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TEXAS ALCOHOLIC BEVERAGE COMMISSION

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ALCOHOLIC BEVERAGE CODE

SEPTEMBER 1, 2013

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

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

September 1, 2013

Note Regarding Constitutionality of Certain Parts of the Alcoholic Beverage Code

In *Siesta Village Market, LLC v Perry*, 530 F.Supp.2d 848 (N.D. Tex., January 14, 2008) the US District Court held the "Texas citizenship requirements" in these sections of the Code unconstitutional as applied to out-of-state wine retailers:
6.03(a) & (k); 11.46(a)(11); 11.61(b)(19); 24.01(c); and 109.53.

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

In *Southern Wine & Spirits v Steen*, 486 F. Supp.2d 626 (W.D. Tex., May 29, 2007) the US District Court held these provisions of the Code unconstitutional:
6.03; 11.46(a)(11); 61.42(a)(5); 61.42(a)(8); and 109.53.

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

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

The legislature finds that:

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

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

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

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

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

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

A Note Regarding the Legislative Intent of Senate Bill 1035 passed during the 83rd Legislature, Regular Session, 2013.

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

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ALCOHOLIC BEVERAGE CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.01. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with objectives of the statutory revision program, the purpose of this code is to make the general and permanent alcoholic beverage law more accessible and understandable, by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Sec. 1.02. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

Sec. 1.03. PUBLIC POLICY. This code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. It shall be liberally construed to accomplish this purpose.

Sec. 1.04. DEFINITIONS. In this code:

(1) "Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

(2) "Consignment sale" means:

(A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;

(B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;

(C) the delivery of alcoholic beverages to a factor or broker;

(D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;

(E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or

(F) any other type of transaction which may legally be construed as a consignment sale.

(3) "Distilled spirits" means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them, and includes spirit coolers that may have an alcoholic content as low as four percent alcohol by volume and that contain plain, sparkling, or carbonated water and may also contain one or more natural or artificial blending or flavoring ingredients.

(4) "Illicit beverage" means an alcoholic beverage:

(A) manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this code;

(B) on which a tax imposed by the laws of this state has not been paid and to which the tax stamp, if required, has not been affixed; or

(C) possessed, kept, stored, owned, or imported, with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of this code.

(5) "Liquor" means any alcoholic beverage containing alcohol in excess of four percent by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero, or barreteago, is prima facie evidence that it is liquor.

(6) "Person" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

(7) "Wine and vinous liquor" means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.

(8) "Hotel" means the premises of an establishment:

(A) where, in consideration of payment, travelers are furnished food and lodging;

(B) in which are located:

(i) at least 10 adequately furnished completely separate rooms with adequate facilities so comfortably disposed that persons usually apply for and receive overnight accommodations in the establishment, either in the course of usual and regular travel or as a residence; or

(ii) at least five rooms described by Subparagraph (i) if the building being used as a hotel is a historic structure as defined by Section 442.001, Government Code; and

(C) which operates a regular dining room constantly frequented by customers each day.

(9) "Applicant" means a person who submits or files an original or renewal application with the county judge, commission, or administrator for a license or permit.

(10) "Commission" means the Texas Alcoholic Beverage Commission.

(11) "Permittee" means a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person.

(12) "Ale" or "malt liquor" means a malt beverage containing more than four percent of alcohol by weight.

(13) "Mixed beverage" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.

(14) "Barrel" means, as a standard of measure, a quantity of beer equal to 31 standard gallons.

(15) "Beer" means a malt beverage containing one-half of one percent or 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~~].

(16) "Licensee" means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person.

(17) "Manufacturer" means a person engaged in the manufacture or brewing of beer, whether located inside or outside the state.

(18) "Original package," as applied to beer, means a container holding beer in bulk, or any box, crate, carton, or other device used in packing beer that is contained in bottles or other containers.

(19) "Premises" has the meaning given it in Section 11.49 of this code.

(20) "Citizen of Texas" and "citizen of this state" mean a person who is a citizen of both the United States and Texas.

(21) "Minibar" means a closed container in a hotel guestroom with access to the interior of the container restricted by a locking device which requires the use of a key, magnetic card, or similar device.

(22) "Minibar key" means the key, magnetic card, or similar device which permits access to the interior of a minibar.

(23) "Guestroom" means a sleeping room, including any adjacent private living area, in a hotel which is rented to guests for their use as an overnight accommodation.

(24) "Wine cooler" means an alcoholic beverage consisting of vinous liquor plus plain, sparkling, or carbonated water and which may also contain one or more natural or artificial blending or flavoring ingredients. A wine cooler may have an alcohol content as low as one-half of one percent by volume.

(25) "Executive management" includes the administrator, the assistant administrator, individuals who report directly to the administrator, and the head of each division of the commission.

(26) "Alternating brewery proprietorship" means an arrangement in which two or more parties take turns using the physical premises of a brewery as permitted under this code and federal law.

NOTE: Section 1.04, subsection 26 added by House Bill 3307, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

(26) "Criminal negligence" has the meaning assigned by Section 6.03, Penal Code.

NOTE: Section 1.04, subsection 26 added by Senate Bill 1090, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

(27) "Contract brewing arrangement" means an arrangement in which two breweries, each of which has a separate facility, contract for one brewery to manufacture malt beverages on behalf of the other brewery due to the limited capacity or other reasonable business necessity of one party to the arrangement.

Sec. 1.05. GENERAL PENALTY. (a) A person who violates a provision of this code for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $100 nor more than $1,000 or by confinement in the county jail for not more than one year or by both.

(b) The term "specific penalty," as used in this section, means a penalty which might be imposed as a result of a criminal prosecution.

Sec. 1.06. CODE EXCLUSIVELY GOVERNS. Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

Sec. 1.07. RESIDENT ALIENS. (a) For purposes of any provision of this code that requires an applicant for a license or permit to be a United States citizen or Texas citizen, regardless of whether it applies to an individual, a percentage of stockholders of a corporation, or members of a partnership, firm, or association, an individual who is not a United States citizen but who legally resides in the state is treated as a United States citizen and a citizen of Texas.

(b) If it is required that an individual have resided in the state for a specified period of time, an alien legally residing in the state satisfies the requirement if he has legally resided in the state for the prescribed period of time. If an alien becomes a United States citizen while residing in Texas, any

continuous period of time he legally resided in the state immediately before becoming a citizen is included in computing his period of continuous residence in the state.

~~**Sec. 1.08. CRIMINAL NEGLIGENCE STANDARD FOR ADMINISTRATIVE ACTION.** For the purposes of administrative actions under this code, a person acts with criminal negligence if the person acts with a mental state that would constitute criminal negligence under Chapter 6, Penal Code, if the act were an offense.~~

~~**Sec. 1.08. CRIMINAL NEGLIGENCE DEFINED.** For purposes of this code, a person acts with criminal negligence if the person acts with a mental state that would constitute criminal negligence under Chapter 6, Penal Code, if the act were an offense.~~

NOTE: Sections 1.08 repealed by Senate Bill 1090, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

TITLE 2. ADMINISTRATION OF CODE

CHAPTER 2. CIVIL LIABILITIES FOR SERVING BEVERAGES

Sec. 2.01. DEFINITIONS. In this chapter:

(1) "Provider" means a person who sells or serves an alcoholic beverage under authority of a license or permit issued under the terms of this code or who otherwise sells an alcoholic beverage to an individual.

(2) "Provision" includes, but is not limited to, the sale or service of an alcoholic beverage.

Sec. 2.02. CAUSES OF ACTION. (a) This chapter does not affect the right of any person to bring a common law cause of action against any individual whose consumption of an alcoholic beverage allegedly resulted in causing the person bringing the suit to suffer personal injury or property damage.

(b) Providing, selling, or serving an alcoholic beverage may be made the basis of a statutory cause of action under this chapter and may be made the basis of a revocation proceeding under Section 6.01(b) of this code upon proof that:

(1) at the time the provision occurred it was apparent to the provider that the individual being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others; and

(2) the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered.

(c) An adult 21 years of age or older is liable for damages proximately caused by the intoxication of a minor under the age of 18 if:

(1) the adult is not:

(A) the minor's parent, guardian, or spouse; or

(B) an adult in whose custody the minor has been committed by a court; and

(2) the adult knowingly:

(A) served or provided to the minor any of the alcoholic beverages that contributed to the minor's intoxication; or

(B) allowed the minor to be served or provided any of the alcoholic beverages that contributed to the minor's intoxication on the premises owned or leased by the adult.

Sec. 2.03. EXCLUSIVITY OF STATUTORY REMEDY. (a) The liability of providers under this chapter for the actions of their employees, customers, members, or guests who are or become intoxicated is in lieu of common law or other statutory law warranties and duties of providers of alcoholic beverages.

(b) This chapter does not impose obligations on a provider of alcoholic beverages other than those expressly stated in this chapter.

(c) This chapter provides the exclusive cause of action for providing an alcoholic beverage to a person 18 years of age or older.

CHAPTER 5. ALCOHOLIC BEVERAGE COMMISSION

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Sec. 5.01. TEXAS ALCOHOLIC BEVERAGE COMMISSION. (a) The Texas Alcoholic Beverage Commission is an agency of the state.

(b) The Texas Alcoholic Beverage Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and Subchapter A, Chapter 5, expires September 1, 2019.

Sec. 5.02. MEMBERS OF COMMISSION; APPOINTMENT. (a) The commission is composed of three members, who are appointed by the governor with the advice and consent of the senate.

(b) Each member must be a Texas resident, must have resided in the state for at least five years next preceding his appointment and qualification, and must be a qualified voter in the state at the time of his appointment and qualification.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) A person is not eligible for appointment if the person's spouse is disqualified for appointment under Section 5.05 of this code.

Sec. 5.022. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission and the commission's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the commission;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 5.03. TERMS OF OFFICE. The members of the commission hold office for staggered terms of six years, with the term of one member expiring every two years. Each member holds office until his successor is appointed and has qualified. A member may be appointed to succeed himself.

Sec. 5.04. PRESIDING OFFICER. The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Sec. 5.05. RELATIONSHIP WITH ALCOHOLIC BEVERAGE BUSINESS PROHIBITED. (a) No person may be appointed to or serve on the commission, or hold an office under the commission, or be employed by the commission, who:

(1) has any financial connection with a person engaged in an alcoholic beverage business;

(2) holds stocks or bonds in an alcoholic beverage business; or

(3) has a pecuniary interest in an alcoholic beverage business.

(b) No member of the commission, or anyone holding an office under the commission, or any employee of the commission, may receive a commission or profit from or have an interest in the sale or purchase of alcoholic beverages.

(c) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(d) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of alcoholic beverages; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of alcoholic beverages.

(e) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of businesses or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 5.051. GROUNDS FOR REMOVAL FROM COMMISSION. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 5.02;

(2) does not maintain during service on the commission the qualifications required by Section 5.02;

(3) is ineligible for membership under Section 5.05;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a commission member exists.

(c) If the administrator has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the administrator shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 5.06. COMMISSION OFFICE. The office of the commission shall be in the city of Austin.

Sec. 5.07. COMMISSION MEETINGS. (a) The commission may meet in the city of Austin at times it determines.

(b) A majority of the members constitutes a quorum for the transaction of business or for the exercise of any of the powers or duties of the commission.

(c) The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 5.08. PER DIEM, EXPENSES. Members of the commission receive per diem as provided by the General Appropriation Act for not more than 60 days a year, plus actual expenses, while attending commission meetings or otherwise engaged in the performance of their duties.

NOTE: Sec. 5.09 repealed by Senate Bill 1179, 82nd Legislature, Regular Session, 2011, effective June 17, 2011.

Sec. 5.10. EMPLOYEES; COMPENSATION; BONDS. (a) The commission or administrator may employ clerks, stenographers, inspectors, chemists, and other employees necessary to properly enforce this code.

(b) The administrator or the administrator's designee shall develop an intra-agency career ladder program. The program shall require the intra-agency posting of all non-entry level positions concurrently with any public posting. The administrator or the administrator's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection. The employees shall be compensated as provided by legislative appropriation. The commission or administrator shall determine the duties of all employees of the commission.

(c) The administrator or the administrator's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes);

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(d) A policy statement prepared under Subsection (c) of this section must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with Subsection (c)(1) of this section, and be filed with the governor's office. The governor's office shall deliver a biennial report to the legislature based on the information submitted under this subsection. The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 5.101. HUMAN RESOURCES DIVISION. (a) A human resources division is established within the commission.

(b) The division is responsible for personnel, recruiting, hiring, and other human resource functions and shall provide recruiting and technical assistance to the divisions and regional offices of the commission.

(c) The division shall develop policies and procedures related to recruitment, hiring, and other human resource functions that are in compliance with state and federal law.

Sec. 5.102. RECRUITMENT. For the purpose of providing adequate personnel for all job positions in the commission, the commission shall:

(1) develop a recruiting program that identifies underrepresentation with the commission and focuses on recruiting different ethnic, racial, or gender groups for job categories in which underrepresentation occurs; and

(2) require that all applicants be reviewed by the human resources division to ensure consideration of underrepresented ethnic, racial, or gender groups.

Sec. 5.103. ANNUAL REPORT. The administrator shall report not later than February 1 of each year to the commission on the progress of the commission in the recruitment and hiring of personnel in compliance with the commission's recruitment and hiring policies.

Sec. 5.11. ADMINISTRATOR. (a) The commission shall appoint an administrator to serve at its will and, subject to its supervision, administer this code. Unless the commission orders otherwise, the administrator shall be manager, secretary, and custodian of all records. The administrator shall devote the administrator's [~~his~~] entire time to the office and shall receive a salary as appropriated by the legislature.

(b) The administrator is also known as the executive director.

Sec. 5.12. DUTIES OF ADMINISTRATOR. The commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes and shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the administrator and the staff of the commission. The commission or administrator may develop a procedure under which the commission or administrator, or the designee of either, may negotiate the repayment of debts owed the commission, including fees and delinquent taxes. When this code imposes concurrent powers or duties on the commission and the administrator, the commission shall designate those powers and duties which it delegates to the administrator. An order, decision, or judgment rendered and entered by the administrator in a matter in which the administrator has been authorized to act is not subject to change, review, or revision by the commission. A concurrent power or duty which has not been specifically delegated to the administrator by the commission's order is

retained by the commission, and an order, decision, or judgment rendered and entered by the commission in a matter in which the commission has retained authority is not subject to change, review, or revision by the administrator.

Sec. 5.13. ASSISTANT ADMINISTRATOR. (a) The administrator shall appoint an assistant administrator. The assistant administrator must meet the same qualifications as the administrator. The assistant administrator shall take the constitutional oath of office. In the absence of the administrator, or in case of the administrator's [~~his~~] inability to act, the assistant administrator shall perform the duties conferred on the administrator by law or delegated to the administrator by the commission. If there is a vacancy in the office of administrator, the assistant administrator shall perform the duties of the administrator until an administrator has been appointed by the commission. At other times the assistant administrator [~~he~~] shall perform those duties and have those functions, powers, and authority as may be delegated to the assistant administrator [~~him~~] by the administrator.

(b) The assistant administrator is also known as the deputy executive director.

Sec. 5.14. INSPECTORS AND REPRESENTATIVES. The commission or administrator may commission as many inspectors and representatives as are necessary to enforce this code and other laws administered by the commission. Each inspector and representative shall take the constitutional oath of office, which shall be filed in the office of the commission. Each commissioned inspector and representative has all the powers of a peace officer coextensive with the boundaries of the state.

Sec. 5.141. PURCHASE OF FIREARM FROM COMMISSION BY INSPECTOR OR REPRESENTATIVE. (a) A commissioned inspector or representative of the commission may purchase for an amount set by the commission, not to exceed fair market value, a firearm issued to the inspector or representative by the commission if the firearm is not listed as a prohibited weapon under Section 46.05, Penal Code, and if the firearm is retired by the commission for replacement purposes.

