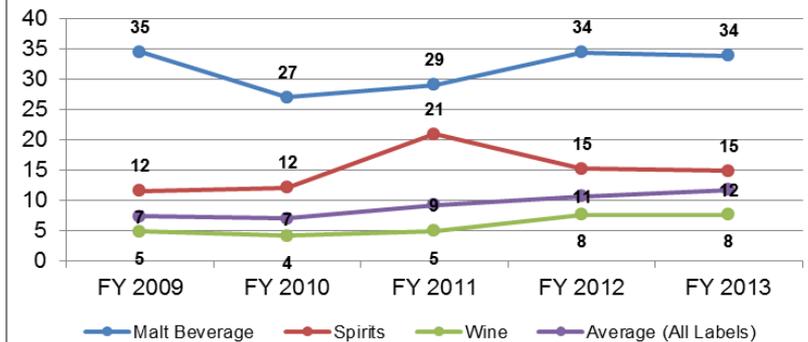
September 2013 - February 2014



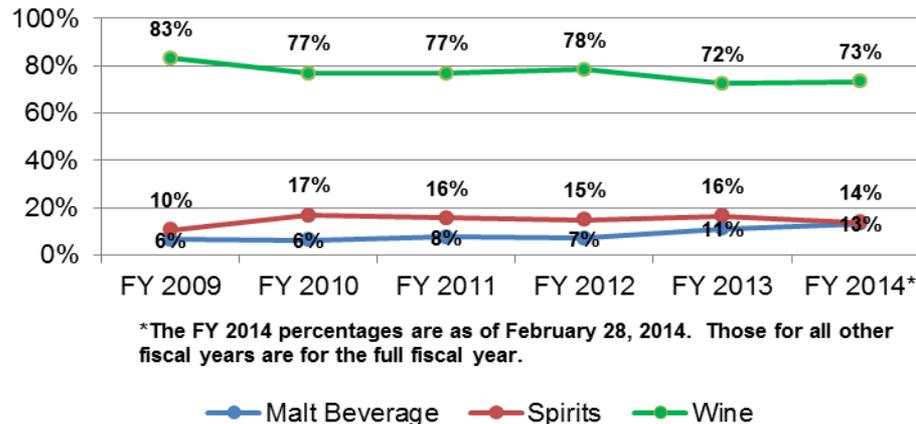
Trends

Days Required to Approve/Disapprove Label Applications by Product Type

FY 2009 - FY 2013

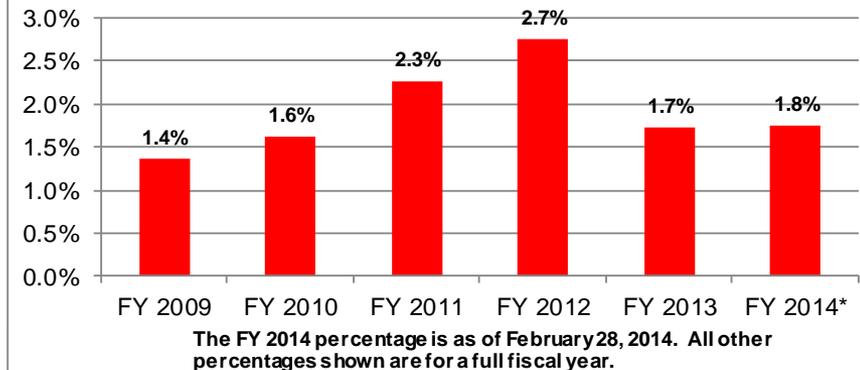


Composition of Incoming Label Applications by Product Type



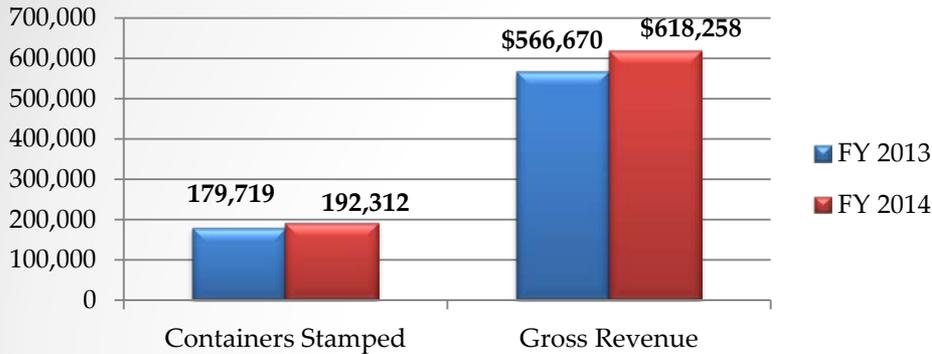
*The FY 2014 percentages are as of February 28, 2014. Those for all other fiscal years are for the full fiscal year.

Denied Applications as a Percentage of All Applications Approved or Denied

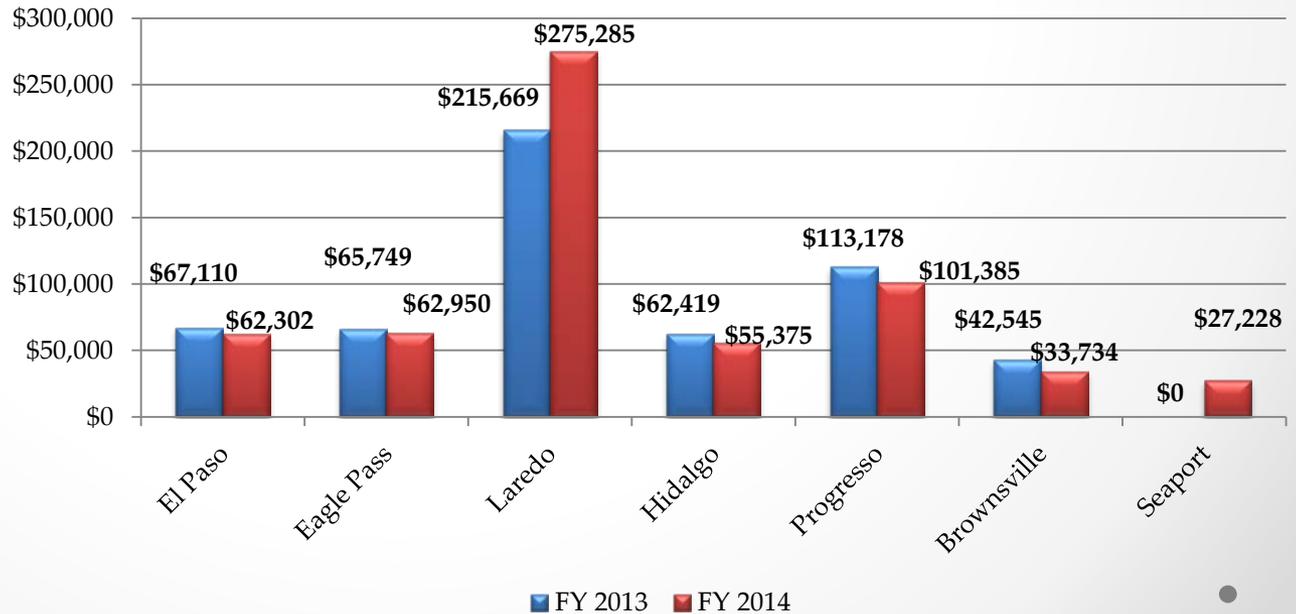


The FY 2014 percentage is as of February 28, 2014. All other percentages shown are for a full fiscal year.

Containers Stamped & POE Revenue Month of January



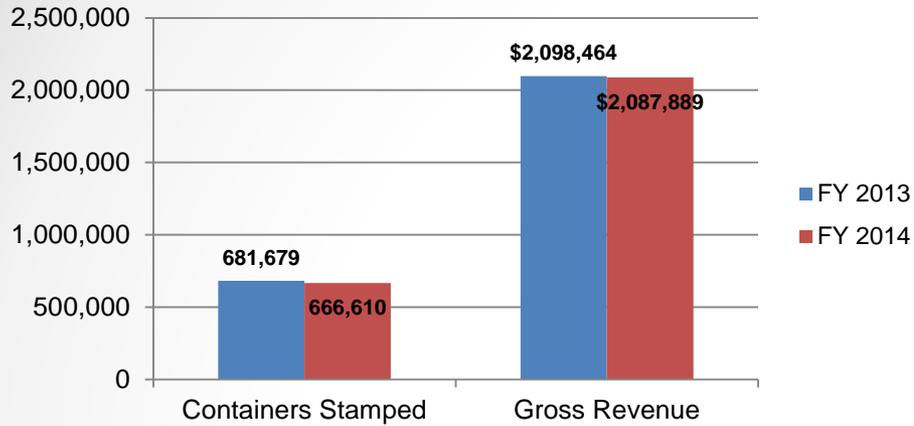
POE Revenue by District January 2013 vs. January 2014



