



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING

January 24, 2013

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer
Midland*

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

*Melinda Fredricks, Member
Conroe*

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AGENDA

REGULAR COMMISSION MEETING

10:00 a.m. – January 24, 2013

5806 Mesa Drive
Austin, Texas 78731



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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

Thursday, January 24, 2013

10:00 a.m.

Agenda

1.	Call to Order	José Cuevas, Jr.
2.	Approval of Commission Meeting Minutes of November 27, 2012	José Cuevas, Jr.
3.	Commission Report: Administrator and Agency Activities, Budget Issues, Staff Achievements, Legislative Activities	Sherry Cook
4.	TABC's Staff Briefing	Sherry Cook
5.	Approval to Adopt New Rule §31.12, Training and Education of Commission Employees	Martin Wilson
6.	Approval to Adopt Amendment to Rule §45.121, Credit Restrictions and Delinquent List for Liquor	Martin Wilson
7.	Web Ex Demonstration	Jay Webster
8.	Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Deliberate the Appointment, Employment, Evaluation, Duties of the Position of Administrator and/or Auditor (Govt. Code §551.071, §551.074, §2102.006(a) and §2102.007(a)(1), Texas Alcoholic Beverage Code §5.11)	José Cuevas, Jr
9.	Public Comments	José Cuevas, Jr
10.	Next Meeting Date: February 26, 2013	José Cuevas, Jr
11.	Adjourn	José Cuevas, Jr

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

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

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

MINUTES

REGULAR COMMISSION MEETING

10:00 a.m. – January 24, 2013

5806 Mesa Drive
Austin, Texas 78731



TABC

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COMMISSION MEETING MINUTES

January 24, 2013

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Thursday, January 24, 2013 at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

**COMMISSIONERS
PRESENT:**

Steven Weinberg, MD, JD
Melinda Fredricks

STAFF PRESENT:

Sherry Cook, Administrator

Carolyn Beck, Director, Communication & Governmental Relations

David Brandon, Enterprise Development Manager
Information Resources Division

Mindy Carroll, Director, Education and Prevention

Luann Dickerson, Executive Assistant, Executive Division

Loretta Doty, Director, Human Resources Division

Darla Elam, Regional Coordinator, Licensing Division

Shelby Eskew, Director, Business Services Division

Randy Field, Lieutenant, Houston Area District Office

Thomas Graham, Supervisor, Marketing Practices

Bruce Harlan, Captain, Training Division

Amy Harrison, Director, Licensing Division

Emily Helm, General Counsel, Legal Division

Joe Iagnemmo, Web Administrator, Information Resources Division

Dexter Jones, Assistant Chief, Field Operations, North Texas Region

Joann Joseph, Assistant Director, Licensing Division Office

Roland D. Luna, Director, Ports of Entry

Earl Pearson, Assistant Chief Field Operations, Coastal Bend Region

Andy Peña, Director, Office of Professional
Responsibility/Training Division
Alexis Reed, Administrative Assistant, OPR
Gloria Darden Reed, Executive Assistant, Executive
Division
John Reney, Investigator
Albert Rodriguez, Lieutenant, OPR
Robert Saenz, Chief of Field Operations
Todd Talley, Regional Liaison, Coastal Bend Region
Rod Venner, Assistant Chief, Field Operations, Border
Region
Jay Webster, Director, Information Resources Division
Martin Wilson, Assistant General Counsel, Legal Division

GUESTS PRESENT:

Lou Bright, General Counsel, Texas Wine & Grape
Growers Association
Vic Brooks, Vice President, Republic National Distributing
Company
M L Calcote, Consultant, Republic National Distributing
Company
Alan Gray, Executive Director, Licensed Beverage
Distributors
Lance Lively, Executive Director, Texas Package Stores
Association
Ralph Townes, Senior Vice President Licensed Beverage
Distributors/Glazers
Randy Yarbrough, Wholesale Beer Distributors of Texas

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:06 a.m. by Commissioner Steven Weinberg. Presiding Officer José Cuevas was unable to attend the Commission meeting due to a prior commitment.

APPROVAL OF COMMISSION MINUTES OF NOVEMBER 27, 2012

Commissioner Steven Weinberg called for approval of the Commission meeting minutes of November 27, 2012. Commissioner Melinda Fredricks so moved to approve the minutes as written. Commissioner Weinberg seconded. The motion carried.

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

Commissioner Weinberg called upon Administrator Sherry Cook to present the Administrator's Report: Administrator and Agency Activities, Budget Issues and Staff Achievements, and Legislative Activities.

After welcoming the Commissioners back to Austin for another Commission meeting, Administrator Cook announced that Ports of Entry Director Roland Luna was leaving TABC to become the Chief Inspector General at the Juvenile Justice Department. Administrator Cook expressed her thanks to Director Luna for his work at TABC and wished him well in his new position.

Administrator Cook began her report by giving an overview of the state of TABC resources. She stated that in September of 2011, TABC changed its strategy for carrying out its public safety mission. This change in focus was primarily in the retail tier of the alcoholic beverage industry. Administrator Cook added that because of a FTE reduction at the end of the last Legislative Session, the Agency realized the need for a more effective way to regulate bad players in the industry. This realization focused less on policing the individual behaviors and more to an aggressive investigative approach in regulating licensed entities. This approach involves source investigations, as well as investigations regarding the over serving of intoxicated patrons, the serving of minors, and violations of prohibited hours of sale. Administrator Cook stated that this change in focus resulted in a delay in our hiring practices. She stated that she will be covering this topic later in her report.

Administrator Cook added that as the state's population continues to grow, the demand for alcoholic beverages and business development grow as well. Administrator Cook commented that the fine balance between regulation, public safety and economic development can be impacted when adequate resources are not in place to regulate the alcoholic beverage industry in the state. She added that with shrinking resources the Agency must determine what needs to be done to meet these demands. Administrator Cook stated that when we see industry growth in the state and the resources are not in place, there is a spike in complaints. She added that when the trend starts to normalize, complaints decrease.

Administrator Cook stated that there have been 407 Local Option Elections since FY 2008 taking the number of dry counties in the state from 26 to 19 counties. She added that the state is less than one half of one percent dry. Administrator Cook stated that with the industry expanding into new areas of the state, the Agency will be expanding into geographical areas that were not regulating before. She stated that there will be additional requirements needed in these areas to ensure that businesses are successful and compliant with the Alcoholic Beverage Code.

Administrator Cook commented that with the continued growth and shrinking resources, there are issues and challenges in public safety. She stated that inspections and minor stings are down, however, compliance has maintained steady. She added that without the Agency's presence there could be an increase in public safety violations as well as in

recidivism rates. Within breach and source investigations, the Agency's overall efforts have continued to trend up.

Commissioner Fredricks quizzed Administrator Cook on breach and source investigations. Administrator Cook responded that a breach investigation is a response to an incident involving a stabbing, shooting or something of that nature. She stated that source investigations focus on where alcohol caused a death or was given to a minor, with an investigation to determine who served the alcohol and from where it was served. Administrator Cook responded that it is a requirement for a licensee or permittee to report a breach of peace to TABC. She added that TABC works with and receives information from local law enforcement on both breach and source investigations. Commissioner Fredricks inquired if the decrease in breach investigations was due to shrinking resources. Administrator Cook stated that due to the size of the Agency and the size of the State of Texas, the Agency depends on notifications through its partnership from other law enforcement agencies. She added that the decrease in the breach investigations can be attributed to the Agency's compliance rates.

Administrator Cook commented that with the growth of the industry, the Agency can anticipate additional revenue for the state in terms of taxes, jobs and a strong economy for Texas. She stated that there has been a considerable amount of growth in the areas of distilleries, craft brewers and wineries. Administrator Cook reemphasized the Agency's on-going commitment to expedite the processing and approval of original applications. She stated that the licensing division has identified an increase in the number of days it takes in getting originals approved, evaluated the cause and initiated corrective action to ensure that performance measures for the fiscal year 2014-2015 are on track. She commented that performance measures for the fiscal year 2013 are still below the Agency's target.

Administrator Cook briefed the Commission on the issues of TABC's staffing. She stated that it takes an average of 64 days to fill a civilian position. During the respective years of 2011 and 2012, Agency staffing was below average.

In comparison, Administrator Cook stated that takes an average of 135 days to fill a Commissioned Peace Officer position due to the process being more labor intensive and requiring more resources. Administrator Cook reports that the Agency has 68 vacancies in the following areas:

- 15 positions are in flight
 - jobs have been offered
 - positions have been accepted
 - interviews are being conducted
 - new hires are waiting for their start date
- 17 Enforcement positions have been offered for academy starting in February

- 15 additional Enforcement positions have been posted for a spring academy

Administrator Cook stated that the total number of vacancies is actually at 21. She added that in order to find out what our attrition rate for a twelve month cycle should be the state attrition rate was compared to TABC's attrition rate. Administrator Cook stated that it was determined that for an Agency of our size, TABC'S annual attrition rate should be 72 FTEs. She stated that after reviewing the commissioned and non-commissioned positions, it should take an average of three months to fill a position adjusting the benchmark for the Agency to 18 FTEs. She added that there will always be turnover, but it is how we manage that turnover.