(b The commission may adopt rules for the sale of a retired firearm to an inspector or representative of the commission.

Sec. 5.142. SPECIAL INSPECTORS OR REPRESENTATIVES. (a) The commission or administrator may appoint as a special inspector or representative an honorably retired commissioned inspector or representative.

(b) A special inspector or representative is subject to the orders of the commission and is subject to the orders of the governor for special duty to the same extent as other law enforcement officers.

(d) A special inspector or representative is not entitled to compensation from the state for service as a special inspector or representative.

(e) A special inspector or representative commission expires January 1 of the first odd-numbered year after appointment. The commission may revoke a special inspector or representative commission at any time for cause.

Sec. 5.15. ASSISTANT ATTORNEYS GENERAL. The attorney general may [~~shall~~] appoint as many as six assistant attorneys general, as the commission determines necessary, to enable the commission to more efficiently enforce this code. The attorney general and the assistant attorneys general shall prosecute all suits requested by the commission and defend all suits against the commission. The commission shall provide the assistant attorneys general with necessary stenographers and office space. The assistant attorneys general shall be paid by the commission out of funds appropriated to it for the administration of this code. Their compensation shall be on the same basis as assistant attorneys general devoting their time to general state business.

Sec. 5.16. REPRESENTATION IN APPEAL TO COMMISSION. No member of the legislature or other person may appear for compensation in a representational capacity in an appeal to the commission unless he first files an affidavit supplied by the commission and makes a full disclosure of whom he represents and of the fact that he is being compensated for doing so. The commission shall provide appropriate forms, and these records are a public record of the commission.

Sec. 5.17. SUITS AGAINST THE COMMISSION: VENUE. In all suits against the commission, except appeals governed by Section 11.67 or 32.18 of this code, venue is in Travis County.

Sec. 5.18. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 5.20. STANDARDS OF CONDUCT INFORMATION. The commission shall provide to its members and employees, as often as necessary, information regarding their qualification for office or employment under this code and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 5.31. GENERAL POWERS AND DUTIES. (a) The commission may exercise all powers, duties, and functions conferred by this code, and all powers incidental, necessary, or convenient to the administration of this code. It shall inspect, supervise, and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distributing alcoholic beverages, and the possession of alcoholic beverages for the purpose of sale or otherwise. It may prescribe and publish rules necessary to carry out the provisions of this code.

(b) The commission shall:

(1) protect the public safety by deterring and detecting violations of this code;

(2) promote legal and responsible alcohol consumption;

(3) ensure fair competition within the alcoholic beverage industry;

(4) ensure consistent, predictable, and timely enforcement of this code;

(5) ensure a consistent, predictable, and timely licensing and permitting process;

(6) promote and foster voluntary compliance with this code; and

(7) communicate the requirements of this code clearly and consistently.

Sec. 5.32. MAY REQUIRE REPORTS. The commission may require [~~the filing of reports and other data by~~] persons engaged in the alcoholic beverage business to provide information, records, or other documents [~~which~~] the commission finds necessary to accomplish the purposes of this code.

Sec. 5.33. REGULATE LICENSEES AND PERMITTEES. The commission shall supervise and regulate licensees and permittees and their places of business in matters affecting the public. This authority is not limited to matters specifically mentioned in this code.

Sec. 5.331. PUBLIC DISTURBANCE REPORTS. Local law enforcement agencies in each county with a population of 3.3 million or more shall send to the commission reports and other data concerning shootings, stabbings, and other public disturbances that occur on the premises of a permittee or licensee. The reports and data shall be incorporated into the record of the permittee or licensee. The administrator of the Texas Alcoholic Beverage Commission shall prescribe the form and content of such reports.

Sec. 5.34. DELEGATION OF AUTHORITY. (a) The commission may authorize its commissioned peace officers, servants, and employees to carry out, under its direction, the provisions of this code.

(b) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

Sec. 5.35. ISSUANCE OF PERMITS AND LICENSES. The commission may grant, refuse, suspend, or cancel alcoholic beverage permits and licenses as provided in this code.

Sec. 5.36. INVESTIGATION OF VIOLATIONS. (a) The commission shall investigate violations of this code and of other laws relating to alcoholic beverages, and shall cooperate in the prosecution of offenders before any court of competent jurisdiction. The commission may seize alcoholic beverages manufactured, sold, kept, imported, or transported in violation of this code and apply for the confiscation of the beverages if required to do so by this code.

Sec. 5.361. ENFORCEMENT. (a) The commission shall develop a risk-based approach to conducting its enforcement activities that focuses on:

(1) detecting serious violations that impact public safety;

(2) monitoring entities that have a history of complaints and violations of this code; and

(3) any other factors the commission considers important.

(b) The commission shall develop benchmarks and goals to track key enforcement activities and the results of those activities. For each type of enforcement activity, the commission shall track the number of violations detected by the enforcement activity, the amount of time spent on the enforcement activity, and any other information the commission considers necessary. The commission shall use the information collected under this subsection and other information to compare the enforcement performance of each region and to determine the most effective enforcement activities.

(c) The commission shall track, on a statewide and regional basis, the type of violations detected, the disposition of the violations, and the entities that committed the most serious violations.

(d) The commission shall compile detailed statistics and analyze trends related to its enforcement activities. The commission shall:

(1) summarize the statistics and trends for executive management on a monthly basis and for the members of the commission on a quarterly basis; and

(2) make summary information available to the public, including by posting the information on the commission's Internet website.

Sec. 5.362. SCHEDULE OF SANCTIONS. (a) The commission by rule shall adopt a schedule of sanctions that may be imposed on a license or permit holder for violations of this code or rules adopted under this code. In adopting the schedule of sanctions, the commission shall ensure that the severity of the sanction imposed is appropriate to the type of violation that is the basis for disciplinary action.

(b) For each violation for which a license or permit may be suspended, the schedule of sanctions must include the number of days a permit or license would be suspended and the corresponding civil penalty under Section 11.64.

(c) In determining the appropriate sanction for a violation under the schedule, the commission or administrator shall consider:

(1) the type of license or permit held by the person who committed the violation;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation; and

(4) the license or permit holder's previous violations of this code.

(d) The schedule must:

(1) allow deviations from the schedule for clearly established mitigating circumstances, including circumstances listed in Section 11.64(c), or aggravating circumstances; and

(2) include a list of the most common violations by members of the manufacturing, wholesaling, and retailing tiers of the alcoholic beverage industry and the sanctions assessed for those violations.

(e) The commission shall develop policies to guide commission staff in determining the circumstances when it is appropriate to deviate from the schedule of sanctions. The policies must identify the circumstances when approval is required in order to deviate from the schedule.

(f) The commission shall make the schedule of sanctions available to the public, including by posting the schedule on the commission's Internet website.

Sec. 5.37. COLLECTION OF TAXES AT SOURCE. (a) If the federal government provides a method of collecting liquor taxes at the source, the commission may enter contracts and comply with regulations, even to the extent of abrogating provisions of this code which are inconsistent with federal law or regulations, in order to receive the portion of the taxes allocated to the state. The taxes received shall be distributed as provided in this code.

(b) The commission may acquire by gift, grant, or purchase, port of entry or other facilities for the administration of the Alcoholic Beverage Code, including the collection of taxes and confiscation of unlawful containers and illicit beverages. The commission may enter into agreements with agencies of the United States or other persons, if in the judgment of the commission, it will benefit the state to place

facilities under its control through lease or sale from the United States or other persons. The commission may expend funds for the purpose of rehabilitating, renewing, restoring, extending, enlarging, improving, or performing routine maintenance on facilities under its control.

(c) For the purpose of complying with Chapter 455, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 678f, Vernon's Texas Civil Statutes), the commission is considered to be a public authority and unless the commission requests facilities to be obtained in accordance with Chapter 258, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 666b,Vernon's Texas Civil Statutes), the provisions of that Act do not apply to the acquisition of facilities under this Act.

(d) The commission is authorized to receive in the form of a gift, grant, or donation, any funds consistent with the purposes and goals of the commission and the designation of the grantor. However, no gift, grant, or donation may be offered or accepted from any party to any contested case before the agency, or from any party licensed or regulated by the commission.

Sec. 5.371. PROCEEDS FROM CONTRABAND. Property, money, and the proceeds from forfeited contraband provided to the commission by a federal agency or under state or federal law shall be deposited in the commission's account in the state treasury and may be appropriated only to the commission for law enforcement purposes. Funds under this section that are not expended at the close of a fiscal year shall be reappropriated for the same purpose the following fiscal year.

Sec. 5.38. QUALITY AND PURITY OF BEVERAGES. (a) The commission shall require by rule that any alcoholic beverage sold in this state conform in all respects to its advertised quality.

(b) The commission shall promulgate and enforce rules governing the labeling and advertising of all alcoholic beverages sold in the state, and shall adopt and enforce a standard of quality, purity, and identity of all alcoholic beverages. The commission shall promulgate and enforce necessary rules to safeguard the public health and to insure sanitary conditions in the manufacturing, refining, blending, mixing, purifying, bottling, rebottling, and sale of alcoholic beverages.

(c) The commission may test the contents of any alcoholic beverage manufactured or sold in the state to protect the public health and safety and to ensure that the product:

(1) is accurately represented to the public; and

(2) complies with state law and commission rules.

Sec. 5.39. REGULATION OF LIQUOR CONTAINERS. The commission shall adopt rules to standardize the size of containers in which liquor may be sold in the state and relating to representations required or allowed to be displayed on or in the containers. To accommodate the alcoholic beverage industry's conversion to the metric system, the commission shall adopt rules permitting the importation and sale of liquor in metric-sized containers as well as in containers sized according to the United States standard gallon system.

Sec. 5.40. REGULATION OF BEER CONTAINER DEPOSITS. If the commission finds it necessary to effectuate the purposes of this code, it may adopt rules to provide a schedule of deposits required to be obtained on beer containers delivered by a licensee.

Sec. 5.41. ALCOHOL USED FOR SCIENTIFIC PURPOSES, ETC. The commission shall license and regulate the use of alcohol and liquor for scientific, pharmaceutical, and industrial purposes. The commission shall provide by rule for the withdrawal of alcohol or liquor for those purposes from warehouses or denaturing plants, and shall prescribe the manner in which alcohol or liquor may be used, tax free, for scientific research, in hospitals or sanatoriums, in industrial plants, or for other manufacturing purposes.

Sec. 5.42. PENALTY FOR VIOLATION OF RULE. A person who violates a valid rule of the commission is guilty of a misdemeanor and on conviction is punishable by the penalty prescribed in Section 1.05 of this code.

Sec. 5.43. WHO MAY HOLD HEARING; RULES OF EVIDENCE. (a) Except as provided by Subsection (b) for a hearing held under Section 61.32 of this code, a hearing on the adoption of commission rules, or a hearing on an employment matter, the commission designates the State Office of Administrative Hearings to conduct and make a record of any hearing authorized by this code. If the commission or administrator declares a hearing to be an emergency, the State Office of Administrative

Hearings shall assign an administrative law judge or may contract with a qualified individual within five days and set a hearing as soon as possible.

(b) The commission or administrator may render a decision on the basis of the record or the proposal for decision if one is required under the administrative procedure law, Chapter 2001, Government Code, as if the administrator or entire commission had conducted the hearing. The commission may prescribe its rules of procedure for cases not heard by the State Office of Administrative Hearings.

Sec. 5.435. PUBLIC PARTICIPATION IN LICENSING OR PERMITTING HEARINGS. (a) The commission or the party conducting a hearing under this code that relates to an application for an alcoholic beverage license or permit, the renewal, suspension, or revocation of an alcoholic beverage license or permit, or other disciplinary action against the holder of an alcoholic beverage license or permit shall adopt rules or policies that provide the public with a reasonable opportunity to appear before the commission or the party conducting the hearing and to speak on any issue related to the hearing.

(b) The commission or the party conducting the hearing shall consider the public testimony in making a decision on the hearing.

(c) This section does not prohibit the commission or the party conducting the hearing from adopting rules relating to:

(1) the conduct of the hearing, the order of witnesses, or rules of conduct for participants, including witnesses, at the hearing; and

(2) the reliability, relevance, or authenticity of evidence presented at a hearing, except that a rule adopted under this subsection may not prevent a party from presenting testimony or evidence at a hearing or prevent the commission or the party conducting the hearing from considering the testimony or evidence under Subsection (b).

Sec. 5.44. SUBPOENA OF WITNESSES; WITNESS FEES; CONTEMPT. (a) The commission or administrator, or an inspector or representative of the commission under the direction of the commission, for the purposes of this code, may:

(1) issue subpoenas;

(2) compel the attendance of witnesses;

(3) administer oaths;

(4) certify to official acts;

(5) take depositions inside or outside the state, as provided by law;

(6) compel the production of pertinent books, accounts, records, documents, and testimony; and

(7) certify to copies of documents as being true copies on file in the official records of the commission.

(b) If a witness in attendance before the commission or before an authorized representative refuses without reasonable cause to be examined or answer a legal or pertinent question, or to produce a book, record, or paper when ordered by the commission to do so, the commission may apply to the district court for a rule or order returnable in not less than two nor more than five days, directing the witness to show cause before the judge why he should not be punished for contempt. The commission may apply to the district court of any county where the witness is in attendance, on proof by affidavit of the fact, unless the order of contempt is sought under Chapter 2001, Government Code, in which case the commission shall apply to a district court of Travis County in conformity with that Act. On return of the order, the judge hearing the matter shall examine the witness under oath, and the witness shall be given an opportunity to be heard. If the judge determines that the witness has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

(c) Subpoenas are served and witness fees and mileage paid as in civil cases in the district court in the county to which the witness is called, unless the proceeding for which the service or payment is made is pursuant to Chapter 2001, Government Code, in which case the service or payment shall be

made as provided in that Act. Witnesses subpoenaed at the instance of the commission shall be paid their fees and mileage by the commission out of funds appropriated for that purpose.

Sec. 5.441. FEES AND EXPENSES PAID MEMBERS OR EMPLOYEES OF COMMISSION. (a) If a member of the commission, the administrator, or an employee of the commission is called to attend a federal or state judicial proceeding inside or outside the state and the attendance relates to the individual's duties with the commission, the individual shall pay to the comptroller any witness fees he receives. The comptroller shall deposit the fees in the state treasury to the credit of an appropriation made to the commission for payment of fees and mileage of witnesses called by the commission.

(b) An employee of the commission who travels inside or outside the state on official business as the designated representative of the administrator is entitled to reimbursement for meals, lodging, and travel at the same rate as is applicable to members of the commission.

Sec. 5.45. PROOF OF DOCUMENT. (a) In a suit by the state or the commission or in which either is a party, a transcript from the papers, books, records, or proceedings of the commission purporting to contain a true statement of accounts between the commission or the state and any person, or a copy of a rule, order, audit, bond, contract, or other instrument relating to a transaction between the commission and a person, when certified by the administrator or chairman of the commission to be a true copy of the original on file with the commission and authenticated under the seal of the commission, is admissible as prima facie evidence of the existence and validity of the original document and entitled to the same creditability as the original document. If a suit is brought on a bond or other written instrument, and the person alleged to have executed the instrument denies by a sworn pleading to have executed the instrument, the court shall require the production and proof of the instrument.

(b) A member of the commission or the administrator may execute a certificate under the seal of the commission setting forth the terms of an order, rule, bond, or other instrument referred to in this section. In the case of an order or rule, the certificate may state that the order or rule was adopted, promulgated, and published and filed with the commission and was in force at any date or during any period of time. In the case of a bond or other instrument, the certificate may state that it was executed and filed with the commission and was in force at any date or during any period of time. The certificate is prima facie evidence of the facts stated in it and is admissible as evidence in any action, civil or criminal, involving the facts contained in the certificate without further proof of those facts.

