

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, APRIL 24, 2000

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman; John T. Steen, Member and Gail Madden, Member. Staff present: Doyne Bailey, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance, Greg Hamilton, Chief of Enforcement and Buck Fuller, Director of Compliance. Present to receive certificates of service: Dyer Lightfoot, Odessa and Anita Allison, Licensing. Public comment was received from: Wade Spilman, Wholesale Beer Distributors of Texas; Bob Mann, Alcohol Safety Training; Tom Mobley, National Traffic Safety Institute; Linda Barnett, MADD Central Texas; Dean S. DeSoto, Community Alliance for Traffic Safety; Trish Merrill, Faith Partners; Toni Logan, MADD Texas State Office; Mary Hill, Retired Dean of Students and Fred Niemann, Jr., Texas Package Stores Association.

The agenda follows:

1:30 p.m. - Call to order.

1. Recognition of agency employees with 20 or more years of services.
2. Approval of minutes of March 27, 2000 meeting; discussion, comment, possible vote.
3. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement;
 - c. discussion of strategic plan; and
 - d. discussion of management controls.
4. Fiscal stewardship of agency; discussion, comment, possible vote.
5. Consider proposed amendment to marketing practices rules allowing for certain types of electronic advertising by alcoholic beverage manufacturers; discussion, comment, possible vote.
6. Consider publication of proposed amendment to 16 TAC §45.106 relating to sweepstakes and games of chance; discussion, comment, possible vote.
7. Consider proposed amendment to 16 TAC Chapter 50 to require participation in seller-server training by all licensees and permittees authorized to sell or serve alcoholic beverages at retail; discussion, comment, possible vote.
8. Consider publication of proposed 16 TAC §33.42 relating to affiliation between members of different tiers of the liquor industry; discussion, comment, possible vote.
9. Consider amendment to 16 TAC §50.1 as published in 25 TexReg 2510 on March 24, 2000; discussion, comment, possible vote. (Purpose)
10. Consider amendment to 16 TAC §50.2 as published in 25 TexReg 2510-2511 on March 24, 2000; discussion, comment, possible vote. (Definitions and Construction)
11. Consider amendment to 16 TAC §50.3 as published in 25 TexReg 2511-2514 on March

- 24, 2000; discussion, comment, possible vote. (Application for Program Approval)
12. Consider amendment to 16 TAC §50.4 as published in 25 TexReg 2514-2515 on March 24, 2000; discussion, comment, possible vote. (Program Administration)
 13. Consider amendment to 16 TAC §50.5 as published in 25 TexReg 2515-2517 on March 24, 2000; discussion, comment, possible vote. (Denial, Revocation or Suspension of Program Approval)
 14. Consider amendment to 16 TAC §50.6 as published in 25 TexReg 2517 on March 24, 2000; discussion, comment, possible vote. (Application for Trainer Certification)
 15. Consider amendment to 16 TAC §50.7 as published in 25 TexReg 2517-2518 on March 24, 2000; discussion, comment, possible vote. (Denial, Revocation or Suspension of Trainer Approval)
 16. Consider amendment to 16 TAC §50.8 as published in 25 TexReg 2518-2519 on March 24, 2000; discussion, comment, possible vote. (Trainee Certification)
 17. Consider repeal of 16 TAC §50.9 as published in 25 TexReg 2519 on March 24, 2000; discussion, comment, possible vote. (Licensee/Permittee Exemption from Administrative Action)
 18. Consider a new 16 TAC §50.9 as published in 25 TexReg 2519-2520 on March 24, 2000; discussion, comment, possible vote. (Revocation or Suspension of Trainee Certification)
 19. Consider a new 16 TAC §50.10 as published in 25 TexReg 2520 on March 24, 2000; discussion, comment, possible vote. (Licensee/Permittee Exemption from Administrative Action)
 20. Consider a new 16 TAC §50.11 as published in 25 TexReg 2520-2521 on March 24, 2000; discussion, comment possible vote. (Mandatory Participation in Server Training)
 21. Public comment.
- Announcement of executive session:
22. Executive session:
 - a. the commission may go into executive session to consult with legal counsel regarding items 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 or 20 of this agenda pursuant to Texas Government Code, §551.071.
- Continue open meeting.
23. Take action, including a vote if appropriate, on topics listed for discussion under executive session.
 24. Adjourn.

The meeting was called to order at 1:44 p.m. by Chairman Shivers.

MR. SHIVERS: I will call this meeting of the Alcoholic Beverage Commission to order for Monday, April 24, 2000. It is one forty-four in the afternoon.

Before we start our agenda, I have the delightful honor of swearing in our new commissioner, Ms. Gail Madden.

At this time, Chairman Shivers administered the Oath of Office for the position of Member-Alcoholic Beverage Commission to Ms. Madden.

MR. SHIVERS: I'd like to recognize those employees who have been with this agency for 20 years or more.

Ramiro Guerra is a taxpayer compliance officer at the Laredo Bridge where he acts as assistant supervisor. Mr. Guerra is a very dedicated employee who has been instrumental in the creation of new computer programs to improve office efficiency. Congratulations to Ramiro on his 30 years of outstanding service. He is unable to be here today, and we will send his certificate to him.

Dyer Lightfoot began his law enforcement career with the TABC in 1975 as an Inspector I in Odessa. He moved through the ranks and was promoted to his current rank of lieutenant in February 1994. He has been recognized by his supervisor as a "dedicated and well-respected employee." We congratulate Lieutenant Lightfoot on his 25 years of service with TABC and to the citizens of the State of Texas. Thank you.

MR. LIGHTFOOT: Thank you.

MR. SHIVERS: Anita Allison's 20 years of service with the commission has been in the licensing department. She was re-employed by the commission on May 18, 1981, with one year of prior service. She is assigned to the tax security section where she handles an extremely large volume of work, and Jeannene Fox thinks she's wonderful, right?

MS. FOX: That's right.

MR. SHIVERS: Congratulations.

MS. ALLISON: Thank you.

MR. SHIVERS: We thank all of these people for long years of service to this commission. Without them, we wouldn't be able to function nearly as well. They are the historical memory that gives us our efficiency.

Approval of the minutes of the March 27, 2000 meeting. The minutes have been previously mailed to the commission. Are there any changes to those minutes?

MR. STEEN: I move approval.

MS. MADDEN: I think I will defer to you all since I wasn't here.

MR. SHIVERS: Second. All in favor?

MR. STEEN: Aye.

MR. SHIVERS: Aye.

The administrator's report. Mr. Bailey, please, sir?

MR. BAILEY: Mr. Chairman, you have in your books, and we sent to you previously, the regular report. You will notice this time that each of the divisions or departments did include some narrative in regards to activities like Spring Break and Mardi Gras and those kinds of things. We will try to include that kind of information for you in the future.

The only thing that's a little bit out of the ordinary is under the legal department reports, you will notice that the "Hearing Cases Opened" and the "Violations Charged" are slightly down. I'm told that this is more a result of our transition of employees in the office. We expect those numbers to catch back up during this next month. So, there is not really a decline there. That's all I have for you at this time.

MR. SHIVERS: Any questions for Mr. Bailey or the staff?

MR. STEEN: No questions.

MS. MADDEN: No.

MR. SHIVERS: Thank you, sir.

Fiscal stewardship of the agency?

MR. BAILEY: In the interest of our otherwise long agenda, I will point out that you have a report there, and we have two primary questions from that letter that Governor Bush sent us a few months ago that we are going to talk about today.

The first one is, "Are We Accountable?" The answer is, "Yes." The second one is, "Are We In Compliance?" The answer is, "Yes." That would be my report unless you have any questions.

As you can see from those charts, we find ourselves to be in compliance

with those issues. The one thing that I would point out to you, as I've mentioned before, is that in the area where we consider as a performance measure, the percentage of criminal cases that we charge, the convictions on the percentage of criminal cases, that our numbers are down. That is, the number of cases that we've actually tested. I've pointed out to you before that with the increase in the number of prevention activities, Shattered Dreams, Project SAVE, and so forth, that our agents, who must go to each individual clerk's office and check those dispositions, have been pulled off on those other items, so that's the reason that number is down. It still shows a good percentage for us. It's just a lot smaller data base that we are looking at in that regard.

We will continue to consider some of Governor Bush's questions in each monthly meeting.

MR. STEEN: The thing you were just mentioning, where is that on here?

MR. BAILEY: That's under the performance measures. It's represented on page one in the middle, that yellow chart. For instance, in the first quarter of 2000, the numbers were 2,887, and that's significantly down from previous years. That's the number that we looked at, not the number that was filed or the number of convictions.

MS. MADDEN: Do we need to be concerned?

MR. BAILEY: Only from the standpoint that because we have allowed or, in fact, instructed agents to spend their time in these other activities. I think that was an appropriate decision. We will continue to try to get these numbers back up so that we will have a good report when we go to the legislature during the session.

MR. STEEN: Explain to me, they are going to the clerk's office and checking on the disposition?

MR. BAILEY: Yes, sir. Each time an agent writes a criminal citation, the prosecution of that case is done in the local court, normally in a justice of the peace court. After the case is disposed of in the criminal court, a disposition is forwarded to the county clerk, in most cases. We have tried a variety of ways to get the county clerks to feed that information back to us. We've not had too much success, so in order to know what conviction rate we have, we have to send agents to the county clerk's office to sit down and go through all those previous dispositions to, first, find our cases and, second, determine what the disposition was. Rather than use our

manpower doing that, we've let those numbers slide some.

MR. STEEN: Why does someone need to be an agent to go do that?

MR. BAILEY: Our experience has been that's the only people we've had to send to do that. These, of course, are in the local offices all over the state. They have to go to those local offices. Normally, it's the agent that's better able to get away and go do those things than anyone else in the local office.

I hope that we can, at some point, either modify that performance report or maybe substitute something else for it, because it eats up a lot of our man time.