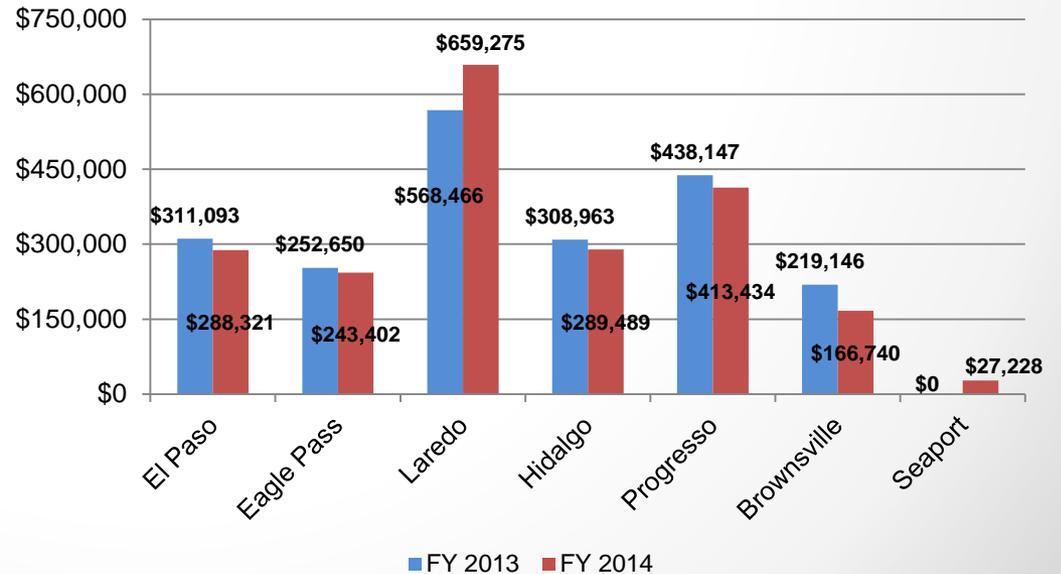
Trends



Containers Stamped & POE Revenue September - January

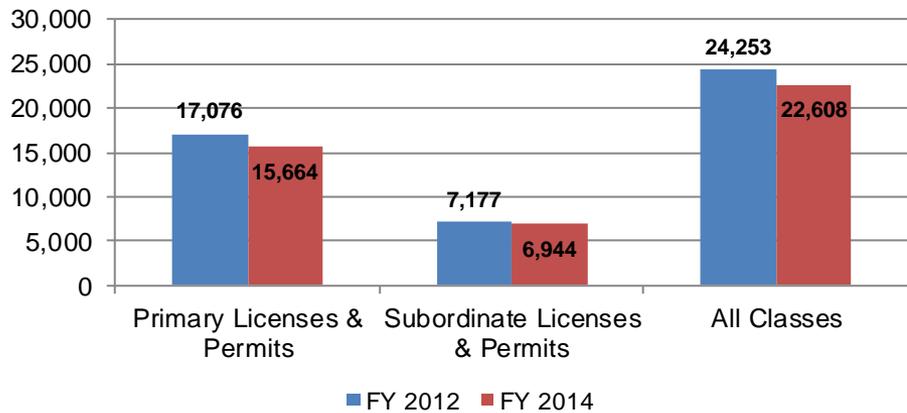


POE Gross Revenues by District September - January



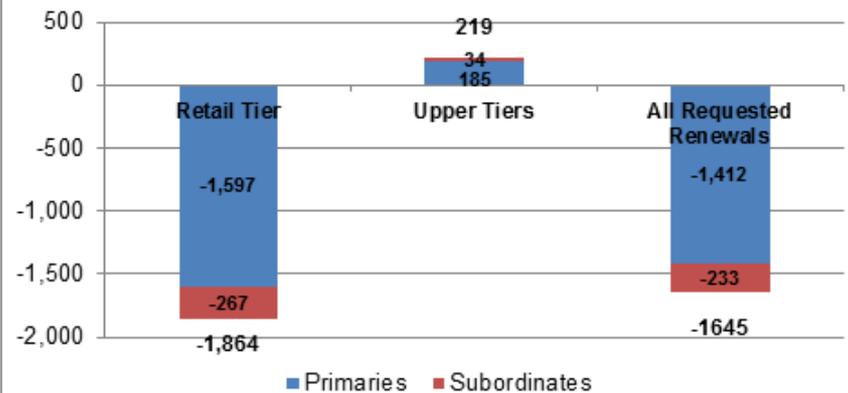
Trends

License & Permit Renewals Requested Applications Received : September - January



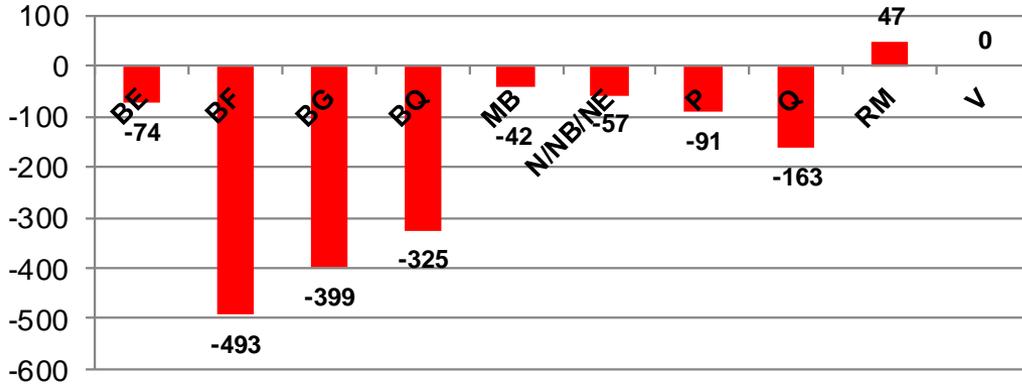
Change in the Number of Requested License & Permit Renewals by Tier

From Sep-Jan FY 2012 to Sep-Jan FY 2014



Change in the Number of Requested Retail Primary Renewals by License Class

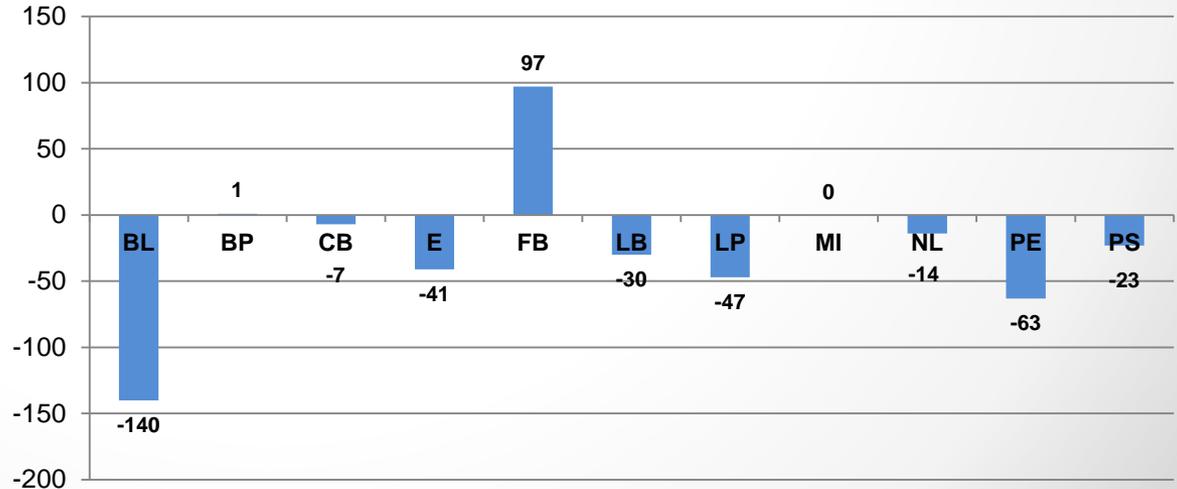
From Sep-Jan FY 2012 to Sep-Jan FY 2014



Trends

Change in the Number of Requested Retail Subordinate Renewals By License Class

From Sep-Jan FY 2012 to Sep-Jan FY 2014





See Y'all in
San Antonio



NCSLA JUNE 2014



SAN ANTONIO
Texas

June 16 – 20, 2014



QUESTIONS



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability



COMMISSIONER
STEVEN WEINBERG, MD, JD



CHAIRMAN
JOSE CUEVAS, JR.



COMMISSIONER
MELINDA S. FREDRICKS



Attachment 2

Strategic Planning Briefing

Strategic Planning



Commission Meeting
March 25, 2014

The Process: March-June

- * March

- * 3/24/14 PM Revisit Mission / Vision / Philosophy

- * 3/25/14 1:30 PM External Management Goals
Stakeholders are Encouraged to Attend

- * April - Compile / Finalize Document.

- * May 1st - Mail Document to Commissioners

- * Late May - Commissioners Vote to Approve

- * Late June - Distribute Copies

Edited TABC Mission:

The mission of TABC is to protect
~~promote~~ public health and safety and
serve the people of Texas through
consistent, fair and timely
administration of the Alcoholic
Beverage Code ~~while fostering~~
~~education, voluntary compliance and~~
~~legal, responsible alcohol~~
~~consumption.~~

Updated TABC Mission:

Why do we exist?

The mission of TABC is to serve the people of Texas, and protect the public health and safety, through the consistent, fair and timely administration of the Alcoholic Beverage Code.

Edited TABC Vision

A safe and ~~responsible~~ healthy Texas served by an innovative Alcoholic Beverage Commission ~~committed to innovative partnerships with our communities and the~~ regulating a responsible and compliant alcoholic beverage industry.

Updated TABC Vision

The future we want to create.

A safe and healthy Texas served by
an innovative Alcoholic Beverage
Commission regulating a
responsible and compliant alcoholic
beverage industry.

Updated TABC Philosophy

The Texas Alcoholic Beverage Commission will:

- * apply the Alcoholic Beverage Code in a fair, consistent, and timely manner;
- * exemplify courteous, ethical, and professional behavior;
- * be fiscally responsible and accountable to the people of Texas; and
- * be accessible, transparent, efficient and effective.

Updated Guiding Principles

- * We empower our employees to respond effectively to challenges.
- * We recruit, develop, retain and value a highly competent and diverse workforce that will successfully execute our mission.
- * We strive to be a competitive employer.

Guiding Principles (cont.)

- * We expect ethical and professional behavior of ourselves.
- * We exercise discretion in our authority when making decisions based on ethical and legal principles.
- * We do the right thing, not just what we have the right to do.
- * We work together to achieve goals and solve problems.

Guiding Principles (cont.)

- * We put responsible people into business and promote good business practices through open communication.
- * We foster voluntary compliance through education.
- * We provide the highest level of public safety by assessing and analyzing at-risk behavior and taking action against unlawful conduct.

The Four Cornerstones

* Service

* Courtesy

* Integrity

* Accountability

Questions or Comments?