Sec. 5.46. SECURITY FOR COSTS. No security for costs may be required of a representative of the commission in a matter in which the representative protests the issuance of a license or permit in a hearing conducted by the county judge.

Sec. 5.47. RECORDS OF VIOLATIONS. Records of all violations of this code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations shall be kept on file at the office of the commission in the city of Austin. The records are open to the public.

Sec. 5.48. PRIVATE RECORDS. (a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

Sec. 5.49. PRINTED COPIES OF CODE AND RULES. The commission from time to time may have as many copies of this code and any commission rule governing the collection or refund of the gross receipts tax printed in pamphlet form for distribution as it finds necessary.

Sec. 5.50. ESTABLISHMENT OF CERTAIN FEES. (a) The commission by rule may establish reasonable fees for tasks and services performed by the commission in carrying out the

provisions of this code, including fees incidental to the issuance of licenses and permits under Title 3 of this code.

(b) The commission may not increase or decrease a fee set by this code, but if a statute is enacted creating a certificate, permit, or license and there is no fee established, the commission by rule may set a fee. The commission by rule shall assess surcharges on all applicants for an original or renewal certificate, permit, or license issued by the commission in addition to any fee set by this code and collect the surcharges at the time of application. In assessing a surcharge, the commission may not overly penalize any segment of the alcoholic beverage industry or impose an undue hardship on small businesses.

(c) Insofar as they relate to the levying and collection of a local fee, Sections 11.38 and 61.36 of this code do not apply to fees set by rule of the commission.

(d) Revenues and surcharges from fees collected by the commission under this section shall be deposited in the general revenue fund.

Sec. 5.51. BOOKKEEPING RECORDS. A permittee who holds a permit issued under Chapters 28 through 33 of this code may elect to keep all records required under this code on a machine bookkeeping system. A permittee who desires to use such a system must submit a written application for commission approval of the system before implementing the system. The commission may authorize a permittee to centralize the permittee's records.

Sec. 5.52. PROGRAM ACCESSIBILITY PLAN. The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

Sec. 5.53. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall adopt rules that clearly define the agency's complaint process from the time the complaint is received until it is resolved.

(b) The commission shall make information describing its procedures for complaint investigation and resolution available to the public and appropriate state agencies, including by posting the information on the commission's Internet website.

(c) The commission, by rule, shall adopt a standardized form for filing complaints against a licensed or permitted entity. The commission shall make the complaint form available to the public, including by posting the complaint form on the commission's Internet website.

(d) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing a complaint to the commission. The commission may require that the notification be provided on a sign prominently displayed in the place of business of each individual or entity regulated under this code.

Sec. 5.54. RESOLUTION OF COMPLAINTS. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall assign priorities to complaint investigations based on risk so that the commission handles the most serious complaints first.

(a-1) The commission shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The commission shall:

(1) compile:

(A) detailed statistics and analyze trends on complaint information, including:

(i) the nature of the complaints;

(ii) heir disposition; and

(iii) the length of time to resolve complaints; and

(B) complaint information on a statewide and a regional basis;

(2) report the information on a monthly basis to executive management and on a quarterly basis to members of the commission; and

(3) make general information about the nature and disposition of complaints available to the public, including by posting the information on the commission's Internet website.

Sec. 5.55. ELECTRONIC PROCESSING OF LICENSES OR PERMITS. (a) The commission shall expedite the processing of original and renewal applications for licenses and permits by using electronic means, including the Internet.

(b) The commission or administrator may enter into an agreement with another agency of this state to provide for the issuance of original or renewal licenses or permits through the use of electronic means, including use of the Internet, to facilitate the licensing process.

(c) A reasonable service fee may be charged to applicants who choose to use electronic or Internet service to apply for original licenses or permits or to renew licenses or permits, subject to other laws limiting or defining those fees; provided, that no service fee may be charged by the commission or by another agency to those applicants who choose not to utilize the electronic or Internet method to apply for an original or a renewal license or permit.

Sec. 5.56. FUNDING OF TEXAS WINE MARKETING ASSISTANCE PROGRAM. (a) Notwithstanding any other law, on or before October 1 of each fiscal year, the commission shall transfer from funds appropriated to the commission $250,000 to the Department of Agriculture to be used by the department to implement the Texas Wine Marketing Assistance Program established by Chapter 110.

(b) The commission in accordance with this subsection may recover the amount transferred under Subsection (a) by imposing a surcharge on licenses and permits, other than an agent's permit or an agent's beer license, issued or renewed by the commission each fiscal year. The surcharge shall be an amount equal to the amount transferred under Subsection (a) divided by the number of licenses and permits the commission anticipates issuing during that year, rounded down to the next lowest whole dollar.

(c) The governing body of an incorporated city or town or the commissioners court of a county may not levy and collect a fee under Section 11.38 or 61.36 based on a surcharge imposed under this section.

Sec. 5.57. MARKETING PRACTICES REGULATORY DECISIONS. (a) The commission shall develop a formal process for making policy decisions regarding marketing practices regulations and for communicating those decisions to agency staff and the alcoholic beverage industry.

(b) The commission shall gather input from a diverse group of representatives of the alcoholic beverage industry regarding regulatory issues and interpretations of this code and commission rules.

(c) The commission shall make a reasonable attempt to meet with alcoholic beverage industry representatives from:

(1) the manufacturing, distribution, and retail tiers of the industry; and

(2) the liquor, beer, and wine segments of the industry.

(d) In making policy decisions regarding marketing practices regulations, the commission shall:

(1) take into consideration recommendations of the industry representatives consulted under this section;

(2) document its policy decisions by:

(A) using a precedents manual; or

(B) drafting formal advisories; and

(3) make those documents available to regional staff and industry members through its Internet website, electronic mail, or commission publications.

Sec. 5.58. INTERNAL AFFAIRS. (a) The administrator shall establish an office of internal affairs to ensure fair and impartial investigations of alleged employee misconduct.

(b) The administrator shall appoint and directly oversee the head of the office of internal affairs.

(c) The office of internal affairs has original departmental jurisdiction over complaints involving commission personnel.

(d) The office of internal affairs staff shall coordinate and be the central reporting point for all employee investigations. The staff may initiate investigations of complaints; however, the staff must obtain the approval of the appropriate division director or higher-level executive management to investigate an employee when no complaint has been made.

(e) At least once each month, the head of the office of internal affairs shall report to the administrator information about the nature and status of each complaint investigated by the office of internal affairs.

(f) The head of the office of internal affairs shall submit a quarterly report to the members of the commission. The report must contain a summary of information relating to investigations conducted under this section, including an analysis of the number, type, and outcome of investigations, trends in the investigations, and recommendations to avoid future complaints.

(g) The commission shall inform the public about how to file a complaint against an employee of the commission and the steps the agency takes to address complaints against employees.

Sec. 5.59. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Sec. 5.60. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Sec. 5.61. REPORT TO LEGISLATURE ON CERTAIN ENFORCEMENT EFFORTS. (a) Not later than October 31 of each even-numbered year, the commission shall report to the legislature on the commission's enforcement efforts concerning alcohol sales and consumption during prohibited hours.

(b) The report must specify the number of individuals or establishments found to be:

(1) engaging in an activity for which a permit or license is required by this code without the required permit or license;

(2) selling, serving, or offering for sale an alcoholic beverage during prohibited hours in violation of Chapter 105 or Section 11.61(b)(23), 32.17(a)(7), or 61.71(a)(7);

(3) consuming or permitting consumption of an alcoholic beverage on a permitted or licensed premises during prohibited hours in violation of Chapter 105 or Section 11.61(b)(22), 32.17(a)(7), or 61.71(a)(18); or

(4) violating Section 11.61(b)(2), 32.17(a)(2), 32.17(a)(3), 61.71(a)(14), or 101.04 by:

(A) refusing to allow entry to a permitted or licensed premises by an inspector, investigator, or law enforcement official;

(B) refusing to furnish information to an inspector, investigator, or law enforcement official; or

(C) interfering with or refusing to permit an inspection or investigation being conducted by an inspector, investigator, or law enforcement official.

(c) The commission shall report the information required by Subsection (b) on a statewide basis and for each region and major metropolitan area.

CHAPTER 6. ACTIVITIES SUBJECT TO REGULATION

Sec. 6.01. RIGHTS AND PRIVILEGES; REVOCATION. (a) A person may manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages, if the right or privilege of doing so is granted by this code and the person has first obtained a license or permit of the proper type as required by this code.

(b) A license or permit issued under this code is a purely personal privilege and is subject to revocation or suspension if the holder is found to have violated a provision of this code or a rule of the commission.

Sec. 6.02. COORDINATION OF EXPIRATION DATES. (a) The commission may authorize a licensee or permittee to change the expiration date of a license or permit held by the licensee or permittee to any date that is agreeable to the commission, consistent with a reasonable annual distribution of renewal application review work of the commission, and to the licensee or permittee.

(b) The fee for an application for a change in expiration date is $25 per license or permit affected.

(c) The commission may not abate or refund a license or permit fee because of a change in the expiration date made under this section but may authorize a license or permit period of less than one year for the period during which the expiration date is changed. The commission may not authorize a license or permit period of greater than two years.

NOTE: TABC is enjoined from enforcing the Texas state residency and Texas state citizenship requirements in Section 6.03 below.

Sec. 6.03. CITIZENSHIP REQUIREMENTS. (a) It is the public policy of this state and a purpose of this section to require that, except as provided in Subsection (k) of this section or otherwise in this code, a permit or license may not be issued to a person who was not a citizen of this state for a one-year period preceding the date of the filing of the person's application for a license or permit. In that regard, the legislature makes the findings in Subsections (b) through (j) of this section.

(b) Between 1920 and 1933, the distribution and consumption of alcoholic beverages was prohibited in the United States. While the idealistic motives behind Prohibition were noble, a law enforcement nightmare ensued. Otherwise law-abiding citizens routinely violated the law by buying and consuming alcoholic beverages. The demand for the illegal products created an opportunity for criminal elements to develop a national network for the supply and distribution of alcoholic beverages to the populace. Massive criminal empires were built on illicit profits from these unlawful activities and organized crime openly flourished in Chicago, New York, New Orleans, and other cities.

(c) During Prohibition, the illegal enterprises used their national wholesale distribution networks to exert control over their customers. A common operating procedure was to sell alcoholic

beverages to a speakeasy on liberal terms to ensnarl the owner in a web of debt and control with the aim of forcing the owner to engage in other illegal business enterprises on the premises including gambling, prostitution, and the distribution of illegal drugs.

(d) In 1935, when the sale of alcoholic beverages was legalized in this state following the adoption of the Twenty-first Amendment to the United States Constitution, the state was faced with building an entire framework for the distribution of alcoholic beverage products. An important concern was that since criminals owned and controlled the existing illegal alcoholic beverage distribution system, criminals would attempt to own and control the newly legalized industry. In an effort to prevent this situation, comprehensive laws were adopted to ensure that an alcoholic beverage permit or license could be issued only to citizens of the state who had lived in this state for at least three years, thus, long enough to be known by their community and neighbors.

(e) Under the newly designed regulatory scheme, permits and licenses issued by the state did not grant the holder a right. Rather, the holder was granted a privilege that could be challenged at both the county and the state level if the character or qualifications of the applicant were suspect. Finally, strict cash and credit laws were adopted to prevent parties in the wholesale distribution system from controlling their retail customers through the leveraging of debt to accomplish other illicit gain.

(f) The alcoholic beverage laws adopted by the legislature in the 1930s to free the industry from the influence of organized crime have been successful in this state. The alcoholic beverage industry in this state is not dominated by organized crime. However, the legislature does find that organized crime continues to be a threat that should never be allowed to establish itself in the alcoholic beverage industry in this state.

(g) To accommodate the interests of the consuming public, the expansion of popular nationwide businesses, and the increasing state interest in tourism, and at the same time to guard against the threats of organized crime, unfair competition, and decreased opportunities for small businesses, the legislature finds that there is no longer need for the three-year residency requirements with regard to those segments of the industry that sell alcoholic beverages to the ultimate consumer only. The legislature finds that it is desirable to retain a one-year residency requirement for businesses that sell to the consumer packaged liquor and fortified wine capable of being used to supply legal or illegal bars and clubs. The legislature also finds it reasonable, desirable, and in the best interests of the state to provide a one-year residency requirement for businesses engaged in the wholesale distribution of beer, malt liquor, or wine or in the manufacture and distribution of distilled spirits and fortified wines at both the wholesale and the retail levels where those beverages, in unopened containers, are sold to mixed beverage permittees and private club registration permittees as well as to the general public. Adequate protection is deemed to be provided by controlling those sources of supply for distilled spirits and fortified wines.

(h) It is also the public policy of this state and a purpose of this section to enforce strict cash and credit laws as a means of preventing those engaged in the distribution of alcoholic beverages from exerting undue influence over any level of the industry selling or serving alcoholic beverages to the ultimate consumer.

(i) It is also the public policy of this state and a purpose of this section to maintain and enforce the three-tier system (strict separation between the manufacturing, wholesaling, and retailing levels of the industry) and thereby to prevent the creation or maintenance of a "tied house" as described and prohibited in Section 102.01 of this code.

(j) The above-stated public policies, purposes of this section, and legislative findings are provided as guidelines for the construction of the following subsections of this section.

(k) A requirement under this code that 51 percent or more of the stock of a corporation be owned by a person or persons who were citizens of this state for a one-year period preceding the date of the filing of an application for a license or permit does not apply to a corporation organized under the laws of this state that applies for a license or permit under Chapters 25-34, Chapter 44, Chapters 48-51, Chapters 69-72, or Chapter 74 of this code if:

(1) all of the officers and a majority of directors of the applicant corporation have resided within the state for a one-year period preceding the date of the application and each officer or director possesses the qualifications required of other applicants for permits and licenses;

(2) the applicant corporation and the applicant's shareholders have no direct or indirect ownership or other prohibited relationship with others engaged in the alcoholic beverage industry at different levels as provided by Chapter 102 of this code and other provisions of this code;

(3) the applicant corporation is not precluded by law, rule, charter, or corporate bylaw from disclosing the applicant's shareholders to the commission; and

(4) the applicant corporation maintains its books and records relating to its alcoholic beverage operations in the state at its registered office or at a location in the state approved in writing by the commission.

(l) Corporations subject to Subsection (k) of this section that have substantially similar ownership may merge or consolidate. A fee of $100 shall be paid to the commission for each licensed or permitted premises that is merged or consolidated into the surviving corporation. The surviving corporation succeeds to all privileges of the prior corporation that held the permits or licenses if the surviving corporation is qualified to hold the permits or licenses under this code. The purposes of this subsection, corporations have substantially similar ownership if 90 percent or more of the corporations is owned by the same person or persons or by the same corporation or corporations or if the surviving corporation has maintained an ownership interest in the merged or consolidated corporations since the date the original permit or license was issued.

Sec. 6.04. GRACE PERIOD ON RENEWAL OF LICENSES AND PERMITS. (a) Notwithstanding any other provision of this code, the holder of a license or permit issued under this code may renew the license or permit rather than reapply for an original license or permit if, not later than the 30th day after the date of the expiration of the license or permit, the holder files a renewal application and the required license or permit fee with the commission and pays a late fee as provided by rules of the commission.

(b) If an application is filed under Subsection (a), a violation of the law that occurs before the filing of a renewal application may be the basis for an administrative action against the holder of the license or permit.

(c) The holder of a license or permit who does not renew the license or permit before its expiration date may not operate until the holder files an application under Subsection (a).

(d) The commission shall adopt rules necessary to implement this section.

Sec. 6.05. CORPORATE LIABILITY. A corporation with an ownership interest in a corporation holding a permit under Section 6.03(k) of this code and which shares space, employees, business facilities, or services is subject to liability under Chapter 2 of this code.