MR. HAMILTON: Also, I'd like to say that in some of our offices we have tried to use clerks or secretaries to go out, and our success is still the same. You are going to have to send somebody out there. You've just got to decide who you are going to use. As far as us being able to manually go out and check these books and books of dispositions, it's very time consuming. We've also added a postcard. We've given that to the county clerks and, hopefully, they will be able to sign that and let us know what the disposition is. As far as our returns, they are very minimal on that, also.

MR. SHIVERS: The clerks don't have any particular incentive to let us know what the disposition is.

MR. YARBROUGH: I think a couple of things that are important about that, the number of criminal cases we've made have been pretty steady, if not increasing over the last several years, and if you will look on the bottom of page one, that last graph, shows our catch up, generally, is in the fourth quarter where we try to clear out the year and, especially, during the summer when we are not teaching the classes in the schools and our education effort goes down, that frees up some time where we can go out and spend more time catching up. So, a lot of that is a catch up in the fourth quarter, but the percentage has actually been up this year on the convictions that we've got in the good cases, as opposed to previous years. I think that's a good indicator on those cases, that they are being upheld in the courts, even though sometimes that's open to local whims, and so forth, interpretations that you might not have in our administrative cases that we have a little more control over.

MR. SHIVERS: It's a constant balancing act on where you want to put your resources. We have very limited resources to do what we are supposed to do. I guess anyone can have different preferences on where those resources ought to

be deployed.

MR. STEEN: I think we ought to continue to look at that pretty hard, because that seems to me not a good use of agents' time, to have them sitting over at the county clerk's office going through records.

MR. SHIVERS: It's a lousy use of agents' time, but if we could get the county clerks to send the information to us, it would save that, or if we could get the legislature to increase our budget so we could hire clerks to do it, it would be better.

MR. BAILEY: In terms of sending a clerk, if you recall, most of those are ad techs that are in the local offices doing licenses. If you take them away from that licensing function then, of course, that suffers. It is a balancing act, and that's simply what I'm trying to report to you.

MR. SHIVERS: As I visit the district offices around the state, the almost universal problem that agents have is the amount of paperwork, the amount of time they have to spend filling out forms and paperwork. We've talked about using some sort of personal digital assistant type device to speed this up so they can download it and free up more of their time for the more productive, more important work, than filling out paperwork.

The legislature, in the last session, we talked about it, and they did not see fit to fund the acquisition of even a pilot program with those devices. That, I think, given the budgetary constraints we are under, is probably the only reasonable hope for a solution we have, is to add more technology and see if we can't speed this up. We are just going to continue to visit with the legislature and see if we can shine a little light on it.

MR. BAILEY: Do you have any other questions?

MR. STEEN: No.

MS. MADDEN: No.

MR. SHIVERS: Number five - Consider proposed amendment to marketing practices rules allowing for certain types of electronic advertising by alcoholic beverage manufacturers. Mr. Bright?

MR. BRIGHT: Mr. Chairman, if you will remember, this is before you from an agenda item from last month. You heard a suggestion from a Mr. Jim Greaves and his attorney, Steve Shaw, that Mr. Greaves' wine marketing selection

kiosk should be allowed. It is, and was, the staffs' position that that violates several of our rules, as laid out in my letter to Mr. Shaw. We had some discussion about it, and we put it back on this agenda to rediscuss it.

Mr. Shaw called earlier this morning to send his apologies. His plane was delayed, and so he will be late. I don't see that he has joined us, yet.

Your options, I believe, at this point, are to reject this suggestion of rulemaking and tell Mr. Greaves and Mr. Shaw that we are sorry, but we are not going to do what they want or, secondly, Mr. Greaves and Mr. Shaw have spoken to you before to disagree with the staff to say that Mr. Greaves' technology does not, in fact, violate our rules. You may certainly agree with that and determine that it is lawful under our rules without changing our rule structure and instruct the staff to quit telling people to the contrary. The third thing that you may do, if you would like to pursue this idea, is to instruct the staff to begin the rulemaking discussion process. What we would do, at that point, is work on coming up with a rule draft to discuss with the relevant people of the industry, with a view towards bringing you back an actual draft for consideration and publication, probably at your June meeting.

MR. SHIVERS: Mr. Spilman, would you like to speak on this issue?

MR. SPILMAN: Briefly, if I may? Mr. Chairman, Mr. Steen, Ms. Madden, for the record, if I may, my name is Wade Spilman. I am an attorney here in Austin with the firm of McGinnis, Lochridge and Kilgore. I've represented the Wholesale Beer Distributors of Texas for the last 32 plus years, and am regularly in attendance when they have public hearings at this agency.

I would like to incorporate, if I may, my testimony from the last meeting when this was discussed. We certainly agree with the staff, at least, in respect to two of their suggestions today. Not the one that we think this program could be put into place under your existing rules. There was considerable uncertainty as to exactly how the program was to be put into Texas, as you will recall, from Mr. Greaves' testimony. First, his representation was that both the retailer and the manufacturer would make some payment to his company in connection with this program, and that is the case as he's put it into place in some states, he says and, other states, it's not put into place that way. There was some uncertainty about it.

We think, as a minimum, it violates certain of your rules with reference to cooperative advertising and the prohibition against that. We would suggest that it needs further study and possibly further modification from

the requestor for this program. We do not believe that it could be effectively put into place without some change in your rules. Not only a new rule for this, but possibly changing some other rules. I think, again, as we speak to these marketing practices rules, we will certainly benefit from our previous experience of tedious consideration of many marketing practices rules. The goal has to be - and I know it's your goal - in every instance where you are considering new rules, you want a rule that everybody understands, that is clear and concise. I keep saying this but, Mr. Chairman, that has been your position forever, and I concur in it.

MR. SHIVERS: My hopes are fading that we will ever achieve it.

MR. SPILMAN: I think we must strive for that. Certainly, that's what we would request. We would say this, again, requires further study. We agree with the staff, certainly, that as they presented it last time, and as they have presented it today with their first alternative, and that is that it seems pretty clearly to violate certain of your other rules, and there's going to have to be...if this is to be done on any basis in Texas, then it needs some further study, in our opinion, and very careful and thoughtful preparation of a rule so that everybody will know what we are getting into.

I understand about the future of the internet and how this is a thing that's with us, but let's keep in mind this one thing and I will close. Ms. Madden, this may be mainly for your benefit, because the other guys on the commission have listened to me too many times, I'm sure, with reference to various and sundry marketing practices rules, some of which we've heartily endorsed, I'm happy to say.

In any event, the product that this agency is set up to regulate is different from any other product that's bought and sold in commerce. It's the subject of two amendments to the Constitution of the United States which you swore to uphold today, and we all do - the 18th and the 21st Amendments. It's clear that it is different. It's a socially volatile commodity. It will make people drunk, and it will do things that are bad. We can't sell it to young people. We can't sell it to people who are inebriated. Incidentally, the people I represent don't sell it to the ultimate consumer. They sell it to retailers and private clubs. But, in any event, keep in mind that this is a different kind of regulatory system, and one that we will - the Good Lord willing and my clients permit me to continue - I'll be here as we consider these kinds of things from time to time in the future and try to be helpful and answer any questions based on the past, future - I'm a little less certain about the future - the Chairman keeps admonishing me about that and what's happening in our society. But, let me say that

there's some things that we've got to be very careful about as we go into the future with reference to the consumption and sale of alcoholic beverages in this state. If there are any questions, I will be pleased to try to answer them.

MS. MADDEN: I've looked at this, and this is one of those things where at first blush...I'm always amazed at American ingenuity and how they can always find another way to skin a cat. You kind of have to admire them for that. It seems to me that the advertising part of it is specifically tailored for the retailer, and that bothers me a great deal.

MR. SPILMAN: We have prohibitions against...in Texas, we have a three-tier system where we have the manufacturers of alcoholic beverages. We have the wholesalers in the middle and the retailers who sell it to the ultimate consumer. This separation came about following the Repeal of Prohibition, and it serves us well in Texas as it does the several states. It's even embedded in the Federal Alcohol Administration Act, so this is not something that has just come about. It's been here a long time, and it's served everybody pretty well.

The regulators find it to be highly acceptable in this respect, that they know who sells what to whom, they can trace it, they can audit it, they can collect the taxes. They can do all of these things which have been found to be very helpful in regulating this very volatile product, which we all recognize is out there all the time and, therein, lies one of the principle duties and responsibilities of this agency, and it's one that you hear an awful lot about from a lot of people who have different views about it. In any event, obviously, we don't want to not move into, certainly, the 20th Century and maybe the 21st as these things come about that are helpful but, on the books now, the complete separation that's between these various levels of the business is such that they have not permitted cooperative advertising. That is to say, they have not permitted the manufacturer and the retailer to jointly advertise. The manufacturers and the wholesalers can't do anything that benefits one retailer over another and make those choices so that there is that complete kind of separation that has always been there in the law, embedded in the law and embedded in the rules of this agency. All I'm saying is if any changes are suggested that are appropriate in your mind or in the minds of this commission, we want to be sure that we dot every "i" and cross every "t" appropriately so that whatever you think ought to be permitted is permissible and to limit those things so that there is never present in any of these changes the result of which is to permit illegal inducements of any kind, that is where the manufacturer favors one retailer over another in some way by reason of

some joint advertising that is otherwise prohibited.

I think I've not misstated it, counselor. Our suggestion would be that if there is any thought that this might be something that is appropriate, that it certainly requires very close study as was suggested...of course, our preference would be to simply postpone it at this time and worry about it...frankly, the requestor of this did not come forward with a proposed rule. They came with a proposal which, incidently, from the outset, suggested that they needed to amend the law, too. The judgment was subsequently made, apparently, that maybe this can be done without amending the existing law. We may have to amend some existing rules, but maybe we can do it without amending the existing law. I'm not sure that's the case. I'm not willing to concede it at this time. I don't think that's the argument here today, but they may be able to do it without amending the law, but that was not even the requestor's...the company that has requested this did not...I may be mistaken about this.