Attachment 3

Education and Prevention Briefing

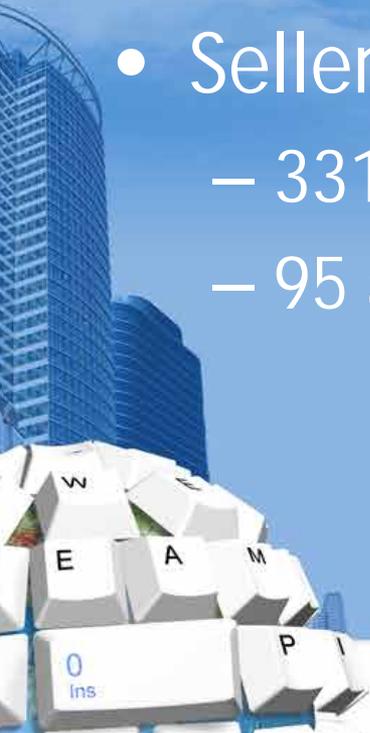
Education & Prevention

Update 2014



By the Numbers

- Total Budget \$429,344 (Education/Seller)
- FY14 Grant Funds \$458,264
- TXDOT Printing \$158,900 (09/2013 - 2/2014)
- Seller Server (FY13)
 - 331,005 trainees
 - 95 approved schools



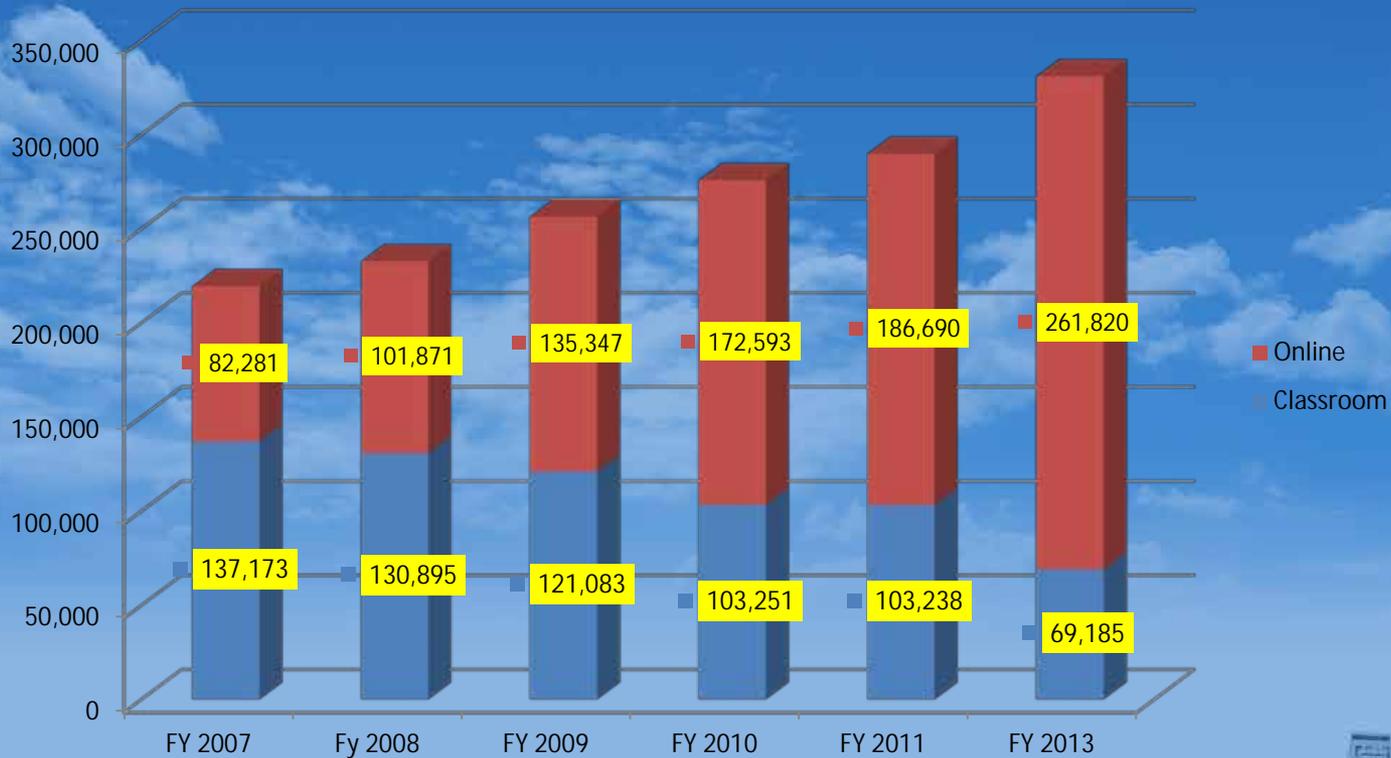
Staff

- **Julie Davis** – Video Production; Updates to microsite; Educational Items (LE/Licensing); LEAD - EUDL
- **Kayla Fritz** – Facebook (ED); LE Training; Calendar Contest; Social Campaigns, Materials; College Specialist
- **Ruby Gonzalez** – Manages PI&E Ordering; SS support
- **Toni Hale** – Grant Coordinator; Project Management (Divisional); TXDOT contact printing
- **Jacki Jackson** – Community Specialist – LEAD Source Investigation Grant; Process SS Applications
- **Ashleigh Jons** – Coordinator Seller Server; TABC Retailer Education Specialist; Updates all TABC programs (MAP/SERVE); LEAD – Special Events Grant

Grants

- Unfunded Programs/Projects
- Two TXDOT Grants
 - TABC Special Events
 - TABC Inspection Overtime
- EUDL Video
 - Underage Drinking in Texas
- FY15 Request
 - Traffic Safety: Inspection Overtime/Education
 - JAG – Specialized Training/Equipment SIU/FCU

SS Certificates Issued by Class Type



Industry Programs/ Private Providers

On-Line Program Comparison

Certificates Issued

16 private

4 industry

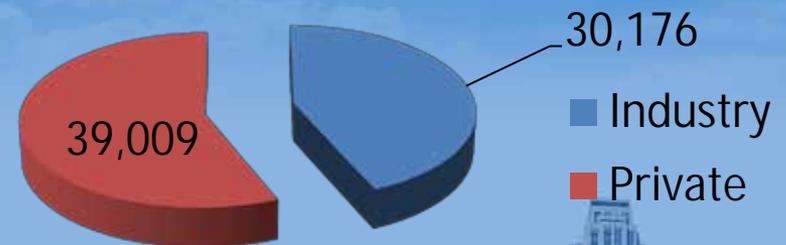


Classroom Program Comparison

Certificates Issued

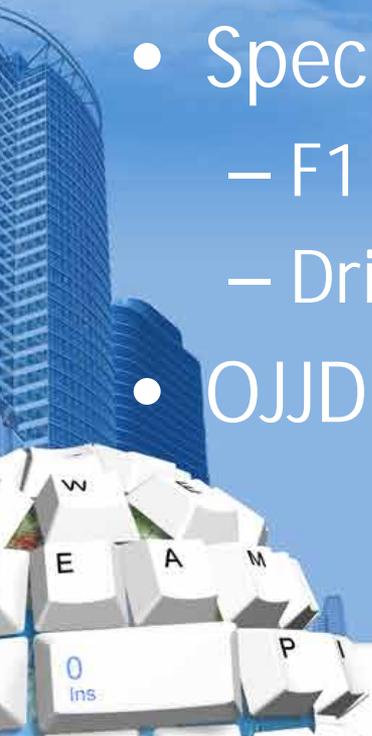
59 private

16 industry



Retailer Education

- MAP / SERVE (taught by agents and auditors in the field upon request or following a violation)
- Increase focus beyond sell to minor/intoxication
 - Marketing Practices (FY13) - Special Events (FY14)
- Special Campaigns
 - F1 Materials
 - Drink Tampering
- OJDP Success Story – Marketing Practices (April 2014)



Community Education

- Currently update 13 short programs for various areas in the community. Agents and Auditors train at the community level.
- Responsible Alcohol Consumption (Alcohol by Volume)
 - Primary 21-25 and Parents/Community Leaders
- Special Campaigns
- OJJDP Success Story: There is an App for that (Mobile Complaints) (July 2013)



Law Enforcement Education

- Sexual Assault – Drug Facilitated Training
 - Houston (02/20); San Antonio (3/19), Dallas (8/13) and Austin (9/17)
 - TAASA provides sexual assault training
 - TABC provides training about alcohol by volume and working together to address violations at licensed locations (Oscar Williams, Conroe)
- OJJDP Success Story – Law Enforcement EUDL Subgrantee Program (April 2013)

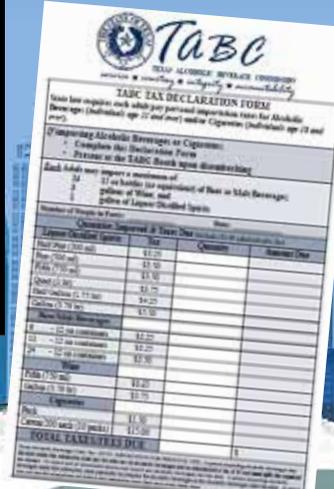
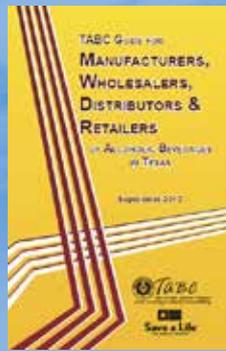
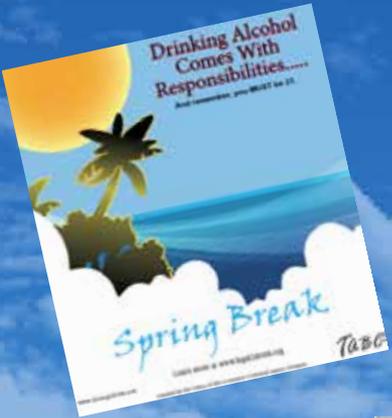


Prevention Anytime/Anywhere

- www.2young2drink.com Underage Drinking
- www.legal2drink.org Microsite Responsible Consumption – Over 21
- Phone Applications
- TABC You Tube Channel
 - 33 Videos/PSAs
- Social Media Toolkits – Facebook/Twitter
 - Interactive flyers and educational information

Art Graphic Design

Over 52 Educational Items Completed for FY14 Campaigns



TABC Temporary Event



TABC Marketing Practices



TABC Angel/Devil :30

Questions



Attachment 4

Enforcement Administration Audit

**INTERNAL AUDIT OF THE
ENFORCEMENT ADMINISTRATION**

AS OF JANUARY 14, 2014

**AT THE
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

MONDAY N. RUFUS, P.C.

Certified Public Accountants & Consultants

Member: American Institute of Certified Public Accountants

Commission Members

Texas Alcoholic Beverage Commission

Austin, Texas

We have evaluated the controls implemented by the Texas Alcoholic Beverage Commission (Commission) regarding the Enforcement Administration as of January 14, 2014. The results of our evaluation disclosed that the Commission has procedures and controls in place related to the Enforcement administration. We noted some opportunities for enhancing the controls in place. The report that accompanies this letter summarizes our comments and recommendations.

We have already discussed this report with various Commission personnel, and we will be pleased to discuss it in further detail at your convenience.

Monday N. Rufus, P.C.

January 14, 2014

Austin, Texas

Objectives

The primary objectives of the internal audit were:

1. Reliability and Integrity of Information
2. Compliance with Policies, Procedures, Laws, and Regulations
3. Efficiency and Effectiveness of Operating Procedures
4. Safeguarding of Assets

Summary of Internal Audit Results

- Procedures and controls are in place to ensure that inspections and investigations conducted by the Enforcement administration of licensed and unlicensed premises are complying with the Texas Alcoholic Beverage Code, TABC Administrative rules, and other legislative requirements.
- Enforcement personnel in the five districts input inspections and investigations information and scan documents into ARTS, DARS, and CrisNet systems for case management and accessibility by TABC headquarters and district enforcement personnel.
- While the Enforcement administration operations continue to become more electronic and paperless, documents which may support or assist an active or on-going case or investigation will be maintained at the local districts for immediate accessibility until cases are closed.