TITLE 3. LICENSES AND PERMITS

SUBTITLE A. PERMITS

CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO PERMITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.01. PERMIT REQUIRED. (a) No person who has not first obtained a permit of the type required for the privilege exercised may, in a wet area, do any of the following:

(1) manufacture, distill, brew, sell, possess for the purpose of sale, import into this state, export from this state, transport, distribute, warehouse, or store liquor;

(2) solicit or take orders for liquor; or

(3) for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process liquor.

(b) A person may manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process liquor, or possess equipment or material designed for or capable of use for manufacturing liquor, if the right or privilege of doing so is granted by this code.

(c) A right or privilege granted by this section as an exception to prohibitions contained elsewhere in this code may be exercised only in the manner provided. An act done by a person which is not permitted by this code is unlawful.

Sec. 11.015. HEARING LOCATION. Notwithstanding any other provision of this code, except for a hearing required to be conducted by a county judge, a hearing related to the issuance, renewal, cancellation, or suspension of a permit under this subtitle may be conducted:

(1) in the county in which the premises is located;

(2) at the nearest permanent hearing office of the State Office of Administrative Hearings; or

(3) at any location agreed to by the parties.

Sec. 11.02. SEPARATE PERMIT REQUIRED. A separate permit shall be obtained and a separate fee paid for each outlet of liquor in the state.

Sec. 11.03. NATURE OF PERMIT. A permit issued under this code is a purely personal privilege and is subject to revocation as provided in this code. It is not property, is not subject to execution, does not pass by descent or distribution, and except as otherwise provided in this code, ceases on the death of the holder.

Sec. 11.04. MUST DISPLAY PERMIT. All permits shall be displayed in a conspicuous place at all times on the licensed premises.

Sec. 11.041. WARNING SIGN REQUIRED. (a) Each holder of a permit who is not otherwise required to display a sign under Section 411.204, Government Code, shall display in a prominent place on the permit holder's premises a sign giving notice that it is unlawful for a person to carry a weapon on the premises unless the weapon is a concealed handgun [~~of the same category~~] the person is licensed to carry under Subchapter H, Chapter 411, Government Code.

(b) The sign must be a least 6 inches high and 14 inches wide, must appear in contrasting colors, and shall be displayed in a conspicuous manner clearly visible to the public. The commission or administrator may require the permit holder to also display the sign in a language other than English if it can be observed or determined that a substantial portion of the expected customers speak the other language as their familiar language.

NOTE: Section 11.041 amended by House Bill 3142, 83rd Legislature, Regular Session, 2013, effective May 31, 2013.

Sec. 11.042. HEALTH RISKS WARNING SIGN. (a) The commission by rule shall require the holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption to display a warning sign on the door to each restroom on the permitted premises that informs the public of the risks of drinking alcohol during pregnancy.

(b) The commission's rules shall specify the language of the warning and the size and graphic design of the sign, including font size and type.

Sec. 11.05. UNAUTHORIZED USE OF PERMIT. No permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued.

Sec. 11.06. PRIVILEGES LIMITED TO LICENSED PREMISES. No person may use a permit or exercise any privileges granted by the permit except at the place, address, premises, or location for which the permit is issued, except as otherwise provided by this code.

Sec. 11.07. DUPLICATE OR CORRECTED PERMIT. If a permit is lost, destroyed, or needs to be changed, the commission may issue a duplicate or corrected permit.

Sec. 11.08. CHANGE OF LOCATION. If a permittee desires to change the location of his place of business, he may file an application for a change of location with the commission. The application shall be on a form prescribed by the commission. The commission or administrator may deny the application on any ground for which an original application may be denied. The application is subject to protest and hearing in the same manner as an original application for a permit.

Sec. 11.09. EXPIRATION OR SUSPENSION OF PERMIT. (a) A permit issued under this code expires on the second anniversary of the date it is issued, except as provided by Subsections (d) and (e) or another provision of this code. Notwithstanding Section 5.50(b), the commission shall double the amount of fees and surcharges otherwise applicable under this code for a permit with a two-year term.

(b) A secondary permit which requires the holder of the permit to first obtain another permit, including a late hours permit or temporary permit, expires on the same date the basic or primary permit expires. The commission may not prorate or refund any part of the fee for the secondary permit if the application of this section results in the expiration of the permit in less than two years.

(c) An action by the commission resulting in the suspension of a basic or primary permit also acts to suspend any secondary permit held by the holder of the basic or primary permit.

(d) The commission by rule may require that the expiration date for an individual permit holder's permit is the first anniversary of the date on which the permit is issued due to the permit holder's violation history.

(e) The commission may issue a permit with an expiration date less than two years after the date the permit is issued in order to maintain a reasonable annual distribution of renewal application review work and permit fees. If the commission issues a permit with an expiration date less than two years after the date the permit is issued, the commission shall prorate the permit fee on a monthly basis so that the permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid.

Sec. 11.091. NOTIFICATION OF EXPIRED OR SUSPENDED PERMIT. (a) The commission shall verify that the holder of an expired or suspended retail permit is not operating in violation of this code. The verification, including any inspection of the premises by commission personnel, must occur within a reasonable time after the date the permit expires or is suspended.

(b) The commission shall promptly notify each wholesaler, as that term is ordinarily used and understood in Section 102.01, who regularly supplies retailers in the geographic area that the holder’s retail permit has expired or has been suspended.

Sec. 11.10. SUCCESSION ON DEATH, BANKRUPTCY, ETC. On the death of the permittee or of a person having an interest in the permit, or on bankruptcy, receivership, or partnership dissolution, the receiver or successor in interest may apply to the county judge of the county where the licensed premises are located for certification that he is the receiver or successor in interest. On certification, unless good cause for refusal is shown, the commission or administrator shall grant permission, by letter or otherwise, for the receiver or successor in interest to operate the business during the unexpired portion of the permit. The permit may not be renewed, but the receiver or successor in interest may apply for an

original permit or license. A receiver or successor in interest operating for the unexpired portion of the permit is subject to the provisions of this code relating to suspension or cancellation of a permit.

Sec. 11.11. CONDUCT SURETY BOND. (a) Except as provided in Subsection (e) of this section, an applicant for a permit or a holder of a permit issued under:

(1) Chapter 25, 28, or 32 of this code shall file with the commission a surety bond in the amount of $5,000 conditioned on the applicant's or holder's conformance with alcoholic beverage law; or

(2) Chapter 22, 24, 25, 26, 28, or 32 and whose place of business is within 1,000 feet of the property line of a public school shall file with the commission a surety bond in the amount of $10,000 conditioned on the applicant's or holder's conformance with alcoholic beverage law.

(b) A surety bond required under this section shall contain the following statements on the face of the bond:

(1) that the holder of the permit will not violate a law of the state relating to alcoholic beverages or a rule of the commission; and

(2) that the holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code, regardless of whether the actions of an employee of a holder are not attributable to the holder under Section 106.14.

(c) The commission shall adopt rules relating to the:

(1) form of the surety bond;

(2) qualifications for a surety;

(3) method for filing and obtaining approval of the bond by the commission; and

(4) release or discharge of the bond.

(d) A holder of a permit required to file a surety bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or savings institution authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or savings institution authorized to do business in this state.

(e) A holder of a permit issued under this code who has held a permit for three years or more before the date the holder applied for renewal of the permit is not required to furnish a surety bond if the holder:

(1) has not had a license or permit issued under this code revoked in the five years before the date the holder applied for renewal of the permit;

(2) is not the subject of a pending permit or license revocation proceeding; and

(3) has continuously operated on the permitted premises for three years or more before the date the holder applied for renewal of the permit.

(f) If a holder of a permit is exempt from furnishing a conduct surety bond under Subsection (e) of this section, the holder shall be exempt from furnishing the bond at another location where the holder applies for or holds a permit.

Sec. 11.12. ALTERING FORM OF BUSINESS ENTITY. (a) The holder of a permit issued under this chapter, including a food and beverage certificate, may alter the form of the business entity that holds the permit if the ownership of the newly created business entity is identical to the ownership of the former business entity.

(b) Before the 10th day preceding the date the holder of the permit converts to a different form of business, the holder of the permit shall:

(1) file notice with the commission on a form prescribed by the commission of the change in the form of the business entity; and

(2) pay a $100 fee for each permitted premises affected by the change in form of the business entity.

(c) After satisfying the requirements of Subsection (b) and establishing the newly created business entity, that entity may use the permit and exercise any privileges granted by the permit.

Sec. 11.13. CERTAIN APPLICATIONS PROHIBITED. (a) This section applies only to a license or permit held in connection with an establishment located in a county with a population of 1.4 million or more for which a license or permit has been issued under Chapter 25 or 69 for the on-premises consumption of beer exclusively or beer and wine exclusively, other than a license or permit for an establishment holding a food and beverage certificate whose primary business being operated on the premises is food service.

(b) Notwithstanding any other provision of this code, a person who is within the fourth degree by consanguinity or affinity of the current licensee or permittee, as determined under Chapter 573, Government Code, may not apply for any license or permit under this code in connection with an establishment the license or permit of which is suspended under Section 11.61 or 61.71 or in connection with an establishment against whose current licensee or permittee a charge of a violation of this code is pending.

(c) Notwithstanding any other provision of this code, a person who is within the fourth degree by consanguinity or affinity of a licensee or permittee, as determined under Chapter 573, Government Code, whose license or permit was canceled under Section 11.61 or 61.71 may not, for a period of three years from the date of the cancellation, apply for a license or permit in connection with an establishment at the same location as the establishment whose license or permit was canceled.

(d) In this section, "person" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

SUBCHAPTER B. APPLICATION FOR AND ISSUANCE OF PERMITS

Sec. 11.31. APPLICATION FOR PERMIT. All permits shall be applied for and obtained from the commission. This section does not apply to wine and beer retailer's permits, except those for railway cars or excursion boats, or to wine and beer retailer's off-premises permits.

Sec. 11.32. RENEWAL APPLICATION. Renewal applications shall be made under oath and shall contain all information required by the commission or administrator showing that the applicant is qualified to hold the permit. The application shall be accompanied by the required bond and state fee. The commission or administrator may issue a renewal permit if it is found that the applicant is qualified.

Sec. 11.321. ADMINISTRATIVE PENALTY IN CERTAIN COUNTIES. (a) This section applies only to an original or renewal application made in connection with an establishment located in a county with a population of 1.4 million or more.

(b) In addition to any other applicable civil or criminal penalty, the commission may impose an administrative penalty not to exceed $4,000 on a licensee or permittee who makes a false or misleading statement in an original or renewal application, either in the formal application itself or in any written instrument relating to the application submitted to the commission or its officers or employees, in connection with an establishment that is licensed or permitted under Chapter 25 or 69 for the on-premises consumption of beer exclusively or beer and wine exclusively, other than an establishment holding a food and beverage certificate whose primary business being operated on the premises is food service.

Sec. 11.33. APPLICATION FORMS. All permit application forms shall be provided by the commission.

Sec. 11.34. CONSOLIDATED APPLICATION. (a) An applicant for a wholesaler's, class B wholesaler's, distiller's and rectifier's, brewer's, or winery permit may consolidate in a single application his application for that permit and his application for:

(1) private storage;
(2) storage in a public bonded warehouse;
(3) a private carrier's permit; and
(4) any other permit he is qualified to receive.

(b) An applicant who files a consolidated application must pay the fee prescribed in this code for each permit included in the application.

Sec. 11.35. PAYMENT OF FEE. (a) Each permit application must be accompanied by a cashier's check, a teller's check, a check drawn on the account of a corporation applying for a permit, or a money order or payment by credit card, charge card, or other electronic form of payment approved by commission rule for the amount of the state fee, payable to the order of the comptroller.

(b) The commission may set a processing fee in an amount that is reasonably related to the expense incurred by the commission in processing the electronic payment.

Sec. 11.36. REFUND OF FEE. The commission may not refund a permit fee except when the permittee is prevented from continuing in business because of a local option election or when an application for a permit is rejected by the commission or administrator. As much of the proceeds from permit fees as is necessary may be appropriated for that purpose.

Sec. 11.37. CERTIFICATION OF WET OR DRY STATUS. (a) The county clerk of the county in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by any valid order of the commissioners court.

(b) The city secretary or clerk of the city in which an application for a permit is made shall certify whether the location of address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by charter or ordinance.

(c) Once a permit is issued, the certification that the location or address is in a wet area may not be changed until after a subsequent local option election to prohibit the sale of alcoholic beverages.

(d) Notwithstanding any other provision of this code, if the county clerk, city secretary, or city clerk certifies that the location or address given in the application is not in a wet area or refuses to issue the certification required by this section, the applicant is entitled to a hearing before the county judge to contest the certification or refusal to certify. The applicant must submit a written request to the county judge for a hearing under this subsection. The county judge shall conduct a hearing required by this subsection not later than the 30th day after the date the county judge receives the written request.

Sec. 11.38. LOCAL FEE AUTHORIZED. (a) The governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half of the state fee for each permit issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the permittee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 351, Tax Code, and the local sales and use tax levied under Chapter 321, Tax Code.

(b) The commission or administrator may cancel a permit if it finds that the permittee has not paid a fee levied under this section. A permittee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than $10 nor more than $200.

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate permittees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

(d) The following are exempt from the fee authorized in this section:

(1) agent's, airline beverage, passenger train beverage, industrial, carrier's, private carrier's, private club registration, local cartage, storage, and temporary wine and beer retailer's permits;

(2) a wine and beer retailer's permit issued for a dining, buffet, or club car; and

(3) a mixed beverage permit during the three-year period following the issuance of the permit.

(e) The commission or administrator may cancel or deny a permit for the retail sale or service of alcoholic beverages, including a permit held by the holder of a food and beverage certificate, if it finds that the permit holder or applicant has not paid delinquent ad valorem taxes due on that permitted premises or due from a business operated on that premises to any taxing authority in the county of the

premises. For purposes of this subsection, a permit holder or applicant is presumed delinquent in the payment of taxes due if the permit holder or applicant:

(1) is placed on a delinquent tax roll prepared under Section 33.03, Tax Code;

(2) has received a notice of delinquency under Section 33.04, Tax Code; and

(3) has not made payment required under Section 42.08, Tax Code.

(f) In this section, "applicant" has the meaning assigned by Section 11.45.

Sec. 11.39. APPLICANT TO PUBLISH NOTICE. (a) Every applicant for a brewer's, distiller's and rectifier's, mixed beverage, private club registration, winery, wholesaler's, class B wholesaler's, wine bottler's, or package store permit shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in the city or town in which his place of business is located. If no newspaper is published in the city or town, the notice shall be published in a newspaper of general circulation published in the county where the applicant's business is located. If no newspaper is published in the county, the notice shall be published in a qualified newspaper published in the closest neighboring county and circulated in the county of the applicant's residence.

(b) The notice shall be printed in 10-point boldface type and shall include:

(1) the type of permit to be applied for;

(2) the exact location of the place of business for which the permit is sought;

(3) the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and

(4) if the applicant is a corporation, the names and titles of all officers.

(c) An applicant for a renewal permit is not required to publish notice.

(d) This section does not apply to an applicant for a daily temporary mixed beverage permit or a caterer's permit.

Sec. 11.391. NOTICE BY SIGN. (a) An applicant for a permit issued under this code for a location not previously licensed for the on-premises consumption of alcoholic beverages must, not later than the 60th day before the date the permit is issued, prominently post an outdoor sign at the location stating that alcoholic beverages are intended to be served on the premises, the type of permit, and the name and business address of the applicant.

(b) The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The administrator may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language. The commission shall provide such sign and may charge a fee therefor.

(c) This section does not apply to an applicant for a permit issued under Chapter 16, 19, 20, 21, 22, 23, 24, or 52.