MR. BRIGHT: No, he did not suggest a rule.

MR. SPILMAN: Okay.

MR. SHIVERS: John, any questions?

MR. STEEN: Ms. Madden, do you feel at a disadvantage not having seen the presentation?

MS. MADDEN: Not really. I've read the minutes of the last two meetings. Was it Mr. Greaves who gave the presentation?

MR. SHIVERS: Yes.

MS. MADDEN: He was very thorough. This is one of those things where if you were an unsophisticated consumer, I can see where it would be a big help, but I'm just a little bit worried that we go down this path and it might have some ramifications in other places.

MR. STEEN: What do you think, Mr. Chairman?

MR. SHIVERS: Given the presentation we saw last month, I'm having a little difficulty distinguishing this in a quantitative way or a quality way, I suppose, from print advertising which a manufacturer may provide in one form or another that may be available to the retail customer in a retail outlet. Say a retailer has copies of the *Wine Spectator* Magazine or one of these other things in

a wine retail establishment. The manufacturer obviously buys advertising in those magazines touting the benefits of their products and how they go with various foods, and so forth. The retailer may, while violating copy rights, may make copies of those articles and make them available near their wine displays. As far as I know, that's all perfectly legal. This seems to be doing the same thing electronically. I'm not sure. I still have questions about it and, I think, perhaps, the best way to proceed is to ask the staff to consider making some rule changes. Let's see if we can't flush out some more information on this thing, then we can decide whether we want to pursue it or not or whether we want to publish it or not. Right now, I still have some real questions about is this really different, other than form, from what is already permitted? Mr. Spilman, do you have a response?

MR. SPILMAN: As originally proposed, it contemplated payment by both the manufacturer and the retailer...

MR. SHIVERS: That we wouldn't do. That's a clear violation of the three tier.

MR. SPILMAN: I wanted to point that out. As I say, that's the way they have the program...

MR. SHIVERS: That's a clear violation of the three-tier rule, and we can't do that.

MR. SPILMAN: And, also cooperative advertising.

MR. SHIVERS: I think if what they are proposing is simply a different form of message delivery or what's currently permitted, then I certainly don't have a problem with it.

MR. SPILMAN: It may end up being the greatest thing since sliced bread.

MR. SHIVERS: I think the commission needs more advice on this and, perhaps, the best way for us to proceed is to ask staff to start proposed rulemaking procedures, gather some more information for us on exactly what this is and who pays for what. As I understand it, the manufacturers pay Mr. Greaves' company to provide this. The presentations are downloaded to each retailer based on the inventory information the retailer uploads to Mr. Greaves' company. The retailer pays nothing to Mr. Greaves nor receives a fee from Mr. Greaves. Is that correct?

MR. BRIGHT: There has been different statements about that but, generally speaking, I think the retailer does not pay, sees it as a benefit of having it.

MR. SHIVERS: Nor does the retailer receive any payments other than the placement of this machine?

MR. BRIGHT: No one pays the retailer, as I understand it.

MR. SHIVERS: Does the machine become the property of the retailer or is it Mr. Greaves' machine?

MR. BRIGHT: Mr. Greaves says that it is his machine. He keeps it and maintains it and makes sure that the right things are visible on the machine.

MR. SHIVERS: So, it cannot be said of giving anything of value to the retailer...

MR. BRIGHT: Well, that's perhaps not so. When we talk in our rules...

MR. SHIVERS: Other than advertising.

MR. BRIGHT: ...in a dozen different ways of giving something of value to the retailer, we not only proscribe the gift or the sale, but the loaning. "It's mine, but you can use it from now on." We say that, potentially, is of some benefit to the retailer.

If the commission determines to follow your suggestion, what the staff would do at this point, subject to your better instruction, is to grapple with and look at how we might amend our rules to make this program or some similar program okay. We would invite into those discussions the relevant members of the industry, which is essentially whoever wants to be interested in this. We would do that with a view towards presenting you with a rule draft that would provoke a more specific discussion and debate. The staff can say, "Here's what we have discovered in our discussions with everyone. Here's a rule draft that we think is lawful and would work here." Our friends in the industry can stand up and say, "Hooray," or they can stand up and throw rocks at it, and we can have a more focused discussion than we have now. That is a process that my guess is, given time constraints and other scheduling constraints, we could quite possibly present that to you in June.

MR. SHIVERS: What I'm struggling with is why this is different from manufacturers, through distributors, providing to retailers bottles of spirits, whether it be wine, beer, and on the back label is a statement that, "This wine goes wonderfully with...". This isn't a wine label. It's just a machine. It has, essentially, the same or more expanded information conveying the same message, as I understand it. Now, there may be a lot of things I'm missing

in Mr. Greaves' presentation. Mr. Yarbrough, you have something you want to point out to me?

MR. YARBROUGH: The only thing would be how you define it, and that's what staff has struggled with. Specifically, if this is an advertising specialty? If you recall, beer is different from wine and spirits in the way that the statute is written because of the way it's crafted by the legislature. So, we have a limitation of advertising specialties for spirits and that's defined as things designated to advertise or promote specific product or brand and they may have utilitarian function in addition to the product promotion, i.e., what it goes good with and all. They may do that but are subject to an 87 dollar per year, per brand, limitation, and those 87 dollars per brand cannot be commingled or added together. Either this has to be under 87 dollars or it has to somehow not meet the definition of advertising specialty.

MR. BRIGHT: Right. My guess is, as I talk...

MR. SHIVERS: Is that in the code or in the rules, the 87 dollars?

MR. YARBROUGH: Both. The 87 dollars is statutory.

MR. SHIVERS: Then I think that is one question that staff needs to help us understand. One, can this be done by rule or does it need statutory changes? If it needs statutory change, then this is not the venue for the solution of Mr. Greaves' request. He needs to plead his case before the legislature.

MR. BRIGHT: The statute says that the upper tier members in the liquor industry may provide to retailers advertising specialties not more than, by reference to the consumer price index, 87 dollars per year, and they can't combine brand advertising. You may well ask what is an advertising specialty? To which the Texas legislature responds systemically that's up to you to determine, and that gets us back to the vast rulemaking authorities that you have.

MR. SHIVERS: You make my head hurt.

MR. BRIGHT: I sympathize with you. Imagine sitting behind my desk and grappling with this hour after hour after hour. I apologize that we don't have a draft of a rule here to say it would look like this. Clearly, a rule that would allow some promotion of this nature would have to do a couple of things. Through your definitional authority, we would have to define, in some way, that this is not an advertising specialty. Other things are, but this is not. We have defined advertising specialty so far to being things designed

to advertise or promote a specific product or brand. They may have a utilitarian function in addition to product promotion than the total cost. The second thing it would have to do is to say that within certain constraints defined within the rule, this is not cooperative advertising. The cooperative advertising that we spoke of before is a definition that you have adopted that defines inducement. The statute says that you may not give a retailer an inducement. What does that mean, you ask? We have said, in part, in our Rule 45.110, if the upper tier members are providing advertising to benefit a specific retailer, that constitutes an inducement. We would have to define our way out from under that in this situation.

MR. SHIVERS: I just love marketing practices. Rather than spend all day on it, knowing that some of you may not share my enthusiasm for this section of the rules or code, I'd like to ask the staff to, one, advise us whether this needs statutory change - not today - two, if it can be done by rule. If it's quantitatively different from what we are currently permitting in a different form and, three, if the answer to the first is no, then let's start a rule on it. You can come back to us next month and answer those three questions.

MR. BRIGHT: Yes, sir, we certainly can. Recognize that I personally will not be here next month, but I'm sure that staff will enjoy doing that.

MR. SHIVERS: I bet they will be thrilled. Is that agreeable to you, John?

MR. STEEN: That's agreeable.

MR. SHIVERS: Ms. Madden?

MS. MADDEN: Fine.

MR. SHIVERS: Good.

Number six - Consider publication of proposed amendment to 16 TAC §45.106 relating to sweepstakes and games of chance.

MR. BRIGHT: Mr. Chairman, as I'm sure you remember, Section 102.07 and 108.06(1) of the Alcoholic Beverage Code says that upper tier members, manufacturing tier members of both the liquor and the beer industry, may give prizes, big prizes, directly to consumers if those prizes are awarded as a part of a sweepstakes promotion. There are other conditions put on that. It must be nationally offered, simultaneously offered in 30 or more states.

Historically, we have said at this agency that sweepstakes are things that award prizes by chance solely and not by some kind of competition or contest. The suggestion has been made to us that the word, "sweepstakes" does, in fact, include the idea of a contest, and that we should amend our rules accordingly.

We have a rule draft before you now that would define sweepstakes to include contests. The point in the process where you are is to decide whether or not to publish this rule to provoke broader comment, discussion and debate. When we presented this to you last month, the suggestion was made that this rule does need a bit more discussion and debate, particularly along the lines of analyzing what the unintended consequences of this rule might be. That is a suggestion of which the staff heartily agrees.

We did not publish last month. To provoke that discussion, we wrote a letter dated April 6, 2000, which is in the materials before you, that offered, at least, an argument justifying the rule or saying this is why we think the rule might be okay. We have received some comment back from that. One suggestion, for example, in front of you is that the rule should perhaps contain some time limits on the sweepstakes promotions and should require some specific oversight or approval granted by the administrator. These are interesting ideas. We would like to explore them. We suggest that you authorize that we publish this in the *Texas Register*. We would then undertake to have meetings with the concerned members of the industry and discuss the pros and cons of it prior to bringing an amended version or this version back to you at a future commission meeting date.

MR. SHIVERS: Thank you. Do you have any questions for Mr. Bright? Mr. Steen?

MR. STEEN: Refresh my memory how this came about, this rule request.