Administrator Cook stated that Commissioner Weinberg had raised some concerns at the November Commission meeting in the following areas.

- Vacancies
- Number of Days to Issue Permits
- Enforcement Inspections
- Credit Law

Administrator Cook stated that she and her executive team are working on a plan of action to address the Agency's current practices as well as to retool some of the efforts in individual divisions to ensure employees have the right skill set for that job assignment.

Administrator Cook stated that the number of days it takes to issue a permit increased in 2012 and cited the following factors:

- Introduction of new technology
- Local option elections
- Protests
- Permit effective dates
- Loss of experienced personnel due to retirement and employee turnover

Administrator Cook commented that solutions for these issues are being addressed. She stated that more intensive training for new hires is needed to bring up proficiency rates to required levels, as well as improved training for the employees when introducing new technology into day to day operations. She added that we should investigate our reporting standards for ways to report true numbers to isolate and identify areas of concern. Administrator Cook emphasized a need to address these concerns to provide management and employees the information needed to take corrective measures.

Administrator Cook stated that our Pre-Licensing Assessment Packet is given to Enforcement to assist in identifying potential “at-risk” applicants. She explained that although this does not regularly impact the number of days it takes to issue a permit and depending on the complexity of the information in the packet, a permit can be affected.

Commissioner Fredricks inquired if all applicants must provide this packet as part of their application process. Administrator Cook answered affirmatively. She stated that this requirement was added in 2012 as a proactive measure, but is not intended to be intrusive to the application process.

Commissioner Weinberg quizzed Licensing Director Amy Harrison if it is possible for the Agency to get back to a 37 day average time to issue a permit. Director Harrison responded in the affirmative, further commenting that this study was informative a very good exercise.

Administrator Cook stated that the performance measures for Enforcement inspections are not being met. She stated that the Agency’s focus has shifted from policing the individual behavior to more aggressive regulation of licensed entities, targeting risk-based establishments. With this “risk-based” approach to enforcement, the overall number of enforcement inspections decreased while the number of enforcement inspections of “at risk” retailers increased. She commented that Chief Saenz and the Assistant Chiefs are working toward the appropriate balance of inspections. Administrator Cook stressed that this is not quota based however, the inspections are mandated by statute to inspect 80 percent of permittees every two years.

Administrator Cook thanked the Legislative Budget Board (LBB) for working with the Agency to lower the target number for inspections. She stated that if we continue to keep that focus on the “at-risk” locations, these locations may be visited as many as ten times a year if they continue to be on the “at-risk” list. She added that as these locations become compliant, the locations will not have to be inspected as many times and the target number will become at risk. Administrator Cook commented that the Agency will continue to work with the LBB and closely monitor that area.

Commissioner Fredricks inquired as to whether or not the LBB has seen the inspection numbers in this format. Administrator Cook responded that they have not seen the numbers broken down in this format, however she will present the format to them. Administrator Cook stated that it is very important that we don’t take this agency backwards because of a number. She added that conversations with the LBB analyst have been very positive.

Administrator Cook reported that although there has been a reduction in the total number of enforcement inspections conducted it did not detract from the TABC requirement to inspect at least 80% of all licensees annually.

Administrator Cook stated some of the Inspection solutions.

- FY 14 – 15 Performance Measurements reduced to 75,200
- Determine the appropriate balance between “at risk” vs. “not at risk”.
- Continue to work with the LBB in adjusting future performance measurements as appropriate
- Streamline the posting and recruitment of law enforcement agents
- Ensure resources are well trained and skilled in conducting inspections

Commissioner Weinberg quizzed Chief Robert Saenz how he and the Field Operations’ staff feel about reaching the goals in relation to the inspections. Chief Saenz responded that after reviewing the statistics from the regions across the state, there is room for improvement in the day to day operations. He added that he has conveyed this to his staff and that they will accomplish their goals by September.

Administrator Cook stated that the last topic that is being focused on is Credit Law. She stated that as we are now move toward decreasing the number from 6 days down to 4 days, we continue to study the numbers and have come across some interesting statistics regarding spikes in the dollar amount on the delinquent list. She added that when you drill down into the numbers, the spikes can be attributed to a small numbers of entities.

Commissioner Weinberg commented that the dollar amounts we are talking about regarding the spikes are not small amounts. He stated that on average the monthly amount on the delinquent list stands at approximately 2 million dollars. The average dollar amount of the spikes that are being studied range from \$10-13 million for FY10, \$12 million for FY12, and \$25 million for FY13 to date.

Administrator Cook commented that for the most part, people are compliant; this is not an across the board problem. She stated that going as far back as 2010, the same entities are appearing on the delinquent lists are repeat offenders. Administrator Cook stated that going forward the Agency’s focus will be to better understand by having the conversations as to what is happening within an entity that is contributing to the delinquency. She stated that additional administrative action will need to be looked at as well.

Administrator Cook briefed the Commission on the 83rd Legislative Session. She commented that the 83rd Legislative Session has begun and that the Agency is busy responding to fiscal notes, working on the budget and preparing for a Senate Finance Committee hearing scheduled on February 7, 2013. Administrator Cook stated that the Agency has recently received back the recommendations from HB & SB1. She added that the recommended version has caused us to go back and reevaluate and make some changes to the exceptional items that were originally made back in the summer. Administrator Cook stated that one of the recommendations from the Legislative Budget Board (LBB) to both the House and the Senate was a 30 FTE cut for TABC. She stated

that Director of Business Services Shelby Eskew went back and identified those 30 FTEs. Administrator Cook added that those areas were in compliance, licensing, administration and enforcement. Administrator Cook noted that only 6 FTE positions were from enforcement as our agency is recognized as a law enforcement entity and the value of the public safety we provide. Administrator Cook stated that they were encouraged after the meeting with the LBB which focused on the Agency's top priorities. She added that getting the 30 FTEs back is our number one exceptional item and critical to the Agency in the areas of:

- Industry Growth
- Public safety
- Compliance rates
- Loss of revenue

Administrator Cook stated that our number two exceptional item is operational costs. She added that the 1% benefits increase added during the last Legislative Session is unfunded. Administrator Cook stated that this forces us to lapse the equivalent of 36 FTE positions per year to make up that difference. She commented that in upcoming discussions it will be critical to strike a balance between these two items and make sure they are being compared correctly, which is not the case today. She added that the agency does not intentionally sit on vacancies.

Administrator Cook listed other exceptional items as:

- Public Safety Equipment
- Information Technology
- Ports of Entry regulation
- Education & Prevention Programs

Administrator Cook stated that our requested amount is \$93 million, but added that as we get into the workgroups this number can change. Administrator Cook stressed that she feels confident with the story that we have to carry forward to show through data the sheer numbers of what we regulate in this state and the impact it could have overall to public health, public safety and to the economy. She added that we have a good position to start from.

In addition to the dollar amounts being requested, Administrator Cook stated that there are three riders that are also being requested:

- Rider 1 - Capital Budget Expenditures from Federal and Other Funding Sources.
- Rider 2- Contingency Appropriation Judgments and Settlements
- Rider 3- Use of Appropriated Funds for Informational and Educational Purposes.

Administrator Cook stated that the good news is that TABC is a self-funded agency and after expenditures approximately \$12 million will go into the General Revenue Fund.

Administrator Cook gave a breakdown on bills filed this Legislative Session:

- 867 bills filed as of January 22, 2013;
 - 1,246 bills filed as of this date last session
- 92 bills tracked by TABC
- 7 bills amending the Alcoholic Beverage Code
- Other high impact issues
 - The Budget – annual budgets, zero-based budgeting, hiring freeze, etc.
 - Gambling, Poker, 8-Liners

Notable bills filed:

- HB232 by Guillen – allowing certain minors to perform community service in lieu of alcohol awareness course
- HB310 by Guillen – allowing certain minors to plead guilty by mail
- HB575 by Anchia – relating to admin actions based on criminal prosecution
- HB515 by Pitts – repeal sections of the AB Code enacted during special session (early excise tax payments)
- SB131 by Nelson – extending hours of winery sales on New Year's Eve

Bills filed that would amend the Alcoholic Beverage Code:

- HB34 by Menendez – creating BYOB permits for sexually oriented businesses
- HB421 by Thompson – allowing package store sales on Sundays
- HB130 by Raymond – relating to honesty in taxation – requires state agencies and the legislature to refer to fines, fees and surcharges as “Regulatory Taxes”
- HB231 by Isaac - Relating to suspending ERS annuity payments for retired employees who return to work for the state.