Finding 1

Miscoding of Investigation Case in CrisNet Database System.

- During testing of enforcement agent investigation files by the internal auditors at District 4, we found that an Open Compliance check conducted (ARTS case #1318270) which had resulted in no violations had been miscoded and entered by the enforcement agent into the CrisNet database system as a Source investigation with administrative and criminal violations.
- Management has recoded the case file to properly reflect the nature of the investigation.

Finding 1 (cont'd)

Recommendation

- The status of inspections and complaints cases should be more closely monitored by Enforcement management to ensure proper and accurate reporting of enforcement cases.

Finding 2

Supporting Documentation Lacking for Required Minor Sting Operations Letters Sent to Representatives of Locations Not Selling Alcohol to Minors.

- Section 3.6 (m) of the Enforcement manual policies and procedures requires supervisors at the Enforcement districts to write and send letters to representatives of locations where sting operations were conducted but no alcohol was sold to the minor, acknowledging the location for complying with the law.

Finding 2 (cont'd)

- During our testing of minor sting operations case files entered into the ARTS system we noticed that 3 of 5 minor sting operations case files reviewed in District 4, and 7 of 8 minor sting operations case files reviewed in District 5 where no alcohol was served to the minor, did not have copies of the letters or evidence that the letters were sent.
- Enforcement administration management recently developed a Minor Sting operations electronic complimentary letter to be sent to licensees/permittees who refused to sell alcohol to a minor during a minor sting operation conducted on their premise.

Finding 2 (cont'd)

Recommendation

- Management should include in the policies and procedures instructions on how a copy of the letter or a checklist should be saved (electronically or in paper form) after it is sent as evidence of complying with the written policies and procedures.

Report Distribution

As required by Gov't Code 2102.0091, copies of these reports should be filed with the following:

Governor's Office of Budget and Planning

Attn: Kate McGrath
P.O. Box 12428
Austin, Texas 78711
Phone: (512) 463-1778

Legislative Budget Board

Attn: Ed Osner
P.O. Box 12666
Austin, Texas 78711
Phone: (512) 463-1200

State Auditor's Office

Attn: Internal Audit Coordinator
P.O. Box 12067
Austin, Texas 78711
Phone: (512) 936-9500

Sunset Advisory Commission

Attn: Ken Levine
P.O. Box 13066
Austin, Texas 78711
Phone: (512) 463-1300

Texas Alcoholic Beverage Commission

Jose Cuevas, Jr., Presiding Officer
Steven M. Weinberg, MD, JD
Melinda S. Fredricks

Texas Alcoholic Beverage Commission Management

Sherry Cook, Administrator

Attachment 5

**Approval to Adopt Amendments to Rule §33.31,
Administrative Inactivation, Reinstatement and
Renewal of a License or Permit**

March 25, 2014 Agenda Item 7.

Approval to Adopt Amendments to Rule §33.31, Administrative Inactivation, Reinstatement, and Renewal of a License or Permit.

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §33.31, relating to Administrative Inactivation, Reinstatement, and Renewal of a License or Permit, without changes to the text proposed in the February 14, 2014 issue of the *Texas Register* (39 TexReg 854). No comments were received.

The amendments conform the section to the requirements of Alcoholic Beverage Code §11.44 as amended by Senate Bill No. 409, 83rd Legislature, Regular Session and clarify procedures related to involuntary inactivation involving either voluntary or involuntary suspensions. Senate Bill No. 409 amended Alcoholic Beverage Code §11.44 to create an exception to the general prohibition against the commission issuing a license or permit for a location when an action to suspend or cancel the current license or permit at that location is pending. The exception applies when the current licensee or permittee at that location has been finally evicted from the premises under a final, nonappealable court judgment.

Section 33.31 was also reviewed under Government Code §2001.039, and is being readopted as amended: to address procedures related to and consequences of both voluntary and involuntary administrative inactivation; and to reflect the prohibition in Alcoholic Beverage Code §102.32 on voluntary suspensions and cancellations where the license or permit holder is delinquent in the payment of an account for liquor under that code section.

The section is amended pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

§33.31 Administrative Inactivation, Reinstatement and Renewal of a License or Permit.

{a} This section implements Alcoholic Beverage Code §11.44 and §102.32(d-1), and clarifies procedures related to administrative inactivation involving either voluntary or involuntary suspensions.

(b) Administrative inactivation refers to the placing of a license or permit in administrative suspense under this section and without a due process hearing. During administrative inactivation (whether voluntary or involuntary), the license or permit holder may not engage in any authorized activities allowed under that license or permit. The term of the license or permit will not be tolled during administrative inactivation but will expire on the date indicated on the face of the license or permit.

(c) Unless otherwise disqualified or provided for by this section, the commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit upon receipt of an affidavit by the landlord, on a form prescribed by the administrator, that the premises has been abandoned by the licensee or permittee and that the licensee or permittee no longer has any interest in the premises.

(d) The commission may without a hearing administratively inactivate and place in administrative suspense a license or permit if the commission receives a final, non-appealable court judgment of eviction concerning against a permitted or licensed premises that is subject to a pending or unexpired suspension order or for which a cancelation or suspension action has been initiated.

(e) The commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit if the license or permit holder is delinquent in the payment of an account for liquor under Code §102.32 and either subsection (c) or (d) of this section applies. The Commission may not accept the voluntary cancelation or suspension of a license or permit or allow a license or permit to be renewed or transferred if the license or permit holder is delinquent in the payment of an account for liquor under Section 102.32 of the Texas Alcoholic Beverage Code.

(f) The commission may, but is not required to, administratively inactivate and place in voluntary suspense a license or permit if no administrative action is pending against the license or permit and either:

(1) the actual license or permit is submitted by the license or permit holder; or

(2) a sworn statement is submitted by the license or permit holder stating that the actual license or permit is unavailable for surrender and why.

(g) If a license or permit has been placed in voluntary administrative inactivation and the license or permit has not expired then the license or permit may be reinstated to active status, but only if the same requirements and qualifications as an applicant for an original license or permit are met. If a license or permit is reinstated under this subsection, the license or permit fee for the remainder of the license or permit term during which it was placed in administrative inactive status is not required.

(h) A license or permit may be renewed while on administrative inactivation only if, prior to the expiration date of the license or permit, a completed renewal with required supporting documents and all necessary state fees and surcharges is filed in accordance with all applicable sections of the code and rules. Otherwise the license or permit will expire at the end of its existing term.

(i) The effective date of the administrative inactivation of a license or permit or its voluntary cancellation will be the date the statement or other document required by this section is received in the licensing division or any other date mutually agreed to by the parties.

Attachment 6

**Approval to Withdraw Proposed Amendments to Rule
§45.73, Label: General**

March 25, 2014 Agenda Item 14.

Approval to Publish Proposed Amendments to Rule §45.73, Labels: General.

The Texas Alcoholic Beverage Commission (commission) proposes amendments to §45.73, relating to Labels: General, to state the purpose of and authority for the section, to delete references to special or private brands, to prohibit labels indicating that the beverage is owned or licensed by or exclusively used by a retailer, and to define the word "exclusively" as used in this section.

The amendments attempt to further clarify the commission's interpretation of Alcoholic Beverage Code §102.07 and §102.15, which prohibit brewers and manufacturers from furnishing anything of value to retailers of their products. The commission believes that a malt beverage label that is identified with a specific retailer under certain circumstances (outlined in the section as it would be amended) is a form of advertising for the retailer. Brewers and manufacturers cannot provide advertising for a specific retailer because it is a thing of value to the retailer.

Section 45.73 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide clearer guidance about prohibited activities.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will provide clearer up-front guidance to the regulated community, thereby reducing uncertainty.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code; and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 5.38, 101.41, 101.61, 102.07 and 102.15, and Government Code §2001.039.

§45.73. Label: General.

(a) ~~[Marking, branding and labeling.]~~ The purpose of this section is to implement Alcoholic Beverage Code §101.67 (Prior Approval of Malt Beverages) and §101.41 (Containers, Packaging, and Dispensing Equipment of Beer: Labels), pursuant to the requirements of Alcoholic Beverage Code §5.38 (Quality and Purity of Beverages) and the authority of Alcoholic Beverage Code §5.31 (General Powers and Duties). The section applies the prohibitions in Alcoholic Beverage Code §102.07(a)(3) and §102.15(a)(1) in the labelling context.

(b) It shall be unlawful for any person to transport, sell, or possess for the purpose of sale in this state any malt beverage, directly or indirectly, or through an affiliate, or remove from customs custody any malt beverage in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with this subchapter.

(c) ~~(b)~~ Alteration of labels.

(1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale, except as authorized by law; provided, that the administrator may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this subchapter or of law.

(2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

~~(d)~~ [(e)] Only a brewer's or non-resident brewer's permittee, ~~or~~ a manufacturer's or non-resident manufacturer's licensee, or a brewpub licensee may apply for and receive label approval on beer, ale, or malt liquor.

~~(e)~~ [(d)] No application for a label filed by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee shall be approved which:

(1) indicates by any statement, design, device, or representation that the malt beverage is ~~[a special or private brand]~~ brewed or bottled for any retailer permittee or licensee or any private club registration permittee; ~~or that~~

(2) includes the name, tradename, or trademark of any retailer permittee or licensee or any private club registration permittee; or

~~_____ (3) indicates by any statement, design, device, or representation that the malt beverage is owned or licensed by, or is exclusively used by any retailer permittee or licensee or any private club registration permittee.~~

~~(f)~~ [(e)] The sale of a brand of malt beverages by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee exclusively to the holder of a license or permit authorizing the retail sale or service of malt beverages, or exclusively to other such licensees or permittees under the same ownership, control, or management, to the exclusion of other such licensees or permittees generally is specifically prohibited. ~~[Any such exclusive sale of a brand shall constitute the sale of a special or private brand and the label approval for any such label shall be cancelled and withdrawn.]~~

~~(g) As used in this section, the term exclusively shall mean, with respect to the item referenced, all or substantially all of such item, and the term exclusion shall mean, with respect to the licensees or permittees referenced, all or substantially all of such licensees or permittees.~~

Attachment 7

**Approval to Withdraw Proposed Amendments to Rule
§45.82, Prohibited Practices**

March 25, 2014 Agenda Item 15.

Approval to Publish Proposed Amendments to Rule §45.82, Prohibited Practices.

The Texas Alcoholic Beverage Commission (commission) proposes amendments to §45.82, relating to Prohibited Practices, to delete references to special or private brands, to prohibit labels indicating that the beverage is owned or licensed by or exclusively used by a retailer, and to define the word "exclusively" as used in this section.