MR. BRIGHT: We have a request from a gentleman named Mort Siegel who is representing a member of the distilled spirits industry who asks that they be allowed to do a contest in this state, which is a fairly routine request that we get at this agency. We communicated to him and explained that, at least, to date, we do not believe that the word, "sweepstakes" includes contests. Mr. Siegel availed himself of that portion of the Administrative Procedures Act which says that he may request that we engage in rulemaking. We must begin the rulemaking process within 60 days of his request or explain to him in writing why we are not going to. I have explained already to Mr. Siegel that we would not engage in rulemaking

within the 60 days because we could not get it before you. He was not present at the last meeting, and I explained to him and I sent him a copy of the transcript of the meeting and explained to him that the decision was to provoke further comment which we have done.

MR. STEEN: In summary, what does the staff feel about this?

MR. BRIGHT: The staff feels like it is an idea that is worthy of discussion and debate.

MR. STEEN: You would encourage us to go ahead and take this next step?

MR. BRIGHT: Yes, sir.

MR. SHIVERS: Mr. Spilman?

MR. SPILMAN: For the record, we did oppose, at the last meeting, publishing this particular item for consideration at a subsequent meeting on its merits. The staff has considered it during this interim. There have been various suggestions made. We have one to make today, in connection with any publication, which would make it clear that any sweepstakes promotion that include prizes, that are to be awarded on the basis of some knowledge or skill demonstrated by the sweepstake participant, may not be held or conducted on the licensed premises of a retailer or a private club.

In Mr. Bright's letter to you and to the industry, he indicated that he did not think that would be possible otherwise because of provisions in other rules that prohibit having such contests on the premises of a particular retailer. Of course, our judgment is it would be very helpful to say it in the rule. We've said other things in this rule that are both subject of the statutory law which would otherwise obtain...whether it's in the rule or not, and other things that are in other rules that we speak to in this rule. So, it seems to me that to make it easy to understand, it would be helpful if we all agree, as I think we do, that it would not be contemplated that any of these games of skill or those based on knowledge would be held on the premises of a specific retailer because, as has been indicated....Mr. Bright's judgment is it's not necessary to have that in there because that is the position of the department, and that's the proper interpretation of other rules. However, we submit it would really be helpful to all concerned who are interested in this rule - your own agents, everybody involved - so that it clearly states for all to know that they cannot propose to have these kinds of contests or games based on knowledge - anything that we've always thought of as a sweepstake, which we previously always thought of as a game of chance, cannot conduct those on the premises of a specific retailer

or private club. So, that's what we would propose that you certainly include as an amendment to the proposal.

MR. SHIVERS: Thank you.

MR. STEEN: I move that we proceed to publish this proposed amendment to 16 TAC §45.106 with the proposed amendment that was submitted by Mr. Spilman just now.

MR. SHIVERS: Is there a second? Not hearing a second, is there a motion to publish the rule as presented by the staff? We are not going to do anything today.

MR. BRIGHT: I beg your pardon. I was thinking of something else. I heard the word, "staff" in there. I should be saying to you now, but I have no idea what it is.

MR. SHIVERS: Mr. Steen made a motion to publish the rule with the amendment proposed by Mr. Spilman. There was no second to that motion.

MS. MADDEN: I thought you seconded it.

MR. SHIVERS: No ma'am. I asked for a second.

MS. MADDEN: I'm sorry. I second the motion. I apologize. I misunderstood.

MR. SHIVERS: There is a motion and a second. Is there any further discussion? All in favor of publication of the proposed amendment with Mr. Spilman's amendment, say aye.

MR. STEEN: Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed? Thank you.

Number seven - Consider proposed amendment to 16 TAC Chapter 50 to require participation in seller-server training by all licensees and permittees authorized to sell or serve alcoholic beverages at retail. Mr. Bright?

MR. BRIGHT: Mr. Shivers, we have had some discussion of this issue before, and it is back before you. Let me see if I can articulate what I think your options are at this point. Number one, you can vote to publish this as a proposed

rule in the *Texas Register*, which does not commit this agency to any further activity one way or the other or commit you to any further action one way or the other, does not affect anyone's rights one way or the other.

If you do so, there are two consequences that I would bring to your attention. First, I have some minor amendments to the rule draft that you have in front of you that I would ask that you include in any version that you permit us to publish.

The second consequence of voting to publish is recognize that in agenda item, I think it's 20, we have a proposed Rule 50.11 that is prepared for adoption today that we will discuss at the appropriate time. Rule 50.11 purports to apply what we have referred to as the selective mandatory idea. That is, that server training would remain voluntary for those who wanted it to be voluntary and, if the permittee committed more than one violation within a 12-month period, the administrator could, in his judgment, require that person to engage in server training. If you publish a rule as a proposal that server training should be mandatory for everyone, you probably should not, at this point, adopt a rule that makes it selectively mandatory for others. You may have Rule 50.11 postponed. You may postpone your decision about that for up to six months from the date that we originally published it which, I think, was about a month ago.

The second thing that you may do in response to this is to simply vote to reject the idea, that you can vote not to publish a rule that would make seller-server training mandatory and be done with it.

The third thing that you may do is, I believe, vote to defer, table the idea for some period of time, to await further developments. For example, to see how our selective mandatory idea works.

There have been some discussions among the staff. I am informed we have some grant money that is available to us. We have had some discussions to the point of talking about whether we should use that grant money to put out a request for proposal and hire social scientist researchers to do a research project on the effectiveness of server training in Texas, generally.

That's the most that I can report to you about the status of that project. It is in the discussion stages among the staff. There are three major bodies of information that have been and will be presented to you by which you can make your determination. We have had some comment from the public. We will hear more, I bet, and I bet some of the members of the

industry have given written comment to you, and I bet some more of them want to talk to you about this.

Secondly, we will hear from, I believe, Mr. Fuller, who will talk to you about the adjustments and the fiscal impact that this rule would have on the staff if it were to become a rule and, finally, you have heard, during our last session, from me about the legal questions that arise by this rule. We organized the agenda so that if you care to discuss that further with me, you may do so in executive session at your discretion.

MR. SHIVERS: Thank you.

MR. STEEN: Mr. Bright, I have just a preliminary question. Explain to me, again, the significance of your signing whatever it is that goes into the *Texas Register*.

MR. BRIGHT: Our publication to the *Texas Register* says - and I sign it as the *Texas Register* liaison - and it is an affirmation that this proposed rule or adopted rule has been reviewed by agency counsel and - I don't remember the exact language, but that lawyer says we have the authority to do this.

MR. STEEN: You've told us in the past that you are willing to sign that on this. Is that still your position?

MR. BRIGHT: I remain willing to do so, yes, sir.

MR. STEEN: Thank you.

MR. SHIVERS: Toni Logan?

MS. LOGAN: Good afternoon, I'm Toni Logan. I'm the communication liaison for the MADD Texas State Office. I'm here today on behalf of the MADD State Chapters, as well as the executive committee of the state office to urge the approval of the required seller-server training. MADD believes this requirement is uniquely poised to achieve a bridge between the corporate regulatory interests and the negative costs that trickle down to society by educating the seller-server to prevent excessive and underage drinking.

MR. SHIVERS: Thank you. Trish Merrill?

MS. MERRILL: Hi, I'm Trish Merrill, and I'm executive director of Faith Partners, a nonprofit organization that works with clergy and congregations of all faith traditions to try to prevent and reduce alcohol problems. Whether it's

a rule or a statute, we believe that the proposed change to mandatory training is necessary. We believe that, as every congregation should do everything in its power to educate their population, we believe that all retailers need to take an active approach, too. They need to prevent alcohol violations and reduce sales to intoxicated patrons and minors. We appreciate the concerned retailers who have already required such training. Through a team ministry, we help families, children and youth prevent alcohol problems. We are also committed to work with families that are affected by alcohol problems. Most of our congregations do not prohibit the use of alcohol by adults, yet they are very concerned about underage drinking and youth access to alcohol, and they are very concerned about drinking and driving. We know and see firsthand, with our families, the damage, the pain, the devastation that's caused by the misuse of alcohol. So, we support mandatory training. Thank you for the opportunity to speak.

MR. SHIVERS: Thank you. Dean DeSoto?

MR. DESOTO: Good afternoon, Commissioner Steen, Commissioner Shivers, Commissioner Madden. I'm Dean DeSoto. I've brought some letters here for the commissioners from San Antonio from Gabe Qunitanilla, our democratic party chair and Susan D. Reed, our district attorney, in support of mandatory training.

It's nice to meet you, Ms. Madden. I did not bring both these folks along. I could not bring them physically. I would prefer to have brought them in person, but they are in support. As you know, and as I've recorded in the record, I am the executive director of Community Alliance for Traffic Safety, a nonprofit educational alliance. We are licensed by the Texas Alcoholic Beverage Commission to conduct seller-server training programs. We are also licensed by the Texas Education Agency and the Texas Commission on Alcohol and Drug Abuse. During the past 16 years, I have had a progressive experience on many transportation safety issues with the U.S. Department of Transportation/National Highway Traffic Safety Administration, the National League of Cities, the U.S. Conference of Mayors, the Governor's Office, under the Clement's administration, and a number of state and national agencies and organizations.

To quote the great Hebrew prophet Isaiah, Chapter 50, Verse 4, "The Lord God has given me a well-trained tongue, that I might know how to speak to the weary, a word that will rouse them. Morning after morning, he opens my ear so that I may hear." Last month, I quoted Socrates about, "unexamined life is not worth living." Today, I will present the thoughts

of both Isaiah and Socrates with my simple voice.

There are so many here today that have a much deeper and much wiser impression of the issues that are presented to the commission than I. A simple thought continues to reverberate that is not possible for me to answer. During the 1990's, on any given year in Texas, we had approximately 190,000 Texans arrested for public intoxication, another 57,645 Texans in 1998 arrested for drunk driving and 35,000 young Texans last year cited for violations of beverage codes. It is also estimated that 51 percent of all traffic crashes in Texas involve alcohol, compared to 39 percent on the national scale. Texas has approximately 39,000 licensed premises, and when one adds up all of the public intoxication arrests, DWI arrests and young Texans under 21 citations, we get approximately seven violations of law for each licensed premise in Texas. We know, and fully understand, that the majority of premises in Texas operate within the law and to the best of their ability. However, there exists licensed premises either knowingly or unknowingly, wittingly or unwittingly, who violate our laws which endanger our society and our many communities. Since 1987, a partnership by the Texas Alcoholic Beverage Commission, educators and seller-servers have trained 47 percent of all servers. It is now time to act upon the missing 53 percent.