Administrator Cook's report is supported by a PowerPoint presentation.
(Attachment 1)

Commissioner Weinberg requested Ports of Entry Director Roland Luna to come before the Commission to report on the status of tax collection at the Port of Galveston. Director Luna began his report by stating that a feasibility study began 8 months ago to

compile data on regulating personal importation by passengers disembarking from cruise ships at the Port of Galveston. Completed items of the study included:

- Meetings held with Cruise Line Executives and Local Law Enforcement Agencies
- Completed four surveys of 6500 passengers from various cruise lines
- Obtained the 2012-2013 cruise line schedules
- Explored possible lease space for offices

Director Luna stated that through the collection of this data, they have estimated that the revenue totals to be 5 million dollars over the biennium Commissioner Weinberg quizzed Director Luna on when this project could begin. Director Luna answered that if the requested exceptional items are funded, this project could begin September 1, 2013. He added that this will be a tremendous source of revenue for the state with minimal expenditures.

Commissioner Weinberg thanked Director Luna for his thorough report. He stated that Director Luna has been a great asset to the Agency and losing him will be a huge loss for the Agency. Commissioner Weinberg congratulated Director Luna on his new position.

Director Luna expressed his gratitude to Administrator Cook for her guidance and support throughout his career at TABC.

Commissioner Weinberg commented that Director Luna has done an outstanding job in making our Ports of Entry offices a physically safer place to work. He added that that was no easy task considering the violence along the border.

Commissioner Fredricks wished Director Luna all the best in his new job, but regrets the loss to TABC.

Administrator Cook requested Human Resources Division Benefits Coordinator Linda McLeod to come forward and be recognized as she retires from the agency. Administrator Cook stated that we are losing one of our very valuable resources in Linda. Ms. McLeod came forward and expressed how much she has enjoyed working at TABC.

Commissioner Weinberg requested Human Resources Director Loretta Doty to come forward. He quizzed Director Doty if her division is up to the staffing challenges Administrator Cook spoke about in her presentation. Director Doty responded that she believes that we are. She added that she has a good staff and she feels that they are up to the challenge.

APPROVAL TO ADOPT NEW RULE §31.12, TRAINING AND EDUCATION OF COMMISSION EMPLOYEES

Commissioner Steven Weinberg called upon Assistant General Counsel Martin Wilson to present the next agenda item. Assistant General Counsel Wilson briefed the Commission and stated that this rule authorizes the expenditure of Commission funds for education and training, specifically for tuition reimbursement. He stated that state agencies are required to have such a rule to be in compliance with the government code. He added that there were no public comments made regarding this rule.

Commissioner Weinberg moved for the approval of new rule §31.12, Training and Education of Commission Employees. Commissioner Fredricks seconded and the motion passes.

APPROVAL TO ADOPT AMENDMENT TO RULE §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR

Assistant General Counsel Wilson stated that this proposed amendment to Rule §45.12 is the annual review of this rule where we have been reducing the number of days that by rule we have allowed for delinquent payment before the company's appears on the delinquent list. He stated that as proposed would reduce the time from six (6) calendar days to four (4) business days. Assistant General Counsel Wilson stated that a public hearing was held and the comments by involved parties, the wholesalers and package stores, were that they supported the reduction down to four business days. Assistant General Counsel recommended to the Commission that we make that change to this rule. Assistant General Counsel Wilson defined "non-business days" to the Commission.

- Saturday and Sunday
- State and Federal Holidays
- Standard Federal Reserve Bank Holidays

Commissioner Weinberg quizzed Assistant General Counsel Wilson if there was a need to re-post this for public comment. Assistant General Counsel Wilson answered that it is not necessary as the interested parties were able to give comment on this rule change and those comments guided the revision to this rule.

Commissioner Weinberg opened the floor for public comments on this agenda item. Mr. Alan Gray, Executive Director, Licensed Beverage Distributors came forward to address the Commissioners. Mr. Gray stated that they are in support of this proposed rule. Commissioner Weinberg thanked him for his comment.

Commissioner Weinberg commented that at the November Commission meeting he had stated that Legislative changes might be needed to make the system fair to everyone in the industry. He added that after careful review of the TABC Code and Rules, he believes that these changes can be made through TABC rule changes and not through

Legislative changes. Commissioner Weinberg suggested that the legal staff look into this possibility.

Commissioner Weinberg requested that Assistant General Counsel Martin Wilson report back to the Commission on ways we can change the rules to make the system fair to everyone.

Commissioner Weinberg moved for the approval to adopt amendment to rule §45.121, Credit Restrictions and Delinquent List for Liquor. Commissioner Fredricks seconded and the motion passes.

WebEx Demonstration

Commissioner Weinberg called on Jay Webster, Director of the Information Resources Division to present the next agenda item. Director Webster began his presentation by providing some background information. He stated that the WebEx being viewed is a Cisco product. He added that the agency procured a total of eight licenses for this product, five for use in the district offices and three licenses for Headquarters. Approximately six months ago the web conferencing system was put into use, replacing audio conferencing as a sole means for conducting remote meetings. Director Webster stated that his product allows us to not only add video to a remote meeting, but content as well, such as PowerPoint presentations. He added that the WebEx meeting is broadcast to the participants over the internet in a very secure environment. Director Webster commented that the participants for today's demonstration were participating from various locations all of the state.

Director Webster introduced the participants for the demonstration:

- Larry Howard, Regional Compliance Supervisor, Abilene
- Gene Anderson, Acting Major, Region 2
- Dexter Jones , Assistant Chief of Field Operations, North Texas Region

Commissioners Weinberg and Fredricks were also connected to the WebEx conference from inside the Commission meeting room.

After introductions were made, Director Webster explained that the Cisco System allowed the participants access to WebEx meetings using various devices:

- Desktop/Laptop Computers
- I Pads
- I Phones and other Smart Phones

He stated that all access is in a very safe and secure environment. He added that currently the video broadcast only functions if there is a Wi-Fi connection present. Commissioner Weinberg commented that as bandwidth speeds increase, the Wi-Fi connection will not be the only alternative. Director Webster agreed. He commented that WebEx is considering integrating an audio system into their web conferencing

capabilities. Director Webster added that currently an audio conference bridge must be in place in order to have both a video and audio component for web conferences.

Commissioner Fredricks quizzed Director Webster for clarification that without the audio conferencing equipment we would only have the video portion of the WebEx demonstration. Director Webster stated that that was correct.

Commissioner Weinberg quizzed Director Webster if they have had any problems with the firewalls. Director Webster responded that all of the ports and firewall settings are enabled and the system works very well within our agency. He added that using the conferencing system off-site and outside of our resources does have added security challenges.

Director Webster stated that we currently use this WebEx technology for short smaller group meetings. He added that the use for larger multiple day meetings with large numbers of people is not being considered as of yet. Commissioner Weinberg encouraged Director Webster to move toward using the technology for larger more involved meetings. Director Webster stated that it is currently being looked into.

Director Webster then demonstrated how as facilitator of the meeting he is able to control and display any documents or presentations that are required for a particular meeting. Director Webster commented that this meeting format is a good tool for use for training. He stated that we have already done some limited training using this system. He added that by using all the technology and tools this system provides, we enhance productivity while reducing travel. Director Webster then opened the floor for the Commissioners to engage in conversation with the participants via the WebEx conferencing system.

Commissioner Weinberg commented that currently it is not legal for open board meetings to be conducted by video conferencing, but that the possibility exists that this will become an acceptable method of conducting an open meeting in the future.

Commissioner Weinberg commented that this is a great tool for an agency that is spread out over such a large state. He added that it not only a budget item, but it is also an effective time management tool.

Director Webster thanked Commissioner Weinberg for his support throughout the project. He then recognized Information Resources personnel Richard Maness and Joe Iagnemmo for their assistance with not only this project, but their technical assistance with all of the Commission meetings. Lastly, Director Webster thanked the demonstration participants and concluded the demonstration.

EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING AND ANTICIPATED LITIGATION AGAINST THE AGENCY AND TO DISCUSS THE DUTIES, RESPONSIBILITIES, AND EVALUATION, DUTIES OF THE ADMINISTRATOR (Govt. Code §551.071, §551.074)

Commissioner Weinberg announced the regular open session of the Texas Alcoholic Beverage Commission will be recessed at this time, 11:39 a.m., January 24, 2013 and an executive session will be held to consult with Legal Counsel regarding pending and anticipated litigation against the Agency and to discuss the duties, responsibilities, and evaluation of the Administrator (Govt. Code §551.071, §551.074)

The Texas Alcoholic Beverage Commission has concluded its Executive session and is now in open regular session. The date is January 24, 2013 and the time is 12:50 p.m. No final action, decision or vote was made in Executive session.

PUBLIC COMMENTS

Commissioner Weinberg opened the floor for additional comments before the Commission. No one came forward to address the Commission.

NEXT MEETING DATES: Tuesday, February 26, 2013

ADJOURN

Commissioner Weinberg called for a motion to adjourn. Commissioner Fredricks made a motion. Commissioner Weinberg seconded. The motion was made and seconded. The motion passes. Commissioner Weinberg announced that the meeting was adjourned at 12:50 p.m.