The amendments attempt to further clarify the commission's interpretation of Alcoholic Beverage Code §102.07 and §102.15, which prohibit brewers and manufacturers from furnishing anything of value to retailers of their products. The commission believes that a malt beverage label that is identified with a specific retailer under certain circumstances (outlined in the section as it would be amended) is a form of advertising for the retailer. Brewers and manufacturers cannot provide advertising for a specific retailer because it is a thing of value to the retailer.

Section 45.82 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide clearer guidance about prohibited activities.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will provide clearer up-front guidance to the regulated community, thereby reducing uncertainty.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-

3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code; and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 5.38, 101.41, 101.61, 102.07 and 102.15, and Government Code §2001.039.

§45.82 Prohibited Practices.

(a) Statements on labels. Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic or other matter accompanying such containers to the consumer shall not contain the following:

- (1) any statement that is false or untrue in any particular, or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression;
- (2) any statement that is disparaging of a competitor's products;
- (3) any statement, design, device, or representation which is obscene or indecent;
- (4) any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
- (5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
- (6) a trade name or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in

accordance with the specifications of, such individual or organization; provided, that this subsection shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, wholesaler, distributor, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935;

(7) any statement, design, device, or representation that:

(A) ~~the malt beverage is [a special or private brand] brewed or bottled for any retail licensee or permittee or private club registration permittee; ;~~
~~[or that]~~

(B) includes the name, tradename or trademark of any retail licensee or permittee or private club registration permittee; ~~;~~ or

(C) the malt beverage is owned or licensed by or exclusively used by any retail licensee or permittee or private club registration permittee where exclusively shall mean, with respect to the item referenced, all or substantially all of such item.

(b) Simulation of government stamps. No label shall be of such design as to resemble or simulate a stamp of the United States government or of any state or foreign government. No label, other than stamps authorized or required by the United States government or any state or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, labeled, sold under, or in accordance with any municipal, state, federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by federal or state law or regulations of the foreign country in which such malt beverages were produced. If the foreign municipal or state government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by the law of that state or foreign municipality.

(c) Use of word "bonded," etc. The words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packaging, shall not be used on any label for malt beverages.

(d) Statements, seals, flags, coats of arms, crests, and other insignia. Statements, seals, flags, coats of arms, crests, or other insignia, or graphic, or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited on any label of malt beverages.

(e) Curative and therapeutic effects. Labels shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

(f) Coverings, cartons, cases. Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written,

printed, graphic, or other matter accompanying the container shall not contain any statement, or any graphic, pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverage. It shall be unlawful for any retailer to affix to any carton or case any paper or sticker bearing any painted, printed, or other graphic matter whatsoever; and it shall be unlawful for any retailer to paint, imprint, or otherwise impose any wording, lettering, picture, or design of any character whatsoever on any carton or case.

Attachment 8

**Approval to Withdraw Proposed New Rule §45.92,
Prohibited Malt Beverage Labels**

The Texas Alcoholic Beverage Commission (commission) proposes new §45.92, relating to Prohibited Malt Beverage Labels.

On January 20, 2014, the commission received a petition for rulemaking from the Beer Alliance of Texas, LLC. The petition requested amendments to §45.73, relating to Label: General, and §45.82, relating to Prohibited Practices. The commission granted the petition for rulemaking at its January 28, 2014 meeting and authorized the initiation of a rulemaking proceeding pursuant to Government Code §2001.021.

Currently there are pending amendments to 16 TAC §45.73 (see the December 13, 2013, issue of the *Texas Register* (38 TexReg 8987)) and §45.82 (see the December 13, 2013, issue of the *Texas Register* (38 TexReg 8988)). Because of constraints imposed by *Texas Register* policies, the commission may not publish proposed amendments to a section if there are proposed amendments to the same section already pending. Therefore, the commission has modified the proposals for amendments to §45.73 and §45.82 that were presented in the Beer Alliance of Texas petition and has combined some of their suggestions, with some editorial revisions in light of the *Texas Register's* policies, as this proposed new §45.92. The format and, in some instances, the petitioner's proposed language in has been modified.

Because of the *Texas Register* policies, the following Beer Alliance of Texas proposed changes to §45.73 cannot be published as proposed amendments to that section:

- (1) In subsection (d), strike *the* words "special or private brand" and add this language between "trademark of" and " any retailer": "owned or licensed by, or exclusively used by".
- (2) In subsection (e), strike the last sentence.
- (3) Add new subsection (f) to read: "As used in this rule, the term exclusively shall mean, with respect to the item referenced, all or substantially all of such item, and the term exclusion shall mean, with respect to the licensees or permittees referenced, all or substantially all of such licensees or permittees."

Because of the *Texas Register* policies, the following Beer Alliance of Texas proposed changes to §45.82 cannot be published as proposed amendments to that section:

- (1) In paragraph (a)(7), strike the words "special or private brand" and add this language between "trademark of," and " any retail": "owned or licensed by, or exclusively used by".
- (2) Add new paragraph (a)(8) to read: "As used in this rule, the term exclusively shall mean, with respect to the item referenced, all or substantially all of such item."

The commission invites comments on the language presented by the Beer Alliance of Texas in its petition for rulemaking, specifically as to the deletion of the term "special or private brand".

The Beer Alliance of Texas suggests that this proposed new §45.92 should be adopted only if the currently pending amendments to §45.73 and §45.82 are adopted by the commission. If the commission rejects the currently pending amendments to §45.73 and §45.82, the Beer Alliance of Texas suggests that instead of proposed new §45.92, the modifications to those sections that were specified in the Beer Alliance of Texas petition would be appropriate. The commission also invites comment on this suggestion.

In addition to the proposed modifications suggested for §45.73 and §45.82, which are reflected in this proposed new §45.92, the Beer Alliance of Texas petition for rulemaking also sought changes to §45.110, relating to inducements. The proposed amendments to §45.110 are being published simultaneously with this proposed new §45.92. The changes to the commission's rules sought by the Beer Alliance of Texas are related and taken together are characterized by the petitioner as an attempt to clarify practices that are currently prohibited.

Initiating a rulemaking proceeding in response to a petition for rulemaking does not necessarily mean that the proposal is supported by the commission or that the proposed new section will be adopted. It means only that the rule proposal will be published in the *Texas Register* for public comment.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new section will be in effect, there will be no fiscal impact on state or local government.

The proposed new section will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new section will be in effect, the public would benefit if the petitioner is correct that the new section does indeed clarify prohibited practices. The commission invites comments on: (1) whether the petitioner is correct that these provisions are clearer; and (2) more generally, whether and how the public will benefit if the proposed new section is adopted.

Comments on the proposed new section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by

facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments received within 30 days following publication in the *Texas Register* will be considered and addressed in the preamble to the adopted new section pursuant to Government Code §2001.033, if the commission decides to adopt the new section in this proceeding. Please contact Mr. Wilson at martin.wilson@tabc.state.tx.us if you would like to receive a copy of the original petition for rulemaking filed by the Beer Alliance of Texas, which requested that this rulemaking proceeding be initiated.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new section on March 4, 2014 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted new section, if the commission chooses to adopt the new section in this proceeding. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed new section is authorized by Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code.

The proposed new section affects Alcoholic Beverage Code §5.31.

45.92 Prohibited Malt Beverage Labels

(a) Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic, or other matter accompanying such containers to the consumer may not include any statement, design, device, or representation that:

_____ (1) indicates that the malt beverage is brewed or bottled for a retail licensee or permittee or for a private club registration permittee; or

_____ (2) includes:

(A) the name, tradename, or trademark of a retail licensee or permittee or of a private club registration permittee; or

(B) a name, tradename, or trademark that is owned, licensed by, or exclusively used by a retail licensee or permittee or by a private club registration permittee.

(b) For purposes of this section and of §45.73 and §45.82 of this title, exclusively shall mean, with respect to the item referenced, all or substantially all of such item, and the term exclusion shall mean, with respect to the licensees or permittees referenced, all or substantially all of such licensees or permittees.

Attachment 9

**Approval to Withdraw Proposed New Rule §45.93,
Prohibited Practices and Relationships for Malt
Beverages**

The Texas Alcoholic Beverage Commission (commission) proposes new §45.93, relating to Prohibited Practices and Relationships for Malt Beverages.

On January 21, 2014, the commission received a petition for rulemaking from the Wholesale Beer Distributors of Texas. The petition requested amendments to §45.73, relating to Label: General. The petition was received too late to be considered at the commission's January 28, 2014, meeting but more than 60 days prior to the commission's next opportunity to act on granting or denying the petition. Under Government Code §2001.021(c), the commission is therefore required to initiate a rulemaking proceeding.

Currently there are pending amendments to §45.73 (see the December 13, 2013, issue of the *Texas Register* (38 *TexReg* 8988)). Because of constraints imposed by *Texas Register* policies, the commission may not publish proposed amendments to a section if there are proposed amendments to the same section already pending. Therefore, the commission has modified the proposal for amendments to §45.73 that were presented in the Wholesale Beer Distributors of Texas petition and has combined some of their suggestions, with some editorial revisions in light of the *Texas Register's* policies, as this proposed new §45.93. The format and, in some instances, the petitioner's proposed language have been modified.

Because of the *Texas Register* policies, the following Wholesale Beer Distributors of Texas proposed changes to §45.73 cannot be published as proposed amendments to that section:

(1) Strike current subsection (d), and in its place add a new subsection (d) which reads: "No application for a label shall be approved and any approved label shall be revoked on beer, ale and malt liquor if there is anything of value exchanged between a retailer and a manufacturer related to the product."

(2) Add new subsection (g) to read: "Every permitted brewer or licensed manufacturer of beer, ale, or malt liquor must submit the following form to the TABC on an annual basis: Private Label Questionnaire. Pursuant to Sections 102.15 and 102.22 of the Alcoholic Beverage Code, the TABC requires a manufacturer to annually file this form to determine if any prohibited relationships occur between a manufacturer of malt beverages and a Texas retailer." The questionnaire, which was included in the rulemaking petition, asks in question format, for the information identified in this proposed §45.93(b) – (d).

The commission invites comments on the language presented by the Wholesale Beer Distributors of Texas in its petition for rulemaking.

Initiating a rulemaking proceeding in response to a petition for rulemaking does not necessarily mean that the proposal is supported by the commission or that the proposed new section will be adopted. It means only that the rule proposal will be published in the *Texas Register* for public comment.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new section will be in effect, there will be no fiscal impact on state or local government.

The proposed new section will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new section will be in effect, the public would benefit if the petitioner is correct that the proliferation of private labels threaten the ability of wholesalers to continue to be an independent conduit to a well-functioning, orderly market place, and that the proposed new section alleviates the problem. The commission invites comments on: (1) whether the petitioner is correct that these provisions address and help alleviate a problem in the malt beverage market place; and (2) more generally, whether and how the public will benefit if the proposed new section is adopted.