As all of you know, our agency has testified in three civil actions defending the integrity of our programs, our agency and the efforts of the Texas Alcoholic Beverage Commission. We will continue to do this, because it is the consistent and the right thing to do.

At your last meeting, several points of law were brought forward. I am not an attorney, nor do I have any legal training. The word, "if" was mentioned in Section 106.14. It is not my intention to examine this, "if" as a legal issue. However, it does bear examination from the point of challenge to all of us.

The great black humorist, Moms Mabley, once told a story about a wine-o she met on a bus going downtown. As he was drinking from his bottle in the brown paper sack, she told him that if he continued drinking he would go to hell. He looked at his bottle, looked at her and thought a moment. He then handed her the bottle and said, "Take a big drink, honey, because we are on the same bus."

All of us are in this issue together. The word, "if" is a conjunction that joins two words or groups of words according to Warriner's. I submit to you that the word, "if" is the bridge between action and non action. To

bring this issue forward reflects the proactive and responsive nature of the commissioners and the commission.

“If’s” are throughout our national history. To quote both popular political parties, “if’s” have been addressed as, “others ask why and I ask why not?” or in the darkness there is, “a thousand points of light.” “If’s” are in Texas history. In 1836, it was, “if” we band together and hold off the invading army at this crumbling mission, we will probably die, but Texas will live. Later it was, “if” we drill in the Permian Basin, we may fail or we may succeed and the Texas economy flourished.

Although I came to Texas over 22 years ago, I am not a native Texan. However, time and again, I have seen this Texas spirit when the word, “if” was put forward to them. The response has always been positive action and, yes, we can make a difference together. This has been the exciting part of living and becoming a naturalized Texan.

Texans respond well to challenge, and it is my humble opinion that the challenge is clearly before you. The National Traffic Safety Institute is in the process of licensing its program which will become available to many rural and urban Texas cities and Texans. We, as professional educators, are not afraid of the “if” that is placed before us. Give us the opportunity and we will clearly demonstrate that the 53 percent untrained sellers and servers will be trained effectively, professionally and resolutely. We can invite change through choice and responsibility.

To conclude, you are probably aware I enjoy the thoughts of Will Rogers. To close, I will quote him, “Never pass up a good opportunity to shut up.” Thank you for your time and sincere consideration.

MR. SHIVERS: Thank you. Linda Barnett?

MS. BARNETT: Hi. I’m Linda Barnett. I’m from the Central Texas Chapter of MADD, and I’ll be very short. I just feel that had mandatory training for seller-servers been in effect, that my son would not have been killed on August 9, 1997. The Central Texas Chapter of MADD would like to see this approved in order to prevent other parents experiencing the pain that we did. Thank you.

MR. SHIVERS: Tom Mobley?

MR. MOBLEY: Good afternoon, Mr. Chairman, Commissioner Steen and Commissioner Madden. It’s a pleasure to stand before you again. It’s nice to talk to you

about some things that are very important to the State of Texas. I believe that if we can train people who sell and serve alcoholic beverages to know what an intoxicated person is and know not to present them with the opportunity to buy alcoholic beverages, then we have made a great step forward in reducing mayhem and crashes in the State of Texas.

As you all know, an alcoholic beverage is just that. There is no directions on the bottle, except to twist open the cap. If a person consumes enough of it, then they wind up under the influence, and there's a statute that defines what under the influence amounts to. You all probably had some input, maybe, into the definition of intoxication, but when you have servers and sellers that read it, and then they don't know exactly where the line is, .08...it's hard to convince me and anybody else that we all think the same way about who's intoxicated and who's not. There have been a lot of signs on walls in taverns that say, "He is not drunk who drinks and falls to the floor and can rise to drink more." There's others that say that if you get hit in the face with bar towel, you are drunk. It depends on who you are talking to, I presume.

But, hopefully, if you could make it mandatory for all servers and sellers to be trained, hopefully, there will be a more even scale of determining who is intoxicated and who is not at the time they try to make a purchase. I appreciate your time and your interest. May God bless you.

MR. SHIVERS: Bob Mann?

MR. MANN: Mr. Chairman and Members of the Commission, staff, I just want to comment on the availability of classes. I operate a training program here in Austin. In the last 12 months, I've had trainees from Lubbock, San Angelo, Wichita Falls, Corpus, Victoria, Marble Falls come to take my classes here in Austin because it was required by their employer and classes were not available where they were. I appreciate what you are doing. Thank you.

MR. SHIVERS: Thank you. Ms. Madden...

MR. STEEN: Could I ask Mr. Mann to come up again?

MR. SHIVERS: I'm sorry. Bob Mann, would you come back up?

MR. STEEN: You own a school and you also teach?

MR. MANN: Yes, sir, I own and operate a training program. I wrote the program in

November of 1987 and trained almost 50,000 people. I've taught the class personally myself over 3,000 times.

MR. SHIVERS: I went through half of his class.

MR. MANN: Mr. Shivers attended my class, along with Mr. Fuller.

MR. STEEN: I was going to mention that both Mr. Shivers and I have attended the class. I don't know how much Ms. Madden has been briefed on this, but I would just ask you - not to take too long - but just to give a summation of what someone learns as a result of completing this class.

MR. MANN: Basically, we teach servers and sellers the rules and laws involving alcoholic beverages, primarily minors and intoxicated patrons. They learn identification and intervention techniques, as well as what the penalties are to them if they do serve to a minor or an intoxicated person. I know that you are new to the commission, but I do have classes on a daily basis, if you care to stop by. Even though I've taught it several thousand times, it's difficult to summarize what we teach in four hours. In my class, I use a combination of discussion, video and role playing. The discussion, because I don't like to lecture anyone, takes about two hours. About half the class, is video. My program does incorporate videos that include both on-premise and off-premise training. Of course, they are tested at the end of the class.

A lot of major employers who do have in-house training programs do use my class, my school, because of the availability of classes. Most of your responsible licensees do make this training a condition of employment. There are those that are in a bind. They will hire someone that is not certified and then, of course, they realize what their responsibilities are after the fact. I have been monitored undercover in my class a couple of times, too, I might add. The commission, of course, can respond to that.

MR. STEEN: What's your current charge?

MR. MANN: I've charged 20 dollars for the last 12 years. My rent has tripled. I do operate a classroom in a fixed shopping center here in Austin. Of course, the market is what establishes this, and I understand there's some schools that charge 12 to 15 dollars. Some charge as much as 25 to 35. I have been in the training business for a number of years. I was also in the driving business and the gun safety business, as well. The market hits itself here in Austin because of the availability of the number of schools. I've always felt like as a 20-dollar class...I've been involved in the

discussion of setting a mandatory price. I don't think that's necessary. The market sets that. There are many licensees what don't have a problem with paying the 20 dollars for my class, when they even have their own in-house programs.

MS. MADDEN: How many, on an average, attend your classes?

MR. MANN: I average about 15 per class. I have classes six days a week. We have morning classes, evening classes and afternoon classes. We don't do training on Sunday. Primarily, most of my classes are licensees that send their staff to my classroom. Very rarely do I go on-site to do a class.

MR. STEEN: Most of what you are doing, the retailers are paying for?

MR. MANN: It varies. Probably 30 percent - just off the top of my head - of the retailers pay for the training. Since the certification belongs to the individual, in many instances, what I have found is when they do hire someone, they send them to a class, they pay for the training. By the time I file the paperwork and receive the certificate to mail to the trainee, they are already employed somewhere else. So, a lot of them are reluctant to pay for it. It depends. A lot of the major hotels pay for the training. A lot of the major oil companies pay for the training. Most of your restaurants and bars make it a condition of employment and have the individual pay for it, because it does belong to them.

MR. STEEN: We've heard some comments about the expense to the employer, but you are saying it's the experience of your schools that 70 percent of the people are paying for it themselves because it's a condition of employment?

MR. MANN: Yes, sir, here in the Austin area.

MR. STEEN: Thank you.

MR. MANN: Any further questions?

MR. SHIVERS: Ms. Madden?

MS. MADDEN: No.

MR. SHIVERS: Thank you.

Gloria Souhami, Director of the Travis County Underage Drinking Prevention Program, could not stay for the meeting and requested that her comments be read into the minutes.

“I am here to support mandatory training for sellers and servers. My Name is Gloria Souhami and I am the director of the Travis County Underage Drinking Prevention Program. According to the National Highway Traffic Safety Administration, alcohol is a factor in approximately 40 percent of all fatal motor vehicle crashes and is a leading killer of youth. Underage drinking and driving is a major concern in our community. The Austin Independent School District, the largest of our seven area districts, reports that during the 98/99 school year, almost half of all 11th graders reported past month alcohol use. Many students say their fake ID’s work just fine. Spring Break, Prom Night and the Christmas Holidays are especially high risk occasions. Limiting access to alcohol in retail establishments through employee training is just another tool we can use to save the lives of teenagers by discouraging underage alcohol consumption.”

MR. STEEN: I think we are going to have a presentation?

MR. SHIVERS: Do we have a presentation? Buck?

MR. STEEN: I think at the last meeting you promised us a presentation.

MR. FULLER: It will be a short, quick presentation. Mr. Chairman and Members, Lou referred to the fiscal impact, if this is passed, what it would have on our agency. As of April 10, 2000, we currently have 263,297 employees with active seller training certificates. We’ve estimated there’s approximately 900,000 employees in the workforce that this would impact. Putting those numbers together, we calculated that the agency would have a need for 12 and a half FTE’s, with the first year expense of 380,000 dollars and the second year expense of 348,000.