Attachment 1

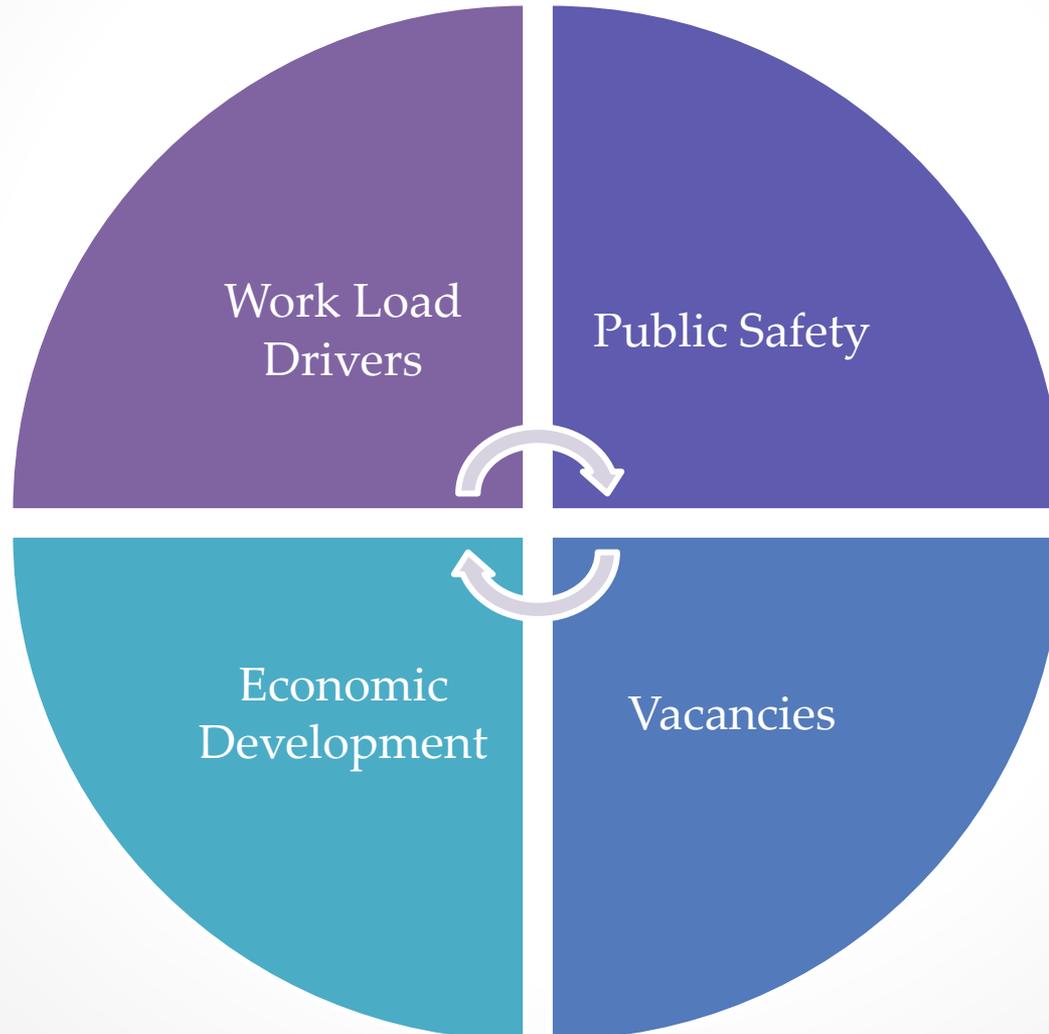
**Commission Report: Administrator and Agency
Activities, Budget Issues, Staff Achievements,
Legislative Activities**

Commission Report January 24, 2013

Sherry Cook
Administrator



State of TABC Resources

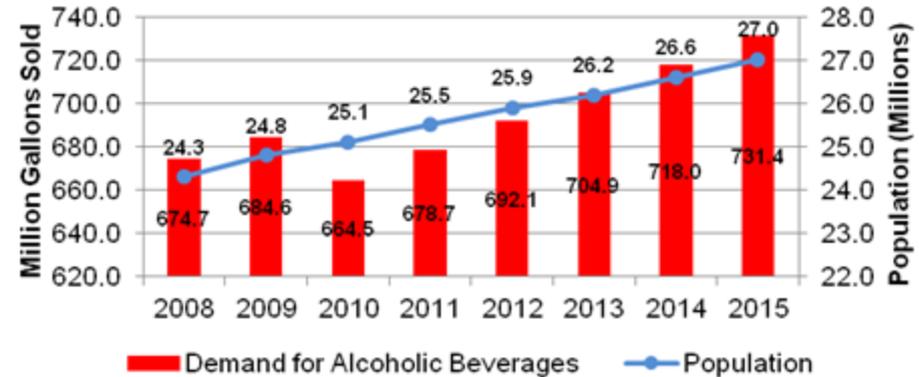


Work Load Drivers

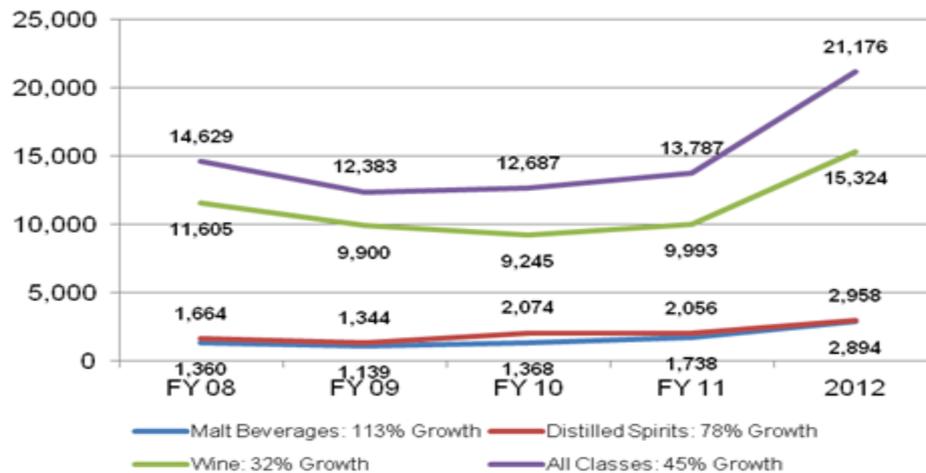
Licensed Texas Businesses and State Population FY 2008 - FY 2015



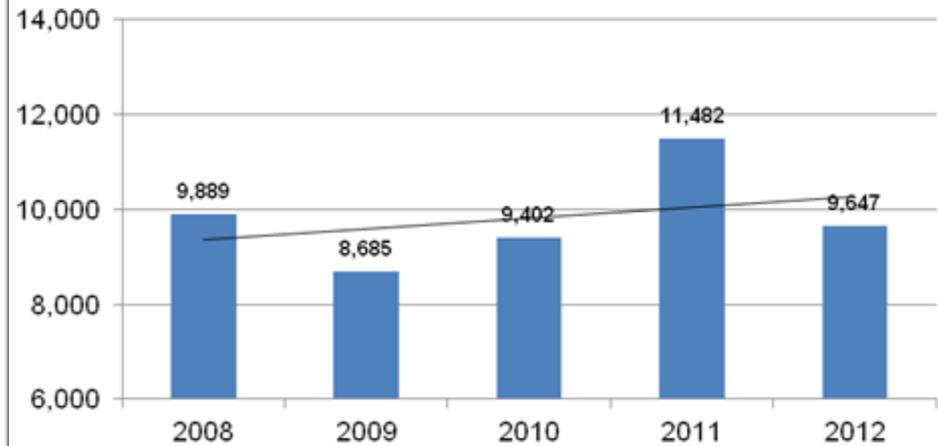
Demand for Alcoholic Beverages And State Population FY 2008 - FY 2015



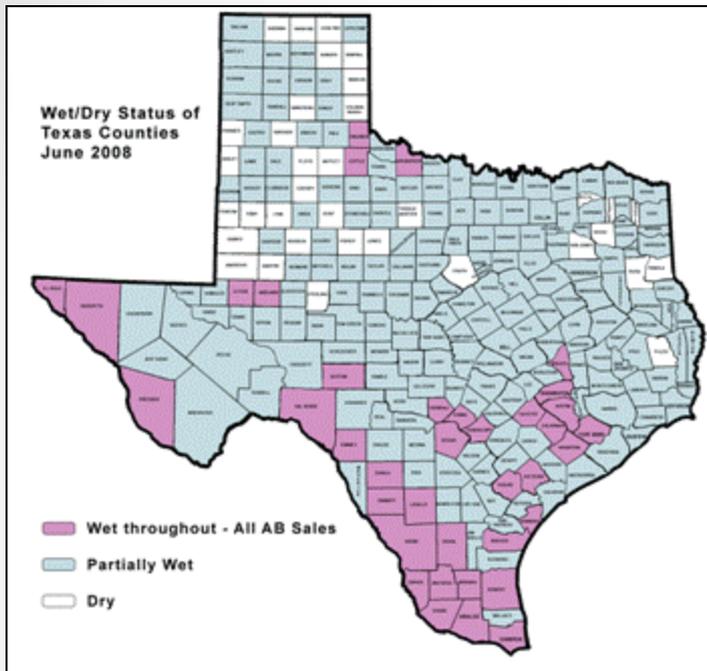
Increase in Label Applications FY 2008 - FY 2012