Sec. 11.392. NOTICE OF PRIVATE CLUB APPLICATION OR RENEWAL. (a) The commission shall give notice of an application for a permit or renewal of a permit issued under Chapter 32 or 33 to:

(1) the state senator and the state representative who represent the district in which the premises are located;

(2) the municipal governing body, if the premises are located in an incorporated area, and the commissioners court of the county in which the premises are located; and

(3) the chief of police of the municipality, if the premises are located in an incorporated area, and the sheriff of the county in which the premises are located.

(b) Notwithstanding Section 11.39(c), the applicant for a private club permit renewal shall publish notice of the renewal application in a newspaper of general circulation in accordance with the requirements of Sections 11.39(a) and (b).

(c) Notices provided under this section must be given not later than:

(1) the fifth day after the date the application is filed; or

(2) the 31st day before the expiration date of a permit in the case of renewal.

(d) This section does not apply to a fraternal or veterans organization or the holder of a food and beverage certificate.

Sec. 11.393. NOTICE BY MAIL. (a) Except as provided by Subsection (b), a person who submits an original application for private club registration permit or a permit authorizing the retail sale of alcoholic beverages for on-premises consumption shall give written notice of the application to each residential address and established neighborhood association located within 300 feet of any property line of the premises for which the permit is sought.

(b) The notice required by Subsection (a) does not apply to an application that contains an application for a food and beverage certificate.

(c) The notice required by this section must be:

(1) delivered by mail at the applicant's expense;

(2) provided in English and a language other than English if it is likely that a substantial number of residents in the area speak a language other than English as their familiar language; and

(3) provided not earlier than the 14th day and not later than the 7th day before the date the application is filed.

(d) The applicant shall submit with an application for a permit described by Subsection (a) a list of each residential address provided notice under this section.

(e) The notice must be provided on a form prescribed by the commission and must contain:

(1) the type of permit and type of business for which the applicant has applied;

(2) the exact location of the place of business for which the permit is sought;

(3) the name of each owner of the business or, if the business is operated under an assumed name, the trade name and the name of each owner;

(4) if the applicant is a corporation, the name and title of each officer; and

(5) a description of the procedure for protesting the application.

NOTE: Sec. 11.40 repealed by House Bill 1217, 80th Legislature, Regular Session, 2007, effective September 1, 2007.

Sec. 11.41. RECOMMENDATION OF LOCAL OFFICIALS. (a) When a person applies for a permit, the commission or administrator may give due consideration to the recommendations of the mayor, the city council member or commissioner who represents the area in question, chief of police, city marshal, or city attorney of the city or town in which the premises sought to be licensed are located and of the county judge, the county commissioner who represents the area in question, sheriff, or county or district attorney of the county in which the premises sought to be licensed are located. If a protest against the issuance of a permit is made to the commission by any of these officers and it is found on a hearing or finding of facts that the issuance of the permit would be in conflict with the provisions of this code, the commission or administrator shall enter an order setting forth the reasons for refusal. A copy of the order shall be immediately mailed or delivered to the applicant.

(b) In the granting or withholding of a permit to sell alcoholic beverages at retail, the commission or administrator may give consideration to a recommendation made in writing by the commissioners court of the county in which the applicant proposes to conduct his business or by a representative of the commission.

Sec. 11.42. STATEMENT OF STOCK OWNERSHIP. The commission at any time may require an officer of a corporation holding a permit to file a sworn statement showing the actual owners of the stock of the corporation, the amount of stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders.

Sec. 11.43. DISCRETION TO GRANT OR REFUSE PERMIT. (a) The commission and administrator have discretionary authority to grant or refuse to issue an original or renewal permit under the provisions of this subchapter or any other applicable provision of this code.

(b) Notwithstanding any other provision of this code that authorizes the commission or administrator to refuse to issue a permit without a hearing, the commission or administrator shall hold a hearing before granting or refusing to issue an original mixed beverage permit, private club registration

permit, wine and beer retailer's permit, or retail dealer's on-premise license if a sexually oriented business is to be operated on the premises to be covered by the permit or license.

(c) A hearing shall be held on any renewal application of a mixed beverage permit, private club registration permit, wine and beer retailer's permit, or retail dealer's on-premise license if a sexually oriented business is to be operated on the premises to be covered by the permit or license and a petition is presented to the commission requesting a hearing which is signed by 50 percent of the residents who reside within 300 feet of any property line of the affected premises.

(d) A request for a hearing made under Subsection (b) or (c) of this section must include an allegation of grounds on which the original or renewal application, as applicable, should be denied.

Sec. 11.44. PREMISES INELIGIBLE FOR PERMIT OR LICENSE. (a) Except as provided by Subsection (c), if [~~If~~] an order of suspension against a permit or license is pending or unexpired, or if the commission has initiated action to cancel or suspend a permit or license, no permit or license may be issued for or transferred to the same licensed premises.

(b) The commission or administrator shall refuse to issue for a period of three years a permit or license for any location to an applicant who submitted a prior application that expired or was voluntarily surrendered before the hearing on the application was held on a protest involving allegations of prostitution, a shooting, stabbing, or other violent act, or an offense involving drugs or trafficking of persons. The three-year period commences on the date the prior application expired or was voluntarily surrendered.

(c) The commission may issue an original permit or license covering an otherwise permitted or licensed premises under conditions described by Subsection (a) if:

(1) the holder of the permit or license that is subject to the pending or unexpired suspension order or against which the cancellation or suspension action has been initiated has been evicted from the premises under a final, nonappealable court judgment; and

(2) all other conditions for the issuance of the new permit or license covering the premises are met by the applicant.

Sec. 11.45. "APPLICANT" DEFINED. The word "applicant," as used in Sections 11.46 through 11.48 of this code, also includes, as of the date of the application, each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

Sec. 11.46. GENERAL GROUNDS FOR REFUSAL. (a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of his application;

(2) five years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

(3) within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission which involves moral turpitude, as distinguished from a technical violation of this code or of the rule;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or by rule of the commission;

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(7) the applicant is a minor;

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

(10) the applicant will sell liquor unlawfully in a dry area or in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so;

(11) the applicant is not a United States citizen or has not been a citizen of Texas for a period of one year immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

NOTE: TABC is enjoined from enforcing the Texas state residency and Texas state citizenship requirements in Section 11.46(a)(11).

(12) the applicant does not provide an adequate building available at the address for which the permit is sought before conducting any activity authorized by the permit;

(13) the applicant is residentially domiciled with a person whose permit or license has been cancelled for cause within the 12 months immediately preceding the date of his present application;

(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency.

(b) The commission or administrator shall refuse to issue an original permit authorizing the retail sale of alcoholic beverages unless the applicant for the permit files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit, if required, for the place of business for which the alcoholic beverage permit is sought.

(c) The commission or administrator shall refuse to issue for a period of one year after cancellation a mixed beverage permit or private club registration permit for a premises where a license or permit has been cancelled during the preceding 12 months as a result of a shooting, stabbing, or other violent act, or as a result of an offense involving drugs, prostitution, or trafficking of persons.

Sec. 11.47. REFUSAL OF PERMIT: INTEREST IN BEER ESTABLISHMENT. The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant or a person with whom he is residentially domiciled has a financial interest in a permit or license authorizing the sale of beer at retail, except as is authorized by Section 22.06, 24.05, or 102.05 of this code. This section does not apply to an applicant for a permit which authorizes the sale of mixed beverages.

Sec. 11.48. REFUSAL OF PACKAGE STORE OR MIXED BEVERAGE PERMIT. (a) The commission or administrator may refuse to issue an original or renewal mixed beverage permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant, directly or indirectly, or through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns an interest of any kind in the premises, business, or permit of a package store.

(b) The commission or administrator may refuse to issue an original or renewal package store permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant, directly or indirectly, through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns an interest of any kind in the premises, business, or permit of a mixed beverage establishment.

(c) This section does not apply to anything permitted by Section 102.05 of this code.

Sec. 11.481. REFUSAL OF PERMIT AUTHORIZING ON-PREMISES CONSUMPTION. (a) In this section, "applicant" has the meaning assigned by Section 11.45.

(b) The commission or administrator shall refuse to issue an original or renewal permit authorizing on-premises consumption of alcoholic beverages, with or without a hearing, if the commission or administrator has reasonable grounds to believe and finds that, during the three years preceding the date the permit application was filed, a license or permit previously held under this code by the applicant, a person who owns the premises for which the permit is sought, or an officer of a person who owns the premises for which the permit is sought was canceled or not renewed as a result of a shooting, stabbing, or other violent act.

(c) This section does not apply to the issuance of an original or renewal permit authorizing on-premises consumption for a location that also holds a food and beverage certificate but does not hold a late hours permit.

Sec. 11.49. PREMISES DEFINED; DESIGNATION OF LICENSED PREMISES. (a) In this code, "premises" means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

(b) (1) Subject to the approval of the commission or the administrator, and except as provided in Subsection (c) of this section, an applicant for a permit or license may designate a portion of the grounds, buildings, vehicles, and appurtenances to be excluded from the licensed premises. (2) If such a designation has been made and approved as to the holder of a license or permit authorizing the sale of alcoholic beverages at retail or as to a private club registration permit, the sharing of space, employees, business facilities, and services with another business entity (including the permittee's lessor, which, if a corporation, may be a domestic or foreign corporation, but excluding a business entity holding any type of winery permit, a manufacturer's license, or a general, local, or branch distributor's license), does not constitute a subterfuge or surrender of exclusive control in violation of Section 109.53 of this code or the use or display of the license for the benefit of another in violation of Subdivision (15) of Subsection (a) of Section 61.71 of this code. This subsection shall not apply to original or renewal package store permits, wine only package store permits, local distributor's permits, or any type of wholesaler's permits.

(c) An applicant for an original or renewal package store permit, wine only package store permit, local distributor's permit, or any type of wholesaler's permit may not take advantage of the right conferred by Subsection (b) of this section except as permitted in Section 11.50 or 109.53 of this code.

(d) Any package store, wine only package store, wholesaler's, or local distributor's permittee who is injured in his business or property by another person (other than a person in his capacity as the holder of a wine and beer retailer's permit, wine and beer retailer's off-premise permit, private club registration permit, or mixed beverage permit or any person in the capacity of lessor of the holder of such a permit) by reason of anything prohibited in this section or Section 109.53 of this code is entitled to the same remedies available to a package store permittee under Section 109.53 of this code. Except for actions brought against a person in his capacity as the holder of or as the lessor of the holder of a wine and beer retailer's permit, wine and beer retailer's off-premise permit, mixed beverage permit, or private club registration permit, the statute of limitations for any action brought under this section or Section 109.53 of this code for any cause of action arising after the effective date of this Act is four years unless a false affidavit has been filed with the commission in which event the statute of limitations is 10 years for all purposes.

(e) When a designation under Subsection (b) of this section is made by a wine and beer retailer or a beer retailer, selling primarily for off-premise consumption, or by a wine and beer retailer's off-premise permittee, no more than 20 percent of the retail floor and display space of the entire premises may be included in the licensed premises, and all the retail floor and display space in the licensed premises must be compact and contiguous and may not be gerrymandered. However, the retail floor and display space included in the licensed premises may be in two separate locations within the retail premises if the total retail floor and display space included in the licensed premises does not exceed 20 percent of the floor and display space of the entire premises and each of the two portions of floor and

display space included in the licensed premises is itself compact and contiguous and not gerrymandered. In addition to the one or two separate locations of retail floor and display space on the premises, the licensed premises may include the cash register and check-out portions of the premises provided that (1) no alcoholic beverages are displayed in the check-out or cash register portion of the premises, and (2) the area of the check-out and cash register portions of the premises are counted towards the total of 20 percent of the retail floor and display space that may be dedicated to the sale and display of wine and beer. A storage area that is not accessible or visible to the public may be included in the licensed premises but shall not be considered retail floor and display space for purposes of this section. The commission or administrator shall adopt rules to implement this subsection and to prevent gerrymandering.

Sec. 11.492. CHANGE OF LICENSE OR PERMIT FROM ON-PREMISE TO OFF-PREMISE. (a) A holder of a wine and beer retailer's permit may change the permit to a wine and beer retailer's off-premise permit, and a holder of a retail dealer's on-premise license may change the license to a retail dealer's off-premise license, in the manner provided by this section.

(b) Any time before the expiration of a wine and beer retailer's permit or a retail dealer's on-premise license the permittee or licensee may file an application for a change of permit or license under Subsection (a) of this section. The applicant must make the application on a form provided by the commission and the application must be accompanied by the appropriate fee for the permit or license sought.

(c) The commission shall consider an application under this section in the same manner and according to the same criteria as it would consider a renewal application of the license or permit held by the permittee or licensee. Procedures applicable to an application for an original license or permit do not apply. The commission shall issue a new license or permit to an applicant if the commission determines the applicant is eligible to hold the license or permit sought. The license or permit takes effect on the expiration of the old license or, if requested in the application, on approval. The former license is cancelled on the effective date of the new license. The licensee or permittee is not entitled to a refund for the unexpired portion of a cancelled license or permit.

Sec. 11.493. SUPPLEMENTAL OR AMENDED DESIGNATION OF PREMISES. (a) Subject to the limitations imposed by Section 11.49 of this code on designating a portion of a building or premises where alcoholic beverages may be sold or served, a licensee or permittee may submit an amended or supplemental designation at the time of renewal of the license or permit or at any other time, provided the license or permit is not under suspension at the time the amended or supplemental designation is submitted.

(b) If the amended or supplemental designation is submitted with an application for renewal, there is no charge for processing the document. If the amended or supplemental designation is submitted at any other time, the commission may charge a fee for processing the document.

Sec. 11.494. SUPPLEMENTAL DESIGNATION OF CERTAIN AREAS AUTHORIZED. The holder of a mixed beverage permit or private club permit covering premises located in or adjacent to an area described in Section 251.74(b)(1) of this code may submit an amended or supplemental designation of premises to the administrator enlarging or altering the premises covered by the permit where alcoholic beverages may be sold to include any structures located in that area. The premises as described in the amended or supplemental designation as submitted is the licensed premises of the mixed beverage permittee or private club permittee for all purposes, notwithstanding Section 109.57(c) of this code or any other provision of this code or law of this state to the contrary. A city charter, zoning ordinance, or regulation does not alter, limit, or affect in any way the permittee's sale of alcoholic beverages on those premises.

Sec. 11.495. CONFORMANCE OF PREMISES WITH THE AMERICANS WITH DISABILITIES ACT. (a) A permittee or licensee shall certify that any area to be designated as the premises where alcoholic beverages may be sold or served has been reviewed for compliance with Title III of the Americans with Disabilities Act of 1990.

(b) Any permittee or licensee designating a premise for which this certification cannot be made shall be provided with information on compliance with the Americans with Disabilities Act by the

commission. The commission shall utilize materials produced by the United States Department of Justice, United States Department of Justice grantees, grantees of other federal agencies such as the National Institute on Disability and Rehabilitation Research, any agency of the State of Texas, trade associations of permittees or licensees, and other sources of a similar nature.

Sec. 11.50. LICENSING A PORTION OF A BUILDING AS PREMISES. (a) This section applies to a package store permit which was issued on or before April 1, 1971, and which was in good standing not under suspension, and in actual operation and doing business on that date, unless temporarily prevented from operation by a natural disaster. This section does not apply to a permit if a change in the size or location of the licensed premises has occurred subsequent to April 1, 1971, or if after that date a change in ownership has occurred, by majority stock transfer or otherwise, except by devise or descent where the holder of the permit died on or after April 1, 1971.

(b) Notwithstanding any other provision of this code, the holder of a package store permit to which this section applies may continue to operate a package store on premises comprising a portion of a building if not later than November 28, 1971, he clearly defined the licensed premises by isolating it from the remainder of the building by the erection of a wall or screen so that the licensed premise is accessible from the remainder of the building only through a door or archway, eight feet or less in width, in the wall or screen. The door or archway must be kept closed during the hours in which it is not legal to sell liquor.