MR. STEEN: Mr. Fuller, I’ve got a question. This was established as an incentive-based program. I think you told me, the last number you have, is it only 47 percent of the retailers are requiring it?

MR. FULLER: Yes, sir.

MR. STEEN: I guess it concerns me a little bit that in the sense as an agency we are not prepared if the incentive system had worked better to accommodate that...is that what you are saying, we would need...

MR. FULLER: We would need more staff, yes, sir. Our seller training department is composed of three employees here at headquarters. We have 28 field compliance officers that monitors schools. We feel the need, with the additional demand on our seller training department upstairs, we would need seven employees up there, with four more field compliance officers. We would also have an impact in our fiscal services department here processing all the revenue, and our mailroom has estimated they would

need a half of an employee to accommodate the increase in the mail volume.

MR. STEEN: I might ask Mr. Bailey to comment on this.

MR. SHIVERS: Mr. Bailey?

MR. BAILEY: As I understand your question, are we not prepared to handle mandatory training?

MR. SHIVERS: Why do we not have 380,000 dollars in our budget for this? We forgot to ask the legislature last session.

MR. BAILEY: That's as good an answer...we don't have the money to do mandatory training because the law provides that it be voluntary and a safe harbor. I don't know that there has ever been an effort on the part of the agency to make it mandatory and at the same time ask for increase in staff. As you know, by having appeared at some of the legislative appropriation hearings, requests for personnel are always connected to activities. What we'd do, I think, as a practical matter, if you chose to make it mandatory, we would seek your guidance on what things you want us to quit doing in order to shift people to that responsibility.

MR. STEEN: Mr. Bailey, what would happen if this, for whatever reason, this incentive-based system began to work better and we went up to 60 percent or 70 percent? You are saying the agency couldn't handle that with its current personnel?

MR. BAILEY: We would do the same thing. First, we would obviously make a request for additional people, show them the numbers of increases in licenses that we are issuing, the increase in mail, all of those things, and try to get the legislature to allow us to fund that. Secondly, if that didn't work, we would make decisions about what we are going to quit doing in order to be able to meet the needs of the mandatory program.

MR. STEEN: If we voted today to make it mandatory, what would you do? What would your response be?

MR. BAILEY: I would call you tonight and say, "What do you want me to quit doing?" Obviously, one of the things if you voted today to make it mandatory, that because of the availability of trainers - we have had testimony that there are not enough trainers around the state - the fact that there would be a required period of preparation to meet those needs, that we would start

immediately trying to make shifts and requests for additional people. I don't think you can make it mandatory today and expect it to be effective in 30 or 60 days. I think it's going to require an implementation period. Not only do we have staff and personnel concerns, but somebody has got to be there to train them.

MR. STEEN: What would be your suggestion on phasing it in?

MR. BAILEY: I'd have to study that and try to make a recommendation to you.

MR. SHIVERS: Mr. Bright, has this rule been published?

MR. BRIGHT: It has not. The question is before you to publish it or not.

MR. STEEN: I had some additional questions of Mr. Fuller. I had asked you to prepare some information. Did you?

MR. FULLER: Yes, sir. The charts that...

MR. STEEN: Right. Do you have that available for the other commissioners?

MR. SHIVERS: It's in our books. It was also mailed to all of us. Did you get it, Gail?

MS. MADDEN: Yes, I did.

MR. FULLER: I would like to thank Mr. Steve Carlson for putting this together. He's our supervisor of support and quality control with our compliance department.

MR. SHIVERS: How many cases have we made against trained seller servers? How many violations have we attributed to selling to intoxicated persons or underage persons, sales by people who had seller-server training certificates? Do we know that?

MR. FULLER: I don't have those figures before me.

MR. SHIVERS: Mr. Hamilton, do you know whether we make a number of cases against...

MR. HAMILTON: Not enforcement, no, sir.

MR. SHIVERS: Enforcement does not make cases or we don't...

MR. HAMILTON: It doesn't make cases against seller-server training schools.

MR. SHIVERS: Not the schools. Servers who are seller-server trained.

MR. HAMILTON: I don't have that figure, no, sir.

MS. FOX: Last year, for the time period of January 1st to November 29th, we made 1,752 cases against permittees selling to minors or intoxicated persons, and 505 of those were restrained.

MR. SHIVERS: Say that again.

MS. FOX: 1,752 cases for selling to minors or intoxicated persons in 11 months of 1999. Of that amount, 505 were restrained.

MR. SHIVERS: A little less than a third of the cases we made for selling to minors or intoxicated persons were made because the employee who made the sale had been seller server trained. Is that correct?

MR. STEEN: I think you are saying of the 1,752 cases, that only 505 were seller trained.

MS. FOX: They either made a sale to a minor or an intoxicated person, and of that 1,752, five hundred and five were seller trained, that actually made the sale.

MR. SHIVERS: Seller-server training is not a guarantee that the violation will not occur?

MS. FOX: No, I don't believe there's any guarantee.

MR. SHIVERS: Nothing in life is certain, except death and taxes.

MR. STEEN: Mr. Fuller, I was interested in the graph that you did that was showing the percentage of each type of retail account that requires seller training for their employees. I think the day you used was March 31, 2000.

MR. FULLER: Yes, sir.

MR. STEEN: The two that really jump out at you are the one that's labeled, "BE" which is a beer retailer's on-premise license, and you are showing on those only 23 percent are requiring seller-server training?

MR. FULLER: Yes, sir.

MR. STEEN: And the other one is a, "BG" which is a wine and beer retailer's permit, and the percentage there is 27 percent?

MR. FULLER: Yes, sir. We identified those licensees and permittees requiring seller training and, as you've stated, the beer retailer's on-premise licensees, about 23 percent of those are voluntarily participating in the program, where 27 percent of our wine and beer retailers are participating in the program.

I took it a little further, and our "BG's" make up about 23.3 percent of the licensees and permittees. We currently mail out information with our renewal applications with lists of schools and encouraging participation in seller training, as we have it now.

On that last figure, Figure 7 in that packet, "Counties With Over 500 Licensees/Permittees," Travis County has a 65.9 percent of voluntary participation. Dallas County is 62.9 percent. Harris County, which has a large number of licensees and permittees, only has about 28 percent of their licensees/permittees who voluntarily participate in the seller training program. This has identified something for us. If you don't approve mandatory participation, we need to address that and try to promote that within these counties.

MR. STEEN: Looking at that one, the "BE" that only has the 23 percent requiring training, what is that? Describe an establishment with a "BE."

MR. FULLER: That's an on-premise establishment. It's a beer retailer's on-premise. They will serve beer for on-premise consumption.

MR. STEEN: Is that what a lot of people refer to as a beer joint?

MR. SHIVERS: Yes. Simple answer.

MR. FULLER: It would be referred to as a beer retailer's on-premise license.

MR. SHIVERS: Jukebox, dark lights, smoke, shuffle board.

MR. STEEN: That's a concern to me to see that low percentage of participation. My feeling is that's where a lot of the problems are with establishments like that selling to intoxicated persons and selling to minors.

MR. SHIVERS: Do we have any evidence that indicates that we have a greater problem with one type of establishment than another?

MS. FOX: Interesting enough, if you just look at the cases that I mentioned a minute ago, the 1,700 cases that we did file for sale to minor and intoxicated

person, you might think...I tell you this just to complicate the issue and show you that's there's no one easy answer. You might think those establishments, the "BE's" and "BG's," that have a lower percentage requirement of required seller training, would have a higher percentage of their population having sales to minors or intoxicated persons. But, if you actually look at those numbers, on the "BE's," only 2.3 percent of the cases we filed against a "BE"...let me back that up. I didn't say that correctly.

Of the 50 cases that we filed against "BE's," that only represents 2.3 percent of those type of permits. Of the cases we filed against "BG's," it only represents 2.8 percent. But, if you will look at an "MB," which on your chart indicates to you that 65 percent of those permittees having a mixed beverage permit require selling training, the type of cases that we make, five percent of those permittees represented the cases that we filed. Obviously, a lot of these numbers are impacted by the locations that we do the inspections and our visibility while we are out there, and not necessarily only seller training.

MR. SHIVERS: I'm not anxious to enter into rulemaking on a rule where we have no hard evidence that the result of this rule and the attendant costs are going to result in any decrease in the number of violations. It will add considerable expense to the agency. We will have to decide what we are not going to do, whether it's training or enforcement or something else, if we are going to adopt this. We just don't have any evidence that it will be effective. I like the carrot stick approach. We are going to bring up in agenda item 20, a rule we've already published, which gives the administrator the authority, upon specific violations, that he can mandate seller-server training for certain locations. If we are going down this road, that is my preferred option.

MS. MADDEN: I think that's a nice compromise, actually. I think that could be a deterrent for this type of thing for people to violate the law. I think, sometimes, when you use a little thought of punishment, fear is a great motivator, as they say. That might be a nice approach to do it that way instead of jumping headfirst into making it mandatory. I have some concerns about that, too, as far as the economic factor and also the impact on the agency.

MR. STEEN: I think the incentive-based program has really been a failure. It's been in effect since '87. We've never had over 50 percent of the retailers requiring the training. It sounds like the other two commissioners don't want to go along with this, but I would certainly be in favor of doing something aggressive in this area. I think we've had a concern about our

authority to do it and, this thing about the cost, Mr. Fuller briefed me about it. I don't recall it being that dramatic as you present it today in terms of the fiscal impact on the commission. I think that if we were determined to do this, we'd just have to tell you that we wanted to do it, and if it had to be phased in, then we would phase it in. I think to throw out a number that we would need how many extra employees, Mr. Fuller?

MR. FULLER: Twelve and a half.

MR. STEEN: I'm skeptical about that. I know it's your best guess, but I'm skeptical about it.

