



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

## COMMISSION MEETING

*March 27, 2012*

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*



# **AGENDA**

## **REGULAR COMMISSION MEETING**

**9:30 a.m. – March 27, 2012**

**5806 Mesa Drive  
Austin, TX 78731**



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José Cuevas, Jr.  
Presiding Officer-Midland

Steven M. Weinberg, MD, JD  
Member-Colleyville

Melinda S. Fredricks  
Member-Conroe

Alan Steen  
Administrator

**Tuesday, March 27, 2012 – 9:30 a.m.**

## Agenda

1.	<b>Call to Order</b>	<b>José Cuevas, Jr.</b>
2.	<b>Approval of Commission Meeting Minutes of January 24, 2012</b>	<b>José Cuevas, Jr.</b>
3.	<b>Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements</b>	<b>Alan Steen</b>
4.	<b>Strategic Planning Briefing</b>	<b>Carolyn Beck</b>
5.	<b>Recognition of Agency Ports of Entry New Regional Managers</b>	<b>Sherry Cook</b>
6.	<b>Education and Prevention Briefing</b>	<b>Sherry Cook</b>
7.	<b>Internal Audit of License and Permit Revenue Processing</b>	<b>Russell Gregorczyk</b>
8.	<b>Approval to Publish Proposed Amendment to Rule §45.71, Definitions</b>	<b>Martin Wilson</b>
9.	<b>Approval to Publish Proposed Amendment to Rule §45.77, Class and Type</b>	<b>Martin Wilson</b>
10.	<b>Approval to Publish Proposed Amendment to Rule §45.79, Alcoholic Content</b>	<b>Martin Wilson</b>
11.	<b>Approval to Publish Proposed Amendment to Rule §45.82, Prohibited Practices</b>	<b>Martin Wilson</b>
12.	<b>Approval to Publish Proposed Amendment to Rule §45.90, Advertisement: Prohibited Statements</b>	<b>Martin Wilson</b>
13.	<b>Approval to Publish Proposed Amendment to Rule §45.110, Inducements</b>	<b>Martin Wilson</b>
14.	<b>Approval to Publish Proposed Amendment to Rule §41.23, Basic General Records Required</b>	<b>Martin Wilson</b>

15.	<b>Public Comment</b>	<b>José Cuevas, Jr.</b>
16.	<b>Executive Session 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)</b>	<b>José Cuevas, Jr.</b>
17.	<b>Next Meeting Dates:</b> <b>Tuesday, April 24, 2012</b> <b>Tuesday, May 22, 2012</b>	<b>José Cuevas, Jr.</b>
18.	<b>Adjourn</b>	<b>José Cuevas, Jr.</b>

*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 Luann Dickerson at (512) 206-3217 (voice) (512) 206-3203 (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**

**9:30 a.m. – March 27, 2012**

**5806 Mesa Drive  
Austin, TX 78731**



# TABC

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## **COMMISSION MEETING MINUTES**

**March 27, 2012**

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, March 27, 2012, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

### ***PRESIDING***

#### ***OFFICER:***

José Cuevas, Jr.

#### ***COMMISSIONERS***

#### ***PRESENT:***

Melinda Fredricks

Steven M. Weinberg, MD, JD

### ***STAFF PRESENT:***

Alan Steen, Administrator

Carolyn Beck, Director of Communications and  
Governmental Relations

David Brandon, Enterprise Development Manager,  
Information Resources Division

Mindy Carroll, Director, Education and Prevention

Sherry Cook, Assistant Administrator, Executive Division

Darryl Darnell, Lieutenant, Regional Liaison

Carlos Davila, Computer Systems Specialist, Information  
Resources Division

Joe Fralin, Regional Manager, Ports of Entry, Southwest

Alex de la Garza, Regional Manager, Ports of Entry,  
Rio Grande Valley

Luann Dickerson, Executive Assistant, Executive Division

Loretta Doty, Director, Human Resources Division

Shelby Eskew, Director, Business Services Division

Joey Estrada, Grants Coordinator, Education and  
Prevention

Kathy Gersbach, Executive Assistant, Executive Division

Steve Greinert, Director, Tax Division & Marketing Practices

Thomas Graham, Supervisor, Marketing Practices

Toni Hale, Program Specialist, Education and Prevention

Bruce Harlan, Lieutenant, Training Division

Amy Harrison, Director, Licensing Division  
Emily Helm, General Counsel, Legal Division  
Joe Iagnemmo, Web Administrator  
Dexter K. Jones, Assistant Chief of Field Operations  
Ashleigh Jons, Program Specialist, Education and  
Prevention  
Shaun Jordan, Licensing Supervisor, Austin District Office  
Jo Ann Joseph, Assistant Director, Licensing Division  
Michael Lockhart, Lieutenant, Training Division  
Roland Luna, Director, Ports of Entry  
Joel Moreno, Chief of Field Operations  
Merideth Munoz, Information Specialist, Executive Division  
Earl Pearson, Assistant Chief of Field Operations  
Andy Peña, Director, Office of Professional  
Responsibility/Training Division  
John Reney, Lieutenant, Office of Professional  
Responsibility  
Gloria Darden Reed, Executive Assistant, Executive Division  
Albert Rodriguez, Lieutenant, Office of Professional  
Responsibility  
Loretta Smith, Assistant Director, Business Services Division  
Todd Talley, Regional Liaison, Coastal Bend Region  
Rod Venner, Assistant Chief of Field Operations  
Jay Webster, Director, Information Resources Division  
Martin Wilson, Assistant General Counsel, Legal Division

**GUESTS  
PRESENT:**

Lou Bright, General Counsel, Texas Wine and Grape  
Growers Association (TWGGA)  
Colleen Buck, Policy, Governor's Office  
Angie Cervantes, Policy Analyst, Senate Committee on  
Business & Commerce  
ML Calcote, Consultant, Republic National Distribution  
Company  
Rick Donley, President, The Beer Alliance of Texas  
Alan Gray, Executive Director, Licensed Beverage  
Distributors  
Lance Lively, Executive Director, Texas Package Stores  
Association  
Mignon McGarry, Consultant, Republic National Distributing  
Company  
Jack Martin, Attorney, Jack Martin and Associates  
David Repp, Budget Analyst, Legislative Budget Board

Gerald Rich, Intern, *The Texas Tribune*  
Keith Strange, Attorney, Wholesale Beer Distributors of  
Texas  
Ralph Townes, Senior Vice President, Licensed Beverage  
Distributors/Glazers  
Don Walden, Attorney  
Randy Yarbrough, Consultant, Wholesale Beer Distributors  
of Texas

### **CALL TO ORDER**

The meeting of the Texas Alcoholic Beverage Commission was called to order at 9:35 a.m. by Presiding Officer José Cuevas.

### **APPROVAL OF COMMISSION MEETING MINUTES OF JANUARY 24, 2012**

**Presiding Officer José Cuevas called for approval of the Commission meeting minutes of January 24, 2012. Commissioner Steven Weinberg so moved to approve the minutes as written, and Commissioner Fredricks seconded. The motion carried.**

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

Presiding Officer Cuevas called upon Administrator Steen to give his Administrator's report. After welcoming the Commissioners to Austin for another Commission meeting, Administrator Steen's report covered grant funds received from the Governor's Office's of the Criminal Justice Division. He stated that the realignment and reallocation of resources, along with the grant funds, has created a positive outcome toward the improvement in public safety and public service during and after Spring break. Administrator Steen stated that the grant funds have enabled the creation of mobile phone apps that will help curb excessive and underage drinking. He stated that one of the apps allows users to gauge their motor skills through a series of increasingly difficult tests. Another useful tool being developed is an app that would allow someone to file a complaint against an establishment if it is suspected of serving alcohol to a minor or over service. Administrator Steen stated that Assistant Administrator Sherry Cook's agenda presentation will contain information on the educational component of videos that discuss the importance of making individuals aware of blood alcohol content. Administrator Steen explained that the Agency's website is already accepting online complaints and hopes that the new app's will help bring retailers who sell to minors into compliance. Administrator Steen stated that both of the apps will become part of the Agency's website. He acknowledged and publicly thanked the Governor's Office for awarding the grant to the Agency.

Administrator Steen reported the cancellation of a lounge, "El Cubo" was accomplished through a thorough audit using enforcement, legal, and compliance personnel. He stated the establishment was cited for causing problems to the neighborhood and was a threat to public safety.

Administrator Steen focused on agency trends. He stated that research completed in the area of seller training trainees on the method of instruction (classroom versus on-line). He noted that online instruction has steadily shown an increase.

Administrator Steen stated that the efficiency, maturity and professionalism of the employee workforce are a vital part in the success of an agency. Using the slide presentation on the turnover by Agency for the year ending 2011, he stated that the accomplishments and successes at TABC have relied on its seasoned workforce. Administrator Steen emphatically stated that the Agency's successes could not have been accomplished with "rookies". Administrator Steen stated that it is his endeavor to maintain the Agency's employment turnover rate low.

Administrator Steen discussed the trends in the decline in in-state licensed business. He stated that the local option elections have caused a reduction in some established licensed businesses and stated a minimum number of new applications have been filed. However an increase has occurred in the amount of gallons sold throughout the state. Administrator Steen stated that this occurrence needs to be carefully monitored because the Agency's funding is sustained through license applications/renewals and surcharge fees.

Administrator Steen discussed the trends of the personal importations taxed by the Ports of Entry. According to the chart illustrations, he stated that there has been a slight decrease; however the revenues have doubled due to the increase of the alcohol administrative fee.

Administrator Steen stated that he will testify before the Business and Commerce Committee on April 10<sup>th</sup> on some of the challenges to the constitutionality of the Alcoholic Beverage Code.

Commissioner Weinberg inquired since Ports of Entry seems to be stabilizing at 30% or less in volume, will the increase in the Agency's income affect the staffing at the port bridges. Administrator Steen stated that the staff would not be affected. He stated that the Ports of Entry Tax Collection System (POETCS), bar coding equipment, is beneficial in recording the high/low peak sales. He stated that TABC is working for a continued effort to strengthen its relationship with the federal border agents. Commissioner Weinberg inquired about the new bridges that opened. Administration Steen stated that the new Ports of Entry bridges open were Anzaldua and Donna.

Commissioner Weinberg inquired if there has been any activity with the ships. Administrator Steen answered affirmatively. He stated that the Agency has begun its

dissemination of educational materials dealing with the laws pertaining to product importations and taxes to be paid on the importations.

Presiding Officer Cuevas asked for an explanation on the changes that occur when a local option election is held. Administration Steen stated that changes occur after a local option election is held and retailers in a traditional dry area and retailers along the outer edges of the dry area when the area becomes wet, one does not have to purchase product along the once dry area edges because product can be bought inside the area. He stated what usually happens is the retailer in the outer edges begin to lose business and may be forced to close.

Presiding Officer Cuevas commented that positive change has occurred at the Agency. He stated that Administrator Steen's theme of "change" in the various day to day Agency operations is to be commended. Presiding Officer Cuevas cited examples in Administrator Steen's report of the Agency's positive change:

- Spring Break grant funds initiatives
- Agency's thorough job leading to the closure of "El Cubo" lounge
- Seller Training Trainees – rise in number of online courses
- Proactive approach to educate personnel in charge of travel ships of importation product laws for the State of Texas

Presiding Officer Cuevas stated that he believes that the Agency will have an impact on a new generation. He stated that he appreciates Administrator Steen's leadership for setting the stage toward the "positive change" the Agency is experiencing.

Commissioner Weinberg commented that the state having fewer retailers but with more volume is a benefit. He stated the state is doing well in receiving more revenues.

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

## **STRATEGIC PLANNING BRIEFING**

Presiding Officer Cuevas called upon Director Carolyn Beck for the next agenda item.

Director Beck's report outlined the Internal Management Goals timeline:

- January Supervisor Meetings to review employee survey results
- February-March Staff Meetings to review survey results and provide feedback
- March 22<sup>nd</sup> HQ directors reviewed employee feedback to develop new internal management goals
- March 26<sup>th</sup> Administrator review
- March 27<sup>th</sup> Commission Meeting

Director Beck stated that the internal management goals were developed from feedback from employees based on a survey of employee engagement survey that was conducted in October 2011. She informed the Commissioners that they will have an opportunity to offer their suggestions and comments.

Director Beck explained some old and new strategies for the internal management goals:

1. Continue to explore ways to ensure employees are compensated fairly.
  - Review the Career Ladder
  - Explore non-financial incentives to reward employees
  - Explore equity adjustments for comparable positions within the agency
  - Conduct a study to ensure accurate classification of civilian employees

Commissioner Weinberg commented that employee pay is an important subject. Administrator Steen agreed and commented the issue of pay is one of the lowest scoring construct in the survey. He stated that he has ideas to discuss on how to hold on to the Agency's valuable employees and what is the Commission's vision of an efficient and effective regulator moving forward.

2. Continue to improve internal communication.
  - Provide training on how to fully utilize the intranet (SharePoint) and the internet.
  - Expand the use of SharePoint.
  - Expand use of webinar or video conferencing.
  - Downward communication should go to all impacted parties (not strictly through chain of command)

Director Beck stated that Administrator Steen's agency wide email has been an excellent effective way of communication to the employees. Presiding Officer Cuevas inquired if there is a certain department that scored communication lower. Director Beck stated that statewide the farthest distance from the Austin headquarters seemed to score lower due to their geographical location. She stated there tends to

be the communication of rumors rather than factual information funnels down the communication chain. Presiding Officer Cuevas asked if the communication is lost in the areas of enforcement, licensing, or a combination of both. Director Beck stated that generally communication occurs in the field. She stated that the Certified Peace Officer scores are usually lower than the civilian. Presiding Officer Cuevas agreed that Administrator Steen's email is helpful; however, he suggested that the Regional Majors, Captains, or Supervisors could generate emails to their respective area employees. Director Beck concurred with Presiding Officer Cuevas' suggestion.

Commissioner Fredricks inquired about SharePoint. Assistant Administrator Cook stated that SharePoint is a collaborative tool that is located on the Agency's intranet that allows its user to post, share and edit documents, schedule meetings online and keeps a history of who made changes to a particular document. She stated it is an organized way to see at a glance to structure and view a specific project (calendar task or meeting request). Assistant Administrator Cook stated that several projects have been steered to the SharePoint site to help organize and manage the data. She commented that SharePoint has proven to be effective in communicating, such as the Tri-Regional Workgroup, from headquarters to personnel in the field and back. Assistant Administrator Cook stated that she anticipates expanding the SharePoint site into a workflow system. In her viewpoint, she stated that the biggest attribute of SharePoint is that it is a collaborative site that alleviates searches through several files in different data storage areas to locate information and to avoid duplication.

Commissioner Fredricks inquired if there is an executive in management or a place where an employee can clarify misinformation. Assistant Administrator Cook answered in the affirmative. As an example, SharePoint has a list of the committee members, serving 2-year memberships, on the Tri-Regional Workgroup formulated from across the state. She stated that during the reallocation of resources, the intent was to effectively communicate the changes that were occurring within the newly created regions. She commented that if an employee feels that agency information, rumors, or concerns have been miscommunicated and needs clarification, the employee could contact the regional committee member.

Presiding Officer Cuevas gave a scenario of an employee who has heard a rumor and would like clarification can that be obtained on SharePoint. Assistant Administrator Cook stated that the employee can contact their regional workgroup member with the concern and the member will bring the concern through the Project Manager. The Project Manager will bring the concern before the body of the committee for discussion and resolution.

Presiding Officer Cuevas inquired how much time it will take before a response is given and is there a place on the website for the concern and for the response to be posted. Assistant Administrator Cook responded affirmatively and stated the concern and response would be posted in SharePoint under the Tri-Regional Workgroup site. She stated that the initial discussions in the workgroup are restricted to the workgroup and will not be posted – only the final decision in a timely manner.

Administrator Steen stated that the Agency's Training Division has designed a program of training, "Operational Leadership" for each member of the Tri-Regional Workgroup. He stated this training focuses on giving the workgroup member a better understanding of the various divisions/departments Agency functions, responsibilities and operations in order to articulate an explanation when asked and, the member's explanation will be fact-based and not his/her opinion.

3. Continue to improve and expand employee training
  - Develop topical training that can be viewed at any time using Webinar or video conferencing

Commissioner Fredricks asked Director Beck if the plan will have the training videos available for individuals to checkout at their leisure or will the videos only be available in a structured class. Director Beck stated that she had no answer to that question at the present time.

4. Leverage technology to improve employee work experience and environment
  - Support technology initiatives identified in the Agency Strategic Plan
5. Continue to find ways to improve Ports of Entry facilities and/or work areas
  - Negotiate contracts with facility owners to include improvements
  - Make other improvements to work areas where possible

Director Beck reviewed the current and amended external management goals:

1)

Current  
Identify high-risk businesses by using non-public-safety violations as an indicator that public safety violations may be occurring

Amended  
Identify and gather information collected outside TABC that is an indicator of high-risk business behavior or an unstable marketplace

Presiding Officer Cuevas commented that he liked the amended version of the current external management goals.

In the report, Director Beck discussed new external goals and strategies that were amended:

- 2) *Continue to improve communication with industry to facilitate education and voluntary compliance;*

Commissioner Fredricks commented that she was able to attend for the first hours of the industry meeting. She stated that she was impressed of the manner of time spent in the discussion by the stakeholders and the interest generated from the discussion of the new external goals and strategies.

3) *Work with stakeholders to continue prevention and education programs, including prevention of underage drinking and over-service;*

Presiding Officer Cuevas questioned if there is a strategy among the various industry members to communicate the same message to deter underage drinking; and is there a movement to poll the message to support TABC's philosophy regarding underage drinking. Assistant Administrator Cook responded and stated that her presentation will address the issues concerning underage drinking. Administrator Steen commented that he strongly believes that the industry is willing to lend their support and resources to help get the message out through education and prevention. He stated that the Agency as a regulator has not collected all of the resources together; however the industry has been supportive.

4)

Current

Amended

Continue to streamline the licensing Process to reduce cost and time involved

Accelerate the licensing process to put good actors in business while setting up controls to keep bad actors out

Administrator Steen commented the local election option voting plays an integral part in this strategy. He stated that when a county becomes "wet" the local officials have no clue in TABC's approval process. Administrator Steen stated that there seems to be a balance of public service and public safety with regard to licensing and it is real critical. He stated that the Agency needs to rethink its strategy and not move too fast in licensing.

Presiding Officer Cuevas quizzed Administrator Steen about the progress of the Pilot program. Administrator Steen responded that the testing is doing well and stated that the testing program explores new ways of conducting business through the county. Presiding Officer Cuevas and Administrator Steen agreed that the objective to automate the entire process is still needed.

5) *Invest in technology to better serve the industry and the public;*

Presiding Officer Cuevas inquired what type of information can be obtained from reading of a bar code on a tax stamp. Director Beck responded that the reading would reveal a history of the bottle and to prevent fraudulent representation of the merchandise, stolen stamps and track illegal activities.

6) *Explore ways to reward voluntary compliance in addition to penalties for non-compliance;*

Presiding Officer Cuevas commented that he believes most of the persons that have a history of complying with the rules and regulations concerning alcoholic beverage would remain in compliance without a reward system. Administrator Steen stated that the Agency is searching out that person that is motivated through illegal behavior and interests, not those that make mistakes. He explained for those that make mistakes in unawareness, “I got ya”, issue need not worry too much about the consequences, just move on. Commissioner Fredricks voiced a concern in minor stings of “I got ya” that the Agency does not show too much leniency in a sale to an underage minor. Administrator Steen stated that the offenders can expect several TABC visits to check on their compliance to the rules and regulations.

Administrator Steen commented that in Assistant Administrator Cook’s presentation will be a segment exploring the idea of rewarding the employee who says “no” to the sale to the underage minor. He mentioned that the Education & Prevention division has developed materials toward rewarding the retailer called “We Salute You” campaign recognizing that they do not sell to minors and that they are following the law.

Commissioner Weinberg inquired if TABC issues warning tickets and if records are kept. Administrator Steen answered affirmatively and the records can reflect the issuances by service sector.

