



**TABC**

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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**ALCOHOLIC  
BEVERAGE  
CODE**

**SEPTEMBER 1, 2013**

This edition of the Texas Alcoholic Beverage Code was compiled to include the changes in the law made by the 83<sup>rd</sup> Legislature, Regular, 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Special Sessions. Deleted language has been struck through and new language appears as underlined text in this printing.

All efforts have been made to check this edition with the current law and with the legislation that passed. However, if any errors are detected, it would be greatly appreciated if they were brought to the attention of the agency by calling the Executive Office of the Texas Alcoholic Beverage Commission at Austin, Texas (512) 206-3217.

September 1, 2013

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### **Note Regarding Constitutionality of Certain Parts of the Alcoholic Beverage Code**

In *Siesta Village Market, LLC v Perry*, 530 F.Supp.2d 848 (N.D. Tex., January 14, 2008) the US District Court held the “Texas citizenship requirements” in these sections of the Code unconstitutional as applied to out-of-state wine retailers:

6.03(a) & (k); 11.46(a)(11); 11.61(b)(19); 24.01(c); and 109.53.

The agency is enjoined from enforcing these Texas citizenship requirements. Although the District Court’s ruling on the unconstitutionality of these Texas citizenship requirements was not appealed, the Court of Appeals opinion at *Wine Country Gift Baskets.Com v. Steen*, 612 F.3d 809, 821 (5<sup>th</sup> Cir., July 22, 2010) clarifies that its order “leaves in place the district court’s voiding of provisions that retailers be **Texas** citizens for one year.” [emphasis added]

In *Southern Wine & Spirits v Steen*, 486 F. Supp.2d 626 (W.D. Tex., May 29, 2007) the US District Court held these provisions of the Code unconstitutional:

6.03; 11.46(a)(11); 61.42(a)(5); 61.42(a)(8); and 109.53.

The agency is “enjoined from enforcing the Texas state residency and citizenship requirements” in those sections. The Judgment clarifies “that this Order not be construed as prohibiting the Administrator from enforcing any requirement found in the Texas Alcoholic Beverage Code that applicants for permits or licenses issued by the Texas Alcoholic Beverage Commission be residents or citizens of the United States of America.” As noted by the Court of Appeals in *Wine Country Gift Baskets.Com* (612 F. 3d 809, 812), the District Court in *Southern Wine & Spirits* found these requirements in the Code that permit holders must be Texas citizens for one year “unconstitutional insofar as they applied to **wholesalers**.” [emphasis added]

**A Note Regarding the Legislative Intent of Senate Bills 515, 516, 517, and 518 passed during the 83<sup>rd</sup> Legislature, Regular Session, 2013.**

The legislature finds that:

(1) the state is authorized under the Twenty-first Amendment of the United States Constitution to promote the public's interest in the fair, efficient, and competitive marketing of malt liquor, ale, and beer in this state;

(2) the United States Supreme Court in *Granholm v. Heald*, 544 U.S. 460 (2005), has recognized that the three-tier system of regulating the alcoholic beverage industry is unquestionably legitimate;

(3) in *Granholm*, the United States Supreme Court further recognized that while the states are entitled to regulate the production and sale of liquor within their borders, the right is nonetheless subject to the provisions of the Constitution of the United States, including the Interstate Commerce Clause, and laws regulating the alcoholic beverage industry may not discriminate against out-of-state participants or give undue deference to local participants and may not ignore other provisions of the constitution, including the Supremacy Clause, Commerce Clause, and the Privileges and Immunities Clause with its nondiscriminatory principles;

(4) the state is authorized to promote, market, and educate consumers about the emerging small brewing industry;

(5) it is in the state's interest to encourage entrepreneurial and small business development opportunities in the state that will lead to new capital investment in the state, create new jobs in the state, and expand the state and local tax base; and

(6) it is the public policy of the state to exercise the police power of the state to protect the welfare, health, peace, temperance, and safety of the people of Texas.

The change in law made by this Act applies only to a license application filed on or after September 1, 2013. A license application filed before that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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