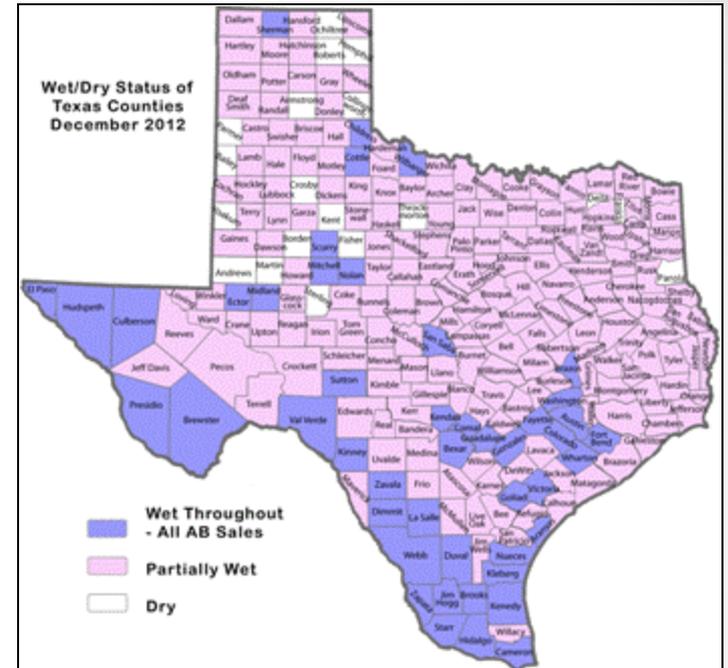
Complaints Requiring Investigation FY 2008 - FY 2012



Work Drivers Continued



.47%

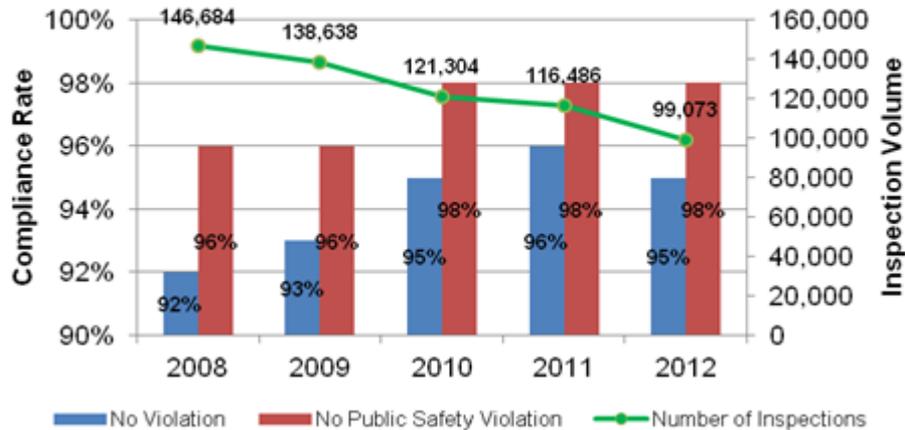


Since the start of FY 2008:

- 407 local option elections held.
- 227 jurisdictions in 103 Texas Counties have authorized or expanded sales of alcoholic beverages.
- More than 15M people, approximately 63% of the state's population, have seen the local availability and selection of alcoholic beverage products enhanced as a consequence of local option elections
- The number of totally "dry" Texas counties has declined from 26 to 19.

Public Safety Impact

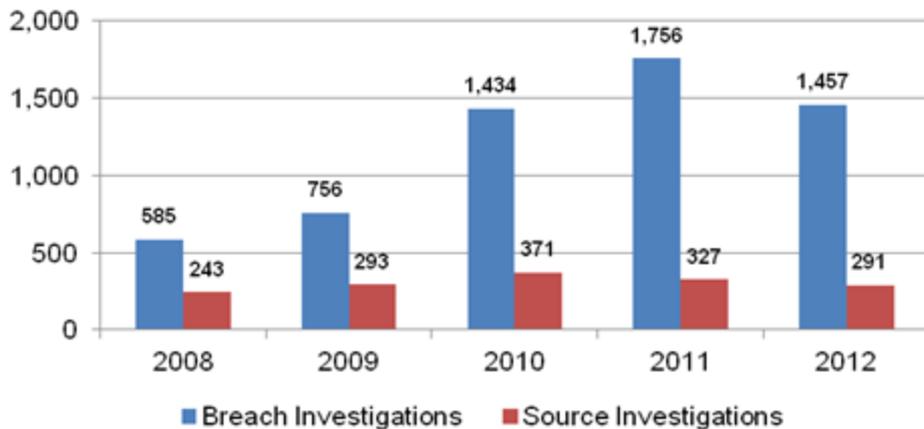
Inspection Compliance Rates FY 2008 - FY 2012