Presiding Officer Cuevas offered a scenario of an employee certified in a seller training course and is ticketed for selling to a minor and terminates at that employment and then becomes employed at another place, will his seller training number be captured and recorded for the offense. Administrator Steen responded that all of the owner’s employees must be seller training certified, in order to be qualified for “safe harbor” and if the employee sold to a minor, the owner would fire him. He further explained that if the employee gains employment at another location, only the initial owner’s name or business location appears for the offense under seller training certification, not the employee. However, the employee who sold to the underage minor would be listed under a criminal offense as a Class A misdemeanor, sale to minor.

Director Beck’s expectation at the conclusion of the off-site meeting with the Headquarters Directors and Commissioners is to develop a high level vision and roadmap for the Agency. She expects to present the Strategic Plan at the Commission meeting on April 24<sup>th</sup> with the Commissioners voting on the Strategic Plan at the May 22<sup>nd</sup> Commission meeting. The deadline to submit the plan is in July.

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

## **RECOGNITION OF AGENCY PORTS OF ENTRY NEW REGIONAL MANAGERS**

Presiding Officer Cuevas called upon Ports of Entry Director Roland Luna for the recognition of the new Regional Managers for the Ports of Entry.

Director Luna introduced Alex de la Garza to the Commission with a brief biographical background. Director Luna stated Alex de la Garza began his career with the TABC Ports of Entry Division in Hidalgo in 1990 as a Tax Compliance Officer. In 2001, he promoted to District Supervisor for the Eagle Pass Port of Entry, and later transferred to the Hidalgo District where he was responsible for the Hidalgo, Pharr, Anzaldua, Los Ebanos, Rio Grande, Roma, and Falcon Port of Entry. His professional experience also includes serving as United States Customs Officer from 1996-1998 at the Hidalgo Port of Entry. Alex graduated from the University of Texas Pan American with a Degree in Business Administration. He is actively involved with St. John's Lutheran Church in San Juan where his mother is the pastor of the Church and a retired teacher after 35 years. Alex has one brother and one sister who are coaches for the PSJA school District. Alex enjoys hunting and spending time with his family. Director Luna solicited the Commission to welcome Alex as the new Regional Manager for the Rio Grande Valley.

Presiding Officer Cuevas asked Regional Manager de la Garza about his promotion. Regional Manager de la Garza stated that he is enjoying the promotion and will help to improve the ports in his area. Presiding Officer Cuevas commented that Regional Manager de la Garza is the eyes and the ears for the Agency and the front line of communication. Presiding Officer Cuevas and Commissioners Weinberg and Fredricks congratulated him in his promotion. Director Luna read Regional Manager de la Garza's Certificate of Promotion.

Director Luna introduced Joe Fralin to the Commission with a brief biographical background. He stated that Joe Fralin began his career with the Texas Railroad Commission as a Transportation Rate Auditor, served as a manager for the Orvis Company, and joins TABC after 11 years with the State Auditor's Office where he served as a Project Manager/Senior Auditor. Joe grew up in the small community of Morton, Texas, and graduated from Texas Tech University with a Bachelor of Arts and a Master of Business Administration in International Business. Joe spends his free time with his family, sharing their mutual love for the outdoors. Their favorite outdoor activities include fishing, kayaking, swimming, and hiking. Joe and his wife have two children and look forward to the move to El Paso. Director Luna asked the Commission to welcome Joe as the new Regional Manager for the Southwest.

Presiding Officer Cuevas quizzed Regional Manager Fralin about his prior employment with the State's Auditor's Office. He reiterated that Regional Manager Fralin is the eyes and ears of the Agency and the front line of communication to the employees under his supervision. Director Luna read Regional Manager Fralin's Certificate of Promotion.

Presiding Officer Cuevas, Commissioner Weinberg and Commissioner Fredricks congratulated both managers and photographs were taken.

### **EDUCATION AND PREVENTION BRIEFING**

Presiding Officer Cuevas called up Assistant Administrator Sherry Cook for the next agenda item, Education and Prevention Briefing.

Assistant Administrator Cook's report focused on the efforts in education and prevention. She stated that the presentation will show how creative and innovative the staff is under the leadership of Director Mindy Carroll in meeting the demands and modern expectations in a world of media and instantaneous information and how we are leveraging some of the same media outlets to get the message out.

Assistant Administrator Cook briefed the Commission of the Texas Prevention Education history:

- 1893 – Helen Stoddard of Forth Worth secured the passage of a bill that required all public schools to teach students about alcohol.
- 2009 – Health Education was changed from a required to an elective course in public education.
- 2009- Law Enforcement II requires teachers to teach about alcohol laws in the course.
- 2010 – TABC received approval from TEA for a curriculum designed for high school Law Enforcement II course related to alcoholic beverage laws.

Assistant Administrator Cook gave the Commission a true scenario of an underage party called "Project X" in Colin County in McKinney, TX. She stated that the event was listed on Face book and a teacher notified the Sheriff's Office of the event. Although TABC's Agents did not assist in the arrest process, she stated that they were there to serve as technical advisors on how to safely disperse the party. She stated that this training is an example of the benefits in how TABC supports local communities in working through their problems.

Assistant Administrator Cook spoke on the effectiveness of party dispersal training and outlined the strategy:

- Understanding causes of underage drinking
- Generate Strategies for party prevention
- Proactive approach
- Dispersing an underage party
- Understanding how the media can be used to amplify the effects of a controlled dispersal program and maintaining community support.

Commissioner Weinberg questioned Assistant Administrator Cook about the objective in dealing with a party dispersal. She responded that some media outlets such as Face book will cause alerts to be recognized and caught before the event happens. She commented that if a party is in progress, the party dispersal training can be essential for the safety of the party attendees. .

Assistant Administrator Cook told the Commission of a mock party dispersal training session held at TABC headquarters. She stated that she viewed the confusion and the dangers that are encountered at that type of event.

Assistant Administrator Cook addressed Education and Prevention's current initiative which is the Spring Break 2012-2013 grant. She mentioned that the Agency has been active in developing public service announcements (PSAs), the designing and issuing of T-shirts and other items distributed at South Padre Island for Spring Break. Assistant Administrator Cook stated that the Ports of Entry participated in disseminating information at the border bridges. She stated that as part of the expenditure for the 2013 grant, \$80,000 to buy airtime to get the message out in the media through PSA's.

Commissioner Weinberg stated that radios stations will run Public Service Announcements (PSA) free. Commissioner Weinberg inquired if any of the 911 legislation included in the PSA's developed through education and prevention. Assistant Administrator Cook responded negatively at the present time; however she stated that EUDL guidelines are limited to the use for underage drinking projects.

Commissioner Weinberg had the current edition of the *Texas Bar Journal* that contained an article endorsed by the Texas Young Lawyers Association that addressed underage binge drinking. He stated that the Association has offered its support to the survivors of victims of alcohol poisoning.

After a second viewing of the video, Commissioner Weinberg and Presiding Officer Cuevas agreed the video produced by the education and prevention division was good, but asked for the 911 legislation message to be included at the end. Commissioner Fredricks commented that with an addition of the 911 legislation, the message of the video would be muddled. She stated the video deals with "Know the Signs of Alcohol Poisoning". She explained the thought of the video is for a minor to avoid taking too many drinks that would lead to alcohol poisoning. Presiding Officer Cuevas stated Commissioner Fredricks brought up a good point.

Assistant Administrator Cook stated that the creation of smart phone applications will also be developed from the Spring Break 2012/13 grant funds. For example:

- Complaint Application - Report over-service, sell to minors, after hour sales
- Awareness Application - Connects to mobile website & PSA's;
- Game—single or multiplayer.Post scores to Facebook

## Info on different Blood Alcohol Content (BAC) levels

Assistant Administrator Cook's report contained graphic copies of literature created in education and prevention and is available for distribution. Some of the featured materials include: Law Enforcement Partnership Training – used in law enforcement only and related to working with TABC in an investigative capacity; At Risk Priority Training – Security training for on-premise; promote current MAP, Serve programs; Retailer Salute Program – Acknowledge sellers for compliance work in partnership with the retailers to avoid a sell to minor

Commissioner Fredricks inquired where is the videos/PSA's located. She noticed that they were being shown on YouTube. Assistant Administrator Cook stated that the Agency has a YouTube channel. She stated that there are links on the Agency's website that connect to the YouTube channel.

Assistant Administrator Cook stated that her presentation may contain information covered during at another meeting, but the intent to show the Agency's continual message toward alcohol awareness. She stated that posted on the Agency's website will be charts and videos of alcohol by volume to alert the consumer of the impact of drink size versus alcohol content. Currently in Beta Testing Assistant Administrator Cook stated that the percent of alcohol by volume, new types of products entering the market and what the labels look like can be found on the website.

Commissioner Weinberg inquired who would use the information. Assistant Administrator Cook stated that the audience will vary. Director Beck commented that the Beer Hobbyist who is perusing the website for something new and different. Administrator Steen commented that TABC agents would find the site useful. Assistant Administrator Cook gave kudos to Information Resources Division's Director Jay Webster and Tax Division's Director Steve Greinert for a thorough job in the creation of the document and for keeping the document simple to access information.

Commissioner Fredricks quizzed Assistant Administrator Cook if the alcohol content can be found by using the TABC Label Database online. Assistant Administrator Cook answered affirmatively.

In answer to Commissioner Fredricks' query on how does the Agency communicate to the public, Assistant Administrator Cook's presentation listed:

- Traditional Classroom – Prevention messages in core curriculum classes train teachers – support students thinking about the issue; (free curriculums written by TABC)
- Trainings with access to materials stored on the web; provide training with video to refresh concepts (YouTube)
- Jump start conversations with burst of information; provide conversation starters to interested parties all year (Twitter)

- Share information about enforcement efforts, recent studies, available materials; promote communication by providing timely information (Face book)

Assistant Administrator Cook stated that there is a daily update posting to Face book. The intent is to keep the visitors interested reviewing the page. Presiding Officer Cuevas inquired as to how many followers visit Face book. Assistant Administrator Cook and Director Beck responded “256”. He asked how long Face book has been operational. Assistant Administrator Cook responded with a two-part response:

- (1) Initially the Face book was operational two years ago with Director Beck as the Manager;
- (2) Based on various changes of how businesses manage Face book, TABC reorganized under a different business name and moved Face book under education and prevention on January 1, 2012.

Presiding Officer Cuevas inquired about the number of Face book followers before the change. Assistant Administrator stated 1,500. Presiding Officer Cuevas asked for Assistant Administrator Cook’s expectations concerning Face book. She responded to gain the total number of followers of two years ago of 1,500 and to exceed that number. She stated the success will be realized if the information on the page is kept current and how the face book site is used to gain the interest of followers.

Administrator Steen commented regular press release is not attracting much attention. He stated that when the Agency’s information is put on Face book, the press selects the interesting portion of the sound bite to develop their storyline.

Presiding Officer Cuevas asked who is TABC’s audience. He stated if the media has the first line of interest, who else is interested. Assistant Administrator responded that TABC has a mixed audience that includes parents, students, industry, media, employees, and community because of the wide variety of information on the website and it could attract many types of interest groups. Director Beck spoke about the Twitter audience that includes about 800 followers of all types (media, parents, kids, loyal wine drinkers, loyal beer drinkers, industry, attorney, and bloggers).

Assistant Administrator Cook’s report is supported by a PowerPoint presentation and PSA videos. (Attachment 3)

### **INTERNAL AUDIT OF LICENSE AND PERMIT REVENUE PROCESSING**

Presiding Officer Cuevas called upon Mr. Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk Certified Public Accountants for the presentation of the agenda item, Internal Audit of License and Permit Revenue Processing.

Mr. Gregorczyk gave a brief explanation of the audit purpose of the internal audit of license and permit revenue processing was to evaluate compliance with legal

requirements, the adequacy of internal controls and the effectiveness of procedures used by the Licensing and Business Services Divisions for processing revenues for alcoholic beverage license and permit applications and renewals.

Commissioner Fredricks is a member of the Audit Committee stated that the committee met in February 2012 and the audit concerns contained in the report have been resolved.

Mr. Gregorczyk outlined a number of audit objectives, audit conclusions and recommendations:

Audit Objective 1:

- Determine if there are adequate internal controls and effective and efficient procedures for processing all incoming revenues at headquarters associated with licenses and permits;

Audit Conclusions:

- The Business Services Division (BSD) has adequate internal controls and effective and efficient procedures for processing all incoming revenues associated with licenses and permits at Headquarters.

Recommendations:

- None

Audit Objective 1:

- If there are adequate internal controls and effective and efficient procedures for ensuring that all licenses and permits are not issued until the correct fees have been collected.

Audit Conclusions:

- Internal controls are in place to ensure that licenses and permits are not issued by Licensing without collection of the appropriate revenues, except that staff has the capability to override the fees required in Versa Regulation (VR) and this occurs frequently with respect to override of late fees imposed by the VR system. This is an internal control weakness.

Recommendations:

- Licensing Division management should monitor the fee override activities performed in the Versa Regulation system to ensure that all fee changes satisfy agency requirements. Override capabilities should be limited to processors, who should obtain approval from their supervisors for any fee changes made including the amount, the date and the reason for all changes other than the \$100 late fee adjustment.
- Licensing should work with the IRD and the VR vendor to determine if some type of change could be made in VR to eliminate the automatic \$100 late charge that is assigned by the system for certain types of agent license renewals. This would eliminate the need to override the VR system and would eliminate most overrides that currently are performed.

Audit Objective 2:

- Determine if the Licensing Division has adequate internal controls and effective procedures for processing temporary receipts, billing local tax authorities and collecting accounts receivable due to the agency;
- Evaluate the efficiency of the overall process for issuing temporary receipts and collecting revenues.

Audit Conclusions:

- The Licensing Division has adequate internal controls and effective procedures for processing temporary receipts, billing local tax authorities and collecting accounts receivable due to the agency, but there is much inefficiency in the current process.
- The current process often results in significant delays in approving beer applications and collecting associated revenues.
- A total of 6,440 temporary receipt applications were approved in FY 2011. The average number of days from receipt of the application until the date the fees were paid to TABC was 59 days. The total fees deposited in local banks and not in the State Treasury for these 59 days was \$6,459,289.
- One other legal issue was noted. TABC allows the counties to retain 5% of the license fees collected on approved beer licenses and renewals. This practice dates back to the 1940's according to staff, but review of the TAB Code does not indicate any provisions in the Code or in the agency administrative rules that authorize TABC to allow the counties to keep 5% of the state fee paid for each approved application.

Recommendations:

- TABC should seek a legislative change in the TAB Code regarding beer licenses and renewals so that applications and fees for beer licenses can be submitted directly to TABC. This statutory change could be done without eliminating the requirement for the county judge to approve all beer licenses and it would enable the counties to collect their fees and TABC to collect the State's fees.
- TABC should determine what actions are necessary regarding the long-standing practice of allowing counties to retain 5% of state fees collected for beer licenses since there appears to be no statutory authority for the counties to receive these funds.

Commissioner Weinberg questioned if the application process could be changed to expedite the deposit of monies collected. Administrator Steen commented that the decision to change from the way the collection has been done for several years could be difficult because of the political climate in the larger counties versus the smaller counties. Commissioner Weinberg explained that he is suggesting for the application process to remain at the county level, but to send the money directly to TABC. Administrator Steen stated that there is a possibility for that to happen, however when the application is not connected with money, processing issues will occur.

Mr. Gregorczyk discussed the practice of local counties retaining 5% of the state fees collected for beer licenses. As in his report, he stated that there is no statutory authority for the counties to receive these funds and suggested that TABC research the matter further. Commissioner Fredricks suggested a search through the County Code. Administrator Steen added a comment to search through the local County Code for an answer.

Audit Objective 3:

- Determine if there are adequate internal controls and effective and efficient procedures for the timely receipt and processing all incoming revenues associated with license and permit revenues received in TABC field offices.

Audit Conclusions:

- Field Offices have adequate procedures and internal controls in place for the receipt and processing all incoming revenues associates with license and permit revenues.

Audit Objective 4:

- Determine if all deposits are being processed by Business Services in accordance with required state time frames.

Audit Conclusions:

- Revenues from all licenses and permits processed in FY 2011 were deposited in the State Treasury within three days of receipt at Headquarters in accordance with State requirements.

Recommendations:

- None

Audit Objective 5:

- Determine if there are adequate internal controls and effective and efficient procedures for the timely processing of all overpayments related to license and permits.

Audit Conclusions:

- TABC has adequate internal controls for the processing of all overpayments related to licenses and permits.
- Procedures are in place to ensure that all overpayments are valid, accurate and approved before overpayment refunds are made.

Recommendation:

- Business Services should revise its procedures for processing overpayment requests to reduce the number of days from date of request for an overpayment from Licensing to date of processing for payment by the Business Services Division. If it is not practical to process each payment when received, then consideration should be given to a weekly batch processing rather than monthly batch processing.

Mr. Gregorczyk stated that TABC management concurred with the findings and recommendations of the audit and will implement all recommendations by the target dates indicated in the management response with Director Eskew being the responsible part for implementing all recommendations.

**Presiding Officer Cuevas called for a motion. Commissioner Fredricks made a motion to move for the approval of the Texas Alcoholic Beverage Commission's Internal Audit of License and Permit Revenue Processing. Commissioner Weinberg seconded and the motion passes.**

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

Assistant General Counsel Wilson briefed the Commission of the rules originating from the case *Authentic Beverage Company, Inc. vs. Texas Alcoholic Beverage Commission*, No.A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), citing certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. He stated that Rule §45.71 was not declared unconstitutional, it is appropriate to amend it to clarify the use of terms in light of the *Authentic Beverages Order*.

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §45.71, DEFINITIONS**

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to publish in the *Texas Register*, for a 30-day period, the proposed amendment to Rule §45.71, Definitions. Commissioner Fredricks seconded and the motion passes.**

Commissioner Weinberg inquired if the rules could be grouped and each title read before a motion is given and a vote is taken. Assistant General Counsel Wilson answered affirmatively and gave a brief overview for each agenda item.

**(Presiding Officer Cuevas read agenda items 9 through 14; He called for a motion, a motion was given and a vote was taken on the agenda items collectively)**

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §45.77, CLASS AND TYPE**

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to publish in the *Texas Register*, for a 30-day period, the proposed amendment to Rule §45.77, Class and Type. Commissioner Fredricks seconded and the motion passes.**

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §45.79, ALCOHOLIC CONTENT**

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §45.79, Alcoholic Content. Commissioner Fredricks seconded and the motion passes.**

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §45.82, PROHIBITED PRACTICES**

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to publish in the *Texas Register*, for a 30-day comment period, the proposed**

amendment to Rule §45.82, Advertisement: Prohibited Practices. Commissioner Fredricks seconded and the motion passes.

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §45.90, ADVERTISEMENT: PROHIBITED STATEMENTS**

Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §45.90, Advertisement: Prohibited Statements. Commissioner Fredricks seconded and the motion passes.

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §45.110, INDUCEMENTS**

Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §45.110, Inducements. Commissioner Fredricks seconded and the motion passes.

**APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE §41.23, BASIC GENERAL RECORDS REQUIRED**

Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to publish in the *Texas Register*, for a 30-day comment period, the proposed amendment to Rule §41.23, Basic General Records Required. Commissioner Fredricks seconded and the motion passes.

(Attachments)

**PUBLIC COMMENT**

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

**EXECUTIVE SESSION**

The regular open session of the Texas Alcoholic Beverage Commission was recessed at 12:19 p.m., March 27, 2012 and an executive session was 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, pursuant to Texas Government Code, §551.071, §551.074.

The Texas Alcoholic Beverage Commission concluded its executive session and resumed in open regular session on March 27, 2012 at 1:05 p.m. No final action, decision or vote was made in executive session.

### **NEXT MEETING**

Presiding Officer Cuevas announced the next meeting dates are scheduled for Tuesday, April 24, 2012 and Tuesday, May 22, 2012.

### **ADJOURNMENT**

Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg so moved and Commissioner Fredricks seconded. The motion was made and seconded. The motion carried, and Presiding Officer Cuevas announced that the meeting was adjourned at 1:06 p.m.