As far as the downside to it, I know Mr. Bright has been concerned about our authority to do it. I really feel like on this commission that we have broad powers to regulate. Looking at Section 5.31 of the code that we can exercise all powers, duties and functions and regulate every phase of the business of manufacturing, transporting, storing, selling and distributing alcoholic beverages and the possession of alcoholic beverages for the purpose of sale or otherwise. And, under Section 5.33, we shall supervise and regulate licensees and permittees and their places of business in manners affecting the public, and the public policy of the code is to protect the welfare, health, peace, temperance and safety of the people of this state under its police power, and that we are mandated to liberally construe the code to accomplish this purpose.

I know that Mr. Bright has done his best to address this authority issue but, I, for one, because of the good I think this would do, I'd be willing to risk that we would have to go to court on this and defend it. We might not be successful. I think we'd have a good shot at it. If you think about that in terms of saving lives, it's something that I would be willing to do, to risk a court shooting us down. I even think that if we implemented this and, eventually the courts knocked us down on it, in the meantime, we get a lot more people going to this training, as they would try to comply with our rule.

In any case, I would like to move forward on it. I'd like more help from the staff. I feel like I'm not getting the help I need but, in terms of saying, "Well, we can't do it," I'd like for you to tell us how could we do it if we told you to do it, and if needed to phase it in, how would we do that? Mr. Fuller?

MR. FULLER: One thing, as we are going through strategic planning and getting ready for the next legislative session, I feel like we are going to need to ask for

additional staff now with the increase in participation that we have currently. If you all vote to make it mandatory, we will certainly do the best we can with what we have. We are doing more with less. As a state government, we do have a lot of dedicated employees within our agency. It would just be a matter of executive staff telling us how we are going to implement it.

MR. STEEN: I appreciate that. You've done a really thorough job, not just in this area, but in looking at this whole area of seller-server training. Please don't misinterpret my remarks. I know someone tells you what the fiscal impact is going to be and you just have to...

MR. FULLER: We had to put the numbers together...

MR. STEEN: ...make your best guess on it, so I'm not saying anything except it seems to me like saying that we would need 12 extra people, it just doesn't seem right to me.

MR. FULLER: We calculated that based on the workforce of 900,000 employees that would be impacted by this if it were made mandatory. We based that on the number of increase from what we have now. It's about three and a half times the workload of reports being submitted, sessions being held, programs that would have to be approved, the total impact that would be on us with that increase in volume. We would have to anticipate capital expenditures, computers, floor space, desks, places for these people to work. That's how we arrived at this figure and, in addition, to our mailroom and our fiscal services as they deposit and handle all the additional receipts for these certificates.

MR. STEEN: I'm going to go ahead and make the motion. I have a feeling I know what's going to happen. I would like to move that we publish the proposed amendment to 16 TAC Chapter 50 to require participation in seller-server training by all licensees and permittees authorized to sell or serve alcoholic beverages at retail.

MR. SHIVERS: Is there a second?

MS. MADDEN: No.

MR. SHIVERS: Hearing no second, the motion fails. Let me say that before we leave this issue that there is no one on this commission that is in favor of sales to minors or intoxicated persons. Unfortunately, the evidence that we have, as sparse as statistics are, does not indicate, as much as we might wish it

were so, that increased seller-server training, in and by itself, will cut the number of intoxicated persons, be they adults or minors, on the road today. Remember, it's not only the retailer that has a responsibility in this area. The customer has a responsibility. If Texans want fewer drunk drivers on the road, the penalties for drunk driving must be made much stiffer. There have been some efforts in the past to increase the penalties and some have been adopted. There are countries, other than the United States, particularly Northern Europe, where the penalties are extremely severe for drunk driving. You can have a lot of drunk amblers on the road, but you don't see many drunk drivers. So far, the people in the United States have not chosen to follow that example. We are all searching for ways to cut down the number of violations. I'm not convinced that making this mandatory is one of them.

Number eight - Consider publication of proposed 16 TAC §33.42 relating to affiliation between members of different tiers of the liquor industry.
Mr. Bright?

MR. BRIGHT: Mr. Chairman and Members, I bring you tidings of great joy. This rule draft is in response to a request. The requestor could not be present today. It is a proposed rule that requires a good bit of discussion. It has, as you notice from the materials in your book, provoked a good bit of dissension and objection. The requestor said, "In the face of that objection, since I cannot be present, would you ask the commission to table this and leave it for another day?" If you agree to do that, we will institute the necessary discussions on this issue with our friends in the industry and other interested people with a view towards bringing something back to you at one of your future commission meetings, probably in June. I am more than happy to discuss the details of this proposal and the pros and cons of it and what it might mean to us, but I note that we have miles to go before we sleep so, perhaps, you'd rather not.

MR. SHIVERS: Given the length of the agenda, unless Mr. Spilman wishes to speak on this at this time, I think we will move on to the next item without any objection.

Number nine - Consider amendment to 16 TAC §50.1 as published in 25 TexReg 2510 on March 24, 2000. Mr. Bright?

MR. BRIGHT: Mr. Fuller will speak to us about that.

MR. FULLER: Mr. Chairman, Members, as you know, we have been reviewing this Chapter 50 for a number of months, now. At your February meeting, you

voted to publish, and we are asking today that you approve what's been published with the amendments. We've had amendments on 50.3(e). At our February meeting, there was comments made about trade associations. Our committee went back and reviewed that, and we felt that the original language was restrictive, and we have an amendment there before you on 50.3(e).

MR. SHIVERS: 50.3(e)?

MR. FULLER: Yes, sir.

MR. SHIVERS: I don't have 50.3.

MR. FULLER: Do you want to take them one at a time?

MR. SHIVERS: I've got 50.1.

MR. FULLER: I'm sorry. I was getting ahead of myself.

MR. STEEN: Mr. Fuller, I have a suggestion. We've gone over these a lot and we are pretty familiar with them. Could we pass all the ones where there's no changes at one time?

MR. FULLER: That's fine with me. I would like to make one request up front. Because of the nature of these, it will take some time to implement these rules. We would ask that some sort of language be put in that we could have an implementation date of September 1, 2000. We need a little time for our staff to prepare for the changes, to get the word out so the schools can be prepared and so the retailers, themselves, can be prepared for the changes.

MR. SHIVERS: Mr. Steen, you want to consider 9, 10 and 11 together?

MR. STEEN: I'd ask Mr. Fuller how many can we do at one time?

MR. FULLER: We have amendments on 50.3(e), which is number 11; 50.9, which would be the new 50.9, which is number 18 and 50.10, which is number 19. We have amendments to those.

MR. SHIVERS: Lead us through them.

MR. FULLER: 50.3(e), we have an amendment that pertains to bonafide trade associations...

MR. SHIVERS: Is 50.1 something you want to consider? Is that something you want to tell us about?

MR. FULLER: We have no amendments from the way it was published. We just had a little addition there to clarify the language that we could calculate to deter future violations.

MR. SHIVERS: Motion to adopt that?

MS. MADDEN: I make the motion.

MR. SHIVERS: Second?

MR. STEEN: Second.

MR. SHIVERS: All in favor, aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye.

MR. FULLER: 50.2, you will have some discussion on the definition of employee. As we have it proposed, the definition of employee will include persons who immediately manage, direct supervise. The staff committee requests that you approve that as published.

MR. SHIVERS: That is (b)(4), the definition of employee?

MR. FULLER: Yes.

MR. SHIVERS: Motion to adopt?

MR. STEEN: So moved.

MR. SHIVERS: Second?

MS. MADDEN: Second.

MR. SHIVERS: All in favor?

MR. STEEN: Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

MR. FULLER: 50.3(e), at the February meeting, we had some comments about a trade association. The committee went back and reviewed that and determined that, yes, the language could be construed as being restrictive. We have amended that to make it where it would not be restrictive to time of duration or the number of counties in which a bonafide trade association has operated. We had language in there so that one particular retail would not dominate the trade association, and that the combined number of employees would be 150 or more, and that would be in line with 106.14 of the code.

MR. SHIVERS: Questions? Motion to adopt?

MS. MADDEN: So moved.

MR. STEEN: Second.

MR. SHIVERS: All in favor? Aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Number 12?

MR. FULLER: 50.4, I don't think we are anticipating...the identity of the trainees, we have some language in there asking that they be properly identified, people taking the class, and that the certificates be issued by the trainer immediately after successfully completing the class. Last Wednesday, we received a letter regarding 50.4. This is the only negative comment that I know of that we have received in this area about issuing the certificates immediately upon completing the class. They were worried about some bad behavior or something like that. That could happen, anyway. If a school was going to be blankly selling certificates, I think they can do that, anyway. We did receive a lot of positive comments on this that will, hopefully, streamline our procedures from the way we have it now.

MS. MADDEN: But, you are not worried about their concern on this?

MR. FULLER: No, ma'am, because we get a lot of phone calls. We get complaints if a

school is not teaching the course properly, and we do take aggressive steps to monitor these classes. We've been sitting in, as Mr. Mann mentioned earlier. Schools are subject to being monitored in an undercover capacity, as well as an open capacity. If we find that a school is not adhering to what's required of them, word usually comes around to use, and we will take corrective steps to insure that they are complying with the requirements.

MR. SHIVERS: Any further questions? Motion to adopt?

MS. MADDEN: I so move.

MR. STEEN: Second.

MR. SHIVERS: All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number 13 - 50.5?

MR. FULLER: 50.5 has some language to include a civil penalty in lieu of a suspension for a school. This allows the administrator some flexibility in lieu of just closing the school, that if they violated the code, they could pay a civil penalty and correct their ways.

MR. SHIVERS: Questions? Motion?

MS. MADDEN: So moved.

MR. SHIVERS: Second?

MR. STEEN: Second.

MR. SHIVERS: Any further discussion? All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number 14 - 50.6?

MR. FULLER: Application for trainer certification. There, again, we've asked that the original trainer...they will pass a test administered by the Alcoholic Beverage Commission, that they will demonstrate some knowledge of what they are teaching. We've asked that their fees be increased for a trainer from the old fee of five dollars to a new fee of 50 dollars for a 36-month period. We are also asking for continuing education hours of 12 hours for every three-year period.