(c) If the right to continue operation under this exception terminates for any reason, the right shall not revive.

Sec. 11.51. WHOLESALERS MAY SHARE DELIVERY VEHICLES. Section 64.07 of this code relates to delivery vehicles shared by wholesalers.

Sec. 11.52. RESTRICTIONS ON LOCATION IN CERTAIN MUNICIPALITIES. (a) In a municipality with a population of 1,500,000 or more, on the assertion by any person of any justiciable grounds for a suspension, denial, cancellation, or refusal of a mixed beverage permit or a wine and beer retailer's permit, the commission or county judge, as applicable, shall hold a hearing if:

(1) any point of the property line of the premise is less than 300 feet from the nearest point on a property line of a residence, church, school, hospital, day-care facility, or social service facility, as measured in a straight line; and

(2) 75 percent or more of the permittee's or licensee's actual or anticipated gross revenue is from the sale of alcoholic beverages.

(b) An applicant for an original or renewal permit shall give notice to all tenants or property owners affected in Subsection (a) of this section that an application has been made within five days after the application is first filed for an original application and at least 30 days prior to the expiration date of a permit in the case of a renewal application.

SUBCHAPTER C. CANCELLATION AND SUSPENSION OF PERMITS

Sec. 11.61. CANCELLATION OR SUSPENSION OF PERMIT. (a) As used in Subsection (b) of this section, the word "permittee" also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be construed as prohibiting anything permitted under Section 22.06, 24.05, or 102.05 of this code.

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

(1) the permittee has been finally convicted of a violation of this code;

(2) the permittee violated a provision of this code or a rule of the commission;

(3) the permittee was finally convicted of a felony while holding an original or renewal permit;

(4) the permittee made a false or misleading statement in connection with his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission, its officers, or employees;

(5) the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by this code, by a rule of the commission, or by Chapter 183, Tax Code;

(6) the permittee is not of good moral character or his reputation for being a peaceable and law-abiding citizen in the community where he resides is bad;

(7) the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(8) the permittee is not maintaining an acceptable bond;

(9) the permittee maintains a noisy, lewd, disorderly, or unsanitary establishment or has supplied impure or otherwise deleterious beverages;

(10) the permittee is insolvent or mentally or physically unable to carry on the management of his establishment;

(11) the permittee is in the habit of using alcoholic beverages to excess;

(12) the permittee knowingly misrepresented to a customer or the public any liquor sold by him;

(13) the permittee was intoxicated on the licensed premises;

(14) the permittee sold or delivered an alcoholic beverage to an intoxicated person;

(15) the permittee possessed on the licensed premises an alcoholic beverage that he was not authorized by his permit to purchase and sell;

(16) a package store or wine only package store permittee transported or shipped liquor, or caused it to be transported or shipped, into a dry state or a dry area within this state;

(17) the permittee is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, except as authorized by Section 22.06, 24.05, or 102.05 of this code;

(18) the permittee is residentially domiciled with a person whose permit or license was cancelled for cause within the 12-month period preceding his own application;

(19) the permittee is not a citizen of the United States or has not been a citizen of Texas for a period of one year immediately preceding the filing of his application, unless he was issued an original or renewal permit on or before September 1, 1948, and has been a United States citizen at some time;

NOTE: TABC is enjoined from enforcing the Texas state residency and Texas state citizenship requirements in Section 11.61(b)(19).

(20) the permittee permitted a person to open a container of alcoholic beverage or possess an open container of alcoholic beverage on the licensed premises unless a mixed beverage permit has been issued for the premises;

(21) the permittee failed to promptly report to the commission a breach of the peace occurring on the permittee's licensed premises;

(22) the permittee consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code; or

(23) the permittee sold, served, or delivered an alcoholic beverage at a time when its sale is prohibited.

(b-1) Notwithstanding Section 204.01 and any other provision of this code, a person applying for a license or permit under Chapter 25 or 69 for the on-premises consumption of beer exclusively or beer and wine exclusively, other than a license or permit for an establishment holding a food and beverage certificate whose primary business being operated on the premises is food service, must file with

the commission a surety bond, in an amount to be determined by the commission, conditioned on the licensee's or permittee's conformance with the alcoholic beverage law. The bond is forfeited to the commission on the suspension of the license or permit for the first time under this section or Section 61.71. Before the suspended license or permit may be reinstated, the licensee or permittee must furnish a second surety bond, similarly conditioned, in an amount greater than the initial surety bond, the amount to be determined by the commission. If the same license or permit is suspended under this section or Section 61.71 a second time, the bond is again forfeited to the commission. Before the suspended license or permit may be reinstated, the licensee or permittee shall furnish a third surety bond, similarly conditioned, in an amount greater than the second surety bond, the amount to be determined by the commission. If the same license or permit is suspended under this section or Section 61.71 a third time, the bond is again forfeited to the commission and the license or permit shall be canceled by the commission. This subsection applies only to a license or permit held in connection with an establishment located in a county with a population of 1.4 million or more.

(b-2) Subsection (b-1) does not apply to a fraternal organization or veterans organization, as those terms are defined by Section 32.11.

(c) The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a permit if the commission or administrator finds that the permittee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the alcoholic beverage permit; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.

(d) The commission or administrator without a hearing may for investigative purposes summarily suspend a mixed beverage permit or a wine and beer retailer's permit for not more than seven days if the commission or administrator finds that a shooting, stabbing, or murder has occurred on the licensed premises which is likely to result in a subsequent act of violence. Notice of the order suspending the permit shall be given to the permittee personally within 24 hours of the time the violent act occurs. If the permittee cannot be located, notice shall be provided by posting a copy of the order on the front door of the licensed premises.

(e) Except as provided by Subsection (f) or (i), the commission or administrator shall cancel an original or renewal permit if it is found, after notice and hearing, that the permittee knowingly allowed a person to possess a firearm in a building on the licensed premises. This subsection does not apply to a person:

(1) who holds a security officer commission issued under Chapter 1702, Occupations Code, if:

(A) the person is engaged in the performance of the person's duties as a security officer;

(B) the person is wearing a distinctive uniform; and

(C) the weapon is in plain view;

(2) who is a peace officer;

(3) who is a permittee or an employee of a permittee if the person is supervising the operation of the premises; or

(4) who possesses a concealed handgun [~~of the same category~~] the person is licensed to carry under Subchapter H, Chapter 411, Government Code, unless the person is on the premises of a business described by Section 46.035(b)(1), Penal Code.

NOTE: Section 11.61(e)(4) amended by House Bill 3142, 83rd Legislature, Regular Session, 2013, effective May 31, 2013.

(f) The commission may adopt a rule allowing:

(1) a gun or firearm show on the premises of a permit holder, if the premises is owned or leased by a governmental entity or a nonprofit civic, religious, charitable, fraternal, or veterans' organization;

(2) the holder of a permit for the sale of alcoholic beverages for off-premises consumption to also hold a federal firearms license; or

(3) the ceremonial display of firearms on the premises of the permit holder.

(g) The length of a suspension must be appropriate for the nature and seriousness of the violation. In determining the length of a suspension, the commission or administrator shall consider:

(1) the type of license or permit held;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and

(4) the permittee's or licensee's previous violations.

(h) The length of a suspension may not be based on:

(1) the volume of alcoholic beverages sold;

(2) the receipts of the business;

(3) the taxes paid; or

(4) the financial condition of the permittee or licensee.

(i) The commission shall adopt rules allowing a historical reenactment on the premises of a permit holder. Rules adopted under this subsection must prohibit the use of live ammunition in a historical reenactment.

(j) A hearing under Subsection (b) must be concluded not later than the 60th day after notice is provided under that subsection. Neither the permittee nor the commission may waive the provisions of this subsection. This subsection applies only to a hearing in connection with a wine and beer retailer's permit, other than a permit held with a food and beverage certificate, for premises located in a county with a population of 1.4 million or more.

Sec. 11.611. CONVICTION OF OFFENSE RELATING TO DISCRIMINATION. The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing that:

(1) the permittee has been finally convicted of any offense under state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights or the discrimination against an individual on the basis of the individual's race, color, creed, or national origin; and

(2) the offense was committed on the licensed premises or in connection with the operation of the permittee's business.

Sec. 11.612. CANCELLATION OF PRIVATE CLUB PERMIT. (a) The commission or administrator may cancel an original or a renewal permit issued under Chapter 32 or 33 and may refuse to issue any new alcoholic beverage permit for the same premises for one year after the date of cancellation if:

(1) the chief of police of the municipality, if the premises are located in an incorporated area, or the sheriff of the county in which the premises are located has submitted a sworn statement to the commission stating specific allegations that the place or manner in which the permittee conducts its business endangers the general welfare, health, peace, morals, or safety of the community; and

(2) the commission or administrator finds, after notice and hearing within the county where the premises are located, that the place or manner in which the permittee conducts its business does in fact endanger the general welfare, health, peace, morals, or safety of the community.

(b) This section does not apply to a permit issued to a fraternal or veterans organization or the holder of a food and beverage certificate.

Sec. 11.613. SUMMARY SUSPENSION OF PRIVATE CLUB PERMIT. The commission or administrator without a hearing may for investigative purposes summarily suspend a permit issued under

Chapter 32 or 33 for not more than seven days if the commission or administrator finds that a shooting, stabbing, or murder has occurred on the licensed premises that is likely to result in a subsequent act of violence. Notice of the order suspending the permit shall be given to the permittee personally within 72 hours of the time the violent act occurs. If the permittee cannot be located, notice shall be provided by posting a copy of the order on the front door of the licensed premises.

Sec. 11.62. HEARING FOR CANCELLATION OR SUSPENSION OF PERMIT. The commission or administrator may, on the motion of either, set a date for a hearing to determine if a permit should be cancelled or suspended. The commission or administrator shall set a hearing on the petition of the mayor, chief of police, city marshal, or city attorney of the city or town in which the licensed premises are located or of the county judge, sheriff, or county or district attorney of the county in which the licensed premises are located. The petition must be supported by the sworn statement of at least one credible person. The commission or administrator shall give the permittee notice of the hearing and of his right to appear and show cause why the permit should not be cancelled.

Sec. 11.63. NOTICE OF HEARING. At least 10 days' notice shall be given when a hearing is provided by this code. A notice of hearing for the refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the commission or sent by registered or certified mail addressed to the licensee or permittee.

Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION. (a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended, unless the basis for the suspension is a violation of Section 11.61(b)(14), 22.12, 28.11, 32.17(a)(2), 32.17(a)(3), 61.71(a)(5), 61.71(a)(6), 61.74(a)(14), 69.13, 71.09, 101.04, 101.63, 106.03, 106.06, or 106.15, the sale or offer for sale of an alcoholic beverage during hours prohibited by Chapter 105, consumption or the permitting of consumption of an alcoholic beverage on the person's licensed or permitted premises during hours prohibited by Chapter 105 or Section 32.17(a)(7), or an offense relating to prostitution, trafficking of persons, or gambling, in which case the commission or administrator shall determine whether the permittee or licensee may have the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission shall adopt rules addressing when suspension may be imposed pursuant to this section without the opportunity to pay a civil penalty. In adopting rules under this subsection, the commission shall consider the type of license or permit held, the type of violation, any aggravating or ameliorating circumstances concerning the violation, and any past violations of this code by the permittee or licensee. In cases in which a civil penalty is assessed, the commission or administrator shall determine the amount of the penalty. The amount of the civil penalty may not be less than $150 or more than $25,000 for each day the permit or license was to have been suspended. If the licensee or permittee does not pay the penalty before the sixth day after the commission or administrator notifies him of the amount, the commission or administrator shall impose the suspension.

(b) In the case of a violation of this code by a permittee or a licensee, the commission or administrator may relax any provision of the code relating to the suspension or cancellation of the permit or license and assess a sanction the commission or administrator finds just under the circumstances, and the commission or administrator may reinstate the license or permit at any time during the period of suspension on payment by the permittee or licensee of a fee of not less than $75 nor more than $500, if the commission or administrator finds that any of the circumstances described in Subsection (c) exists.

(c) The following circumstances justify the application of Subsection (b):

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped;

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee;

(4) that the permittee or licensee did not knowingly violate this code;

(5) that the permittee or licensee has demonstrated good faith, including the taking of actions to rectify the consequences of the violation and to deter future violations; or

(6) that the violation was a technical one.

(d) Fees and civil penalties received by the commission under this section shall be deposited in the general revenue fund.

Sec. 11.641. AMOUNT OF CIVIL PENALTY. (a) The amount of the civil penalty under Section 11.64 must be appropriate for the nature and seriousness of the violation. In determining the amount of the civil penalty, the commission or administrator shall consider:

(1) the type of license or permit held;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and

(4) the permittee's or licensee's previous violations.

(b) The amount of the civil penalty may not be based on:

(1) the volume of alcoholic beverages sold;

(2) the receipts of the business;

(3) the taxes paid; or

(4) the financial condition of the permittee or licensee.

(c) A civil penalty, including cancellation of a permit, may not be imposed on the basis of a criminal prosecution in which the defendant was found not guilty, the criminal charges were dismissed, or there has not been final adjudication.

Sec. 11.65. NOTICE OF CANCELLATION OR SUSPENSION. (a) A notice of cancellation or suspension of a license or permit shall be given to the licensee or permittee as provided by Section 2001.142, Government Code.

(b) Cancellation or suspension is final and effective as provided by Section 2001.144, Government Code.

Sec. 11.66. SUSPENSION OR CANCELLATION AGAINST RETAILER. Except for a violation of the credit or cash law, a penalty of suspension or cancellation of the license or permit of a retailer shall be assessed against the permit or license for the premises where the offense was committed.

Sec. 11.67. APPEAL FROM CANCELLATION, SUSPENSION, OR REFUSAL OF LICENSE OR PERMIT. (a) An appeal from an order of the commission or administrator refusing, cancelling, or suspending a permit or license may be taken to the district court of the county in which the applicant, licensee, or permittee resides or in which the owner of involved real or personal property resides.

(b) The appeal shall be under the substantial evidence rule and against the commission alone as defendant. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

(1) the appeal shall be perfected and filed within 30 days after the date the order, decision, or ruling of the commission or administrator becomes final and appealable;

(2) the case shall be tried before a judge within 20 days from the date it is filed;

(3) neither party is entitled to a jury; and

(4) the order, decision or ruling of the commission or administrator may be suspended or modified by the court pending a trial on the merits, but the final judgment of the district court may not be modified or suspended pending appeal.

(c) A local official, on record as protesting the issuance or renewal of a permit or license at a hearing provided by this code, is entitled to notice of the appeal. If other persons are on record as protesting the issuance or renewal of a permit or license at a hearing provided by this code, the first three persons to be on record are entitled to notice of the appeal. The appellant is responsible for causing the notice to be given. The notice shall be given by sending, on or before the third day after the date on which the appeal is filed, a copy of the petition by registered or certified mail to the persons entitled to receive the notice.

(d) If the appeal is from an order refusing the issuance or renewal of a permit or license for a business that is sexually oriented, any person may appear on appeal against the issuance or renewal of the

license or permit. However, the court may grant a motion to strike the person's appearance on a showing that the person does not have a justiciable or administratively cognizable interest in the proceeding.

Sec. 11.68. ACTIVITIES PROHIBITED DURING SUSPENSION. No permittee may sell, offer for sale, distribute, or deliver any alcoholic beverage while his permit is suspended.

Sec. 11.69. DISPOSAL OF BEVERAGES IN BULK. The commission may provide by rule the manner and time in which a person whose license or permit is suspended or cancelled or a receiver or successor in interest of a deceased, insolvent, or bankrupt permittee or licensee may dispose of in bulk the alcoholic beverages on hand at the termination of the use of the permit or license.