# **Attachment 1**

**Administrator's Report: Administrator and  
Agency Activities, Budget Issues, Staff  
Achievements**



# **Administrator's Report**

## **Alan Steen, Administrator**

**TABC Commission Meeting**

**March 27, 2012**



# Significant Activities

## THE TEXAS TRIBUNE

STATE AGENCIES > TEXAS ALCOHOLIC BEVERAGE COMMISSION

### TABC Develops Apps to Curb Excessive, Underage Drinking

by Gerald Rich | March 8, 2012 | [7 Comments](#)



 [Enlarge](#)

As college students from across the nation head to Texas beaches for spring break, the [Texas Alcoholic Beverage Commission](#) is already making plans to have new tools at its disposal for next year's parties — mobile phone apps that it hopes will curb excessive and underage drinking.

One app will allow users to gauge their motor skills through a series of increasingly difficult tests, and the other would let anyone file a complaint against an establishment if it is suspected of serving alcohol to a minor or of

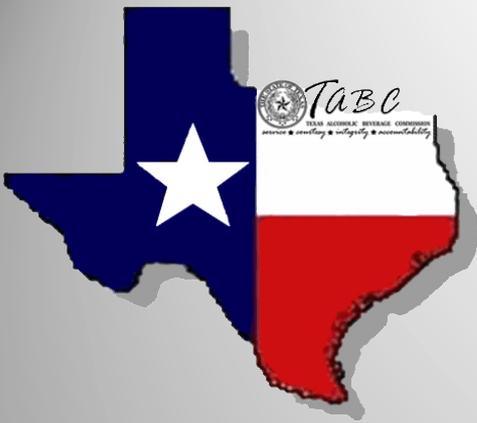
breaking rules against serving too much alcohol to customers.



# Accomplishments

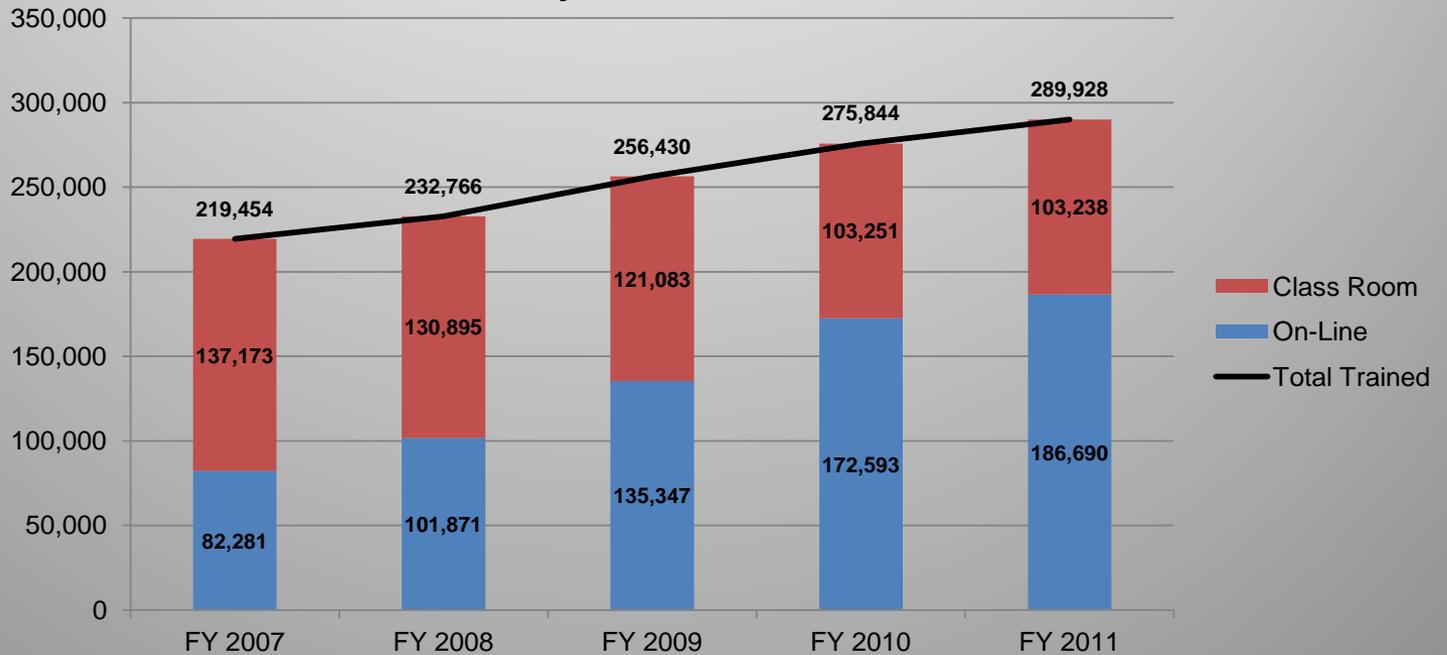


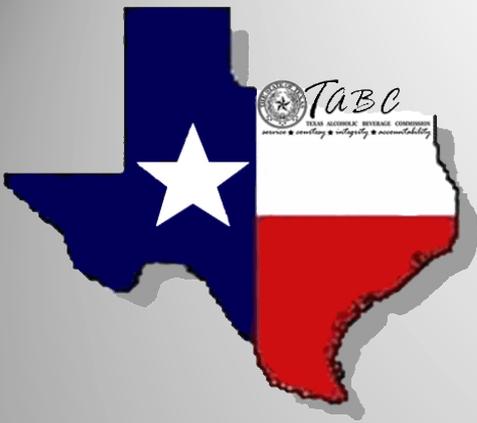
- Due to the thorough job we did on the audit on “El Cubo” lounge, the Appeals Court upheld the cancellation. This has closed the book on the 2900 Walnut Hill businesses that were causing problems to the neighborhood and were a threat to public safety.



# TRENDS

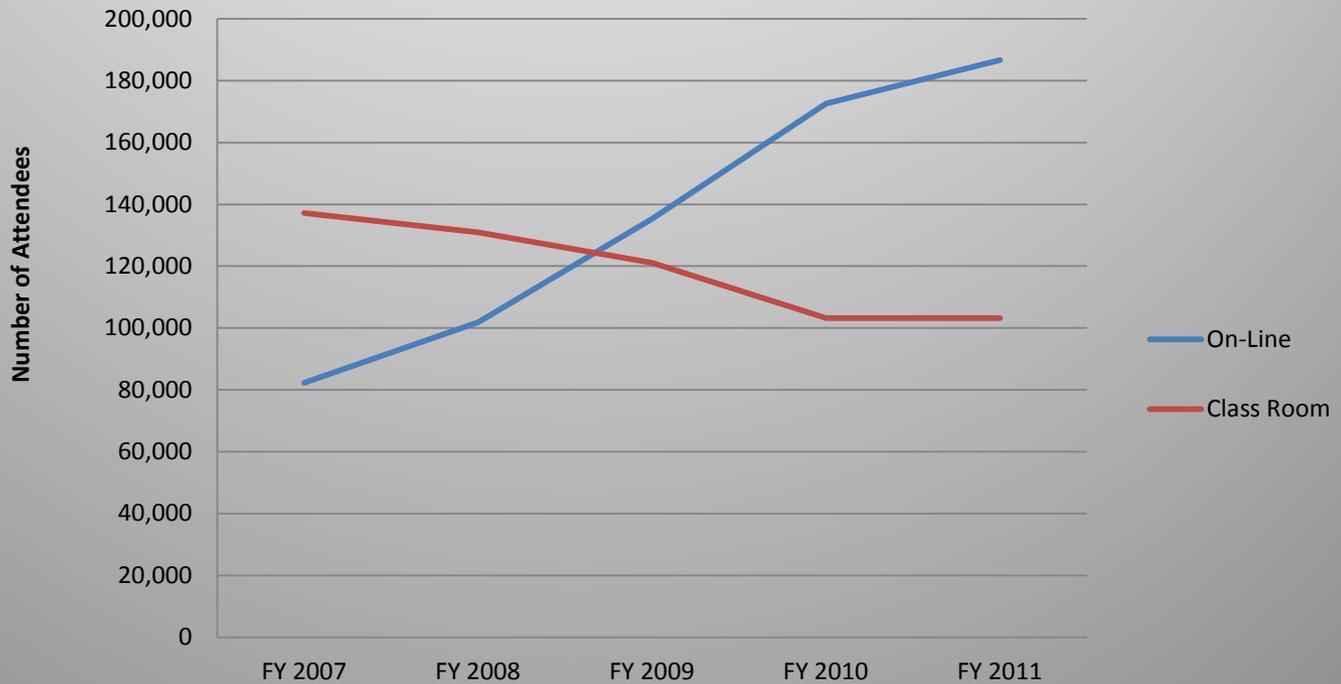
## Seller Training Trainees By Method of Instruction

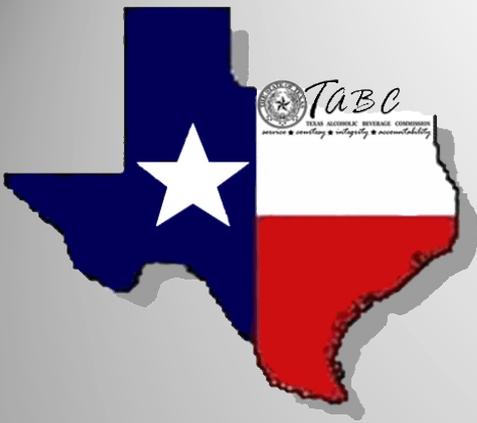




# TRENDS

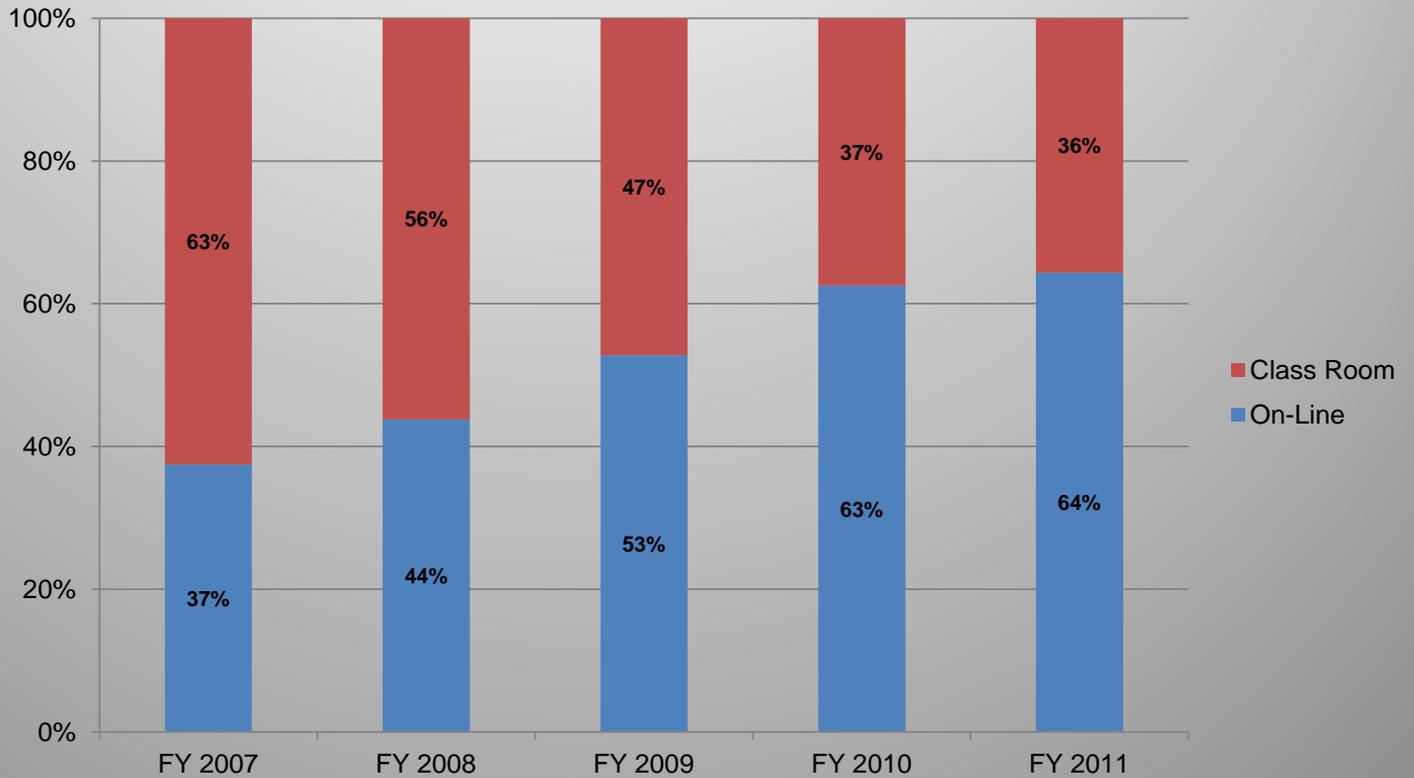
## Trainees by Class Type Online v. Classroom

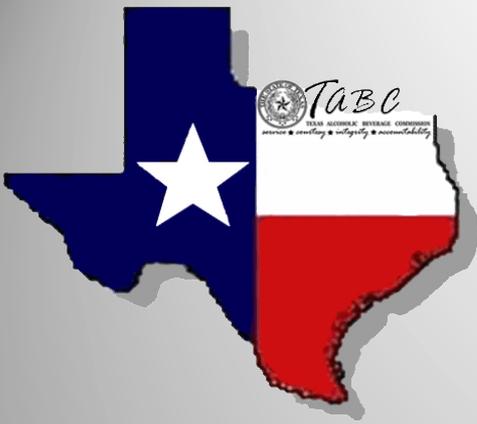




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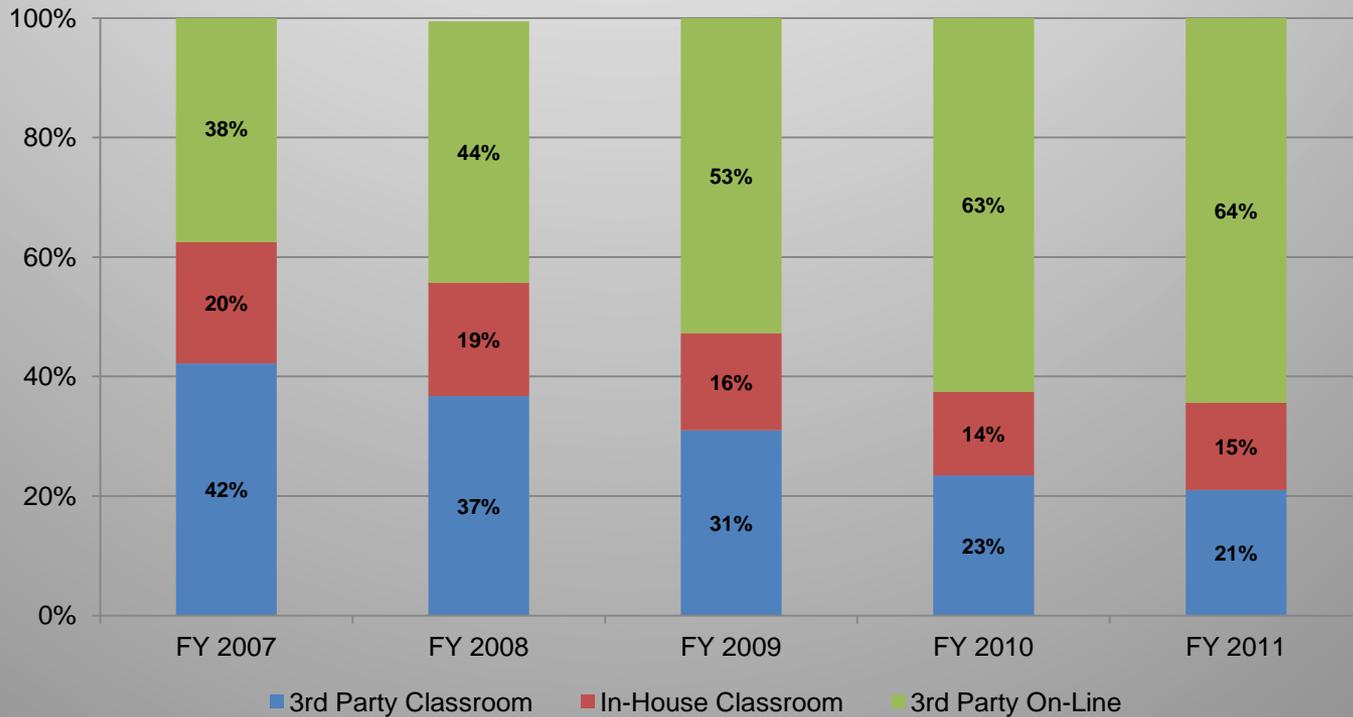
Class Type as a Percentage of Market Share

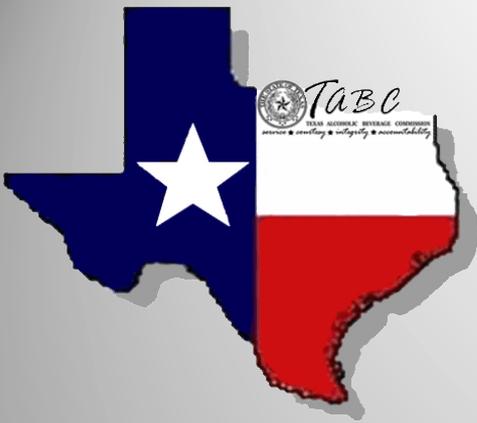




# TRENDS

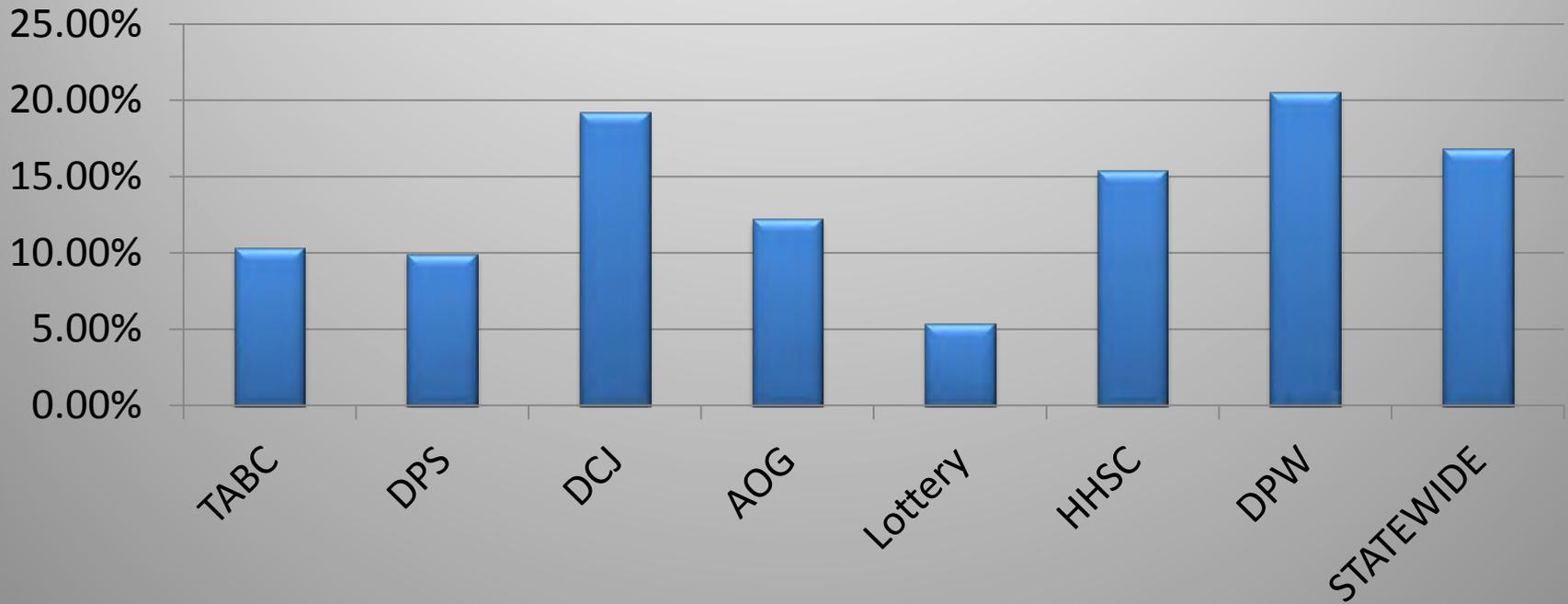
**Class Type Totals as a Percentage of Trainees Completing Approved Courses**