Comments on the proposed new section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments received within 30 days following publication in the *Texas Register* will be considered and addressed in the preamble to the adopted new section pursuant to Government Code §2001.033, if the commission decides to adopt the new section in this proceeding. Please contact Mr. Wilson at martin.wilson@tabc.state.tx.us if you would like to receive a copy of the original petition for rulemaking filed by the Wholesale Beer Distributors of Texas, which requested that this rulemaking proceeding be initiated.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new section on March 4, 2014 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted new section, if the commission chooses to adopt the new section in this proceeding. Staff will not

respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed new section is authorized by Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code, and Alcoholic Beverage Code §102.22, which requires the commission to adopt a form for brewers and manufacturers to annually verify that a brewing or manufacturing facility owned or controlled by the permit or license holder is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates.

The proposed new section affects Alcoholic Beverage Code §§5.31, 102.15 and 102.22.

§45.94 Prohibited Practices and Relationships for Malt Beverages.

(a) Notwithstanding and in addition to the requirements of §45.73 and §45.82(a)(7) of this Title, no application for a label shall be approved and any approved label shall be revoked on beer, ale and malt liquor if there is anything of value exchanged between a retailer and a manufacturer related to the product.

(b) On an annual basis, every permitted brewer or licensed manufacturer of beer, ale, or malt liquor must provide the following information to the commission on a form promulgated by the commission:

_____ (1) whether any brands that have been approved by the commission under the manufacturer's license or brewer's permit have been produced primarily for a specific retailer or its affiliates located in Texas;

_____ (2) whether any brands that have been approved by the commission under the manufacturer's license or brewer's permit are subject to:

_____ (A) any agreements with a Texas retailer or its affiliates relating to price, profit sharing, revenue sharing

or cooperative advertising; or

_____ (B) any other agreement creating a financial relationship of any kind between the manufacturer or brewer or their affiliates and the Texas retailer or its affiliates;

_____ (3) for any brand that has been approved by the commission under the manufacturer's license or brewer's permit, whether there are any agreements with a Texas retailer or distributor or their affiliates to limit other Texas retailers to whom the product will be available for purchase from a distributor; and

_____ (4) for any brand that has been approved by the commission under the manufacturer's license or brewer's permit, whether there are any agreements between the manufacturer or brewer or their affiliates and any Texas retailer, or between the manufacturer or brewer and any distributor or their affiliates, regarding the price at which the product will be offered to certain retailers in Texas.

(c) The form promulgated by the commission pursuant to subsection (b) of this section must advise the manufacturer or brewer filing the form that the information is being requested pursuant to Alcoholic Beverage Code §102.15 and §102.22 and is necessary to determine if any prohibited relationships occur between a manufacturer of malt beverages and a Texas retailer. Also, the form must state that failure to accurately complete the form could result in administrative proceedings against the manufacturer's license or brewer's permit.

(d) If a brand has been produced primarily for a specific Texas retailer or its affiliates, or if any of the agreements described in subsection (b) (2)-(4) of this section exist, the manufacturer or brewer must provide to the commission, accompanying the form required in subsection (b) of this section, a detailed explanation regarding all circumstances, including the brand name and the name of the Texas retailer.

(e) Accompanying the form required in subsection (b) of this section, a manufacturer or brewer must provide copies of any agreement the manufacturer or brewer has with any retailer who has a license or permit to sell malt beverages in Texas.

Attachment 10

**Approval to Withdraw Proposed Amendments to Rule
§45.110, Inducements**

March 25, 2014 Agenda Item 19.

Approval to Publish Proposed Amendments to Rule §45.110, Inducements.

The Texas Alcoholic Beverage Commission (commission) proposes amendments to §45.110, relating to Inducements, to conform subsection (c)(3) to a United States District Court finding that the provision currently in effect is unconstitutional, to cite as examples of unlawful inducements certain malt beverage labels and certain sales of malt beverages, and to add a statutory reference.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Comm'n*, 835 F. Supp. 2d 227 (W.D. Tex., Dec. 19, 2011), §45.110(c)(3) was declared unconstitutional as a violation of the First Amendment and the commission was enjoined from enforcing it, which the commission has not done since the court's ruling. However, the court's order affirms the commission's authority to prohibit undue collusion, financial or otherwise, among the tiers. Accordingly, the commission proposes amending that paragraph to eliminate the per se prohibition on advertising that benefits a specific retailer, and to replace it with a prohibition on such advertising that is a product of unauthorized activity by and among members of different tiers.

In addition, the proposed amendments add to the list of examples of unlawful inducements in subsection (c) by adding paragraphs (7) and (8), which deal with the use of retailer tradenames and trademarks in malt beverage labels, and with the exclusive sale of malt beverage products to specific retailers.

The commission also proposes to amend subsection (a) to add a statutory reference.

Section 45.110 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide clearer guidance about prohibited activities.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will provide clearer up-front guidance to the regulated community, thereby reducing uncertainty, and will remove an unconstitutional provision.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code; and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 102.04, 102.07, 102.12, 102.15 and 108.06, and Government Code §2001.039.

§45.110 Inducements.

(a) General. This ~~section~~ [rule] is enacted pursuant to Alcoholic Beverage Code §§102.04, 102.07, 102.12, 102.15 and 108.06.

(b) Unless otherwise specified, this [This] ~~section~~ [rule] applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of unauthorized activity by and among members of one tier and members of another tier that involves financial remuneration, incentive, inducement or compensation;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed \$500.00 per person on any one occasion; and

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; and

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may only furnish ground transportation.

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this section.

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

(5) furnishing of service trailers with equipment to a retailer; ~~or~~

(6) furnishing transportation or other things of value to organized groups of retailers. Members of the manufacturing and distribution tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership.;

(7) marking, branding or labeling a malt beverage with:

(A) the tradename or trademark of any retailer permittee or licensee or any private club registration permittee; or

(B) a tradename or trademark that is owned or licensed by, or is exclusively used by any retailer permittee or licensee or any private club registration permittee; or

(8) selling all or substantially all of a brand of malt beverages to:

(A) the holder of a license or permit that authorizes the retail sale or service of malt beverages, to the exclusion of all or substantially all other licensees or permittees who are authorized to sell or serve malt beverages at retail; or

(B) holders of licenses or permits that authorize the retail sale or service of malt beverages and that are under the same ownership, control, or management, to the exclusion of all or substantially all other licensees or permittees who are authorized to sell or serve malt beverages at retail.

(d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct

places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.

(1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.

(3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.

(5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

Attachment 11

**Approval to Withdraw Proposed New Rule §45.140,
Verification**

The Texas Alcoholic Beverage Commission (commission) proposes new §45.140, relating to Verification, to implement the requirements of Alcoholic Beverage Code (Code) §102.22, relating to Verification of Use of Facilities.

Alcoholic Beverage Code §102.22(a) requires that a person who holds a Chapter 12 or 13 permit or a Chapter 62 or 63 license must annually verify to the commission that a brewing or manufacturing facility owned or controlled by that person “is not used to produce malt beverages primarily for a specific retailer or the retailer’s affiliates”. Section 102.22(b) requires the commission to adopt a form for the verification.

The commission understands that the statutory language might be subject to different interpretations. Proposed new §45.140 sets forth the standard verification language that the commission will use in a form to be promulgated later, and requires that each affected permit or license holder file that form on or before September 1 of each year. The commission believes that the proposed language is consistent with its understanding of the legislature’s intent in adopting that section of the Code.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on state or local government.

The proposed new rule will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the form of the verification required by Alcoholic Beverage Code §102.22 will be clear.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission’s public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on Wednesday, January 8, 2014 at 1:30 p.m. in the commission meeting room at the commission’s headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §102.22, which requires the commission to adopt a form.

The proposed new rule affects Alcoholic Beverage Code Chapters 12, 13, 62 and 63, and §§5.31, and 102.22.

SUBCHAPTER F. ANNUAL FILING BY RESIDENT AND NONRESIDENT BREWERS AND MANUFACTURERS

§45.140. Verification. Pursuant to Alcoholic Beverage Code §102.22, on or before September 1 of each year, each person who holds a permit issued under Chapter 12 or 13 of the Alcoholic Beverage Code or a license issued under Chapter 62 or 63 of the Alcoholic Beverage Code shall file with the commission, on a form promulgated by the commission, verification that the following statement is true: “Since September 1 of last year, no malt beverage that is primarily produced for sale by a specific retailer or for sale by the retailer’s affiliates has been produced at a brewing or manufacturing facility owned or controlled by [NAME OF PERMIT/LICENSE HOLDER]”.

Attachment 12

**Approval to Publish Proposed Amendments to Rule
§45.73, Label: General**

March 25, 2014 Agenda Item 14.

Approval to Publish Proposed Amendments to Rule §45.73, Labels: General.

The Texas Alcoholic Beverage Commission (commission) proposes amendments to §45.73, relating to Labels: General, to state the purpose of and authority for the section, to delete references to special or private brands, to prohibit labels indicating that the beverage is owned or licensed by or exclusively used by a retailer, and to define the word "exclusively" as used in this section.

The amendments attempt to further clarify the commission's interpretation of Alcoholic Beverage Code §102.07 and §102.15, which prohibit brewers and manufacturers from furnishing anything of value to retailers of their products. The commission believes that a malt beverage label that is identified with a specific retailer under certain circumstances (outlined in the section as it would be amended) is a form of advertising for the retailer. Brewers and manufacturers cannot provide advertising for a specific retailer because it is a thing of value to the retailer.

Section 45.73 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide clearer guidance about prohibited activities.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will provide clearer up-front guidance to the regulated community, thereby reducing uncertainty.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 5.38, 101.41, 101.61, 102.07 and 102.15, and Government Code §2001.039.

§45.73. Label: General.

(a) ~~Marking, branding and labeling.~~ The purpose of this section is to implement Alcoholic Beverage Code §101.67 (Prior Approval of Malt Beverages) and §101.41 (Containers, Packaging, and Dispensing Equipment of Beer: Labels), pursuant to the requirements of Alcoholic Beverage Code §5.38 (Quality and Purity of Beverages) and the authority of Alcoholic Beverage Code §5.31 (General Powers and Duties). The section applies the prohibitions in Alcoholic Beverage Code §102.07(a)(3) and §102.15(a)(1) in the labelling context.

(b) It shall be unlawful for any person to transport, sell, or possess for the purpose of sale in this state any malt beverage, directly or indirectly, or through an affiliate, or remove from customs custody any malt beverage in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with this subchapter.

(c) [(b)] Alteration of labels.