MR. SHIVERS: Motion?

MR. STEEN: So moved.

MS. MADDEN: Second.

MR. SHIVERS: Discussion? All in favor?

MR. STEEN Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number 15 - 50.7?

MR. FULLER: 50.7 allows for a suspension or a civil penalty for a trainer. If the trainer, themselves, violates the code or the rules, then, we have a provision to suspend their trainer certificate or to allow for a civil penalty.

MR. SHIVERS: Questions? Is there a motion?

MS. MADDEN: So moved.

MR. STEEN: Second.

MR. SHIVERS: Discussion? All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number 16?

MR. FULLER: 50.8, there, again, issue certificates upon completion of the class and to increase the fee from two dollars to five dollars for duplicate certificates. We will not allow the schools to issue replacement certificates. They will need to be done through our headquarters.

MR. SHIVERS: Motion?

MS. MADDEN: So moved.

MR. STEEN: Second.

MR. SHIVERS: Discussion? All in favor?

MR. STEEN: Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number 17?

MR. FULLER: Number 17 is to consider the repeal of the old 50.9 to make room for the new 50.9.

MR. STEEN: So moved.

MS. MADDEN: Second.

MR. SHIVERS: Discussion? All in favor?

MR. STEEN: Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye.

Number 18 - 50.9?

MR. FULLER: 50.9, we have it amended. We added some language in there. I think it's

50.9(a). We've added a four and five, and that's for some clarification for the trainee.

MR. SHIVERS: Is there a motion?

MS. MADDEN: I so move.

MR. SHIVERS: Second?

MR. STEEN: Second.

MR. SHIVERS: Discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number 19 - 50.10?

MR. FULLER: I think Mr. Bright wants to make some comments on this.

MR. BRIGHT: This is the rule, Mr. Chairman and Members, that deals with the conditions under which the licensees and permittees may have the restraint, that is the defense for participating in seller-server training. This rule, as I understand it, is the same paragraph (a), (b) and (c), if I remember correctly, essentially the same as our old rule. The change is in paragraph (d). We have some comments, I'm sure, from the industry members. We've had discussions as late as last Thursday with them about this.

We can talk about the details as much as you would like. Essentially, what this does is says that if certain conditions exist, that is some reason from which a hearings examiner can conclude that they are indirectly encouraging violations of law. The conditions that we say give rise to that inference are if they have violated the law more than twice within the previous 12 months; if they have failed to insure that their servers maintain a current certification - that is, go every two years - if they have failed to adopt policies and post them within view of their employees that indicate that that permittee is serious about not violating the law and, then, paragraph (3) says that they insure that their employees have actually read and understood those policies.

Paragraph (3) is a change that we recommend from the version that we published. We published a version that said the inference of indirect encouragement of violation of law could arise if the employer failed to maintain a signed statement from each employee that they had read and understood the policies. Our friends in the industry pointed out that that, at least, potentially would submit one of the retailers to having to litigate whether or not they were entitled to the defense because they misplaced the folder with all their employees' signatures in it. "We don't think this part of our regulation ought to be that picky." That point was well taken. We have done this amendment accordingly. We suggest that you pass this rule.

MR. SHIVERS: Motion?

MR. STEEN: So moved.

MS. MADDEN: Second.

MR. SHIVERS: Any discussion? All in favor?

MR. STEEN: Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

Number 20, we have some comment on. We have been at this about two hours. Does anyone want a five minute break before we get into the rest or shall we plow on through?

MS. MADDEN: It's up to you, Mr. Chairman.

MR. SHIVERS: John, what's your pleasure? Plow through?

MS. MADDEN: Sure.

MR. SHIVERS: Number 20 - 16 TAC 50.11? This is mandatory participation in seller-server training, which we referred to earlier. Mr. Bright?

MR. BRIGHT: Mr. Chairman and Members, this is what we talked about before, what we have referred to as selective mandatory. This is a new idea. It does not replace or amend an existing rule. Under this rule, as you can see, if a permittee violated more than once, within a 12-month period, the

administrator could order that permittee to participate in the server training process. They would be compelled under that order of this rule to participate in that until such time as they had two years without violation under that. We have received very little comment. I don't know if anyone is here to comment today.

MR. SHIVERS: I have two people signed up for this. One is from the Student Government of Knippa High School. Is anyone here?

MR. STEEN: I'm thinking since that agenda item was labeled "Mandatory Participation in Server Training" that, perhaps, people who meant to speak on the earlier item signed up for this one.

MR. SHIVERS: Mary Hill, Retired Dean of Students?

MS. HILL: I'm Mary Hill, former Dean of Students at one of our university campuses. I'm presently a consultant for alcohol, other drugs and violence prevention in higher education. I had opportunity last year to visit over 300 campuses in the United States. Many of those were Texas campuses.

One of the most serious environmental factors impacting underage drinking among our underage drinkers was the availability of alcohol. Colleges and universities will lose 360,000 students this year as a result of alcohol. A majority of our students are freshman and sophomores under the age of 21 and should not be served alcohol. Fake ID's are easy to obtain and are used in many of our retail establishments. A qualified and trained server would be able to determine the fake ID's and prevent the use of them. One of my most difficult jobs as a Dean of Students was to sit in my office with a mother and a father who had lost their son or daughter to alcohol poisoning or to drunk driving. In most instances, they were underage. The parents always asked me, "How did they get it?" "Could you have prevented it?" I come to you with that passion.

I commend the Texas Alcoholic Beverage Commission for your recommendation, but I compare the one violation to a traffic intersection where sometimes it seems like we need a fatality before we put up a red light. One violation by our servers may result in lost lives, and that one violation, ladies and gentlemen, I do not think we can afford to take. So, I recommend that we change to make all servers take mandatory training so that they can identify the fake ID's; so they can turn a fraternity group away from the bars; so they can turn one of our athletic teams away from the bars. I think that we can save lives by this action. Thank you.

MR. SHIVERS: Thank you.

MR. BRIGHT: One final thing, Mr. Chairman and Members, if you will remember at the beginning of discussing these rules, Mr. Fuller recommended that we actually make these rules effective September 1, 2000. We have changed some of the definitions...expanded who should go to server training and similar changes. The way to do that, and I would recommend that if you agree with that idea, that you have a motion and pass an amendment to all the rules as adopted to add a paragraph to the end of each rule that would say, "This rule becomes effective September 1, 2000." That amendment would apply to all the rules that you have adopted today and, I believe, Rule 50.11 is still under consideration.

MR. SHIVERS: Apply it to all the rules we have already adopted today or including 50.11?

MR. BRIGHT: This would be an amendment that would apply to 50.1 through 50.11.

MR. SHIVERS: Thank you very much. Is there a motion of adopt 50.11?

MS. MADDEN: I so move.

MR. SHIVERS: Is there a second?

MR. STEEN: I made my comments earlier that I favor mandatory seller-server training for all retail licensees and permittees in the State of Texas. For that reason, I'm going to vote against this motion.

MR. SHIVERS: Second. Any further discussion? All in favor?

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

MR. STEEN: No.

MR. SHIVERS: The motion carries.

Now, we need an amendment to make September 1, 2000 the effective date of 50.1 through 50.11?

MR. BRIGHT: Correct, and I suppose that motion would be to instruct the staff to publish as adopted with that amendment to each rule.

MR. STEEN: I so move.

MR. SHIVERS: Second?

MS. MADDEN: Yes.

MR. SHIVERS: Discussion? All in favor?

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. I'd ask the staff on 50.11 to keep accurate statistics, if we can, to see if those licensees who have had seller-server training for all their employees mandated, if it has shown any change in the incidence of violations.

MR. STEEN: Before we leave, I'd just like to...Jeannene, for you to recognize all the people that worked on this project. You all worked on it how many months?

MS. FOX: Eight months or so. Buck Fuller was our chairman. We had Steve Carlson, who is a supervisor in our compliance division. Debbie Dixon, who is our supervisor over seller training. Diana Gonzalez. I don't know if she is in there. Lou Bright and myself.

MR. STEEN: You all did a great job and made a lot of improvements. Despite my disagreement in that one area, I compliment you on your work.

MR. FULLER: May I say something?

MR. SHIVERS: Yes.

MR. FULLER: I would like to thank all the comments we received from our community groups, from our seller-server schools and our retailers and retail organizations. As we set out in this committee, we had our goals, and the positive comments we received through this process were very encouraging that we are moving towards a goal of having responsible hospitality within our state. I appreciate all those comments we received from all those different groups, as well as comments we received from our field compliance officers and our enforcement agents that had input into this process.

MR. SHIVERS: Thank you. I will second Mr. Steen's comments. We really appreciate all the hard work you do, and sometimes you wonder why we ask you to do these things. You are heavily burdened with requirements already with your normal job. We sometimes ask you to provide a lot of information for us, but it is very helpful, even though it may not seem so initially, but it is part of our on-going education process. We do appreciate your help. Thank you.

Any public comment?

MR. NIEMANN: Mr. Chairman?

MR. SHIVERS: Yes?

MR. NIEMANN: I'm Fred Niemann with the Texas Package Stores Association and just a very brief comment to say I also want to thank all of the staff for the process of the seller training rules. The energy they put in and the model that was used is really the model for the change of any rule. It's as smooth a process as I've ever seen. More fair in terms of pulling in comment from lots of directions. We really do thank you. Though Mr. Bright and Mr. Fuller and I have butted heads severely - the only improvement that could have been made is if they had agreed with our position on a couple of issues - but rather than burden the commission with some of the issues we still disagree with, we do feel we had a thorough opportunity to vent our concerns, and I really want to thank all of you for the energy and effort.

Mr. Steen, thank you for initiating this process. It's been very constructive.

MR. SHIVERS: Thank you.

Is there a motion to adjourn?

MR. STEEN: So moved.

MS. MADDEN: Second.

MR. SHIVERS: We are adjourned.

The meeting adjourned at 3:43 p.m.