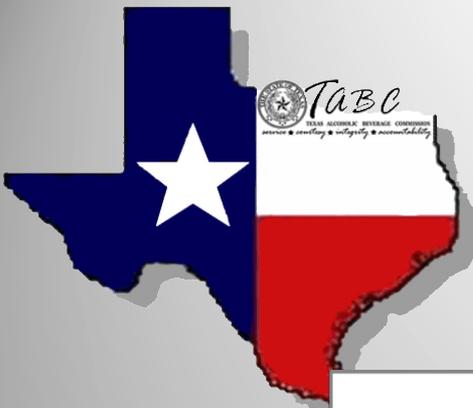




# Trends

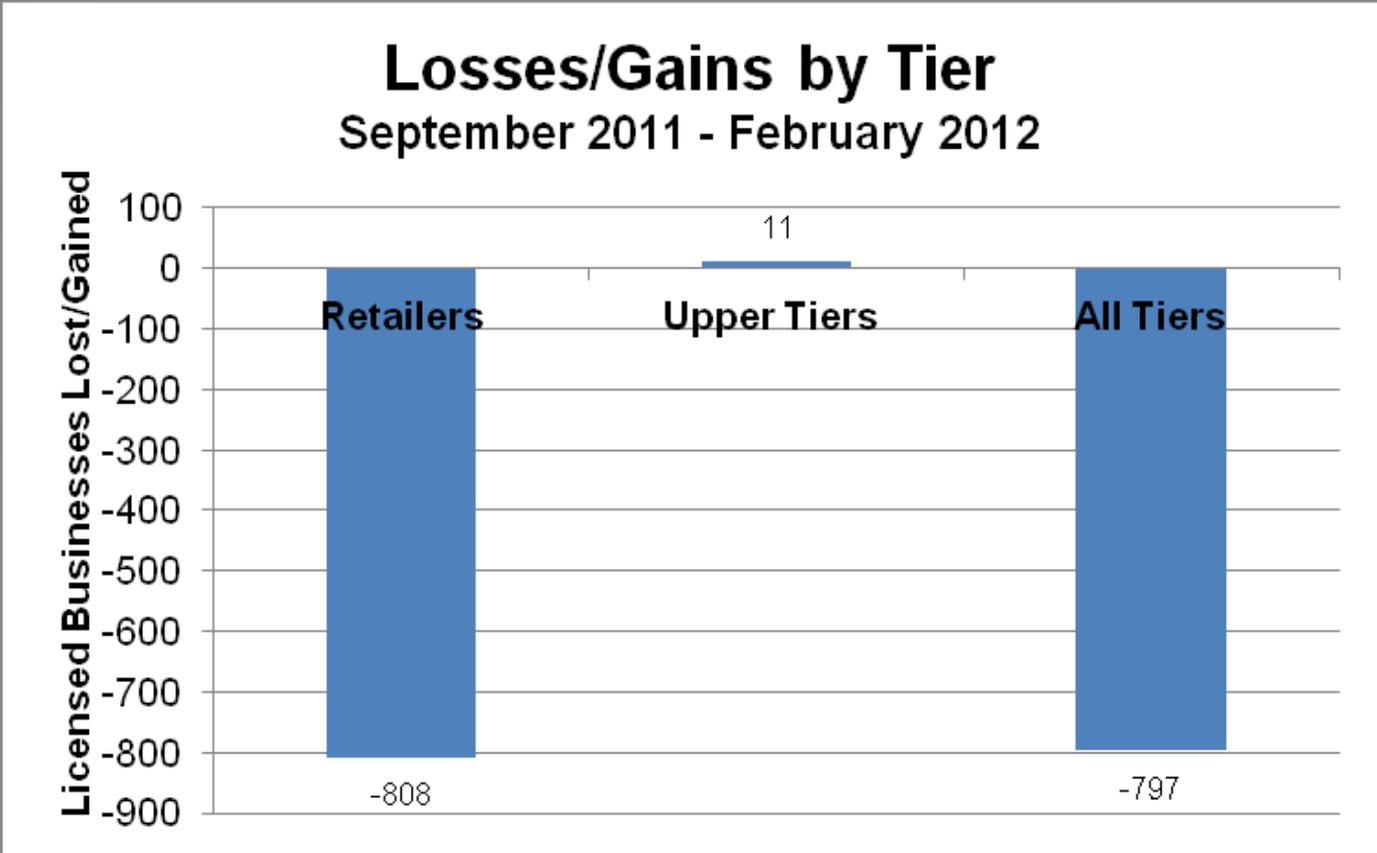
## Turnover by Agency, 2011





# Trends

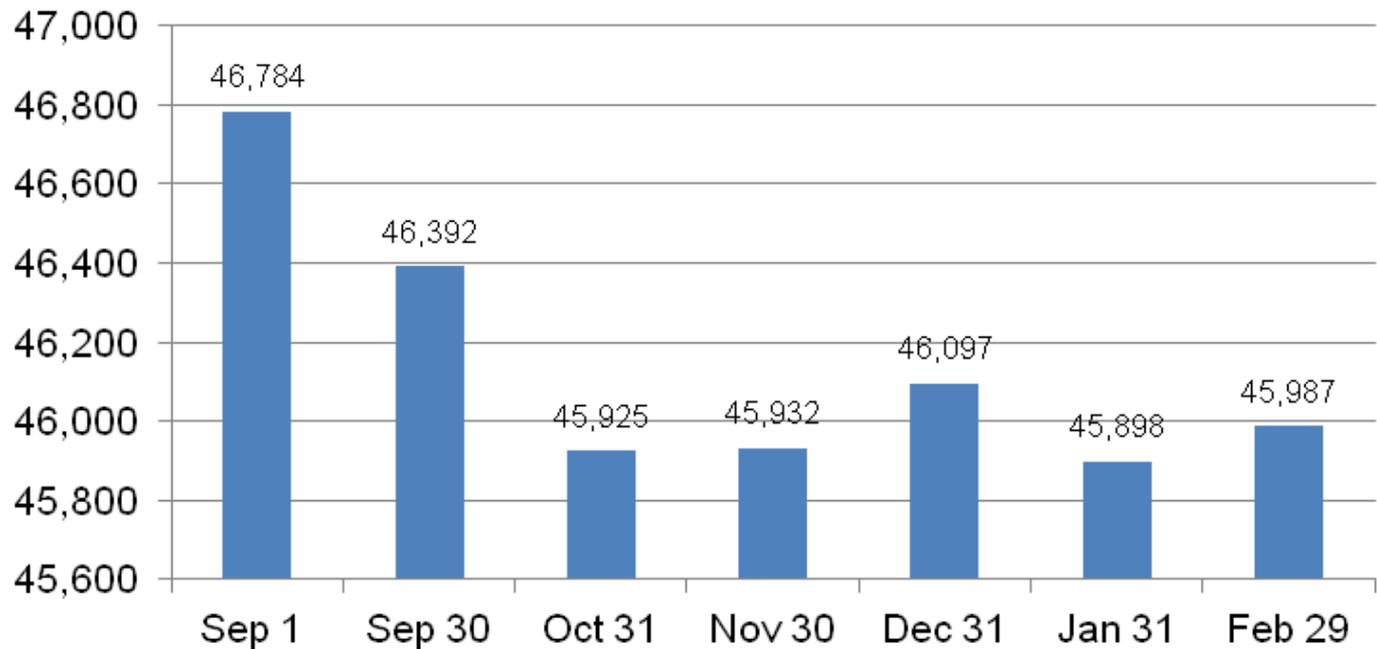
## *Decline in In-State Licensed Businesses*

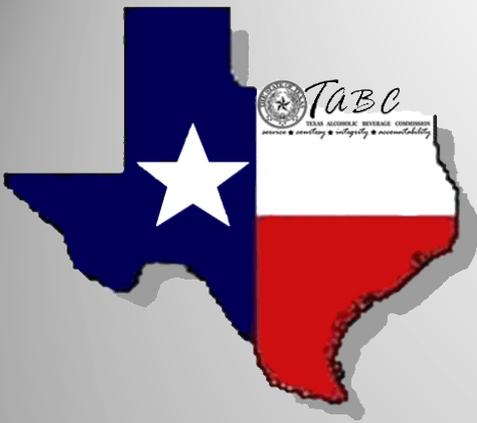




# Trends

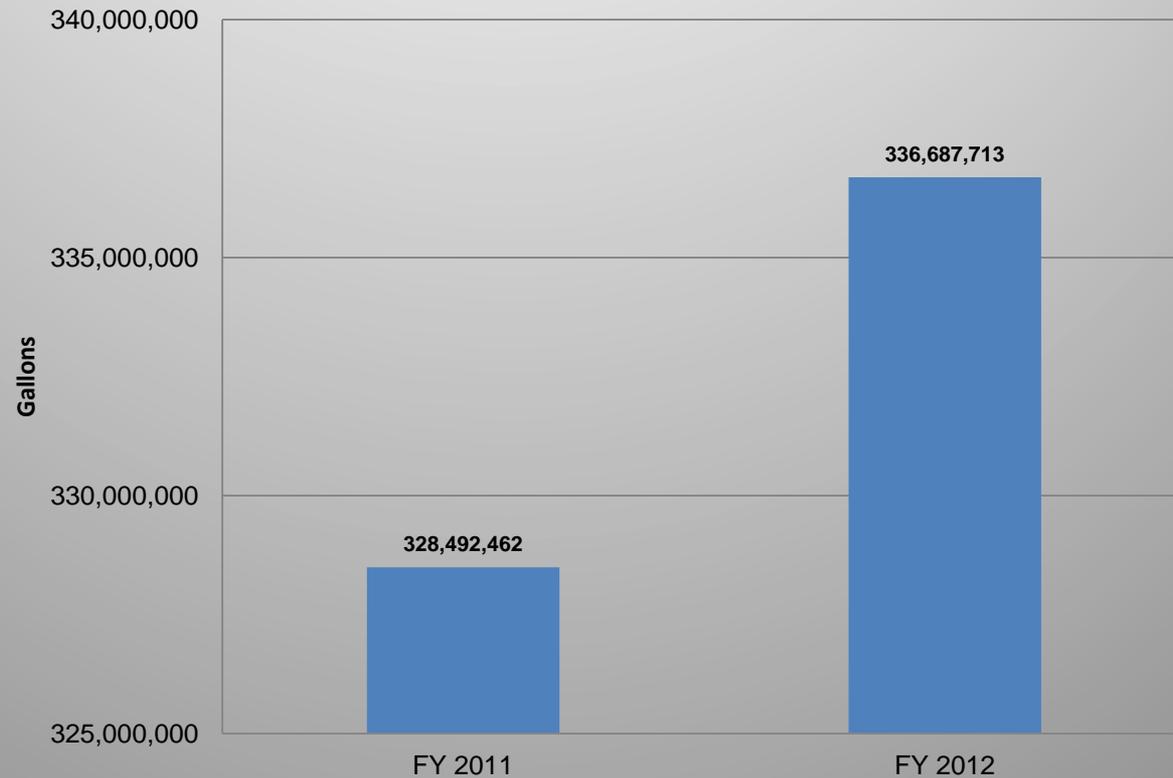
## Licensed Businesses September 2011 - February 2012

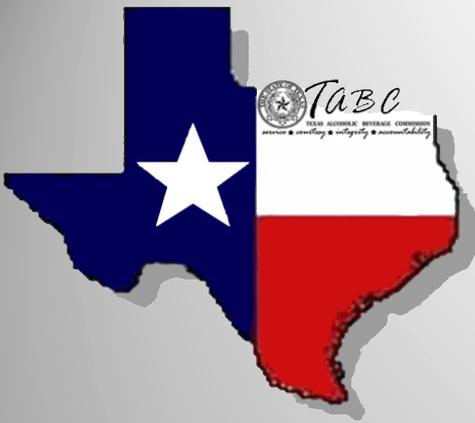




# Trends

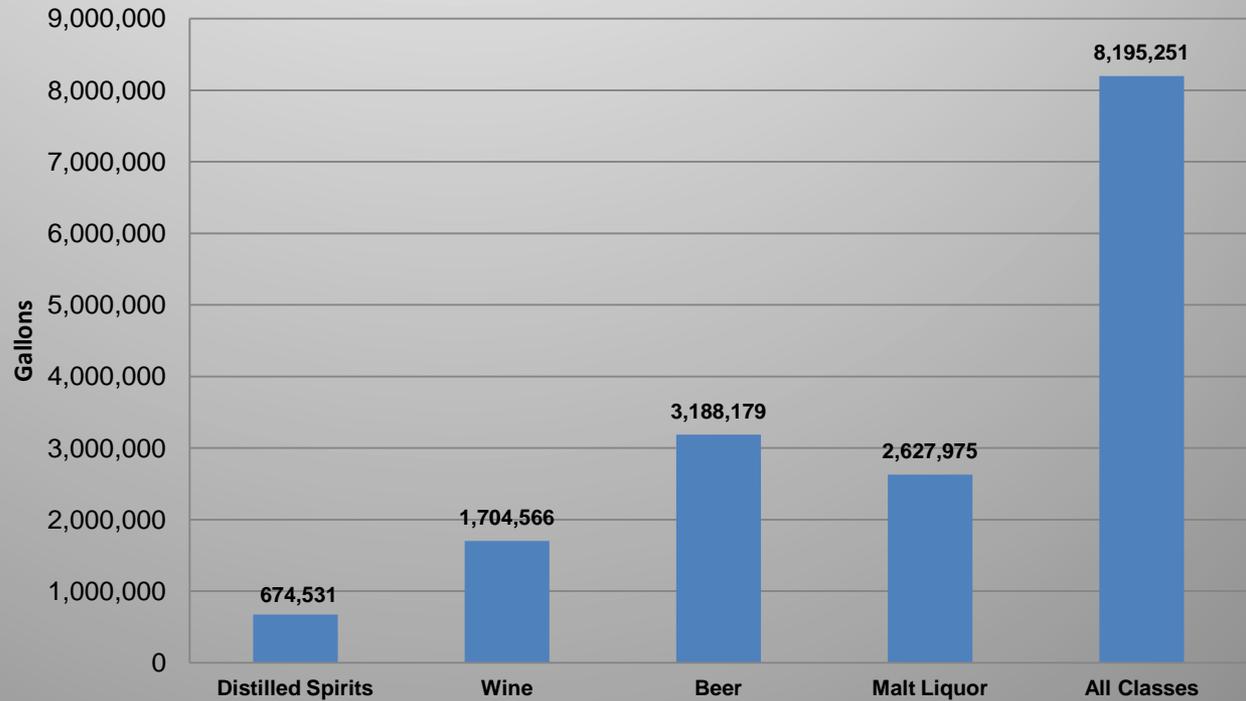
**Alcoholic Beverage Wholesale  
Sales Volume  
September - February**

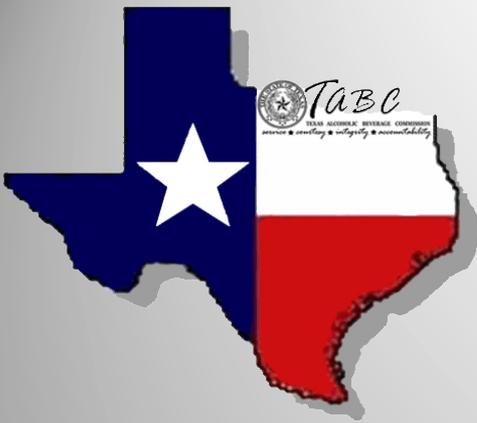




# Trends

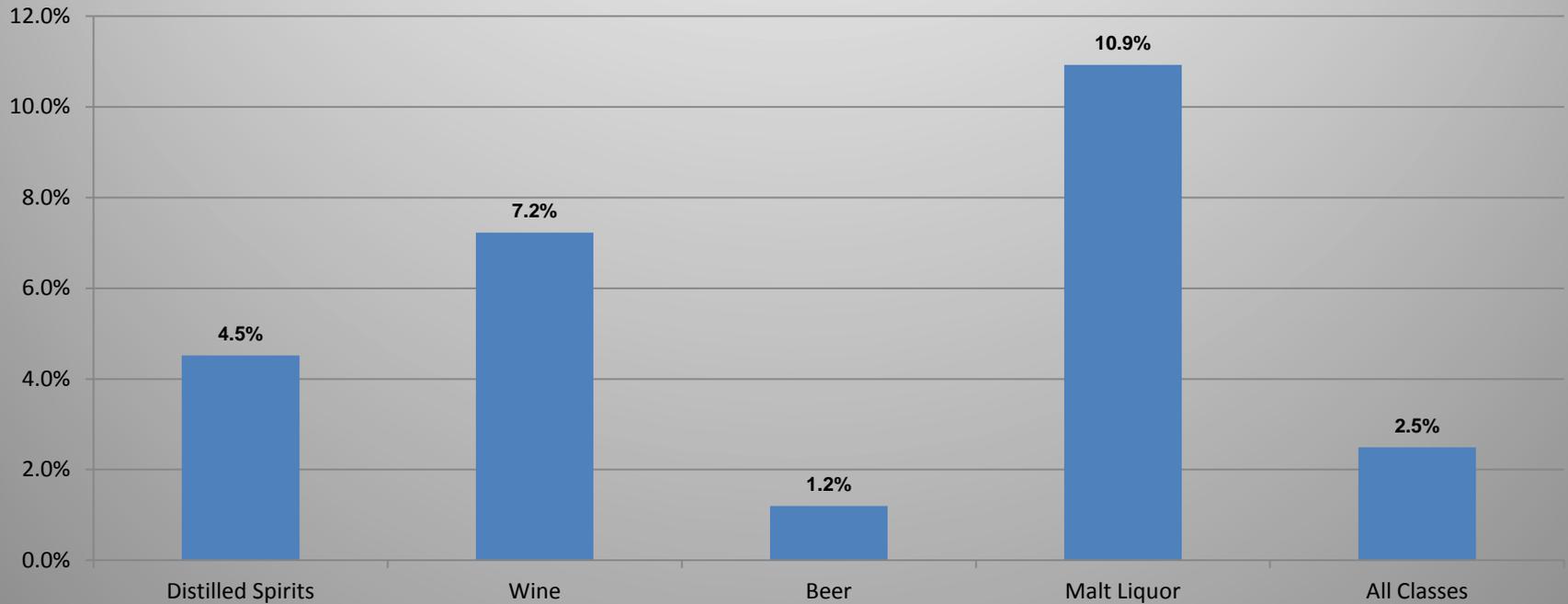
**Changes in Wholesale Sales Volume**  
From FY 2011 to FY 2012  
(September - February)