(1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale, except as authorized by law; provided, that the administrator may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this subchapter or of law.

(2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

~~(d)~~ ~~(e)~~ Only a brewer's or non-resident brewer's permittee, ~~or~~ a manufacturer's or non-resident manufacturer's licensee, or a brewpub licensee may apply for and receive label approval on beer, ale, or malt liquor.

~~(e)~~ ~~(d)~~ No application for a label filed by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee shall be approved which:

(1) indicates by any statement, design, device, or representation that the malt beverage is a special or private brand brewed or bottled for any retailer permittee or licensee or any private club registration permittee; or that

(2) includes the name, tradename, or trademark of any retailer permittee or licensee or any private club registration permittee; or

(3) indicates by any statement, design, device, or representation that the malt beverage is owned or licensed by, or is exclusively used by any retailer permittee or licensee or any private club registration permittee.

~~(f)~~ ~~(e)~~ The sale of a brand of malt beverages by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee exclusively to the holder of a license or permit authorizing the retail sale or service of malt beverages, or exclusively to other such licensees or permittees under the same ownership, control, or management, to the exclusion of other such licensees or permittees generally is specifically prohibited. Any such exclusive sale of a brand shall constitute the sale of a special or private brand and the label approval for any such label shall be cancelled and withdrawn.

(g) As used in this section, the term exclusively shall mean, with respect to the item referenced, all or substantially all of such item, and the term exclusion shall mean, with respect to the licensees or permittees referenced, all or substantially all of such licensees or permittees.

Attachment 13

**Approval to Publish Proposed Amendments to Rule
§45.82, Prohibited Practices**

March 25, 2014 Agenda Item 15.

Approval to Publish Proposed Amendments to Rule §45.82, Prohibited Practices.

The Texas Alcoholic Beverage Commission (commission) proposes amendments to §45.82, relating to Prohibited Practices, to delete references to special or private brands, to prohibit labels indicating that the beverage is owned or licensed by or exclusively used by a retailer, and to define the word "exclusively" as used in this section.

The amendments attempt to further clarify the commission's interpretation of Alcoholic Beverage Code §102.07 and §102.15, which prohibit brewers and manufacturers from furnishing anything of value to retailers of their products. The commission believes that a malt beverage label that is identified with a specific retailer under certain circumstances (outlined in the section as it would be amended) is a form of advertising for the retailer. Brewers and manufacturers cannot provide advertising for a specific retailer because it is a thing of value to the retailer.

Section 45.73 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide clearer guidance about prohibited activities.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will provide clearer up-front guidance to the regulated community, thereby reducing uncertainty.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-

3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 5.38, 101.41, 101.61, 102.07 and 102.15, and Government Code §2001.039.

§45.82 Prohibited Practices.

(a) Statements on labels. Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic or other matter accompanying such containers to the consumer shall not contain the following:

- (1) any statement that is false or untrue in any particular, or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression;
- (2) any statement that is disparaging of a competitor's products;
- (3) any statement, design, device, or representation which is obscene or indecent;
- (4) any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
- (5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
- (6) a trade name or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that

this subsection shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, wholesaler, distributor, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935;

(7) any statement, design, device, or representation that:

(A) the malt beverage is a special or private brand brewed or bottled for any retail licensee or permittee or private club registration permittee; or that

(B) includes the name, tradename or trademark of any retail licensee or permittee or private club registration permittee; or

(C) the malt beverage is owned or licensed by or exclusively used by any retail licensee or permittee or private club registration permittee where exclusively shall mean, with respect to the item referenced, all or substantially all of such item.

(b) Simulation of government stamps. No label shall be of such design as to resemble or simulate a stamp of the United States government or of any state or foreign government. No label, other than stamps authorized or required by the United States government or any state or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, labeled, sold under, or in accordance with any municipal, state, federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by federal or state law or regulations of the foreign country in which such malt beverages were produced. If the foreign municipal or state government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by the law of that state or foreign municipality.

(c) Use of word "bonded," etc. The words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packaging, shall not be used on any label for malt beverages.

(d) Statements, seals, flags, coats of arms, crests, and other insignia. Statements, seals, flags, coats of arms, crests, or other insignia, or graphic, or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited on any label of malt beverages.

(e) Curative and therapeutic effects. Labels shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

(f) Coverings, cartons, cases. Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any

statement, or any graphic, pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverage. It shall be unlawful for any retailer to affix to any carton or case any paper or sticker bearing any painted, printed, or other graphic matter whatsoever; and it shall be unlawful for any retailer to paint, imprint, or otherwise impose any wording, lettering, picture, or design of any character whatsoever on any carton or case.

Attachment 14

**Approval to Publish Proposed New Rule §45.94,
Verification Regarding Use of Facilities**

March 25, 2014 Agenda Item 16:

Approval to Publish Proposed New Rule §45.94, Verification Regarding Use of Facilities

The Texas Alcoholic Beverage Commission (commission) proposes new §45.94, relating to Verification Regarding Use of Facilities, to implement the requirements of Alcoholic Beverage Code §102.22, relating to Verification of Use of Facilities.

Alcoholic Beverage Code §102.22(a) requires that a person who holds a Chapter 12 or 13 permit or a Chapter 62 or 63 license must annually verify to the commission that a brewing or manufacturing facility owned or controlled by that person “is not used to produce malt beverages primarily for a specific retailer or the retailer’s affiliates”. Alcoholic Beverage Code §102.22(b) requires the commission to adopt a form for the verification.

The proposed new section would require that the Alcoholic Beverage Code §102.22 verification be filed on or before September 1 of each year by each permittee and licensee required to do so by that section of the Alcoholic Beverage Code. The new section also provides that the commission will promulgate a form requiring the verification as stated in Alcoholic Beverage Code §102.22.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new section will be in effect, there will be no fiscal impact on state or local government.

The proposed new section will have no fiscal or regulatory impact (beyond the impact of Code §102.22 itself) on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new section will be in effect, the public will benefit because the form of the verification required by Code §102.22 will be clear.

Comments on the proposed new section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission’s public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new section on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission’s headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new section is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §102.22, which requires the commission to adopt a form.

The proposed new section affects Alcoholic Beverage Code Chapters 12, 13, 62 and 63, and §§5.31, and 102.22.

§ 45.94. Verification Regarding Use of Facilities.

On or before September 1 of each year, each holder of a permit issued under Alcoholic Beverage Code Chapter 12 or 13 or a license issued under Alcoholic Beverage Code Chapter 62 or 63 shall verify to the commission, on a form promulgated by the commission, that no brewing or manufacturing facility owned or controlled by the permit or license holder is used to produce malt beverages primarily for a specific Texas retailer or the retailer's Texas affiliates.

Attachment 15

**Approval to Publish New Rule §45.95, Agreements
Between Manufacturers or Brewers and Retailers**

March 25, 2014 Agenda Item 17:

Approval to Publish Proposed New Rule §45.95, Agreements Between Manufacturers or Brewers and Retailers

The Texas Alcoholic Beverage Commission (commission) proposes new §45.95, relating to Agreements Between Manufacturers or Brewers and Retailers, to require the filing of such agreements unless exempted by the section.

The proposed new section is based on the understanding that agreements between the manufacturing and retail tiers are generally prohibited unless otherwise allowed. Alcoholic Beverage Code §102.07 provides that brewers may arrange certain promotional activities with retailers and it is understood that these arrangements may be pursuant to an agreement between the parties. The Alcoholic Beverage Code does not otherwise appear to allow agreements between brewers or manufacturers and Texas retailers.

While it is true that the general prohibition on inter-tier agreements that are not specifically authorized applies to all segments of the alcoholic beverage industry, it is also true that the commission has limited resources and must prioritize its workload. Malt beverage distributors have requested (by submitting and supporting a similar provision in a petition for rulemaking) that the commission require the filing of agreements between brewers or manufacturers and retailers. The underlying concern is that if producers and retailers are able to agree on certain terms regarding the retailer's sale of a product, the middle tier distributors can effectively be squeezed from both above and below in the supply chain, thereby reducing their independence. If middle-tier members are marginalized, the three-tier system of alcoholic beverage regulation that is inherent in the Alcoholic Beverage Code is threatened.

The commission has not received a similar indication of interest in imposing a similar filing requirement from or regarding other segments of the industry. The commission can investigate specific complaints on an individual basis in any segment of the industry. Given the commission's restricted resources and the heightened concerns expressed in the malt beverage segment of the industry, the commission chooses to impose the filing requirement in this section only to that segment of the industry.

If the parties that are required to file their agreements believe that there are lawful agreements between producers and retailers other than the ones exempted from the filing requirement in the proposed new section, the commission believes it is appropriate for the commission to review such agreements. Before agreeing that there may be other lawful agreements, the commission believes it should review the actual documents. As the commission gains more knowledge and understanding from its review of the filed agreements, it can do a better job assessing the appropriate degree of regulation that is appropriate and where lines should be drawn..

The proposed new section requires the filing by September 1, 2015 of all agreements, other than those specifically exempted, that are in effect on August 31, 2015. After September 1, 2015, new agreements would have to be filed within 30 days. Agreements that are not in writing must be summarized in writing and the summary must be filed. Finally, the agreements and summaries would be considered public records under Alcoholic Beverage Code §5.48 and thereby be shielded from disclosure under the terms of that provision.

By delaying the initial filing requirement until September 1, 2015, the commission does not imply that there may be unlawful agreements until that date. If the commission becomes aware of illegal arrangements or activity before or after September 1, 2015, this section would not restrict the remedies available to the commission. Specifically, the commission would use its authority under Alcoholic Beverage Code §5.32 to get documents or other information necessary for its investigation.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new section will be in effect, there will be no fiscal impact on state or local government.

The proposed new section might have a fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. Since the commission believes that agreements other than those exempted are not lawful, it is operating under the assumption that no such agreements exist. If the commission is incorrect in that assumption, it currently has no way to determine how many exist and who may have them. The commission specifically requests comments regarding the costs associated with complying with this section if it is ultimately adopted.

There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new section will be in effect, the public will benefit because the commission will obtain knowledge that will allow it to appropriately focus its efforts to enforce the Alcoholic Beverage Code's restrictions on inter-tier relationships.

Comments on the proposed new section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new section on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new section is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.32, which authorizes the commission to require the regulated community to provide information and documents to the commission.

The proposed new section affects Alcoholic Beverage Code Chapters 12, 13, 62 and 63, and §§1.03, 5.31, 5.32, 5.48, 6.03, 102.01, 102.07, 102.11, 102.12, 102.13, 102.14, 102.15 and 102.16.