Sec. 11.70. LIABILITY OF SURETY. (a) If a permittee or a person having an interest in a permit is finally convicted of the violation of a provision of this code or of a rule or regulation of the commission, or if a permit is cancelled by the commission and no appeal is pending, the commission may institute action in its own name, for the benefit of the state, on the bond supporting the permit. If the cancellation or conviction is proved, the court shall render judgment in favor of the commission for all fines, costs, and 15 percent of the face value of the bond.

(b) If a permittee fails to seasonably remit any money due the state, the surety on his bond is liable for the amount of money due the state plus a penalty of 15 percent of the face value of the bond.

(c) A suit for the collection of any of the amounts specified in this section shall be brought in a court of competent jurisdiction in Travis County.

(d) Nothing in this code shall be construed as imposing on a surety a greater liability than the total amount of the bond less any portion of the bond which has been extinguished by a prior recovery.

Sec. 11.71. SURETY MAY TERMINATE LIABILITY. A surety under the bond of a permittee may terminate its liability by giving 30 days' written notice of termination, served personally or by registered mail on the principal and the commission. The surety is discharged from all liability under the bond for any act or omission of the principal occurring after the expiration of 30 days from the date the notice is served. If the principal fails to duly file a new bond in the same amount and with the same conditions as the original bond before the expiration of the 30-day period, his permit shall terminate when the 30-day period expires.

Sec. 11.72. DISCIPLINE FOR ACTIONS OF AGENT. The commission or administrator may suspend or revoke the permit of a person who is represented by the holder of an agent's permit under [~~as described by~~] Section 15.01, 35.01, or 36.01 or otherwise discipline the person based on an act or omission of the holder of the [~~an~~] agent's permit only if an individual employed by the person in a supervisory position:

(1) was directly involved in the act or omission of the holder of the [~~an~~] agent's permit;
(2) had notice or knowledge of the act or omission; or
(3) failed to take reasonable steps to prevent the act or omission.

NOTE: Section 11.72 amended by Senate Bill 828, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 11.72. DISCIPLINE FOR ACTIONS OF AGENT. The commission or administrator may suspend or revoke the permit of a person who is represented by the holder of an agent's permit as described by Section 35.01 or a manufacturer's agent's permit as described by Section 36.01 or otherwise discipline the person based on an act or omission of the holder of an agent's or manufacturer's agent's permit only if an individual employed by the person in a supervisory position:

(1) was directly involved in the act or omission of the holder of an agent's or manufacturer's agent's permit;
(2) had notice or knowledge of the act or omission; or
(3) failed to take reasonable steps to prevent the act or omission.

NOTE: Section 11.72 amended by Senate Bill 1090, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 11.73. AFFIRMATION OF COMPLIANCE. A person who holds a permit under Chapter 19, 20, 21, or 23 may not be subject to an administrative sanction for selling or delivering an alcoholic beverage to a retailer not authorized to purchase and receive the alcoholic beverage if the permit holder:

(1) reasonably believes that the retailer is authorized to purchase and receive that type of alcoholic beverage; and

(2) obtains from the retailer at the time of delivery a written affirmation, which may be printed or stamped on a sales invoice evidencing the sale or delivery of alcoholic beverages by the permit holder, that the retailer is authorized to purchase and receive the type of alcoholic beverage sold and delivered by the permit holder.

CHAPTER 12. BREWER'S PERMIT (B)

Sec. 12.01. AUTHORIZED ACTIVITIES. (a) The holder of a brewer's permit may:

(1) manufacture, bottle, package, and label malt liquor;

(2) import ale and malt liquor acquired from a holder of a nonresident brewer's permit;

(3) sell the ale and malt liquor only to wholesale permit holders in this state or to qualified persons outside the state;

(4) dispense ale and malt liquor for consumption on the premises; [~~and~~]

(5) conduct samplings of ale or malt liquor, including tastings, at a retailer's premises; and

(6) enter into an alternating brewery proprietorship or contract brewing arrangement as provided by Section 12.06.

(b) An agent or employee of the holder of a brewer's permit may open, touch, or pour ale or malt liquor, make a presentation, or answer questions at a sampling event.

Sec. 12.02. FEE. The annual state fee for a brewer's permit is $1,500.

Sec. 12.03. ALE OR MALT LIQUOR FOR EXPORT. Regardless of any other provision of this code, a holder of a brewer's permit may manufacture and package malt beverages, or import them from outside the state, for shipment out of the state, even though the alcohol content, containers, packages, or labels make the beverages illegal to sell within the state. The permittee may export the beverages out of the state or deliver them at his premises for shipment out of the state without being liable for any state tax on beer, ale, or malt liquor sold for resale in the state.

Sec. 12.04. CONTINUANCE OF OPERATION AFTER LOCAL OPTION ELECTION. The right of a brewer's permittee to continue operation after a prohibitory local option election is covered by Section 251.75 of this code.

~~**Sec. 12.05. SALES BY CERTAIN BREWERS.** The holder of a brewer's permit whose annual production of ale in this state does not exceed, together with the annual production of beer by the holder of a manufacturer's license acting under the authority of Section 62.12 of this code at the same premises, a total of 75,000 barrels, may sell ale produced under the permit to those persons to whom the holder of a general class B wholesaler's permit may sell malt liquor under Section 20.01(3) of this code. With regard to such a sale, the brewer has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general class B wholesaler's permit.~~

NOTE: Section 12.05 repealed by Senate Bill 516, 83rd Legislature, Regular Session, 2013, effective June 14, 2013.

Sec. 12.052. SALES BY CERTAIN BREWERS TO CONSUMERS. (a) In addition to the activities authorized by Section 12.01, the holder of a brewer's permit whose annual production of ale together with the annual production of beer by the holder of a manufacturer's license at the same premises does not exceed a total of 225,000 barrels may sell ale produced on the brewer's premises under the

permit to ultimate consumers on the brewer's premises for responsible consumption on the brewer's premises.

(b) The total combined sales of ale to ultimate consumers under this section, together with the sales of beer to ultimate consumers by the holder of a manufacturer's license under Section 62.122 at the same premises, may not exceed 5,000 barrels annually.

Sec. 12.06. USE OF FACILITIES. (a) The holder of [~~An entity or successor to an entity that on May 1, 2005, held~~] a brewer's or nonresident brewer's permit [~~or whose brand was legally sold in this state~~] may contract with the holder of a brewer's permit:

(1) to provide brewing services; or

(2) for the use of the permit holder's brewing facilities under an alternating brewery proprietorship if each party to the proprietorship:

(A) has filed the appropriate Brewer's Notice and Brewer's Bond, as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(B) if applicable, has posted with the commission a bond in an amount determined by the commission under Subsection (e) or (f) [~~or to provide brewing services~~].

(b) An entity [~~or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state~~] is not required to own its brewing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(c) Each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must hold a permit at the location where brewing services are conducted under the arrangement [~~More than one brewer's permit may be issued for a single premises if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state for the use of the permit holder's brewing facilities or to provide brewing services~~].

(d) This section does not authorize a person acting as an agent for a brewery located outside of this state to contract with the holder of a brewer's permit to brew ale or malt liquor on the person's behalf. A contract described by this subsection may only be entered into by the holder of a brewer's permit and another person holding a permit under this code.

(e) Subject to Subsection (f), the commission by rule may require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission not to exceed $200,000.

(f) An entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must post with the commission a bond in an amount determined by the commission of not less than $30,000 if the entity does not own a fee interest in a brewing facility.

CHAPTER 12A. BREWER'S SELF-DISTRIBUTION PERMIT(DA)

Sec. 12A.01. ELIGIBILITY FOR PERMIT. A brewer's self-distribution permit may be issued only to the holder of a brewer's permit under Chapter 12 or the holder of a nonresident brewer's permit under Chapter 13.

Sec. 12A.02. AUTHORIZED ACTIVITIES. (a) A holder of a brewer's self-distribution permit whose annual production of ale under the brewer's or nonresident brewer's permit, together with the annual production of beer by the holder of a manufacturer's or nonresident manufacturer's license at the same premises, does not exceed 125,000 barrels may sell ale produced under the brewer's or nonresident brewer's permit to those persons to whom the holder of a general class B wholesaler's permit may sell ale under Section 20.01(3).

(b) The total combined sales of ale under this section, together with the sales of beer by the holder of a manufacturer's self-distribution license under Section 62A.02 at the same premises, may not exceed 40,000 barrels annually.

(c) With regard to a sale under this section, the holder of a brewer's self-distribution permit has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general class B wholesaler's permit.

(d) Ale sold under this section may be shipped only from a brewery in this state.

Sec. 12A.03. FEE. The annual state fee for a brewer's self-distribution permit is $250.

Sec. 12A.04. REPORT OF SALES TO RETAILERS. (a) Not later than the 15th day of each month, the holder of a brewer's self-distribution permit shall file a report with the commission that contains information relating to the sales made by the permit holder to a retailer during the preceding calendar month.

(b) The commission shall by rule determine the information that is required to be reported under this section and the manner in which the report must be submitted to the commission. The commission may require the report to contain the same information reported to the comptroller under Section 151.462, Tax Code.

CHAPTER 13. NONRESIDENT BREWER'S PERMIT (U)

Sec. 13.01. PERMIT REQUIRED. A nonresident brewer's permit is required for any brewer located outside the state before his ale or malt liquor may be imported into Texas or offered for sale in Texas.

Sec. 13.02. FEE. The annual state fee for a nonresident brewer's permit is $1,500.

Sec. 13.03. NONRESIDENT SELLER'S PERMIT REQUIRED. The holder of a nonresident brewer's permit is also required to hold a nonresident seller's permit.

Sec. 13.04. USE OF FACILITIES. (a) The holder of [~~An entity or successor to an entity that on May 1, 2005, held~~] a brewer's or nonresident brewer's permit [~~or whose brand was legally sold in this state~~] may contract with the holder of a nonresident brewer's permit:

(1) to provide brewing services; or

(2) for the use of the permit holder's brewing facilities under an alternating brewery proprietorship if each party to the proprietorship:

(A) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(B) if applicable, has posted with the commission a bond in an amount determined by the commission under Subsection (e) or (f) [~~or to provide brewing services~~].

(b) An entity [~~or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state~~] is not required to own its brewing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(c) Each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must hold a permit at the location where brewing services are conducted under the arrangement [~~More than one nonresident brewer's permit may be issued for a single premises if the permit holder for the premises has contracted with an entity or successor to an entity that on May 1, 2005, held a brewer's or nonresident brewer's permit or whose brand was legally sold in this state for the use of the permit holder's brewing facilities or to provide brewing services~~].

(d) This section does not authorize a person acting as an agent for a brewery located outside of this state to contract with the holder of a nonresident brewer's permit to brew ale or malt liquor on the person's behalf. A contract described by this subsection may only be entered into by the holder of a nonresident brewer's permit and another person holding a permit under this code.

(e) Subject to Subsection (f), the commission by rule may require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission not to exceed $200,000.

(f) An entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must post with the commission a bond in an amount determined by the commission of not less than $30,000 if the entity does not own a fee interest in a brewing facility.

CHAPTER 14. DISTILLER'S AND RECTIFIER'S PERMIT(D)

Sec. 14.01. AUTHORIZED ACTIVITIES. (a) The holder of a distiller's and rectifier's permit may:

(1) manufacture distilled spirits;

(2) rectify, purify, and refine distilled spirits and wines;

(3) mix wines, distilled spirits, or other liquors;

(4) bottle, label, and package the permit holder's finished products;

(5) sell the finished products in this state to holders of wholesaler's permits and to qualified persons outside the state;

(6) purchase [~~import~~] distilled spirits, to be used only for manufacturing or rectification purposes, from holders of nonresident seller's permits or distiller's and rectifier's permits; [~~and~~]

(7) dispense free distilled spirits for consumption on the permitted premises; under Section 14.04; and

(8) if located in a wet area, sell distilled spirits to ultimate consumers under Section 14.04 or 14.05.

NOTE: Section 14.01, subsection 8 added by Senate Bill 905, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

(8) sell bulk alcohol produced by the permit holder to holders of industrial permits in this state.

NOTE: Section 14.01, subsection 8 Senate Bill 642, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

~~(c) The holder of a distiller's and rectifier's permit may dispense distilled spirits for consumption on the permitted premises under Section 14.04.~~

(b) The privileges granted to a distiller and rectifier are confined strictly to distilled spirits and wines manufactured and rectified under his permit.

NOTE: Subsection (c), Section 14.01, repealed by Senate Bill 905, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 14.02. FEE. The annual state fee for a distiller's and rectifier's permit is $1,500.

Sec. 14.03. CONTINUANCE OF OPERATION AFTER LOCAL OPTION ELECTION. The right of a distiller's and rectifier's permittee to continue in operation after a prohibitory local option election is covered by Section 251.76 of this code.

Sec. 14.04. DISTILLED SPIRITS SAMPLING. (a) The holder of a distiller's and rectifier's permit may conduct distilled spirits samplings on the permitted premises. The permit holder may dispense free samples or collect a fee for the sampling.

(b) A sampling event authorized by this section may not be advertised except by on-site communication or by direct mail.

(c) A person other than the holder of a permit or the holder's agent or employee may not dispense or participate in the dispensing of distilled spirits under this section.

(d) A person authorized to dispense distilled spirits under this section may not:

(1) serve a person more than one sample of each brand of distilled spirits being served at a sampling event; or

(2) serve a sample to a minor or to an obviously intoxicated person.

(e) Sample portions served at a distilled spirits sampling event may not exceed one-half ounce.

(f) A person who receives a sample may not remove the sample from the permitted premises.

~~(g) For the purposes of this code and any other law of this state or a political subdivision of this state, the holder of a permit, during the sampling of distilled spirits under this section, is:~~

~~(1) not the holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption; and~~

~~(2) not considered to have received any revenue from the on-premises sale of alcoholic beverages.~~

NOTE: Subsection (g), Section 14.04 repealed by Senate Bill 905, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 14.05. SALES TO ULTIMATE CONSUMERS. (a) The holder of a distiller's and rectifier's permit may sell to ultimate consumers for consumption on the permitted premises distilled spirits manufactured or rectified by the permit holder in an amount not to exceed 3,000 gallons annually.

(b) The holder of a distiller's and rectifier's permit may sell distilled spirits manufactured by the permit holder to ultimate consumers for off-premises consumption in unbroken packages containing not more than 750 milliliters of distilled spirits for off-premises consumption in an amount not to exceed 3,500 gallons annually.

(c) The holder of a distiller's and rectifier's permit may not under Subsection (b) sell more than two 750 milliliter bottles of distilled spirits or the equivalent to the same consumer within a 30-day period.

(d) A sale under Subsection (b):

(1) may be made only to an individual who is physically present at the permit holder's premises; and

(2) must be delivered to the purchaser in person during the purchaser's visit.

(e) A person may not make a purchase under Subsection (b) as an agent for another person.

(f) The permit holder must check a purchaser's identification and keep records of purchases in a manner that enables the permit holder to comply with this section.

(g) A bottle of distilled spirits sold on the permit holder's premises under Subsection (b) must bear a notice affixed to the bottle that:

(1) does not obscure the label approved by the Alcohol and Tobacco Tax and Trade Bureau;

(2) states that the bottle is commemorative;

(3) states the month and year the bottle is sold; and

(4) is signed by an agent of the permit holder.

NOTE: Section 14.05 added by Senate Bill 905, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 14.05. REPORT OF CERTAIN SALES. A holder of a distiller's and rectifier's permit who sells distilled spirits to a holder of an industrial permit under Section 14.01(a)(8) shall keep records of those sales in a manner prescribed by the commission or administrator.

NOTE: Section 14.05 added by Senate Bill 642, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

CHAPTER 15. DISTILLER'S AGENT'S PERMIT (DK)

Sec. 15.01. AUTHORIZED ACTIVITIES. The holder of a distiller's agent's permit may:

(1) represent the holder of a distiller's and rectifier's permit;

(2) solicit and take orders from a holder of a wholesaler's permit for the sale of distilled spirits manufactured by the permit holder represented by the agent; and

(3) conduct free distilled spirits tastings for consumers on the premises of the holder of a package store permit.