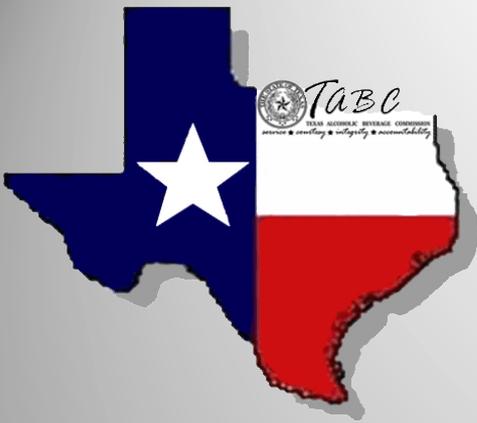




# Trends

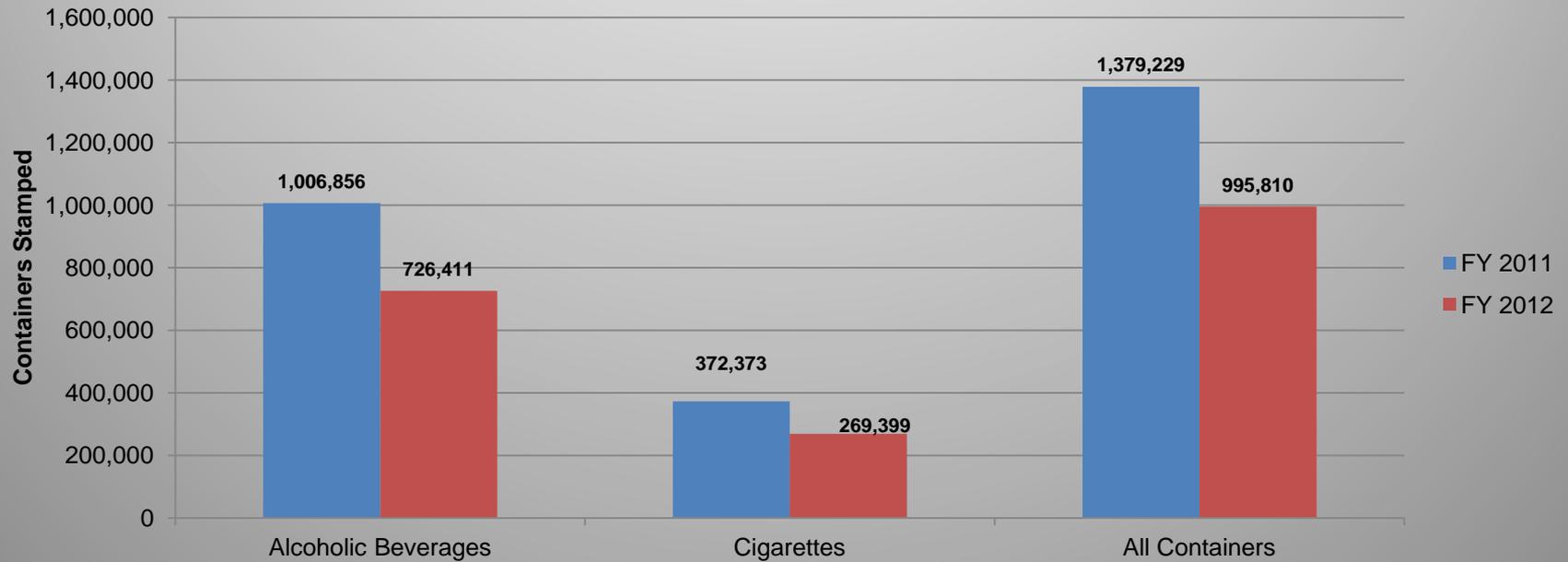
**Percentage Change in Gallons Sold  
From FY 2011 to FY 2012 (Sept - February)**

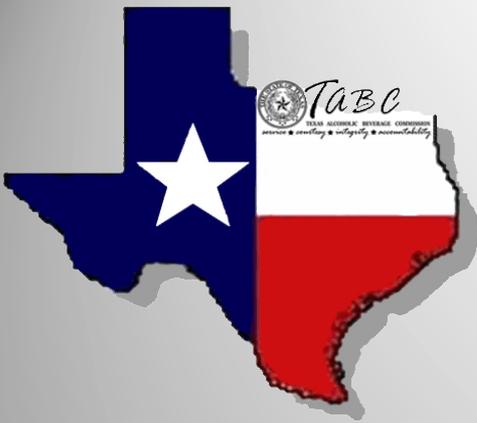




# Trends

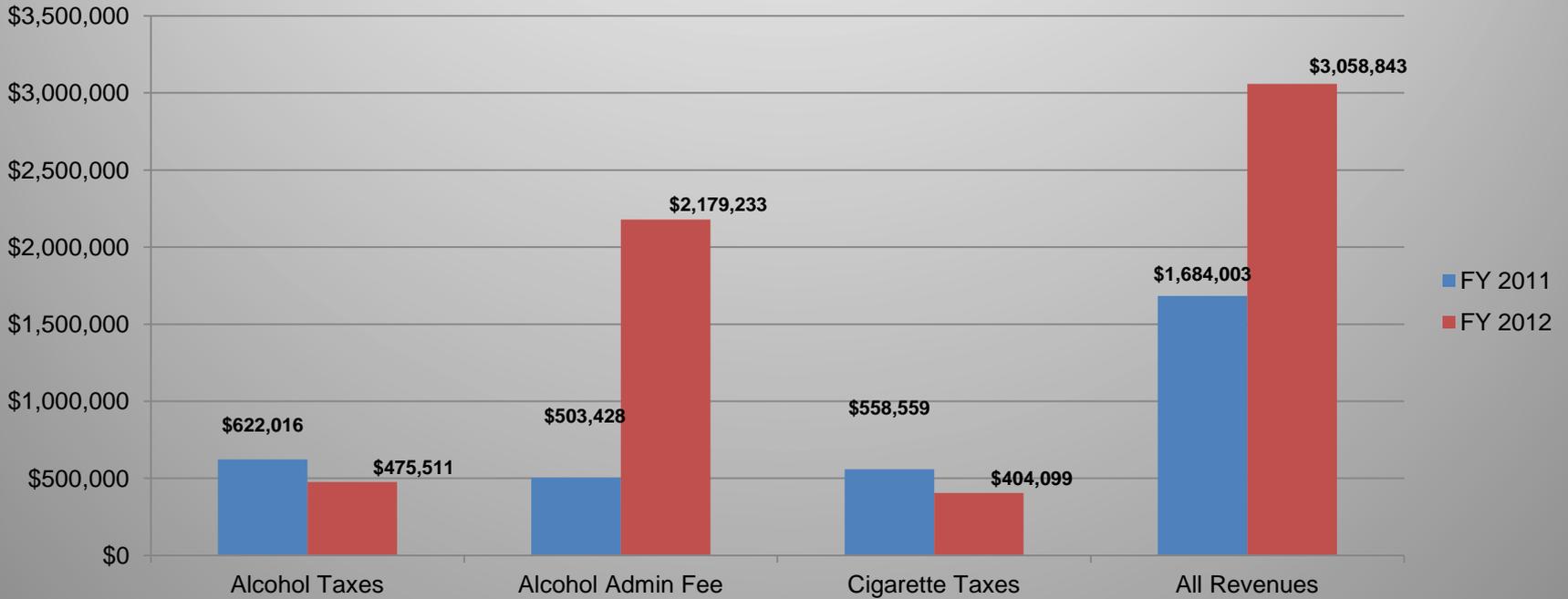
## Personal Importations Taxed By Ports of Entry September - February





# Trends

## Ports of Entry Revenues September - February





Texas Alcoholic Beverage Commission

# QUESTIONS

# **Attachment 2**

**Strategic Planning Briefing**

# Strategic Planning



Commission Meeting

March 27, 2012

# Internal Management Goals



- January Supervisor Meetings to review employee survey results.
- February-March Staff Meetings to review survey results and provide feedback.
- March 22<sup>nd</sup> HQ directors reviewed employee feedback to develop new internal management goals.
- March 26<sup>th</sup> Administrator review
- March 27<sup>th</sup> Commission Meeting

# Internal Goal #1 (Additional Strategies)



## Continue to explore ways to ensure employees are compensated fairly.

- Review the Career Ladder.
- Explore non-financial incentives to reward employees.
- Explore equity adjustments for comparable positions within the agency.
- Conduct a study to ensure accurate classification of civilian employees.



# Internal Goal #2 (New Strategies)



## **Continue to improve internal communication.**

- Provide training on how to fully utilize the intranet (Sharepoint) and the internet.
- Expand the use of Sharepoint.
- Expand use of webinar or video conferencing.
- Downward communication should go to all impacted parties (not strictly through chain of command).



# Internal Goal #3 (New Strategies)



**Continue to improve and expand employee training.**

- Develop topical training that can be viewed at any time using Webinar or video conferencing.

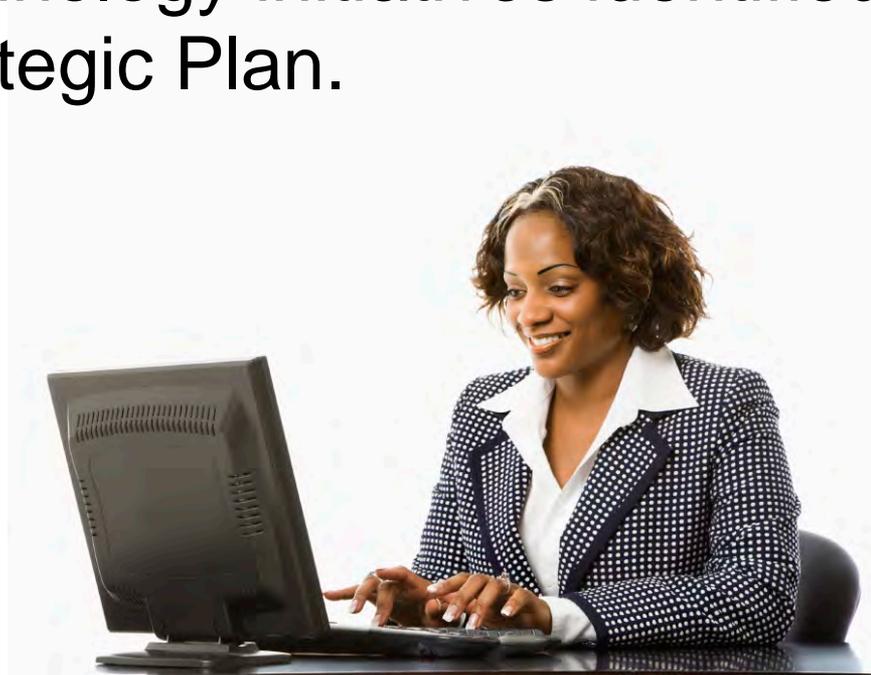


# Internal Goal #4 (New Strategies)



**Leverage technology to improve employee work experience and environment.**

- Support technology initiatives identified in the Agency Strategic Plan.



# Internal Goal #4 (New Goal)

## Continue to find ways to improve Ports of Entry facilities and/or work areas.

- Negotiate contracts with facility owners to include improvements.
- Make other improvements to work areas where possible.

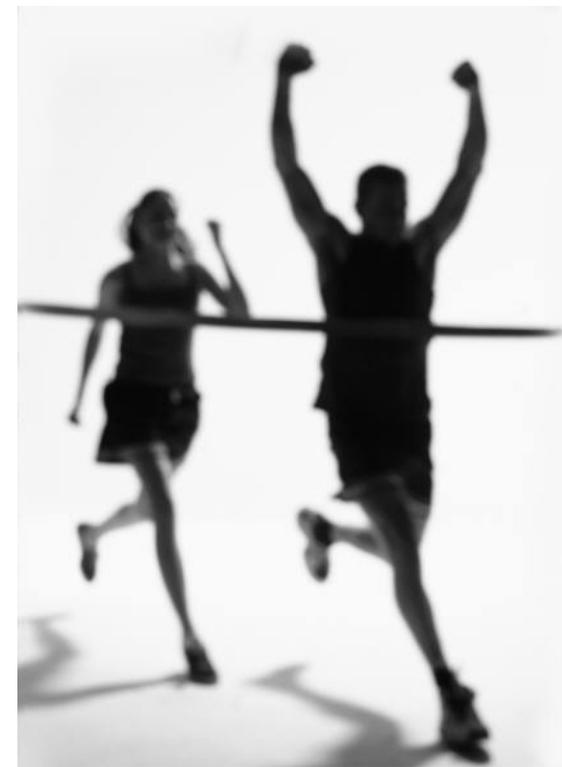


# Internal Goal (Completed)



## Climate/Feedback

- Review current performance evaluation tool to identify improvements.
- Develop training class that covers how to utilize current performance evaluation tool and how to give feedback to employees.



# External Management Goals



- February 23<sup>rd</sup> Stakeholder Meeting. Presented progress on past goals and discussed future needs.
- March 20<sup>th</sup> Executive staff review
- March 26<sup>th</sup> Administrator review
- March 27<sup>th</sup> Commission Meeting

# External Goal #1 (Amended)



- **Current**

- Identify high-risk businesses by using non-public-safety violations as an indicator that public safety violations may be occurring.

- **Amended**

- Identify and gather information collected outside TABC that is an indicator of high-risk business behavior or an unstable marketplace.

# External Goal #2 (Strategies Amended)



## **Continue to improve communication with industry to facilitate education and voluntary compliance.**

- Continue quarterly wholesaler meetings and conduct face-to-face meetings upon request.
- Conduct semi-annual retailer meetings for at-risk locations and other interested retailers, associations and interest groups.
- Continue marketing practice and other agency bulletins.
- Continue tours of stakeholder facilities.
- Request additional funding from the Legislature to expand the industry training and communication program, including training available on the TABC website, covering Alcoholic Beverage Code and Rules.

# External Goal #3 (Strategies Amended)



**Work with stakeholders to continue prevention and education programs, including prevention of underage drinking and over-service.**

- Do more to promote the availability of personnel to speak at school/community events and parent groups and talk more about the consequences of providing alcohol to minors.
- Continue focus on third party providers, expanding education and enforcement. Continue MAP, Project SAVE and SERVE.
- Train local law enforcement.
- Explore methods to distribute materials to parents and young adults.

# External Goal #4 (Amended)



- **Current**

Continue to streamline the licensing process to reduce cost and time involved.

- **Amended**

Accelerate the licensing process to put good actors in business while setting up controls to keep bad actors out.

- Work to standardize the licensing process with local government statewide, with the intent to make the process as efficient as possible.

# External Goal #5 (New)



## **Invest in technology to better to serve the industry and the public.**

- Allow permit holders to opt-in to use email.
- Develop an electronic portal with license and permit information and allow online modifications.
- Implement technology that allows TABC personnel to be more mobile and accessible to license/permit holders.
- Implement bar coding on permit/license and tax stamps.
- Use technology to better serve the service-sector thought process going forward.

# External Goal #6 (New)



## **Explore ways to reward voluntary compliance in addition to penalties for non-compliance.**

- Scoring system to track historical compliance and participation in TABC programs.
- Modifying the sanctioning program to give weight to historical compliance (e.g. not selling during a minor sting).
- If we do reward permit holders, measure the results.

# What's Next?



- March 27-28<sup>th</sup> Off-site meeting with HQ directors and Commissioners to develop high-level vision and roadmap.
- April 24<sup>th</sup> Present Strategic Plan to Commissioners.
- May 22<sup>nd</sup> Commissioners vote on Strategic Plan.

# Questions or Feedback?



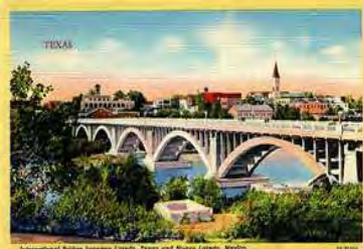
# **Attachment 3**

**Education and Prevention Briefing**

# Education & Prevention



## Educational Campaigns Meeting Modern Expectations



# Texas Prevention Education



**1893** - Helen Stoddard of Forth Worth secured the passage of a bill that required all public schools to teach students about alcohol.

**2009** - Health Education was changed from a required to an elective course in public education.

**2009**- Law Enforcement II requires teachers to teach about alcohol laws in the course.

**2010** - TABC received approval from TEA for a curriculum designed for high school Law Enforcement II course related to alcoholic beverage laws.



# Latest Craze in Underage Parties

## Project X – Nominated EUDL Success Story

### Enforcing Underage Drinking Laws

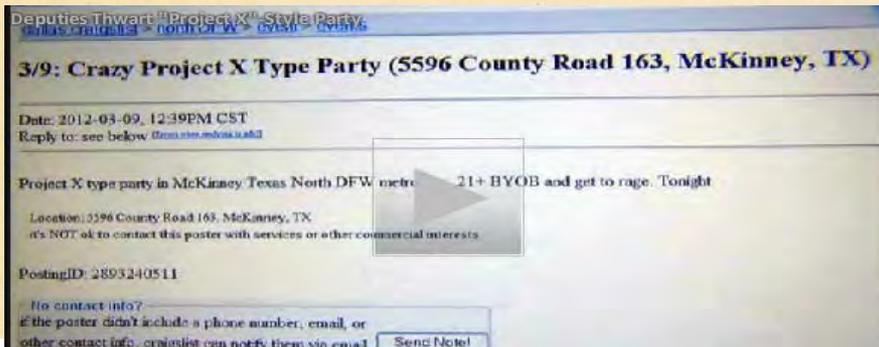


## Collin County Sheriff's Office

- Notified of a Project X Party by teacher
- Confirmed Craigslist, Facebook
- Location Foreclosed Home
- Prevented – used cars with overhead lights to drive attendees away.



- Kids drove over 50 miles
- Estimated over 400 planned to attend
- Made contact with over 100
- 17 year old female – no clothing – in car with 5 males – BAC 0.193



# Project X – EUDL Success Story



## Party Dispersal Training

- Understanding causes of underage drinking
- Generate Strategies for party prevention
- Proactive approach
- Dispersing an underage party
- Understanding how the media can be used to amplify the effects of a controlled dispersal program and maintaining community support.





# Spring Break 2012-2013

- Messaging for those over the age of 21.
- Includes
  - 2 PSA's
- T-shirts and items to distribute at SPI
- Interactive Website (in production)
- Information Booklet
- Media Release – includes PSA airtime



# Creating Smart Phone Applications



Spring Break Funding 2012/13



## Complaint Application

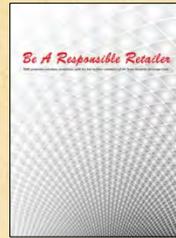
- Report over-service, sell to minors, after hour sales

## Awareness Application

- Connects to Mobile website and PSA's
- Game – single or multi player. Post scores to Facebook.
- Information about difference BAC Levels.



# At Risk Education



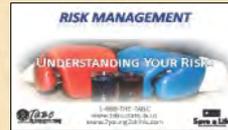
## Law Enforcement Partnership Training

- LE only, related to working with TABC in an investigative capacity.



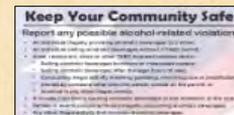
## At Risk Priority Training

- Security Training for On-Premise
- Promote current MAP, Serve programs



## Retailer Salute Program

- Acknowledge Sellers for Compliance

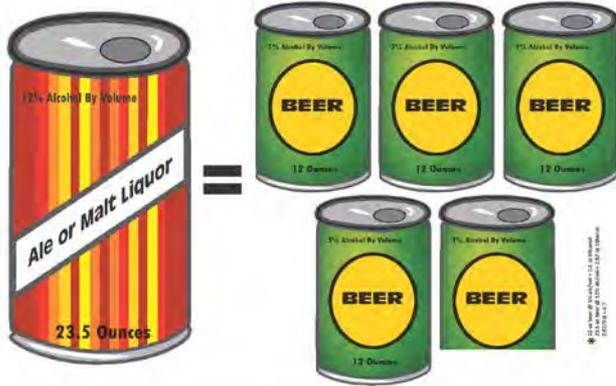


# Alcohol by Volume – Community Program



## Alcohol By Volume Impacts Standard Drink Size

The alcohol in one 23.5 ounce malt beverage (12% ABV) equals the alcohol in 4.7 beers (5% ABV).\*



Alcohol by volume (ABV) is simply the amount of alcohol in a drink compared to the entire volume of the drink. Alcohol concentration varies widely by beverage. Work to know the alcohol content of a canned or bottled beverage! You can start by checking the label, however not all beverages are required to list the alcohol content on the label.

### Measurement Definitions

**Alcohol by Volume (ABV)** - Represents the volume of liquid that is alcohol contained to the entire volume of the drink.

**Alcohol by Weight (ABW)** - Represents the weight of the alcohol contained to the entire weight of the drink.

### Alcohol Definitions

**Ale or Malt Beverage** - A malt beverage containing more than five percent of alcohol by weight (generally 5.0% or more ABW).

**Beer** - A malt beverage containing one-half of one percent to more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer. (Generally, 5.0% and under ABV).

**Distilled Spirits** - Alcohol, spirit of wine, whiskey, rum, brandy, gin, or any spirit produced in whole or in part by the process of distillation, including all dilutions or mechanical mixings, and includes spirit coolers that may have an alcoholic content as low as four percent alcohol by volume and contain plain, sparkling, or carbonated water and may also contain one or more natural or artificial flavors or flavoring ingredients.

**Wine** - A product obtained from the alcoholic fermentation of juice of sound grapes, prunes, berries, or honey, and includes wine coolers.

