



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Sherry Cook
Administrator

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To Texas Distillers:

This letter is intended to detail new laws that went into effect after the 83rd Legislative Session.

Distillery Sales to Consumers

Senate Bill 905 by Senator Leticia Van de Putte authorizes distilleries in a “wet” area to sell product made on the premises direct to consumers at the distillery. In this context, a location is determined to be “wet” for on-premise sales if the community has legalized the sale of mixed beverages, or the sale of mixed beverages in restaurants.

Sales for on-premise consumption may reach up to 3,000 gallons annually. Sales for off-premise consumption may reach up to 3,500 annually. Distilleries will be required to keep records on consumer sales and gallonage and retain these records for inspection.

Hours of Sale. Legal hours for on-premise sales are the same as those of a mixed beverage permit that does not hold a late hours permit. Monday-Friday: 7 am to midnight. Saturday: 7 am to 1 am (Sunday morning). Sunday: Noon to midnight; 10 am – noon along with the service of food to a customer.

Legal hours for off-premise sales are the same as those of a package store. Monday-Saturday: 10 am to 9 pm. Off-premise sales are prohibited on Sundays, Christmas, Thanksgiving, and New Year’s Day. If Christmas and New Year’s Day fall on a Sunday, off-premise sales are prohibited on the following Monday.

Restrictions on Sales for Off-Premise Consumption. Sales direct to consumers must be in unbroken packages containing no more than 750 milliliters and no more than two 750 ml bottles or the equivalent to the same consumer in a 30-day period. The bottle sold “to go” must “bear a notice affixed to the bottle” that says the bottle is commemorative, states the month and year the bottle is sold and is signed by an agent/employee of the permit holder.

Shipping / Deliveries. Distilleries are NOT authorized to ship or deliver to consumers. Consumers purchasing must be present at the distillery.

Tax on Sales to Consumers. Sales to consumers for on-premise consumption will be taxed the same as is required on a mixed beverage permit. See detailed information below. Distillers will be required to collect sales tax on sales to consumers for off-premise consumption.

Administrative Rule Change. In the coming months, TABC will hold a stakeholders meeting to review Rule 45.103 On-Premise Promotions. Currently, this rule applies to retailers and prohibits happy hour practices and drink specials that can be construed as encouraging over consumption. Because all segments of the manufacturing level now have the authority to sell for on-premise consumption, the agency believes the same restrictions should apply to breweries, wineries and distilleries who sell to consumers.

New Applications. Applications for new permits will include a section for the applicant to indicate whether they intend to sell spirits to consumers for on-premise consumption during the life of the permit. The city/county will be required to certify that the location is “wet” and not in violation of any zoning/distance requirements. It should be noted that a city or county can now refuse or protest an application if the location isn’t “wet” for selling spirits for on-premise consumption or is in violation of any zoning/distance requirements.

New applicants in an area that is “wet” for on-premise sales will also be required to post a 60-day sign notifying the community that they are applying for a permit. They will be required to send notices to residences within 300 feet about their intent to turn in an application.

Distiller’s Agent’s Permits

Senate Bill 828 by Van de Putte created the Distiller’s Agent Permit (DK) for employees of a Texas Distillery as well as created a 5-day grace period for Manufacturer’s Agent’s Permits. A Distiller’s Agent must be at least 21 years old. The application for this permit is now available on our website (www.tabc.state.tx.us).

Distiller’s Agents are authorized for the follow activities:

- Represent the holder of a distiller’s and rectifier’s permit;
- solicit and take orders from wholesalers; and
- conduct free tastings at package stores (product must be purchased from package store).

It is important to note that Distiller’s Agents are not authorized to solicit business from Mixed Beverage or Package Store Permits unless accompanied by a wholesaler.

Sale of Bulk Spirits to Industrial Permit Holders

Senate Bill 642 by Van de Putte allows distillers to sell bulk spirits to entities holding an industrial permit, for example an entity that makes food products. Distillers will be required to keep records of bulk sales for audit purposes by TABC.

Transfer of Bulk Alcohol between Manufacturers

Senate Bill 652 by Van de Putte authorizes the transfer of bulk alcohol between members of the manufacturing tier, for manufacturing purposes, as permitted by federal law. Federal Law permits a distillery to receive product from another distillery or a brewery for use as distilling material in the production of a distilled spirits product. Transfers from a brewery to a distillery are provided for by statute (26 U.S.C. 5222), and the Distill Spirits Plants regulations (27 CFR 19.296).

Mixed Beverage Gross Receipts Tax Changes

House Bill 3572 by Rep. Harvey Hildebrand, effective January 1, 2014, will reduce the 14% mixed beverage gross receipts taxes to 6.7%. This tax is paid by the distillery to the Office of the Comptroller. The reduction in tax rate will be replaced by a new 8.25% mixed beverage sales tax to be paid by the patron, collected by the distillery and paid to the Office of the Comptroller. For the most accurate information, your best resource on the implementation of HB 3572 is not TABC, but instead the Comptroller's Office.

For additional information, please contact the following:

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

Licensing@tabc.state.tx.us

Marketing.Practices@tabc.state.tx.us

Excise.Tax@tabc.state.tx.us

Label.Approval@tabc.state.tx.us

Questions@tabc.state.tx.us

Or to the following people:

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

Carolyn Beck, Governmental Relations, 512-206-3347

Amy Harrison, Director of Licensing, 512-206-3373

Sincerely,



Carolyn R. Beck
Governmental Relations

Disclaimer:

The information contained in this letter is current as of December 16, 2013, but is subject to change at any time.

TABC staff has found that the answer to a question is frequently affected by the individual factual circumstances that provide the context for the question and therefore it is often impossible to provide a definitive answer that applies in all situations. Industry members should not rely on or make business decisions based solely on the statements in this letter.

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

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