45.95. Agreements Between Manufacturers or Brewers and Retailers.

(a) This section is adopted under the authority of Alcoholic Beverage Code §5.31(a) and §5.32 in furtherance of its responsibilities under Alcoholic Beverage Code §5.31(b)(1), (3), (4) and (7), and as an exercise of the police power of the state under Alcoholic Beverage Code §1.03 for protection of the public welfare of the people of this state, as articulated by the legislature as a matter of public policy in Alcoholic Beverage Code §6.03(i). It is both necessary and an administratively efficient means under Alcoholic Beverage Code §5.31(a) for the commission to inspect, supervise and regulate the alcoholic malt beverage business and to enforce Alcoholic Beverage Code §§ 102.01, 102.07, 102.11, 102.12, 102.13, 102.14, 102.15 and 102.16. The section is limited to malt beverage producers and retailers because the commission received a specific request for such a rule from malt beverage distributors to give the commission information necessary to proactively investigate possible violations of Alcoholic Beverage Code Chapter 102 rather than waiting to respond to complaints. In order to prioritize and maximize the use of its limited resources, the commission chooses to gather the information required by this section from that segment of the industry, since there has been an expression of concern from and regarding that segment.

(b) By September 1, 2015, each holder of a permit or license issued under Alcoholic Beverage Code Chapters 12, 13, 62 or 63 shall file with the commission a copy of any agreement (except those described in subsection (d) of this section) dated before August 31, 2015, and still in force on September 1, 2015, between the brewer or manufacturer or

its affiliates and the holder of any permit or license in Texas authorizing the retail sale of malt beverages or its affiliates in Texas.

(c) For any agreement (except those described in subsection (d) of this section) dated on or after September 1, 2015 between a holder of a permit or license issued under Alcoholic Beverage Code Chapters 12, 13, 62 or 63 or its affiliates and the holder of any permit or license in Texas authorizing the retail sale of malt beverages or its affiliates in Texas, the brewer or manufacturer shall file the agreement with the commission within 30 calendar days of the date the parties enter into it.

(d) The agreements described in this subsection are not subject to the filing requirements of subsections (b) or (c) of this section:

(1) agreements related to lawful promotional activities authorized by Alcoholic Beverage Code §102.07; and

(2) agreements previously provided to the commission.

(e) If any agreement that is required to be filed by this section is not in writing, the oral agreement must be summarized in writing by the brewer or manufacturer and the summary filed with the commission on the date that the agreement would be due if it were written. If any of the items listed in this subsection as a minimum requirement of the summary is not applicable to the oral agreement, that fact must be noted in the summary.

The summary must include, at a minimum:

(1) the date of the agreement;

(2) the parties to the agreement;

(3) the term of the agreement, including any conditions that apply to its renewability and to its termination prior to the end of the agreed term; and

(4) the duties and obligations of the parties to the contract.

(f) An agreement or summary filed under this section is a private record under Alcoholic Beverage Code §5.48.

Attachment 16

**Approval to Publish Proposed Amendments to Rule
§45.96, Brewpubs**

March 25, 2014 Agenda Item 18:

Approval to Publish Proposed New Rule §45.96, Brewpubs

The Texas Alcoholic Beverage Commission (commission) proposes new §45.96, relating to Brewpubs, to define labelling requirements and to clarify authorized activities.

The proposed new section clarifies that a brewpub is not authorized to provide contract brewing or alternating brewery proprietorship arrangements or engage in such activities because the Alcoholic Beverage Code provides such authority only to holders of permits under Alcoholic Beverage Code Chapters 12 or 13 and of licenses under Alcoholic Beverage Code Chapters 62 and 63.

The proposed new section also clarifies that a brewpub can apply for and receive label approval on malt beverages, which they are already doing under Alcoholic Beverage Code Chapter 74. Before recent amendments to Alcoholic Beverage Code Chapter 74, the commission did not require brewpubs to receive label approval for their products, which could only be sold on their own premises. However, since Alcoholic Beverage Code §§ 74.08 – 74.10 now authorize brewpubs to sell their products under certain conditions to retailers, distributors and retailers, it is incumbent upon the commission under Alcoholic Beverage Code §74.01(a)(1) and §74.06 to apply appropriate labelling requirements. The proposed new section clarifies that a brewpub can use its own name, tradename or trademark to its product, but that it may not use the name, tradename or trademark of another retailer.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new section will be in effect, there will be no fiscal impact on state or local government.

The proposed new section will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission beyond the impacts already imposed by the Alcoholic Beverage Code. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new section will be in effect, the public will benefit because the authorized activities and labelling requirements applicable to brewpubs will be clarified.

Comments on the proposed new section may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also

be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new section on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new section is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed new section affects Alcoholic Beverage Code Chapters 12, 13, 62 and 63, and §§5.31, 74.01, 74.06 and 74.08 - 74.10.

§ 45.96. Brewpubs.

(a) The purpose of this section is to implement Alcoholic Beverage Code §§5.39 (Regulation of Liquor Containers), 74.01 (Authorized Activities), 74.06 (Quality Standards), and 101.67 (Prior Approval of Malt Beverages), pursuant to the requirements of Alcoholic Beverage Code §5.38 (Quality and Purity of Beverages) and the authority of Alcoholic Beverage Code §5.31 (General Powers and Duties).

(b) Labels.

(1) It shall be unlawful for any person to transport, sell, or possess for the purpose of sale in this state any malt beverage, directly or indirectly, or through an affiliate, or to remove from customs custody any malt beverage in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with this subchapter.

(2) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale, except as authorized by law; provided, that the administrator may, upon written application, permit additional

labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this subchapter or of law.

(3) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

(4) A brewpub licensee may apply for and receive label approval on beer, ale, or malt liquor. The label may contain the brewpub licensee's name, tradename or trademark.

(5) No application for a label filed by a brewpub licensee shall be approved which:

(A) indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee (other than the brewpub licensee label applicant itself) or any private club registration permittee;

(B) includes the name, tradename, or trademark of any retailer permittee or licensee (other than the brewpub licensee label applicant itself) or any private club registration permittee; or

(C) indicates by any statement, design, device, or representation that the malt beverage is owned or licensed by, or is exclusively used by any retailer permittee or licensee (other than the brewpub licensee label applicant itself) or any private club registration permittee.

(c) Authorized Activities.

(1) Nothing in this subchapter or in Alcoholic Beverage Code Chapter 74 authorizes a brewpub licensee to engage in contract brewing or alternating brewery proprietorship arrangements, and its facilities may not be used to provide such arrangements or engage in such activities, which are authorized only for holders of permits under Alcoholic Beverage Code Chapters 12 or 13 and holders of licenses under Alcoholic Beverage Code Chapters 62 and 63.

(2) The sale of a brand of malt beverages by a brewpub licensee exclusively to the holder of a license or permit authorizing the retail sale or service of malt beverages, or exclusively to other retail licensees or permittees under the same ownership, control, or management, to the exclusion of other retail licensees or permittees generally is specifically prohibited.

(3) As used in this section, the term exclusively shall mean, with respect to the item referenced, all or substantially all of such item, and the term exclusion shall mean, with respect to the licensees or permittees referenced, all or substantially all of such licensees or permittees.

Attachment 17

**Approval to Publish Proposed Amendments to Rule
§45.110, Inducements**

March 25, 2014 Agenda Item 19.

Approval to Publish Proposed Amendments to Rule §45.110, Inducements.

The Texas Alcoholic Beverage Commission (commission) proposes amendments to §45.110, relating to Inducements, to conform paragraph (c)(3) to a United States District Court finding that the provision currently in effect is unconstitutional, to cite as examples of unlawful inducements certain malt beverage labels and certain sales of malt beverages, and to add a statutory reference.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Comm'n*, 835 F. Supp. 2d 227 (W.D. Tex., Dec. 19, 2011), §45.110(c)(3) was declared unconstitutional as a violation of the First Amendment and the commission was enjoined from enforcing it, which the commission has not done since the court's ruling. However, the court's order affirms the commission's authority to prohibit undue collusion, financial or otherwise, among the tiers. Accordingly, the commission proposes amending that paragraph to eliminate the per se prohibition on advertising that benefits a specific retailer, and to replace it with a prohibition on such advertising that is a product of unauthorized activity by and among members of different tiers.

In addition, the proposed amendments add to the list of examples of unlawful inducements in subsection (c) by adding paragraphs (7) and (8), which deal with the use of retailer tradenames and trademarks in malt beverage labels, and with the exclusive sale of malt beverage products to specific retailers.

The commission also proposes to amend subsection (a) to add a statutory reference.

Section 45.73 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended to provide clearer guidance about prohibited activities.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the amendments.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the section will provide clearer up-front guidance to the regulated community, thereby reducing uncertainty, and will remove an unconstitutional provision.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Wednesday, April 30, 2014 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 102.04, 102.07, 102.12, 102.15 and 108.06, and Government Code §2001.039.

§45.110 Inducements.

(a) General. This section [rule] is enacted pursuant to §§102.04, 102.07, 102.12, 102.15 and 108.06.

(b) Unless otherwise specified, this [This] section [rule] applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of unauthorized activity by and among members of one tier and members of another tier that involves financial remuneration, incentive, inducement or compensation;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed \$500.00 per person on any one occasion; and

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; and

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may only furnish ground transportation.

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as

the primary purpose for the attendance of the retailer at such event is not to receive benefits under this rule.

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

(5) furnishing of service trailers with equipment to a retailer; ~~or~~

(6) furnishing transportation or other things of value to organized groups of retailers. Members of the manufacturing and distribution tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership.:

(7) marking, branding or labeling a malt beverage with:

(A) the tradename or trademark of any retailer permittee or licensee or any private club registration permittee; or

(B) a tradename or trademark that is owned or licensed by, or is exclusively used by any retailer permittee or licensee or any private club registration permittee; or

(8) selling all or substantially all of a brand of malt beverages to:

(A) the holder of a license or permit that authorizes the retail sale or service of malt beverages, to the exclusion of all or substantially all other licensees or permittees who are authorized to sell or serve malt beverages at retail; or

(B) holders of licenses or permits that authorize the retail sale or service of malt beverages and that are under the same ownership, control, or management, to the exclusion of all or substantially all other licensees or permittees who are authorized to sell or serve malt beverages at retail.

(d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.

(1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.

(3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.

(5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

CERTIFICATION

REGULAR COMMISSION MEETING

10:00 a.m. – March 25, 2014

5806 Mesa Drive
Austin, Texas 78731



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on March 25, 2014.

A handwritten signature in black ink that reads "Sherry K. Cook".

Sherry Cook
Administrator

Sworn and subscribed before me this the 4th day of April 2014.



A handwritten signature in black ink that reads "Gloria Darden Reed".

Gloria Darden Reed
Notary in and for Travis County