### Standard Drink

Standard drink charts are helpful, however they may not reflect customer's serving sizes. If you want to know how much alcohol is in a drink for a beverage container, try one of the alcohol beverage retailers at <http://www.tabc.state.tx.us>.



Don't drink until 21!

**TABC**  
1-888-THE-TABC  
[www.tabc.state.tx.us](http://www.tabc.state.tx.us)  
[www.2young2drink.com](http://www.2young2drink.com)



## Prevention Buzzwords

- Standard Drink Size
- Alcohol by Volume
- Binge in a Can

Program explains how these buzzwords impact underage drinking in Texas.



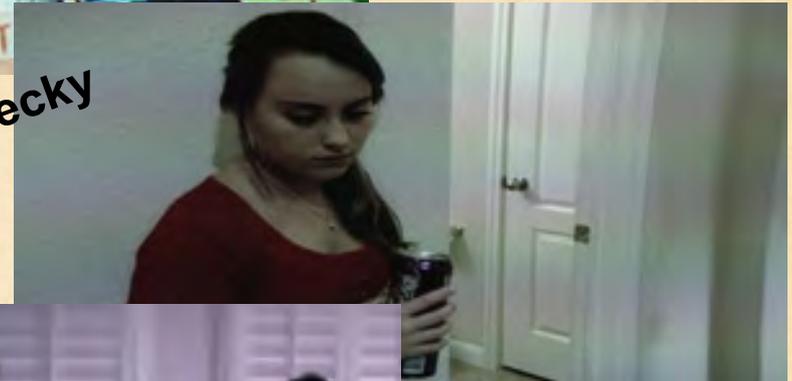


# Videos to Enhance Message

- *Hey Becky* - PSA for parents from youth perspective
- *Bulletin Board* - PSA for Law Enforcement
- *Alcohol by Volume* - Information video about alcohol by volume



Bulletin Board



Hey Becky



Alcohol by Volume

Campaign includes posters and education program.





If Percent Alcohol by Volume not included on the label – check out the TABC Label Database On Line....



- Check out what is approved for sell in Texas.
- What types of new products are entering the market.
- What the labels looks like (data 2005- present)

Week of March 5<sup>th</sup> – 257 labels approved – 39 Malt Beverage; 21 Spirit; 197 Wine



# How do we reach intended audience

Anyway we can.....



- Traditional Classroom

Prevention messages in core curriculum classes – train teachers – support students thinking about the issue.

Free curriculums written by TABC

- **Trainings with access to materials stored on the web**  
**Provide training with video to refresh concepts.**

You Tube



- **Jump start conversations with burst of information**  
**Provide conversation starters to interested parties all year.**

Twitter



- **Share information about enforcement efforts, recent studies, available materials...**

Facebook



**Promote communication by providing timely information.**



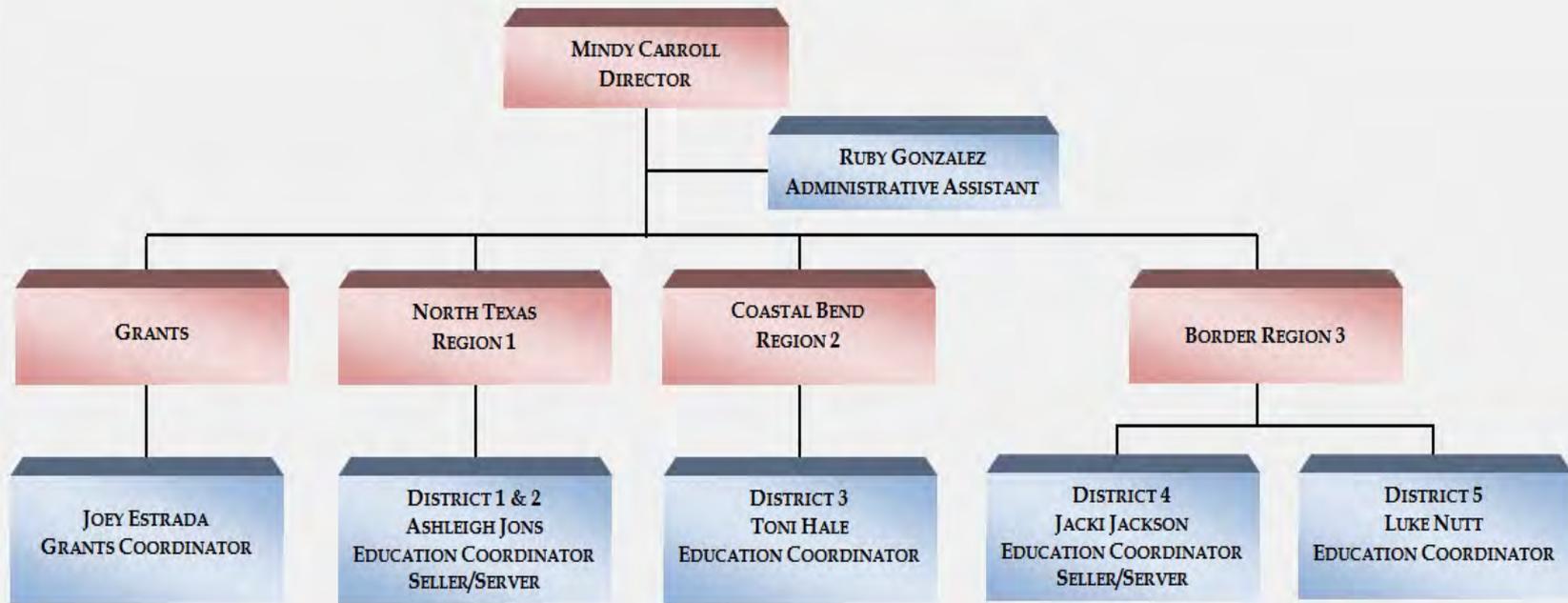
# Education and Prevention

Sherry Cook – Deputy Director



## EDUCATION & PREVENTION DIVISION

### ORGANIZATION CHART





Alcohol by Volume Campaign

Social Media

At-Risk Education



Education & Prevention  
512-206-3293  
education@tabc.state.tx.us



Label Database

Spring Break Awareness & Education

Special Trainings - Gang

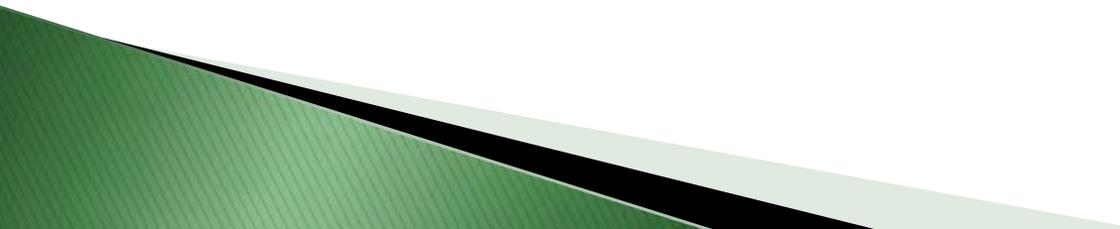
# **Attachment 4**

**Internal Audit of License and Permit Revenue  
Processing**

# Internal Audit of License & Permit Revenue Processing

By Jansen & Gregorczyk, CPAs

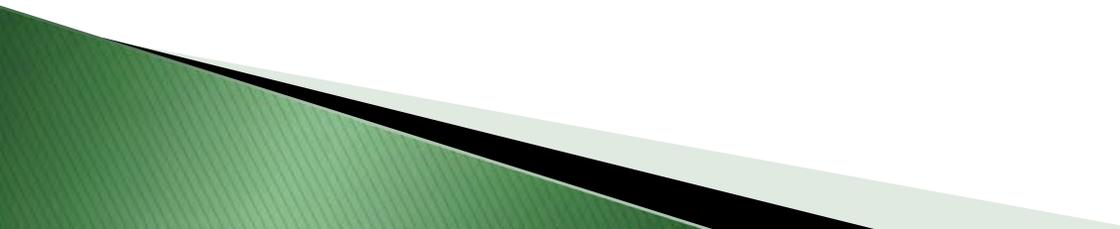
# Audit Purpose

- ▶ Evaluate compliance with legal requirements, the adequacy of internal controls and the effectiveness of procedures used by the Licensing and Business Services Divisions for processing revenues for alcoholic beverage license and permit applications and renewals.
- 

# Audit Objective 1:

- ▶ Determine if there are adequate internal controls and effective and efficient procedures for processing all incoming revenues at headquarters associated with licenses and permits; and,
  - ▶ If there are adequate internal controls and effective and efficient procedures for ensuring that all licenses and permits are not issued until the correct fees have been collected.
- 

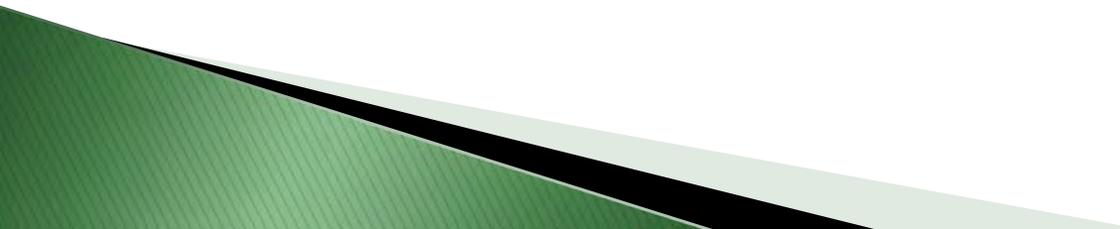
# Audit Conclusions:

- ▶ The Business Services Division (BSD) has adequate internal controls and effective and efficient procedures for processing all incoming revenues associated with licenses and permits at Headquarters.
  - ▶ **Recommendations: None.**
- 

# Audit Conclusions:

- ▶ Internal controls are in place to ensure that licenses and permits are not issued by Licensing without collection of the appropriate revenues, except that staff has the capability to override the fees required in Versa Regulation (VR) and this occurs frequently with respect to override of late fees imposed by the VR system. This is an internal control weakness.

# Recommendation:

- ▶ Licensing Division management should monitor the fee override activities performed in the Versa Regulation system to ensure that all fee changes satisfy agency requirements. Override capabilities should be limited to processors, who should obtain approval from their supervisors for any fee changes made including the amount, the date and the reason for all changes other than the \$100 late fee adjustment.
- 

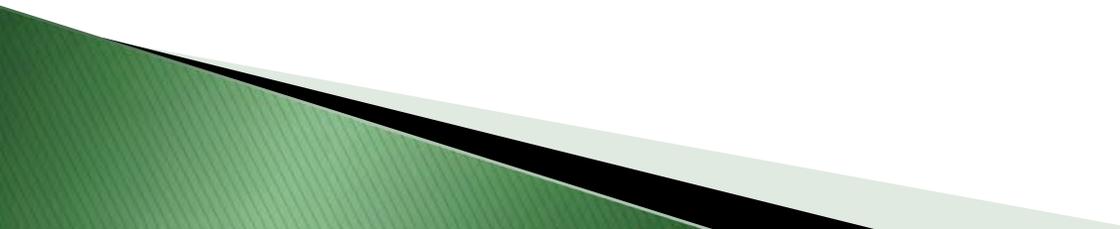
# Recommendation:

- ▶ Licensing should work with the IRD and the VR vendor to determine if some type of change could be made in VR to eliminate the automatic \$100 late charge that is assigned by the system for certain types of agent license renewals. This would eliminate the need to override the VR system and would eliminate most overrides that currently are performed.
- 

# Audit Objective 2:

- ▶ Determine if the Licensing Division has adequate internal controls and effective procedures for processing temporary receipts, billing local tax authorities and collecting accounts receivable due to the agency; and,
  - ▶ Evaluate the efficiency of the overall process for issuing temporary receipts and collecting revenues.
- 

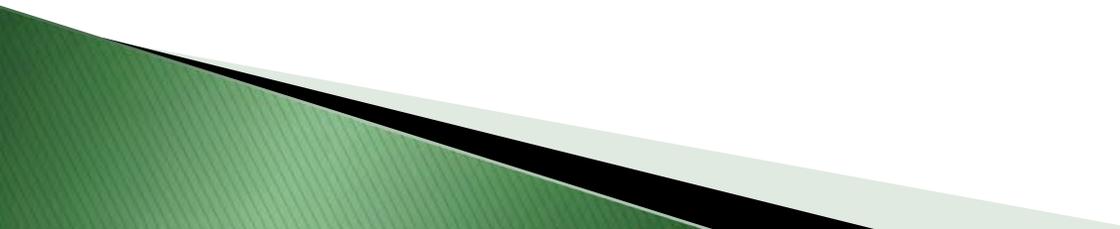
# Audit Conclusions:

- ▶ The Licensing Division has adequate internal controls and effective procedures for processing temporary receipts, billing local tax authorities and collecting accounts receivable due to the agency, but there are many inefficiencies in the current process.
- 

# Audit Conclusions:

- ▶ The current process often results in significant delays in approving beer applications and collecting associated revenues.
- ▶ A total of 6,440 temporary receipt applications were approved in FY 2011. The average number of days from receipt of the application until the date the fees were paid to TABC was 59 days. The total fees deposited in local banks and not in the State Treasury for these 59 days was \$6,459,289.

# Recommendation:

- ▶ TABC should seek a legislative change in the TAB Code regarding beer licenses and renewals so that applications and fees for beer licenses can be submitted directly to TABC. This statutory change could be done without eliminating the requirement for the county judge to approve all beer licenses and it would enable the counties to collect their fees and TABC to collect the State's fees.
- 

# Audit Conclusions:

- ▶ One other legal issue was noted. TABC allows the counties to retain 5% of the license fees collected on approved beer licenses and renewals. This practice dates back to the 1940's according to staff, but review of the TAB Code does not indicate any provisions in the Code or in the agency administrative rules that authorize TABC to allow the counties to keep 5% of the state fee paid for each approved application.
- 

# Recommendation:

- ▶ TABC should determine what actions are necessary regarding the long-standing practice of allowing counties to retain 5% of state fees collected for beer licenses since there appears to be no statutory authority for the counties to receive these funds.

# Audit Objective 3:

- ▶ Determine if there are adequate internal controls and effective and efficient procedures for the timely receipt and processing all incoming revenues associated with license and permit revenues received in TABC field offices.

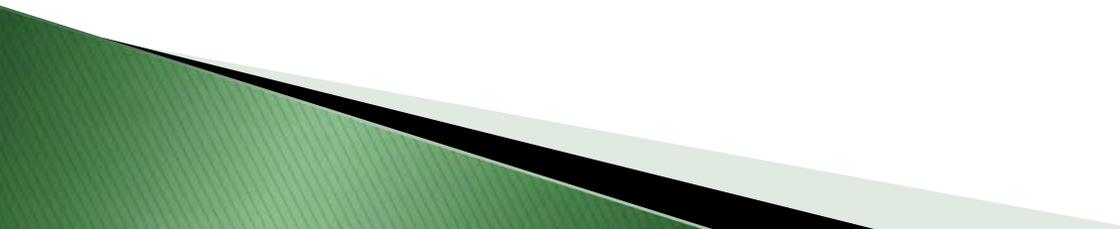
# Audit Conclusions:

- ▶ Field Offices have adequate procedures and internal controls in place for the receipt and processing all incoming revenues associates with license and permit revenues.

# Audit Objective 4:

- ▶ Determine if all deposits are being processed by Business Services in accordance with required state time frames.

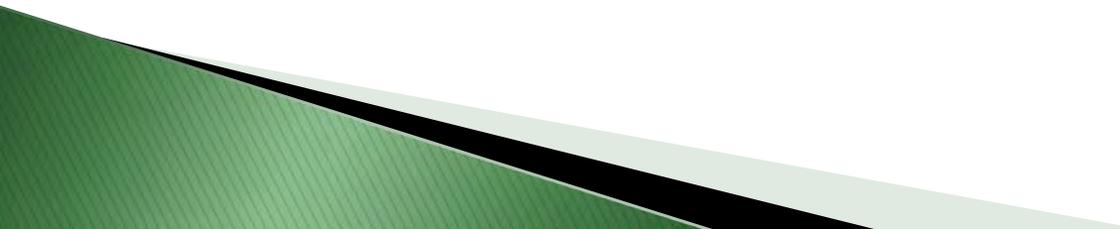
# Audit Conclusions:

- ▶ Revenues from all licenses and permits processed in FY 2011 were deposited in the State Treasury within three days of receipt at Headquarters in accordance with State requirements.
  - ▶ **Recommendations: None.**
- 

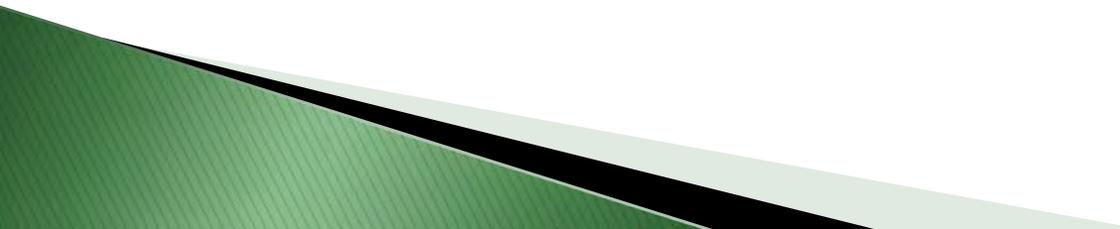
# Audit Objective 5:

- ▶ Determine if there are adequate internal controls and effective and efficient procedures for the timely processing of all overpayments related to license and permits.

# Audit Conclusions:

- ▶ TABC has adequate internal controls for the processing of all overpayments related to licenses and permits.
  - ▶ Procedures are in place to ensure that all overpayments are valid, accurate and approved before overpayment refunds are made.
- 

# Management's Response:

- ▶ A total of nine recommendations were made in the report.
  - ▶ Management agrees with the report conclusions and recommendations. The management response to each recommendation indicates the employee responsible for implementation and the expected implementation completion date.
- 

**Texas Alcoholic Beverage Commission  
Internal Audit of License and Permit  
Revenue Processing**

Final Report

As Approved by the Commission on

March 27, 2012

As Prepared by  
Jansen & Gregorczyk  
Certified Public Accountants

## **TABLE OF CONTENTS**

Auditor's Transmittal Letter . . . . .	1
Executive Summary . . . . .	2
Audit Purpose and Scope . . . . .	4
Audit Results and Recommendations . . . . .	4

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**Texas Alcoholic Beverage Commission Internal Audit of License and Permit  
Revenue Processing – Final Report – March 27, 2012**

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**Jansen & Gregorczyk  
Certified Public Accountants**

Telephone  
(512) 268-0070

P. O. Box 601  
Kyle, Tx. 78640

March 27, 2012

Commission Members  
Texas Alcoholic Beverage Commission

The following report provides the results and recommendations noted during the internal audit of License and Permit Revenue Processing.

The internal audit was conducted in accordance with generally accepted government auditing standards and *Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors.

**Signed Copy on File**

Jansen & Gregorczyk  
Certified Public Accountants

## **EXECUTIVE SUMMARY**

### **Audit Purpose**

The purposes of the internal audit were to evaluate compliance with legal requirements, the adequacy of internal controls and the effectiveness of procedures used by the Licensing and Business Services Divisions for processing revenues for alcoholic beverage license and permit applications and renewals.

### **Key Findings**

- The Business Services Division (BSD) has adequate internal controls and effective and efficient procedures for processing all incoming revenues associated with licenses and permits at Headquarters.
- Internal controls are in place to ensure that licenses and permits are not issued by Licensing without collection of the appropriate revenues, except that staff has the capability to override the fees required in Versa Regulation (VR) and this occurs frequently with respect to override of late fees imposed by the VR system. This is an internal control weakness.
- Override activities are not currently monitored by management, but the internal control weakness that exists could be mitigated by regular monitoring of override activities and a requirement that any overrides other than the \$100 late fee adjustment must have documented supervisory approval.
- There are adequate internal controls and effective procedures for processing temporary receipts, billing local tax authorities and collecting accounts receivable due to the agency, but there are inefficiencies in the current process.