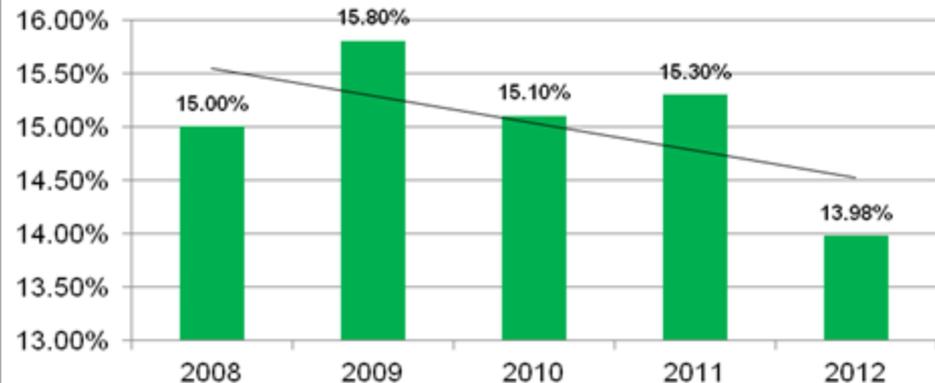
Minor Stings FY 2008 - FY 2012



Breach & Source Investigations FY 2008 - FY 2012

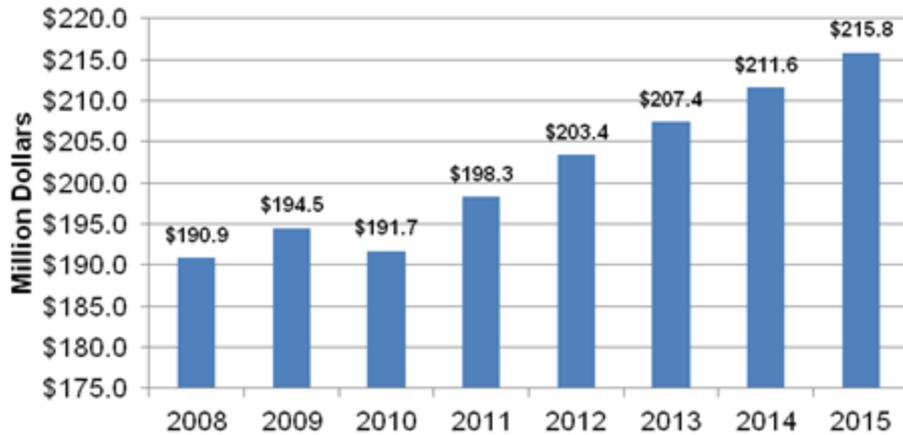


Retailer Recidivism Rate (Public Safety Offenses) FY 2008 - FY 2012

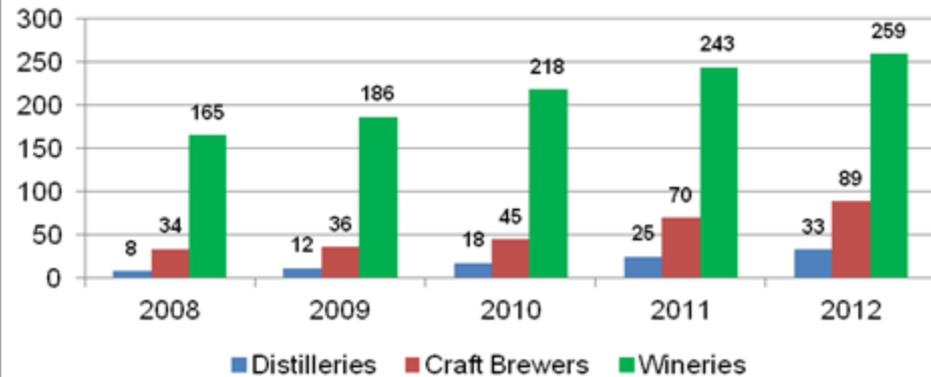


Economic Impact

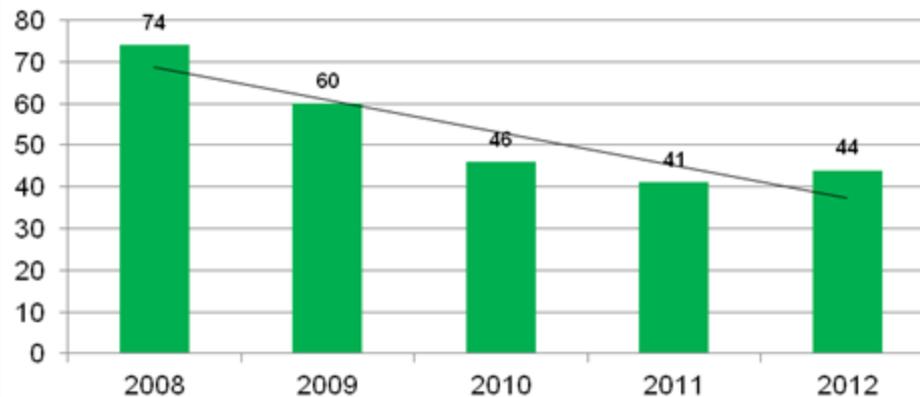
TABC Excise Tax Revenues FY 2008 - FY 2015



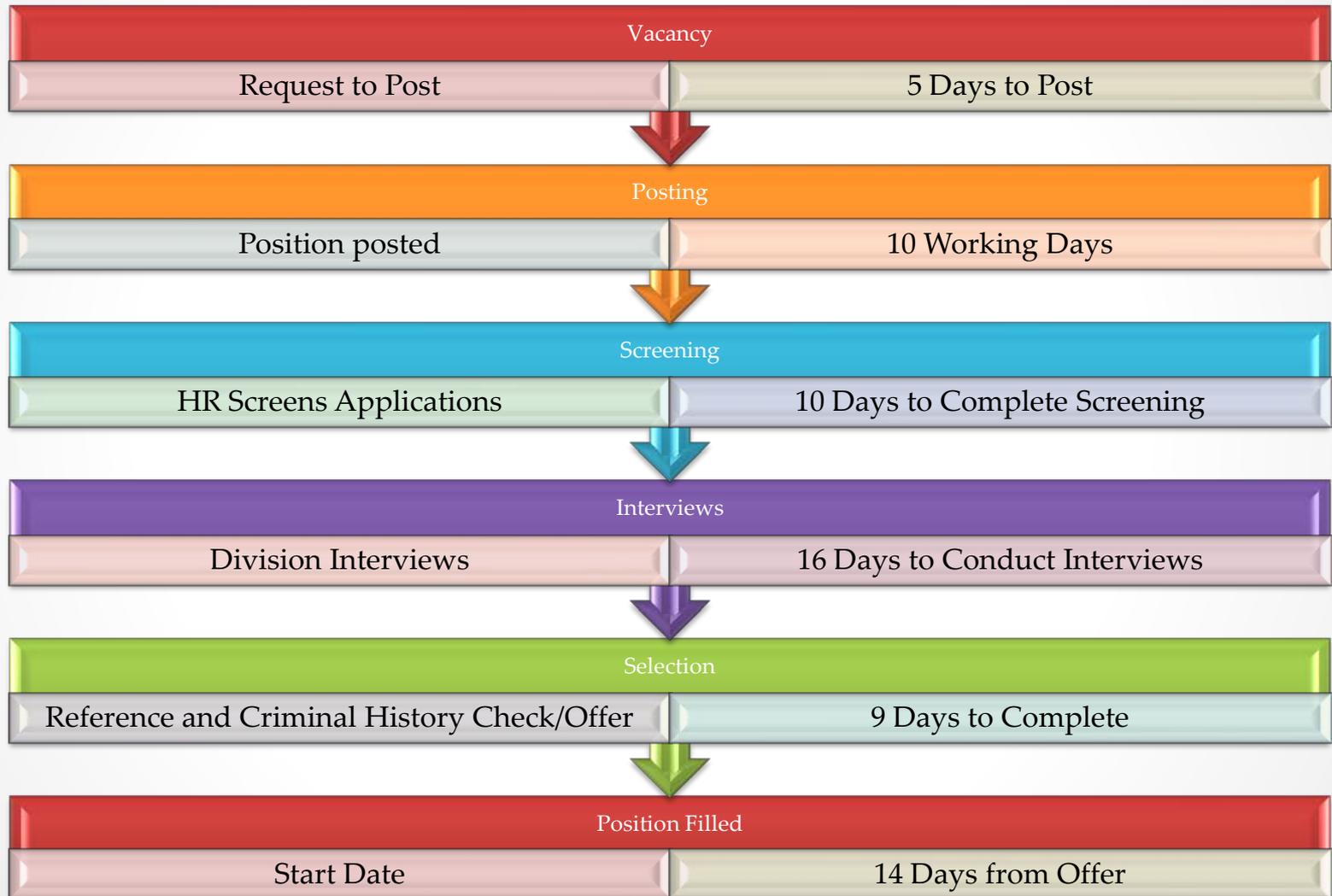
Texas Distilleries, Craft Brewers, and Wineries FY 2008 - FY 2012



Days Required to Approve an Original Application for a New Business FY 2008 - FY 2012



LIFE CYCLE OF A CIVILIAN POSITION



Average of 64 days to complete the hiring process.

LIFE CYCLE OF A COMMISSIONED PEACE OFFICER POSITION



Average of 135 days to complete the hiring process.

Attrition Rate

- Agency Vacancy Snapshot (Jan 2013)
- Total Listed Vacancies: 68
- Positions In-Flight: -15
- Enforcement Agent Offers: -17
- Enforcement Agent Postings: -15
- Total Actual Vacancies: 21

- Agency Turnover Analysis

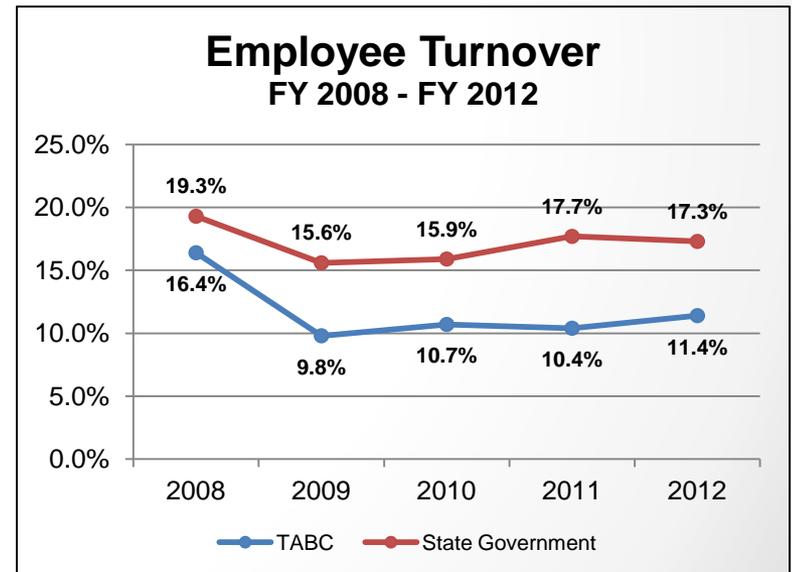
- Total Authorized FTEs: 631.8

- Average Turnover Rate: x0.114

- Total Estimated Annual FTE Turnover: 72

- Rehire Factor (3 months to Fill): x0.25

- Average Annual FTE Float: 18



Challenges

A

- Vacancies

B

- Number of Days to Issue a Permit

C

- Enforcement Inspections

D

- Credit Law

Performance Measurement Impact Factors

- # Of Days to issue a License
 - Introduction of New Technology
 - Local Option Elections
 - Protests
 - Effective Date
 - Loss of Experienced Personnel

180 Years of Experience

Performance Measurement Licensing Solution

- Provide a heightened level of training to new hires in order to get them to a higher level of proficiency quickly.
- Post new licensing vacancies upon notification, in order to reduce fill times.
- Take advantage of lessons learned from the scanner deployment to improve future training programs.
- Investigate methods to modify reporting standards to accommodate applicant requests for future effective dates without impacting agency metrics.
- Work with our reporting experts to determine if more detailed and more frequent report can assist licensing supervisors in identifying and correcting negative operational trends.
- • Track and report on PLAT timelines.