- Applications and renewals for these beer licenses must be submitted to the county and the required fees collected by the county. Approval by the county judge is necessary before TABC can issue an original beer license. A change in the provision of the TAB Code that would allow the applicants to submit the license applications and fees directly to TABC would streamline the process and make it much more efficient.
- It can take months and even years in some cases for a beer license to be issued. Billing counties for approved beer applications at the end of the process rather than requiring applicants to submit their applications and fees directly to TABC at the beginning of the process, results in a significant delay in the State receiving funds.
- A total of 6,440 temporary receipt applications were approved in FY 2011. The average number of days from receipt of the application until the date the fees were paid to TABC was 59 days. The total fees deposited in local banks and not in the State Treasury for these 59 days was \$6,459,289.
- TABC allows the counties to retain 5% of the license fees collected on approved beer licenses and renewals. This practice dates back to the 1940's according to staff, but review of the TAB Code does not indicate any provisions in the Code or in the agency administrative rules that authorize TABC to allow the counties to keep 5% of the state fee paid for each approved application.
- Field Offices have adequate procedures and internal controls in place for the receipt and processing all incoming revenues associates with license and permit revenues.

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**Texas Alcoholic Beverage Commission Internal Audit of License and Permit  
Revenue Processing – Final Report – March 27, 2012**

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- Revenues from all licenses and permits processed in FY 2011 were deposited in the State Treasury within three days of receipt at Headquarters in accordance with State requirements.
- TABC has adequate internal controls for the processing of all overpayments related to licenses and permits. Procedures are in place to ensure that all overpayments are valid, accurate and approved before overpayment refunds are made.
- TABC has adequate reports to track and report all licenses and permits issued and all revenues associated with licenses and permits issued. Summary and detailed reports are provided to management and to the Commissioners regarding the various license and permit revenues received by the agency.

**Significant Recommendations**

- Licensing Division management should monitor the fee override activities performed in the Versa Regulation system to ensure that all fee changes satisfy agency requirements. Override capabilities should be limited to processors, who should obtain approval from their supervisors for any fee changes made including the amount, the date and the reason for all changes other than the \$100 late fee adjustment.
- Licensing should work with the IRD and the VR vendor to determine if some type of change could be made in VR to eliminate the automatic \$100 late charge that is assigned by the system for certain types of agent license renewals. This would eliminate the need to override the VR system and would eliminate most overrides that currently are performed.

- TABC should seek a legislative change in the TAB Code regarding beer licenses and renewals so that applications and fees for beer licenses can be submitted directly to TABC.
- TABC should determine what actions are necessary regarding the long-standing practice of allowing counties to retain 5% of state fees collected for beer licenses since there appears to be no statutory authority for the counties to receive these funds.
- Business Services should revise its procedures for processing overpayment requests to reduce the number of days from date of request for an overpayment from Licensing to date of processing for payment by the Business Services Division. If it is not practical to process each payment when received, then consideration should be given to a weekly batch processing rather than monthly batch processing.

**Management's Response**

Management agrees with the report conclusions and recommendations. The management response to each recommendation indicates the employee responsible for implementation and the expected implementation completion date.

## **AUDIT PURPOSE & SCOPE**

The purposes of the internal audit were to evaluate compliance with legal requirements, the adequacy of internal controls and the effectiveness of procedures used by the Licensing and Business Services Divisions for processing revenues for alcoholic beverage license and permit applications and renewals.

The scope of audit work included review, analysis, and/or testing of the following areas:

- procedures for processing revenues for licenses and permits;
- procedures for processing revenues associated with temporary receipts received from counties for beer applications and renewals;
- procedures for depositing revenues for licenses and permits in the State Treasury;
- procedures for ensuring that licenses and permits are not issued without collection of the correct fees;
- procedures for processing overpayments of license and permit fees; and
- management and performance reports related to license and permit revenues.

Specific audit objectives for each of these audit areas were developed and coordinated with TABC management.

Audit fieldwork was performed at the Austin headquarters office and the Austin regional office.

## **AUDIT RESULTS AND RECOMMENDATIONS**

The results and recommendations of the internal audit work are presented in this section for each of the six audit objectives that were established and coordinated with TABC management.

***Audit Objective 1:** Determine if there are adequate internal controls and effective and efficient procedures for processing all incoming revenues at headquarters associated with licenses and permits and if there are adequate internal controls and effective and efficient procedures for ensuring that all licenses and permits are not issued until the correct fees have been collected.*

The Business Services Division (BSD) has adequate internal controls and effective and efficient procedures for processing all incoming revenues associated with licenses and permits at Headquarters. There is a clear separation of duties starting with the mail room where applications are date stamped and checks endorsed for deposit only. The Accounting Technician receives all applications, separates the checks from the applications and logs batches for the daily deposit. The BSD Data Entry Operator inputs application information into the Versa Regulation (VR) Cash Section and the deposit information into the USAS system. The Accounting Supervisor reconciles the batch log, the VR system totals, the USAS totals and the deposit total.

With one exception, internal controls are in place to ensure that licenses and permits are not issued by Licensing without collection of the appropriate revenues. There is a clear

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**Texas Alcoholic Beverage Commission Internal Audit of License and Permit  
Revenue Processing – Final Report – March 27, 2012**

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separation of duties in that the Licensing Data Entry Operator reviews application information in the Versa Regulation Licensing Section, ensures that revenues collected by BSD equal VR assigned revenues due and assigns the funds. If the dollars received are less than the required amount in VR, the application is not processed and is forwarded to the Licensing Correspondence Section for notification to the applicant that additional funds are needed. If the dollars received exceed the required amount, the application is processed and approved and an overpayment request is processed by BSD. The processor reviews the application for all requirements and, if funds have been assigned, approves the application. The one internal control weakness in this process is that staff is allowed to override the fees required in VR when there is a legitimate reason to do so, as discussed below.

Staff has the capability to override the fees required in VR and this occurs frequently with respect to override of late fees imposed by the VR system. Most of these overrides are for agent A, BK and T renewal applications that have expired. Since the renewal form is simple and mirrors information requested on an original application, staff assumes that since agents submitted their renewals, they wanted to have an agent license so they use the fee submitted for the renewal (which is the same as the fee to submit an original application) and apply it to the original fee needed. VR, however, thinks that a late fee is needed because of the expired permit. Accounts Examiners can change the screen from a renewal to an original application and override (waive) the late fee. There were a total of 12,809 overrides for FY 2011, but only 32 of these over-ridden fees were for reasons other than the \$100 late fee charge

adjustment. Processors are not required to inform their supervisors when they perform a fee change in VR. Data entry operators are not required to seek permission from their supervisors before changing any fees. Override activities are not currently monitored by management, but the internal control weakness that exists could be mitigated by regular monitoring of override activities and a requirement that any overrides other than the \$100 late fee adjustment must have documented supervisory approval.

***Recommendation 1:*** *Licensing Division management should monitor the fee override activities performed in the Versa Regulation system to ensure that all fee changes satisfy agency requirements. Override capabilities should be limited to processors, who should obtain approval from their supervisors for any fee changes made including the amount, the date and the reason for all changes other than the \$100 late fee adjustment. Supervisors should maintain a file of fee changes made to reconcile with a Versa Regulation override report.*

**TABC Management Response:** Agree. Licensing is working with IRD to finalize monthly report for supervisors to review overrides by individual processor from their district. Override capabilities will be restricted to limited Resource Support staff members at the request of processors after obtaining approval from their supervisor.

**Responsible employee title:** Director of Licensing  
**Target date for completion:** Completed

***Recommendation 2:*** *Licensing should work with the IRD and the VR vendor to determine if some type of change could be made in VR to eliminate the automatic \$100 late charge that is assigned by the system for*

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**Texas Alcoholic Beverage Commission Internal Audit of License and Permit  
Revenue Processing – Final Report – March 27, 2012**

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*certain types of agent license renewals. This would eliminate the need to override the VR system and would eliminate most overrides that currently are performed.*

**TABC Management Response:** VR system will no longer require late fee for type of agent permits; A, BK, and T.

**Responsible employee title:** Director of Licensing

**Target date for completion:** Completed

**Audit Objective 2:** *Determine if the Licensing Division has adequate internal controls and effective procedures for processing temporary receipts, billing local tax authorities and collecting accounts receivable due to the agency and evaluate the efficiency of the overall process for issuing temporary receipts and collecting revenues.*

The Licensing Division has adequate internal controls and effective procedures for processing temporary receipts, billing local tax authorities and collecting accounts receivable due to the agency, but there are inefficiencies in the current process. The process that has been developed is necessary to comply with the provisions of the TAB Code related to the application for a license to manufacture, distribute, store, or sell beer. Applications and renewals for these beer licenses must be submitted to the county and the required fees collected by the county. Approval by the county judge is necessary before TABC can issue an original beer license. A change in the provision of the TAB Code that would allow the applicants to submit the license applications and fees directly to TABC would streamline the process and make it much more efficient.

When applications for beer licenses are received by the counties, temporary receipts are issued by the county tax assessor-collectors (TAC) offices throughout the State and funds are retained by the TACs until they are billed by TABC for approved applications. When beer licenses are received at TABC, Licensing staff enters information into Versa Regulation. Controls are built into VR to compare information entered with information required including the amount of the fee required for each application. VR generates billing statements for each county based upon the number and type of applications approved. Once bills are paid, billing information is deleted from the billing section of VR to avoid the possibility of duplicative billing. Licensing monitors the date and amount of the billing statement for each county and the date payment is received. Licensing has a system to follow up with delinquent counties using telephone calls or letters.

Some steps in the processing of temporary receipts are inefficient. Currently the accounts examiners hand write their initials, class, permit number, renewal date and expiration date in the bottom left-hand corner of the renewal form. This information is retained in the VR system and writing it on the form is a duplication of effort. Licensing sends a manual billing statement to every county and 4 by 6 cards for every applicant in each county who has activity for a given month. This same information is posted on the agency's internet site. Instructing the counties to use the website information to submit billings and sending manual statements only to those counties who do not have internet access would save time, supplies and postage every month.

The current process often results in significant delays in approving beer

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**Texas Alcoholic Beverage Commission Internal Audit of License and Permit  
Revenue Processing – Final Report – March 27, 2012**

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applications. Delays occur due to protests of the application, legal issues that need to be resolved before an application can be approved, delays in sending applications to the TABC district offices by the counties, delays in processing applications at the TABC district offices, the time it takes to mail renewal forms from the district to Headquarters, errors found by data entry operators or accounts examiners that require an application to be returned to the applicant and applicants submitting beer applications to Headquarters instead of the counties. It can take months and even years in some cases for a beer license to be issued. Billing counties for approved beer applications at the end of the process rather than requiring applicants to submit their applications and fees directly to TABC at the beginning of the process, results in a significant delay in the State receiving funds. A total of 6,440 temporary receipt applications were approved in FY 2011. The average number of days from receipt of the application until the date the fees were paid to TABC was 59 days. The total fees deposited in local banks and not in the State Treasury for these 59 days was \$6,459,289.

One other legal issue was noted. TABC allows the counties to retain 5% of the license fees collected on approved beer licenses and renewals. This practice dates back to the 1940's according to staff, but review of the TAB Code does not indicate any provisions in the Code or in the agency administrative rules that authorize TABC to allow the counties to keep 5% of the state fee paid for each approved application. Research conducted during the audit in conjunction with the TABC General Counsel indicates that the practice of allowing the counties to keep 5% of the fees collected on beer licenses appears to be based on a provision in the Property Tax

Code that authorized county tax authorities to be paid a fee of 5% of the amount collected for all occupation and license taxes collected. This provision in the Property Tax Code was repealed in 1979 and probably was never applicable to TABC license fees.

***Recommendation 3:** TABC should seek a legislative change in the TAB Code regarding beer licenses and renewals so that applications and fees for beer licenses can be submitted directly to TABC. This statutory change could be done without eliminating the requirement for the county judge to approve all beer licenses and it would enable the counties to collect their fees and TABC to collect the State's fees. This would be a much more efficient process for applicants, the counties and TABC and would make it easier for TABC to implement its planned online application system.*

**TABC Management Response:** Agree. The Commission will research this area with on-line submission of applications and if necessary address this issue in the 82<sup>nd</sup> Legislature Interim Charges so that the Legislature can make the best decision.

**Responsible employee title:** Director of Licensing  
**Target date for completion:** To be determined

***Recommendation 4:** Licensing should instruct the counties to use the agency website to determine funds due to TABC and manual billing statements should only be sent to those counties that are unable to use the TABC website to determine amounts due to TABC.*

**TABC Management Response:** Agree. Information is currently available on TABC's website. Working with IRD to adapt data to a user friendly format.

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**Texas Alcoholic Beverage Commission Internal Audit of License and Permit  
Revenue Processing – Final Report – March 27, 2012**

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**Responsible employee title:** Director of Licensing  
**Target date for completion:** April 1, 2012

**Recommendation 5:** *Counties should be instructed to submit temporary receipts to TABC as soon as possible after receipt and the district offices should process these applications as soon as possible to eliminate the delays that are present in the current process.*

**TABC Management Response:** Agree. However delays are due to peak period workload. Licensing will constantly monitor workload to ensure workflow to facilitate timely processing.

**Responsible employee title:** Director of Licensing  
**Target date for completion:** Completed

**Recommendation 6:** *TABC should determine what actions are necessary regarding the long-standing practice of allowing counties to retain 5% of state fees collected for beer licenses since there appears to be no statutory authority for the counties to receive these funds.*

**TABC Management Response:** Agree. The Commission will research this area with on-line submission of applications and if necessary address this issue in the 82<sup>nd</sup> Legislature Interim Charges so that the Legislature can make the best decision.

**Responsible employee title:** Director of Licensing  
**Target date for completion:** To be determined

**Audit Objective 3:** *Determine if there are adequate internal controls and effective and efficient procedures for the timely receipt and processing all incoming revenues associated with license and permit revenues received in TABC field offices.*

Field Offices have adequate procedures and internal controls in place for the receipt and processing all incoming revenues associated with license and permit revenues. Checks are received by one person, processed by another person, locked in a safe place if not mailed to Headquarters the same day and sent to Headquarters timely for processing. There are two areas where internal controls could be strengthened with minor changes in procedures. None of the offices immediately endorse checks received with "For Deposit Only – TABC", which increases the risk of checks being misused or stolen. We also noted that not all counties send their temporary receipts directly to Headquarters. This not only violates agency rules, it creates a delay in the processing of temporary receipts and billing for this revenue held by the counties.

**Recommendation 7:** *Checks received by the regional offices should be immediately endorsed with a "For Deposit Only – TABC" stamp.*

**TABC Management Response:** Agree. Stamps have been ordered and distributed to the field offices. Original procedures updated.

**Responsible employee title:** Director of Licensing  
**Target date for completion:** Completed

**Recommendation 8:** *Counties should be instructed to send temporary receipts directly to Headquarters.*

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**Texas Alcoholic Beverage Commission Internal Audit of License and Permit  
Revenue Processing – Final Report – March 27, 2012**

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**TABC Management Response:** Agree. We will address those counties who routinely submit TR's through our field offices.

**Responsible employee title:** Director of Licensing  
**Target date for completion:** March 31, 2012

***Audit Objective 4: Determine if all deposits are being processed by Business Services in accordance with required state time frames.***

Revenues from all licenses and permits processed in FY 2011 were deposited in the State Treasury within three days of receipt at Headquarters in accordance with State requirements. Reports of deposit processing times are available and used by management to monitor compliance with the three-day deposit rule.

**Recommendations:** None.

***Audit Objective 5: Determine if there are adequate internal controls and effective and efficient procedures for the timely processing of all overpayments related to license and permits.***

TABC has adequate internal controls for the processing of all overpayments related to licenses and permits. Procedures are in place to ensure that all overpayments are valid, accurate and approved before overpayment refunds are made. Overpayments that accompany approved applications are entered in the Versa Regulation (VR) system and monitored from date of receipt of funds to date overpayment is processed by the Business Services Division. Overpayments that accompany applications that are not approved are sent by the accounts examiners to the correspondence staff to generate the appropriate letter to return the funds to the

applicant. Licensing submits the letter to BSD to authorize the processing of the overpayment back to the applicant. An Overpayments Report is run each day and monitored by staff in Licensing to ensure all overpayments are refunded to the applicants.

Testing of overpayments processed for September and October of 2011 indicated that overpayments were processed once a month rather than being processed on an ongoing basis when received by the Business Services Division. In some cases these overpayments are for substantial amounts. Customer service would be improved by processing these overpayment requests as soon as possible rather than processing them at the end of each month.

***Recommendation 9: Business Services should revise its procedures for processing overpayment requests to reduce the number of days from date of request for an overpayment from Licensing to date of processing for payment by the Business Services Division. If it is not practical to process each payment when received, then consideration should be given to a weekly batch processing rather than monthly batch processing.***

**TABC Management Response:** Agree. The Business Services Division will update the overpayment policy to establish procedures to ensure that overpayment requests from Licensing are processed on a weekly basis.

**Responsible employee title:** Director of Business Services  
**Target date for completion:** Completed

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**Texas Alcoholic Beverage Commission Internal Audit of License and Permit  
Revenue Processing – Final Report – March 27, 2012**

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***Audit Objective 6:** Determine if there are adequate reports and performance measures for tracking and reporting on all licenses and permits issued and all revenues associated with licenses and permits issued.*

TABC has adequate reports to track and report all licenses and permits issued and all revenues associated with licenses and permits issued. The Business Services Division completes a monthly reconciliation of all revenues received, entered into the Versa Regulation system, deposited in the State Treasury and entered into USAS by Comptroller Object Class code. Summary and detailed reports are provided to management and to the Commissioners regarding the various license and permit revenues received by the agency.

A key performance measure for FY 2011, “The Percent of License/Permit Applications Processed within 14 days” was replaced with a new key measure, “The Average Number of Days for Original License/Permit Approval” for FY 2012. This change more accurately reflects the work of Licensing to process, review and obtain all needed information for an application.

**Recommendations:** *None.*

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# **Attachment 5**

**Approval to Publish Proposed Amendment to  
Rule §45.71, Definitions**

**MARCH 27, 2012 AGENDA, ITEM 8:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.71, Definitions**

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §45.71, Definitions.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Commission*, No. A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. Although Rule §45.71 was not declared unconstitutional, the Commission determines that it is appropriate to amend it to clarify the use of terms in light of the *Authentic Beverages Order*.

Section 45.71 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the section will reflect the distinctions between definitions used for regulatory purposes under the Alcoholic Beverage Code and the definitions used for labeling by the industry under the decision in the *Authentic Beverages Company* litigation.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with

## MARCH 27, 2012 AGENDA, ITEM 8:

### PREAMBLE FOR PROPOSED AMENDMENT OF §45.71, Definitions

disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects Alcoholic Beverage Code §§1.04 and 5.31, and Government Code §2001.039.

#### 45.71. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Beer--A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight [~~and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer~~].

(2) Bottler--Any person who places malt beverages in containers.

(3) Brand label--The label carrying, in the usual distinctive design, the brand names of the malt beverage.

(4) Container--Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify §1.04(18) of the Alcoholic Beverage Code.

(5) Domestic malt beverages--A malt beverage manufactured in the United States.

(6) Gallon--United States gallon of 231 cubic inches of malt beverages at 39.2 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions or multiples of the gallon as so defined.

(7) Independent laboratory--A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

(8) Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or

**MARCH 27, 2012 AGENDA, ITEM 8:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.71, Definitions**

products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.

(9) Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight. In this subchapter, "malt liquor" and "ale" have the same meaning.

# **Attachment 6**

**Approval to Publish Proposed Amendment to  
Rule §45.77, Class and Type**

## MARCH 27, 2012 AGENDA, ITEM 9:

### PREAMBLE FOR PROPOSED AMENDMENT OF §45.77, Class and Type

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §45.77, Class and Type.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Comm'n*, A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. Rule §45.77 was declared unconstitutional and the Commission was enjoined from enforcing it. The section is being amended to conform to the Court's decision.

Under the proposed amendment, manufacturers and brewers will have options for labeling their products. The first option is to continue to use the definitions of "beer", "ale" and "malt liquor" found in Alcoholic Beverage Code §1.04. If they elect to use this option, they *may* but are not required to include the product's percentage alcohol by volume on the label. See Rule §45.79, which is also being amended. The other option is to use any truthful description of the class and style of the malt beverage that is commonly recognized in the industry. If this description does not match the definitions of "beer", "ale" or "malt liquor" in Alcoholic Beverage Code §1.04, then the class or style description *must* be accompanied by the product's percentage alcohol by volume on the label.

Thus, manufacturers and brewers can continue using labels that accurately and truthfully reflect the product definitions used in the Alcoholic Beverage Code (and thereby incur no additional expense to change their current production). On the other hand, they can choose to use labels that they believe accurately and truthfully reflect the product definitions used in the industry.

Consumers can be educated to look for the "alcohol by volume" statement on the label. If it is not there, they can rely on a product that is labeled "beer" containing approximately 5.1 percent alcohol by volume or less and a product that is labeled "ale" or "malt liquor" containing more than that amount. Information about the alcohol content of a product, along with the product size, is necessary for consumers who wish to make informed judgments about consumption. Requiring this kind of information furthers the state's interest in protecting the welfare, health, peace, temperance and safety of the people of the state. Alcoholic Beverage Code §1.03.

In its opinion in *Authentic Beverages*, the Court concludes that allowing these two options would advance the state's interests in a less restrictive manner than the current rule. Indeed, allowing these two options was suggested by the plaintiffs in that litigation as a viable means of protecting both the state's interests and their free speech interests.

Section 45.77 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended.

## **MARCH 27, 2012 AGENDA, ITEM 9:**

### **PREAMBLE FOR PROPOSED AMENDMENT OF §45.77, Class and Type**

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the section will reflect the distinctions between terms used for regulatory purposes under the Alcoholic Beverage Code and terms used for labeling by the industry under the decision in the *Authentic Beverages Company* litigation.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

## MARCH 27, 2012 AGENDA, ITEM 9:

### PREAMBLE FOR PROPOSED AMENDMENT OF §45.77, Class and Type

The proposed amendment affects Alcoholic Beverage Code §§1.04 and 5.31, and Government Code §2001.039.

#### §45.77. Class and Type.

(a) Every malt beverage label shall bear, in legible and easily viewed writing: [~~its correct classification as "beer" or "malt liquor." The word "ale" may be substituted for the words "malt liquor."~~]

(1) The word "beer", if the product contains one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, or the word "ale" or "malt liquor" if the product contains more than four percent of alcohol by weight; and/or

(2) A truthful statement of the appropriate class or style of the product using terms commonly recognized in the malt beverage industry, accompanied by the alcohol content of the product in percentage of alcohol by volume (expressed to the nearest one-tenth of a percent).

(b) No product containing less than 0.5% of alcohol by volume shall bear the class designation "beer," "lager," "lager beer," "ale," "porter," or "stout," or any other class or type designation commonly applied to malt beverages containing 0.5% or more of alcohol by volume.

(c) [~~No beer shall bear the class designation of ale or malt liquor, and no malt liquor shall bear the class designation of beer.~~] Nothing shall prevent a malt beverage labeled pursuant to paragraph (a)(1) of this section [~~beer or malt liquor~~] from also bearing a class or style designation that is recognized in the brewing industry, such as, but not limited to, "porter," "stout," or "lager," provided such beer, ale, or malt liquor has the characteristics of such class or style.

(d) Geographical names for distinctive types of malt beverages (other than names found by the commission or administrator under subsection (3) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless: in direct conjunction with the name there appears the word "type" or the word "American," or some other statement indicating the true place of production in lettering substantially as conspicuous as such name; and the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wartzburger.

(e) Only such geographical names for distinctive types of malt beverage as the commission or administrator finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic. Pilsen beer (Pilsenor, Pilsner) is a distinctive type of beer with a geographical name which has become generic.

(f) Except as provided in §45.75 of this title (relating to Mandatory Label Information for Malt Beverages), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

# **Attachment 7**

**Approval to Publish Proposed Amendment  
to Rule §45.79, Alcoholic Content**

**MARCH 27, 2012 AGENDA, ITEM 10:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.79, Alcoholic Content**

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §45.79, Alcoholic Content.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Comm'n*, A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. The section is being amended to conform to the Court's decision.

Rule §45.79(f) was declared unconstitutional and the Commission was enjoined from enforcing it. Accordingly, that subsection is being deleted.

Additionally, paragraphs (c)(3) & (4) need revision to address other requirements in the Court's Order. Those paragraphs currently limit in some situations the level of tolerance otherwise allowed for products labeled "beer", "ale" or "malt liquor". These paragraphs are being amended in light of the Commission's proposed changes to Rule §45.77, Class and Type, which would allow manufacturers and brewers a choice of options for labeling their products. The proposed amendment removes the limitation for tolerances as long as the alcoholic content is stated on the label.

Section 45.79 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the section will reflect the distinctions between terms used for regulatory purposes under the Alcoholic Beverage Code and terms used for labeling by the industry under the decision in the *Authentic Beverages Company* litigation. Also, manufacturers' and brewers' free speech rights recognized by the Court in that litigation will be honored.

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

**MARCH 27, 2012 AGENDA, ITEM 10:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.79, Alcoholic Content**

[http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects Alcoholic Beverage Code §§1.04 and 5.31, and Government Code §2001.039.

**§ 45.79. Alcoholic Content.**

(a) The alcoholic content and the percentage and quantity of the original extract may be stated.

(b) *Form of statement.*

(1) If the alcoholic content is stated, it shall be stated in percentage of alcohol by volume, and shall not be stated by percent by weight, proof, or by maximums or minimums.

(2) The statement of alcoholic content shall be expressed to the nearest one-tenth of a percent, subject to the tolerance permitted by subsection (c) of this section.

(c) *Tolerances.*

(1) For malt beverages containing 0.5% or more of alcohol by volume, a tolerance of 0.3% will be permitted, either above or below the stated percentage of alcohol.

(2) Any malt beverage labeled as having more than 0.5% or more alcohol by volume may not contain less than 0.5% alcohol by volume, regardless of any tolerance.

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.79, Alcoholic Content**

(3) Any malt beverage labeled as "beer" may not contain more than 4.0% alcohol by weight regardless of any tolerance permitted in subsection (c)(1) of this section, unless the alcoholic content is stated on the label.

(4) Any malt beverage labeled as "malt liquor," "ale," or other such similar designation may not contain 4.0% or less alcohol by weight regardless of any tolerance permitted in subsection (c)(1) of this section, unless the alcoholic content is stated on the label.

(5) For malt beverages which are labeled as "low alcohol" or "reduced alcohol" under subsection (d) of this section, the actual alcoholic content may not equal or exceed 2.5% alcohol by volume, regardless of any tolerance permitted in subsection (c)(1) of this section.

(d) *Low alcohol or reduced alcohol.* The terms "low alcohol" or "reduced alcohol" may only be used on malt beverages containing less than 2.5% alcohol by volume.

(e) *Alcoholic Content Statement.* All portions of any alcoholic content statement shall be of the same size and kind of lettering and of equally conspicuous color.

~~[(f) *Advertising of alcoholic content.* The alcoholic content shall not be used in any form of advertisement by means of comparison with other products, nor shall the terms, "strong," "full strength," "high proof," or any other reference to alcoholic content, or any statement of the percentage and quantity or the original extract, or any numerals, letters, characters, figures, or similar words or statements likely to be considered as statements of alcoholic content be used in any advertisements. This does not preclude the use of terms "low alcohol" or "reduced alcohol" as used on labels in accordance with subsection (d) of this section.]~~

# **Attachment 8**

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

**MARCH 27, 2012 AGENDA, ITEM 11:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.82, Prohibited Practices**

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §45.79, Alcoholic Content.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Comm'n*, A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. The section is being amended to conform to the Court's decision.

Rule §45.82(f) was declared unconstitutional and the Commission was enjoined from enforcing it. Accordingly, that subsection is being deleted.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because manufacturers' and brewers' free speech rights recognized by the Court in the *Authentic Beverages* litigation will be honored by the Commission.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

**MARCH 27, 2012 AGENDA, ITEM 11:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.82, Prohibited Practices**

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects Alcoholic Beverage Code §§1.04 and 5.31, and Government Code §2001.039.

**§45.82. Prohibited Practices.**

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

(1) any statement that is false or untrue in any particular, or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression;

(2) any statement that is disparaging of a competitor's products;

(3) any statement, design, device, or representation which is obscene or indecent;

(4) any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(6) a trade name or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that this subsection shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, wholesaler, distributor, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935;

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.82, Prohibited Practices**

(7) any statement, design, device, or representation that the malt beverage is a special or private brand brewed or bottled for, or that includes the name, tradename or trademark of any retail licensee or permittee or private club registration permittee.

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

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

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

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

(f) ~~[Use of the words "strong," "full strength," and similar words. Labels shall not contain the words, "strong," "full strength," "extra strength," "high proof," "prewar strength," "full old-time alcoholic strength," or similar words or statements, likely to be considered as statements of alcoholic content.~~

~~(g)~~ *Coverings, cartons, cases.* Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement, or any graphic, pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverage. It shall be unlawful for any retailer to affix to any carton or case any paper or sticker bearing any painted, printed, or other graphic matter whatsoever; and it shall be unlawful for any retailer to paint, imprint, or otherwise impose any wording, lettering, picture, or design of any character whatsoever on any carton or case.

# **Attachment 9**

**Approval to Publish Proposed Amendment to  
Rule §45.90, Advertisement: Prohibited  
Statements**

## MARCH 27, 2012 AGENDA, ITEM 12:

### **PREAMBLE FOR PROPOSED AMENDMENT OF §45.90, Advertisement: Prohibited Statements**

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §45.90, Advertising: Prohibited Statements.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Comm'n*, A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. The Commission proposes to amend Rule §45.90 to conform to the Court's decision.

Rule §45.90 was declared unconstitutional and the Commission was enjoined from enforcing it. However, the plaintiffs in the lawsuit did not complain about all of the provisions of §45.90. As cited by the Court, plaintiffs' First Amendment challenges to the Alcoholic Beverage Code and the Commission's rules were to those provisions that: prohibited breweries and distributors from telling consumers where their products can be bought; mandated the use of inaccurate statutory definitions of "beer", "ale" and "malt liquor" to describe malt beverages; and prohibited advertising the alcoholic content of brewery products and using words in advertising and labeling that suggest alcoholic strength. Plaintiffs' Motion for Summary Judgment specifically references Rule §45.90(c). [Emphasis added.]

In partially granting Plaintiffs' Motion for Summary Judgment, the Court states that "Although the Code is free to define 'beer' and 'ale' as it sees fit, Texas may not compel malt beverage producers to use those terms, and only those terms, in advertising and labeling. Accordingly, *all statutes and regulations that compel such speech*, including [Commission Rule] Sections 45.77 and 45.90 are declared unconstitutional." [Emphasis added.] Accordingly, the Commission proposes to delete subsection (c) of Rule §45.90 in its entirety. In addition, the Commission proposes to delete other provisions of the rule that seem to prohibit making truthful statements in advertising malt beverage products.

However, the Commission believes that the Court's blanket declaration regarding Rule §45.90 was not intended to, and does not, prevent the Commission from affirming other provisions of the rule that were not litigated by the parties, that were not part of the plaintiffs' request for summary judgment, that were not discussed by the Court, and that have the effect of prohibiting false or misleading statements.

"Untruthful speech, commercial or otherwise, has never been protected for its own sake. [Citations omitted.] Obviously, much commercial speech is not provably false, or even wholly false, but only deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. The First Amendment as we construe it today does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976).

**MARCH 27, 2012 AGENDA, ITEM 12:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.90, Advertisement: Prohibited Statements**

“When a State regulates commercial messages to protect consumers from misleading, deceptive, or aggressive sales practices, or requires the disclosure of beneficial consumer information, the purpose of its regulation is consistent with the reasons for according constitutional protection to commercial speech and therefore justifies less than strict review.” *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 501 (1996).

Recognizing the District Court’s reluctance, and indeed acknowledged lack of authority, to rewrite the law, and noting the Court’s recognition of the Commission’s authority to pass *appropriate* regulations even as to the matters that were litigated, the Commission proposes to extract the offending portions of Rule §45.90 but leave the remaining, appropriate regulations in place.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because manufacturers’ and brewers’ free speech rights recognized by the Court in the *Authentic Beverages* litigation will be honored by the Commission, but consumers will continue to receive some protection from false and misleading advertising.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission’s headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission’s response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512)

**MARCH 27, 2012 AGENDA, ITEM 12:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.90, Advertisement: Prohibited Statements**

206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects Alcoholic Beverage Code §§1.04 and 5.31.

**§45.90. Advertisement: Prohibited Statements.**

- (a) General. An advertisement of malt beverages shall not contain the following:
- (1) any statement that is false or misleading in any material particular;
  - (2) any statement that is disparaging of a competitor or his products;
  - (3) any statement, design, device or representation which is obscene or indecent;
  - (4) any statement, design, device, or representation of or relating to analyses, standards, or tests irrespective of falsity, which the administrator finds to be likely to mislead the consumer; or
  - (5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. ~~;~~
  - ~~[(6) any statement that the malt beverages are brewed, made, bottled, labeled, or sold under, or in accordance with, any municipal, state, or federal authorization, law or regulation; and if a municipal or state permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto;~~
  - ~~(7) the words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, or bottling.]~~
- (b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.
- (c) ~~Class:~~
- ~~(1) No product containing less than 0.5% of alcohol by volume shall be designated in any advertisement as "beer," or by any other class or type designation commonly applied to fermented malt beverages containing 0.5% or more of alcohol by volume.~~
  - ~~(2) No malt beverage containing 4.0% of alcohol by weight or less shall be designated in any advertisement as an "ale" or "malt liquor."~~

**MARCH 27, 2012 AGENDA, ITEM 12:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.90, Advertisement:  
Prohibited Statements**

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

(d) [(~~e~~)] Confusion of brands. Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper or in one piece of other written, printed, or graphic matter) if the advertisement is [~~tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations made as to one brand or lot applied to the other or others, and if as to such latter the representations contravene any provision of this subchapter or are~~] in any respect untrue.

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

# **Attachment 10**

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

**MARCH 27, 2012 AGENDA, ITEM 13:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.110, Inducements**

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §45.110, Inducements.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Comm'n*, A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. The section is being amended to conform to the Court's decision.

Rule §45.110(c)(3) was declared unconstitutional and the Commission was enjoined from enforcing it. However, the Court's Order affirms the Commission's authority to prohibit undue collusion, financial or otherwise, among the tiers. Accordingly, the Commission proposes amending that paragraph to eliminate the per se prohibition on advertising that benefits a specific retailer, and to replace it with a prohibition on such advertising that is a product of undue collusion among members of different tiers. The Commission also proposes to amend subsection (a) to add a statutory reference.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the section will not per se prohibit advertising by a member of the manufacturing or wholesale tiers that benefits a specific retailer, but will prohibit undue collusion among the tiers.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the

**MARCH 27, 2012 AGENDA, ITEM 13:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.110, Inducements**

public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects Alcoholic Beverage Code §§5.31, 102.04, 102.07, 102.12, 102.15 and 108.06.

**§45.110. Inducements.**

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

(b) This rule applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

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

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

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

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of undue collusion involving financial remuneration, incentive, inducement or compensation between the manufacturing or wholesale tier member and the retail tier member;

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

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

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

**MARCH 27, 2012 AGENDA, ITEM 13:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §45.110, Inducements**

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

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

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

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

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

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

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

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

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

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

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

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

# **Attachment 11**

**Approval to Publish Proposed Amendment to  
Rule §41.23, Basic General Records Required**

**MARCH 27, 2012 AGENDA, ITEM 14:**

**PREAMBLE FOR PROPOSED AMENDMENT OF §41.23, Basic General Records Required**

The Texas Alcoholic Beverage Commission (commission), proposes an amendment to §41.23, Basic General Records Required.

In *Authentic Beverages Company, Inc vs Texas Alcoholic Beverage Commission*, No. A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. Although Rule §41.23 was not declared unconstitutional, the Commission determines that it is appropriate to amend it to implement changes required by the *Authentic Beverages Order*.

Because the commission has determined that manufacturers and brewers should have options regarding the labeling of their products, it will no longer be possible to rely on use of the terms “beer”, “ale” or “malt liquor” to determine how a product should be taxed and where it may be sold. It is necessary, therefore, to require that malt beverages be identified on invoices. Since the invoices must accompany the product throughout the chain of distribution from the producer to the retailer, this will allow everyone in the chain (as well as regulatory officials, including the agency) to identify the product and classify it appropriately. This will not require invoices be produced or carried that are not already required, but simply that a notation be made on those invoices that will allow the agency (and others) to properly classify the product. The proposed rule grants flexibility on specifically how the product must be identified, as opposed to mandating use of a specific type of notation.

Section 41.23 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because invoices can be used to track malt beverages for tax and regulatory purposes while allowing manufacturers and brewers options regarding the labeling of their products.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127,

## MARCH 27, 2012 AGENDA, ITEM 14:

### **PREAMBLE FOR PROPOSED AMENDMENT OF §41.23, Basic General Records Required**

Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the Texas Register.

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

Martin Wilson, Assistant General Counsel of the Texas Alcoholic Beverage Commission, certifies that the proposed amendment has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

The proposed amendment affects Alcoholic Beverage Code §§1.04 and 5.31, and Government Code §2001.039.

### **§41.23. Basic General Records Required.**

(a) It shall be unlawful for any brewer, distiller, [~~class A or class B~~] winery, rectifier, wholesaler, class B wholesaler, package store, [~~medicinal permittee,~~] industrial permittee, wine bottler, beer manufacturer, or beer distributor to fail or refuse to keep at each place of business [~~in Texas~~], for a period of two years, for the inspection at all times of the commission or its authorized representatives, a complete record of all alcoholic beverages manufactured, distilled, sold, purchased, received, blended or bottled, including all invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records furnished by the carrier and the seller or shipper of said alcoholic beverages; and in addition thereto, a book record in a well bound book which will provide complete information of all alcoholic beverages manufactured, purchased, or received, the name and address of the person from whom purchased and from whom received, the point from

**PREAMBLE FOR PROPOSED AMENDMENT OF §41.23, Basic General Records Required**

which shipped or delivered, the point at which received, the quantity and kind of beverage received, and inventories on the last day of each month, showing the quantity and kind of beverage on hand. The inventories herein required shall not apply to package store permittees. Wine and beer retailers other than for railroad cars shall be required to keep the records only as to wine purchases.

(b) It shall be unlawful for any brewer, distiller, [~~class A or class B~~] winery, rectifier, wholesaler, class B wholesaler, wine bottler, beer manufacturer, or beer distributor, to fail or refuse to keep at each place of business [~~in Texas~~], for a period of two years for the inspection at all times of the commission or its authorized representatives, a complete record of each and every sale or distribution of alcoholic beverages, upon an invoice to be furnished by said permittee or licensee, which invoice shall be issued [~~in duplicate and~~] in consecutive numbered order. Said invoice shall show the date of sale or distribution, the purchaser and his address, the means of delivery, the name of the carrier, if delivered by common carrier, the quantity, price, container size and brand name [~~kind~~] of alcoholic beverage sold and in addition thereto the said invoice shall be supported by the receipts or other records furnished by the carrier of such alcoholic beverage. Alcohol percentage by volume or an approved symbol or statement must be included in the product description for malt beverages containing more than four percent alcohol by weight. Such invoice or a copy thereof shall be delivered to the purchaser and a copy shall be kept by the permittee or licensee making the sale. Invoices must be printed and numbered and issued in consecutive numbered order, and the copies thereof shall be kept [~~in a well bound book~~] for a period of at least two years.

(c) Each purchaser of tax free alcohol shall keep for inspection of the commission or its authorized representatives all invoices of such purchases for a period of at least two years.

# **CERTIFICATION**

## **REGULAR COMMISSION MEETING**

**9:30 a.m. – March 27, 2012**

**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 March 27, 2012.

A handwritten signature in cursive script, appearing to read "Alan Steen".

Alan Steen  
Administrator

Sworn and subscribed before me this the 20th day of April 2012.



A handwritten signature in cursive script, appearing to read "Gloria Darden Reed".

Gloria Darden Reed  
Notary in and for Travis County, Texas