Enforcement Inspections

- 2010-2011 Change in strategy
 - Shifting focus from policing individual behavior towards a more aggressive regulation of licensed entities
 - Move away from conducting inspections of unlicensed locations
 - Focus time and energy on licensed entities
 - Target risk based establishments



The Inspection Dilemma

- The FY13 LBB targets for total number of licensed establishments and “at risk” licensed establishments are approximately **50,000** and **4,000**, respectively. Using these numbers, the number of “not at risk” licensees should be approximately **46,000**. With a requirement to inspect 80% of these locations annually, the agency must visit at least **36,800** of these licensees per year.
- For “at risk” licensees, the LBB has established an annual target of approximately **22,000** inspections . This means that each of these **4,000** licensees must be inspected a minimum of **5.5** times per year.
- However, even if the agency achieves both of these targets, the total number of inspections completed annually will only be:
 - **36,800 + 22,000 = 58,800**, or well below the **75,200** total target.
The agency must therefore greatly exceed either the **80%** or **22,000** thresholds.
- In line with our strategy, our solution is to increase the number of inspections of “at risk” locations to an average of **10** times per year. These **40,000** high risk inspections added to the **36,800** low risk inspections, yields an annual inspection total of **76,800**. This is right in line with the LBB target of **75,200**.

Findings

The reduction in the total number of enforcement inspections conducted did not detract from the TABC requirement to inspect at least 80% of all licensees annually and the TABC strategy to increase enforcement inspections of the most problematic retail licensees that pose the greatest public safety risk.



Solution

- FY 14 – 15 Performance Measurements reduced to 75,200.
 - These inspections will be conducted with a combination of licensed establishments which are either “at risk” or “not at risk”.
- Determine the appropriate balance between “at risk” vs. “not *at risk*”.
- Continue to work with the LBB in adjusting future performance measurements as appropriate.
- Streamline the posting and recruitment of law enforcement agents.
- Ensure resources are well trained and skilled in conducting inspections.

Credit Law Delinquency First Publications by Month

FY 2010

	Sep 2009	Oct 2009	Nov 2009	Dec 2009	Jan 2010	Feb 2010	Mar 2010	Apr 2010	May 2010	Jun 2010	Jul 2010	Aug 2010	Full FY 10
CLPs with 1st Publications	985	964	719	763	870	469	505	514	446	394	448	378	3,437
No. 1st Publications	1,587	1,590	1,135	1,164	1,319	622	731	705	605	571	624	505	11,158
Value - 1st Publications	\$12,254,787.16	\$13,064,696.07	\$7,311,412.99	\$9,469,685.81	\$10,722,384.15	\$4,947,008.98	\$5,757,964.09	\$4,715,753.19	\$5,351,201.80	\$4,118,710.55	\$4,112,259.06	\$4,095,690.30	\$85,921,554.15
Liquor Retailers FY 10	40,906	41,127	41,141	41,163	41,191	41,283	41,481	41,599	41,692	41,891	42,001	42,172	42,172
% with Published Delinquencies	2.41%	2.34%	1.75%	1.85%	2.11%	1.14%	1.22%	1.24%	1.07%	0.94%	1.07%	0.90%	8.15%

FY 2011

	Sep 2010	Oct 2010	Nov 2010	Dec 2010	Jan 2011	Feb 2011	Mar 2011	Apr 2011	May 2011	Jun 2011	Jul 2011	Aug 2011	Full FY 11
CLPs with 1st Publications	385	370	302	361	290	249	341	325	338	285	348	298	2,432
No. 1st Publications	548	558	411	450	527	305	422	432	458	339	484	391	5,325
Value - 1st Publications	\$4,715,721.10	\$3,272,207.82	\$2,986,014.29	\$2,251,431.20	\$3,109,323.66	\$2,577,111.62	\$1,710,421.99	\$2,118,995.13	\$2,541,530.06	\$1,495,724.78	\$5,706,233.52	\$4,842,463.84	\$37,327,179.01
Liquor Retailers FY 11	42,325	42,745	43,230	43,807	44,419	44,699	45,003	45,217	45,435	45,706	45,900	46,257	46,257
% with Published Delinquencies	0.91%	0.87%	0.70%	0.82%	0.65%	0.56%	0.76%	0.72%	0.74%	0.62%	0.76%	0.64%	5.26%

FY 2012

	Sep 2011	Oct 2011	Nov 2011	Dec 2011	Jan 2012	Feb 2012	Mar 2012	Apr 2012	May 2012	Jun 2012	Jul 2012	Aug 2012	Full FY 12
CLPs with 1st Publications	285	451	251	304	299	291	373	428	340	265	388	216	2,324
No. 1st Publications	384	586	332	369	397	530	622	637	476	324	501	265	5,423
Value - 1st Publications	\$2,623,584.04	\$8,682,729.87	\$1,264,258.26	\$1,247,970.81	\$16,078,375.69	\$11,122,889.85	\$8,458,975.63	\$9,150,798.55	\$4,748,558.93	\$1,535,921.60	\$2,460,036.79	\$2,084,656.61	\$69,458,756.43
Liquor Retailers FY 12	46,330	46,166	45,871	45,779	45,630	45,524	45,464	45,162	45,019	44,858	44,576	44,413	46,330
% with Published Delinquencies	0.62%	0.98%	0.55%	0.66%	0.66%	0.64%	0.82%	0.95%	0.76%	0.59%	0.87%	0.49%	5.02%

FY 2013

	Sep 2012	Oct 2012	Nov 2012	Dec 2012	Sep - Dec
CLPs with 1st Publications	435	602	330	380	1,335
No. 1st Publications	689	820	392	492	2,393
Value - 1st Publications	\$25,345,923.13	\$24,037,640.66	\$1,631,458.35	\$2,385,727.85	\$53,400,749.99
Liquor Retailers FY 13	44,116	44,179	44,277	44,399	44,399
% with Published Delinquencies	0.99%	1.36%	0.75%	0.86%	3.01%

87% 68%

83rd Legislative Session Update

Nov. 12, 2012
Pre-filing of bills

January 8, 2013 –
83rd Legislature
convened

March 8 - Last
day to file regular
bills

May 27 – Sine Die

June 16 - Last day
governor can sign
or veto bills



Legislative Update

Legislative Appropriations Request Fiscal Years 2014 - 2015

	<u>FY 2014</u>	<u>FY 2015</u>	<u>Biennial Total</u>	<u>FTEs</u>
S.B. 1 / H.B. 1 Funded				
General Revenue	\$40,478,592	\$40,892,420	\$81,371,012	601.8
Appropriated Receipts	<u>5,000</u>	<u>5,000</u>	<u>10,000</u>	<u>0.0</u>
Total, S.B. 1 / H.B. 1 Funded	<u>\$40,483,592</u>	<u>\$40,897,420</u>	<u>\$81,381,012</u>	<u>601.8</u>
TABC - Revised Exceptional Item Request				
1 Reductions Per S.B. 1 / H.B. 1	\$1,200,000	\$1,200,000	\$2,400,000	30.0
2 Operational/Insurance Cost Increases	\$1,436,929	\$1,496,618	\$2,933,547	
3 Public Safety Equipment	\$2,680,093	\$658,093	\$3,338,186	
4 Information Technology	\$940,898	\$611,192	\$1,552,090	
5 Ports of Entry Regulation	\$906,319	\$673,374	\$1,579,693	15.0
6 Education and Prevention Programs	<u>\$95,000</u>	<u>\$95,000</u>	<u>\$190,000</u>	
Total, Revised Exceptional Item Request	<u>\$7,259,239</u>	<u>\$4,734,277</u>	<u>\$11,993,516</u>	<u>45.0</u>
TOTAL, TABC Request	<u><u>\$47,742,831</u></u>	<u><u>\$45,631,697</u></u>	<u><u>\$93,374,528</u></u>	<u><u>646.8</u></u>
Method of Financing				
General Revenue	\$47,737,831	\$45,626,697	\$93,364,528	
Appropriated Receipts	<u>5,000</u>	<u>5,000</u>	<u>10,000</u>	
Total, Method of Finance	<u>\$47,742,831</u>	<u>\$45,631,697</u>	<u>\$93,374,528</u>	

LAR Continued

Proposed New Rider:

Capital Budget Expenditures from Federal and Other Funding Sources. The Texas Alcoholic Beverage Commission is hereby exempted from the capital budget rider provisions contained in Article IX of this Act when gifts, grants, inter-local funds, and federal funds are received in excess of the amounts identified in the agency's capital budget rider and such funds are designated by the donor, grantor, or federal agency for the purchase of specific capital items, limited to projects related to law enforcement or the regulation of the Alcoholic Beverage Code.

Amounts expended from these funding sources shall not count against the limitation imposed by capital budget provisions elsewhere in this Act. The TABC shall notify the Legislative Budget Board and the Governor upon receipt of such funds of the amount received and the planned expenditures.

Proposed New Rider:

Contingency Appropriation Judgments and Settlements. Payment of judgments or settlements, including attorney's fees, resulting from actions brought to challenge the validity or constitutionality of the Alcoholic Beverage Code and defended by the Office of the Attorney General that are obtained against the Texas Alcoholic Beverage Commission, or any individual(s) acting in their official capacity on behalf of the Texas Alcoholic Beverage Commission, shall be paid by the agency and are hereby appropriated to the agency in the amount necessary to pay claims, judgments, and settlements.

Proposed New Rider:

Use of Appropriated Funds for Informational and Educational Purposes. The Texas Alcoholic Beverage Commission may develop, create, or purchase with appropriated funds public service announcements or advertisements for informational and educational purposes via written, audio, audio-visual, digital, or other electronic median to communicate to the alcoholic beverage industry and the public, the legal responsibilities of the Commission's code and rules to ensure voluntary compliance.

83rd Legislative Session

- 867 bills filed as of 1/22/13
 - 1,246 bills filed this time last session
- 92 bills tracked by TABC
- 7 bills amending the Alcoholic Beverage Code
- Other high impact issues
 - The Budget – annual budgets, zero-based budgeting, hiring freeze, etc.
 - Gambling, Poker, 8-Liners



Notable Bills

- HB34 by Menendez – creating BYOB permits for sexually oriented businesses
- HB421 by Thompson – allowing package store sales on Sundays
- HB130 by Raymond – relating to honesty in taxation – requires state agencies and the legislature to refer to fines, fees and surcharges as “Regulatory Taxes”
- HB231 by Isaac - Relating to suspending ERS annuity payments for retired employees who return to work for the state.

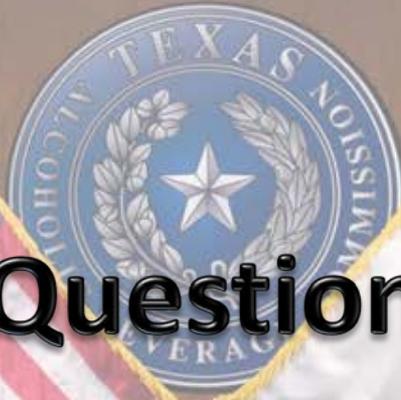


Other Bills Amending the AB Code

- HB232 by Guillen – allowing certain minors to perform community service in lieu of alcohol awareness course
- HB310 by Guillen – allowing certain minors to plead guilty by mail
- HB575 by Anchia – relating to admin actions based on criminal prosecution
- HB515 by Pitts – repeal sections of the AB Code enacted during special session (early excise tax payments)
- SB131 by Nelson – extending hours of winery sales on New Year's Eve



Questions



Attachment 2

**New Rule §31.12, Training and Education of
Commission Employees**

JANUARY 24, 2013 AGENDA, ITEM 5:

ADOPTION OF NEW RULE §31.12, Training and Education of Commission Employees

The Texas Alcoholic Beverage Commission (commission) adopts new §31.12, relating to Training and Education of Commission Employees, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9846). No comments were received. The rule will not be republished.

The section provides that state funds may be used by the commission for the education and training of its employees in accordance with Government Code §§656.041-656.104. It establishes certain restrictions on training and education that may be funded by the commission, addresses supervisory approval to receive the education and training, and clarifies that such education and training does not affect the at-will status of the employee.

The section is adopted pursuant to Government Code §656.048, which requires state agencies to adopt rules relating to the eligibility of the agency's employees for training and education supported by the agency and the obligations assumed by those employees receiving the training and education. The section is also authorized by Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code.

§31.12. Training and Education of Commission Employees.

- (a) The commission may use state funds in accordance with Government Code §§656.041-656.104 to provide training and education for its employees.
- (b) Training or education provided pursuant to subsection (a) of this section shall be related to the employee's current position or prospective job duties within the commission.

(c) Commission employees may be required to complete training and/or education programs related to the employee's current or prospective job duties as a condition of employment.

(d) Participation in training or education programs requires the approval of the employee's supervisors prior to participation and is subject to the availability of funds in the commission's budget.

(e) The employee training and education program for the commission may include:

- (1) mandatory agency-sponsored training or education required for all employees;
- (2) training or education relating to technical or professional certifications and licenses;
- (3) training and education designed to promote employee development;
- (4) employee-funded external education;
- (5) commission-funded external education;
- (6) a tuition-reimbursement program; and
- (7) such other training or education determined by the commission to be of benefit to the employee and the commission, and to promote effective state administration pursuant to Government Code §656.042.

(f) Approval to participate in any portion of the commission's training and education program shall not in any way: affect an employee's at-will employment status; constitute a guarantee or indication of continued employment; or constitute a guarantee or indication of future employment in a current or prospective position.

(g) Approval to participate in any training or education program may be withdrawn if the commission determines, in its sole discretion, that participation would negatively affect the employee's job duties or performance.

Attachment 3

**Amendment to Rule §45.121, Credit Restrictions and
Delinquent List for Liquor**

January 24, 2012 AGENDA, ITEM 6:

APPROVAL TO ADOPT PROPOSED AMENDMENT TO §45.121, CREDIT RESTRICTIONS AND DELINQUENT LIST FOR LIQUOR

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.121, Credit Restrictions and Delinquent List for Liquor with changes to the text as published in the November 9, 2012 issue of the *Texas Register* (37 TexReg. 8907).

When this section was originally adopted in 2009, the commission indicated that it would periodically review it and shorten the time allowed from the end of the reporting period to the date of publication of the Delinquent List. The amendment as proposed would have given retailers two fewer days to pay a delinquent bill before their names appear on the Delinquent List. When a retailer's name appears on the Delinquent List, all wholesalers are on notice that they may not sell any liquor to that retailer until that delinquent account is paid in full, pursuant to Code (Code) §102.32(d).

No written comments on the proposed rule were submitted, but oral comments were made by Lance Lively (on behalf of the Texas Package Store Association), Alan Gray (on behalf of Licensed Beverage Distributors) and ML Calcote (on behalf of Republic National Distributing Co.) at a public hearing held by the staff of the commission on December 13, 2012. All three commenters indicated that the parties were working on a long-term solution to the issues addressed in this rulemaking proceeding.

Mr. Lively noted that every time the period is shortened the Delinquent List has the potential to grow. He also suggested that quite a few more single and double package store owners appeared on the list since the last rule change.

Mr. Gray noted that there is no statutory authority for any extension of time for payment beyond that which is already built into the Code. Extra days were apparently originally allowed as a nod to the use of 1930's-era technology. He indicated that approximately one million dollars of the delinquencies were attributable to mixed beverage establishments, while about \$49.5 million were attributable to package stores. A large part of the package store number is attributable to two big stores. He suggested that if the top offenders were removed from the calculation, the figures might show that there was no problem caused by the elimination of two days in last year's rulemaking.

Mr. Gray stated that the original agreement was to reduce the time period by two days every year. However, he indicated that going from calendar days to business days would be acceptable. Thus, in this rulemaking the period would go from six calendar days to four business days (as opposed to the four calendar days in the proposal). Consistent with the original agreement, next year the period would go from four business days to two business days, and the following year the extra period would be eliminated entirely. In moving from calendar days to business days, however, Mr. Gray recognized that there could be an issue defining a business day. He acknowledged that federal holidays should

not be included but suggested that state skeleton crew holidays should be counted as business days.

The commission believes that reducing the time period from six calendar days to four business days is appropriate and the text of the rule is modified accordingly.

The amendment is authorized by Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §102.32(f), which requires the commission to adopt rules to give effect to that section.

§45.121 Credit Restrictions and Delinquent List for Liquor.

(a) Purpose. This section implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including, money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the day it is required to be paid by §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees. For purposes of this section, the holder of a winery permit issued under Chapter 16 of the Code is a retailer when the winery permit holder purchases wine from the holder of a wholesaler's permit issued under Chapter 19 of the Code for resale to ultimate consumers in unbroken packages.

(7) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web based reporting system at www.tabc.state.tx.us.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission on or before the date the delinquent list is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.state.tx.us>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fourth business day after the 25th day of the month for purchases made from the 1st to the 15th day of that month and for which payment was not made on or before the 25th day of that month. Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fourth business day after the 10th day of the next month for purchases made between the 16th and the last day of the preceding month and for which payment was not made on or before the 10th day of the month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday (as published at <http://www.frb services.org/holidayschedules/index.html>) will be the next regular business day. For purposes of this section, a business day means a day which is not a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be

open for business), or a standard Federal Reserve bank holiday (as published at <http://www.frbservices.org/holidayschedules/index.html>). A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.

CERTIFICATION

REGULAR COMMISSION MEETING

10:00 a.m. – January 24, 2013

**5806 Mesa Drive
Austin, Texas 78759**



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on January 24, 2013.

A handwritten signature in cursive script that reads "Sherry K. Cook".

Sherry Cook
Administrator

Sworn and subscribed before me this the 18th day of April 2013.

A handwritten signature in cursive script that reads "Gloria Darden Reed".

Gloria Darden Reed
Notary in and for Travis County