Sec. 15.02. FEE. The annual state fee for a distiller's agent's permit is $10.

Sec. 15.03. EVIDENCE OF AGENCY OR EMPLOYMENT REQUIRED. A distiller's agent's permit may not be issued to a person until the person shows to the satisfaction of the commission that the person has been employed by or authorized to act as the agent of the permit holder the person proposes to represent.

Sec. 15.04. SOLICITATION FROM HOLDER OF MIXED BEVERAGE OR PRIVATE CLUB PERMIT. A holder of a distiller's agent's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless the distiller's agent is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

Sec. 15.05. UNAUTHORIZED REPRESENTATION. A holder of a distiller's agent's permit in soliciting or taking orders for the sale of liquor may not represent that the permit holder is an agent of any person other than the person designated in the permit holder's application.

Sec. 15.06. GRACE PERIOD. A person may engage in the activities specified in Section 15.01 for an initial grace period of five days during which the person shall procure a distiller's agent's permit from the commission.

CHAPTER 16. WINERY PERMIT (G)

Sec. 16.01. AUTHORIZED ACTIVITIES. (a) Except as provided by Section 16.011, the holder of a winery permit may:

(1) manufacture, bottle, label, and package wine containing not more than 24 percent alcohol by volume;

(2) manufacture fruit brandy and:

(A) use that brandy on the winery permit holder's permitted premises for fortifying purposes only; or

(B) sell that brandy to other winery permit holders;

(3) import or buy fruit brandy from a permit holder authorized to manufacture fruit brandy and use that brandy on the winery permit holder's permitted premises for fortifying purposes only;

(4) sell wine in this state to or buy wine from permit holders authorized to purchase and sell wine, including holders of wholesaler's permits, winery permits, and wine bottler's permits;

(5) sell wine to ultimate consumers:

(A) for consumption on the winery premises; or

(B) in unbroken packages for off-premises consumption in an amount not to exceed 35,000 gallons annually;

(6) sell the wine outside this state to qualified persons;

(7) blend wines; [~~and~~]

(8) dispense free wine for consumption on the winery premises; and

(9) purchase and import wine from the holder of a nonresident seller's permit.

(b) The holder of a winery permit may manufacture and label wine for an adult in an amount not to exceed 50 gallons annually for the personal use of the adult. Any amount of wine produced under this subsection is included in the annual total amount that may be sold by the holder under Subsection (a)(5).

An adult for whom wine is manufactured and labeled under this subsection is not required to hold a license or permit issued under this code.

(c) The holder of a winery permit may conduct wine samplings, including wine tastings at a retailer's premises. A winery employee may open, touch, or pour wine, make a presentation, or answer questions at a wine sampling.

(e) The holder of a winery permit may dispense wine for consumption on the premises of the winery under Section 16.07.

Sec. 16.011. PREMISES IN DRY AREA. A winery permit may be issued for premises in an area in which the sale of wine has not been authorized by a local option election. A holder of a permit under this section may engage in any activity authorized under Section 16.01 except that the permit holder may sell or dispense wine under that section only if the wine is:

(1) bottled in this state; and

(2) at least 75 percent by volume fermented juice of grapes or other fruit grown in this state or a lesser percentage established by the commissioner of agriculture under Section 12.039, Agriculture Code.

Sec. 16.02. FEE. The annual state fee for a winery permit is $75.

Sec. 16.03. IMPORTATION FOR BLENDING. The holder of a winery permit may, for blending purposes [~~only~~], import wines or grape brandy. The wine or grape brandy may be purchased only from the holders of nonresident seller's permits. The state tax on wines imported for blending purposes does not accrue until the wine has been used for blending purposes and the resultant product placed in containers for sale.

Sec. 16.04. FEDERAL PERMIT REQUIRED. A winery permit may be granted only on presentation of a winemaker's and blender's basic permit of the federal alcohol tax unit.

Sec. 16.05. OPERATING AGREEMENTS BETWEEN PERMIT HOLDERS. (a) The holder of a winery permit may engage in any activity authorized by that permit on the permitted premises of another winery permit holder under an agreement between the permit holders that is approved by the commission and that describes with specificity the nature, duration, and extent of the activities authorized by the agreement.

~~(b)~~ The commission shall adopt rules regulating the shared use of winery premises under this section to ensure administrative accountability of each permit holder and a strict separation between the businesses and operations of the permit holders.

Sec. 16.06. PARTICIPATION IN CERTAIN OFF-PREMISES WINE EVALUATION ACTIVITIES. (a) For the purpose of participating in an organized wine tasting, wine evaluation, wine competition, or literary review, the holder of a winery permit may deliver wine produced and manufactured by the holder to locations that are not licensed under this code for the purpose of submitting the wine to an evaluation at an organized wine tasting competition attended primarily by unlicensed persons or by a wine reviewer whose reviews are published if:

(1) no charge of any kind is made for the wine, delivery, or attendance at the event; and

(2) the commission consents in writing to the delivery.

(b) In connection with events authorized by Subsection (a) of this section, the holder of the winery permit may dispense wine to individuals attending the event and discuss with them the manufacture and characteristics of the wine.

Sec. 16.07. WINE SAMPLING. (a) The holder of a winery permit may conduct wine samplings, including wine tastings, on the permitted premises. The holder of the permit may collect a fee for the wine sampling.

(b) A sampling event authorized by this section may not be advertised except by on-site communication or by direct mail.

(c) A person other than the holder of a permit or the holder’s agent or employee may not dispense or participate in the dispensing of wine under this section.

(d) A person authorized to dispense wine under this section:

(1) may serve a person more than one sample; and

(2) may not serve a sample to a minor or to an obviously intoxicated person.

(e) A person who receives a sample may not remove the sample from the permitted premises.

(f) For the purposes of this code and any other law of this state or a political subdivision of this state, the holder of a permit, during the sampling of wine under this section, is:

(1) not the holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption; and

(2) not considered to have received any revenue from the on-premises sale of alcoholic beverages.

Sec. 16.08. WINE FESTIVALS. (a) At an event that is approved by the commission, organized to celebrate and promote the wine industry in this state, and held in whole or in part on the premises of the holder of a winery permit, the permit holder may:

(1) sell wine to consumers for consumption on or off the holder's premises; and

(2) dispense wine without charge for consumption on or off the holder's premises.

(b) The holder of a winery permit may sell wine to the holder of a temporary permit issued under Chapter 27, 30, or 33 for an event that is approved by the commission and organized to celebrate and promote the wine industry in this state.

Sec. 16.09. DIRECT SHIPMENT TO CONSUMERS. (a) The holder of a winery permit may ship wine to the ultimate consumer, including ultimate consumers located in dry areas. Delivery must be by the holder of a carrier permit.

(b) All wine shipped to an ultimate consumer by the holder of a winery permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains wine; and

(2) the package may be delivered only to a person described in Subsection (c).

(c) Wine shipped by the holder of a winery permit may not be delivered to any person other than:

(1) the person who purchased the wine;

(2) a recipient designated in advance by such purchaser; or

(3) a person at the delivery address who is age 21 or over.

(d) Wine may be delivered only to a person who is age 21 or over after the person accepting the package:

(1) presents valid proof of identity and age; and

(2) personally signs a receipt acknowledging delivery of the package.

(e) The holder of a winery permit may not:

(1) sell or ship wine to a minor;

(2) deliver wine to a consumer using a carrier that does not hold a carrier's permit under this code; or

(3) deliver to the same consumer in this state more than nine gallons of wine within any 30-day period or more than 36 gallons of wine within any 12-month period.

CHAPTER 17. WINERY FESTIVAL PERMIT (GF)

Sec. 17.01. AUTHORIZED ACTIVITIES. (a) The holder of a winery festival permit may sell wine at a civic or wine festival, farmers' market, celebration, or similar event.

(b) The holder of a winery festival permit may not offer wine for sale under this chapter on more than four consecutive days at the same location.

Sec. 17.02. QUALIFICATION FOR PERMIT. A winery festival permit may be issued only to the holder of a winery permit.

Sec. 17.03. NOTICE OF SALES; PROCEDURES. (a) Before the holder of a winery festival permit offers wine for sale under this chapter, the permit holder must, in accordance with any rules

adopted or procedures established by the commission, notify the commission of the date on which and location where the permit holder will offer wine for sale under this chapter.

Sec. 17.04. PERMIT FEE. The fee for a winery festival permit is $50.

Sec. 17.05. APPLICABILITY OF OTHER LAW. (a) The provisions of this code applicable to the sale of wine on the permitted premises of the holder of a winery permit apply to the sale of wine under this chapter.

(b) The winery permit of the holder of a winery festival permit may be canceled or suspended for a violation occurring in connection with activities conducted under this chapter.

CHAPTER 18. WINE BOTTLER'S PERMIT (Z)

Sec. 18.01. AUTHORIZED ACTIVITIES. The holder of a wine bottler's permit may:

(1) purchase and import wine only from the holders of nonresident seller's permits or their agents who are holders of manufacturer's agent's permits;

(2) purchase wine in this state from holders of wholesaler's, winery, or wine bottler's permits;

(3) bottle, rebottle, label, package, and sell wine to permit holders in this state authorized to purchase and sell wine; and

(4) sell wine to qualified persons outside the state.

Sec. 18.02. FEE. The annual state fee for a wine bottler's permit is $225.

Sec. 18.03. PERMANENT RECORD. A holder of a wine bottler's permit shall keep a permanent record of each purchase and sale of wine. The record shall include the name of the person from whom the wine is purchased or to whom it is sold, the number of gallons purchased or sold, and the percentage of alcohol of the wine by volume.

CHAPTER 19. WHOLESALER'S PERMIT (W)

Sec. 19.01. AUTHORIZED ACTIVITIES. The holder of a wholesaler's permit may:

(1) purchase and import liquor from distillers, brewers, wineries, wine bottlers, rectifiers, and manufacturers who are holders of nonresident seller's permits or from their agents who hold manufacturer's agents permits;

(2) purchase liquor from other wholesalers in the state;

(3) sell liquor in the original containers in which it is received to retailers and wholesalers in this state authorized to sell the liquor;

(4) sell liquor to qualified persons outside the state; and

(5) sell ale and malt liquor to a holder of a private club registration permit.

Sec. 19.02. FEE. The annual state fee for a wholesaler's permit is $1,875.

Sec. 19.03. PROMOTIONAL ACTIVITIES. The holder of a wholesaler's permit or his agent may enter the licensed premises of a mixed beverage permittee or private club registration permittee to determine the brands offered for sale and suggest or promote the sale of other brands, to the extent authorized by Section 102.07 of this code. The holder or his agent may not accept a direct order from a mixed beverage permittee except for wine or malt liquor.

Sec. 19.04. MINIATURE CONTAINERS. In addition to other authorized containers, a wholesaler's permittee may import, sell, offer for sale, and possess for the purpose of resale distilled spirits, wine, and vinous liquors in containers of not less than one ounce nor more than two ounces. Liquor in containers of that size may be sold to:

(1) package store permittees for resale to airline beverage permittees, as provided in Section 34.05 of this code; and

(2) local distributor's permittees.

Sec. 19.05. ALE AND MALT LIQUOR FOR EXPORT. (a) In this section "ale or malt liquor for export" means ale or malt liquor a wholesaler holds for export to another state in which the wholesaler has been assigned a territory for the distribution and sale of the ale or malt liquor. The term includes ale and malt liquor that is illegal to sell in this state because of alcohol content, containers, packages, or labels.

(b) The holder of a wholesaler's permit who receives ale or malt liquor for export from the holder of a brewer's or nonresident brewer's permit may:

(1) store the ale or malt liquor for export at the wholesaler's premises;

(2) transport the ale or malt liquor for export outside the state in the wholesaler's own vehicles; or

(3) deliver the ale or malt liquor for export to a common carrier for export and delivery outside the state.

(c) The holder of a wholesaler's permit is not liable for any state tax on the ale or malt liquor for export.

(d) Section 101.67 does not apply to ale or malt liquor for export.

CHAPTER 20. GENERAL CLASS B WHOLESALER'S PERMIT (X)

Sec. 20.01. AUTHORIZED ACTIVITIES. The holder of a general class B wholesaler's permit may:

(1) purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and wine bottlers who are the holders of nonresident seller's permits or their agents who are holders of manufacturer's agent permits;

(2) purchase malt and vinous liquors from holders of brewer's permits, holders of brewpub licenses, or other wholesalers in the state;

(3) sell the malt and vinous liquors in the original containers in which they are received to retailers and wholesalers authorized to sell them in this state, including holders of local distributor's permits, mixed beverage permits, and daily temporary mixed beverage permits;

(4) sell the malt and vinous liquors to qualified persons outside the state; and

(5) sell ale and malt liquor to a holder of a private club registration permit.

Sec. 20.02. FEE. The annual state fee for a general class B wholesaler's permit is $300.

Sec. 20.03. ALE AND MALT LIQUOR FOR EXPORT. (a) In this section "ale or malt liquor for export" means ale or malt liquor a wholesaler holds for export to another state in which the wholesaler has been assigned a territory for the distribution and sale of the ale or malt liquor. The term includes ale and malt liquor that is illegal to sell in this state because of alcohol content, containers, packages, or labels.

(b) The holder of a general class B wholesaler's permit who receives ale or malt liquor for export from the holder of a brewer's or nonresident brewer's permit may:

(1) store the ale or malt liquor for export at the wholesaler's premises;

(2) transport the ale or malt liquor for export outside the state in the wholesaler's own vehicles; or

(3) deliver the ale or malt liquor for export to a common carrier for export and delivery outside the state.

(c) The holder of a general class B wholesaler's permit is not liable for any state tax on the ale or malt liquor for export.

(d) Section 101.67 does not apply to ale or malt liquor for export.

CHAPTER 21. LOCAL CLASS B WHOLESALER'S PERMIT (LX)

Sec. 21.01. AUTHORIZED ACTIVITIES. The holder of a local class B wholesaler's permit may:

(1) purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and bottlers who are holders of nonresident seller's permits and from their agents who are holders of manufacturer's agent permits;

(2) purchase malt and vinous liquors from holders of brewer's permits and from other wholesalers in the state;

(3) sell the malt and vinous liquors, in the original containers in which he receives them, to general and local class B wholesaler's permittees and, in his county of residence, to local distributor's permittees and retailers, including mixed beverage permittees and daily temporary mixed beverage permittees; and

(4) sell ale and malt liquor to a holder of a private club registration permit.

Sec. 21.02. FEE. The annual state fee for a local class B wholesaler's permit is $75.

Sec. 21.03. ALE AND MALT LIQUOR FOR EXPORT. (a) In this section "ale or malt liquor for export" means ale or malt liquor a wholesaler holds for export to another state in which the wholesaler has been assigned a territory for the distribution and sale of the ale or malt liquor. The term includes ale and malt liquor that is illegal to sell in this state because of alcohol content, containers, packages, or labels.

(b) The holder of a local class B wholesaler's permit who receives malt liquor or ale for export from the holder of a brewer's or nonresident brewer's permit may:

(1) store the ale or malt liquor for export at the wholesaler's premises;

(2) transport the ale or malt liquor for export outside the state in the wholesaler's own vehicles; or

(3) deliver the ale or malt liquor for export to a common carrier for export and delivery outside the state.

(c) The holder of a local class B wholesaler's permit is not liable for any state tax on the ale or malt liquor for export.

(d) Section 101.67 does not apply to ale or malt liquor for export.

CHAPTER 22. PACKAGE STORE PERMIT (P)

Sec. 22.01. AUTHORIZED ACTIVITIES. The holder of a package store permit may:

(1) purchase liquor in this state from the holder of a winery, wholesaler's, class B wholesaler's, or wine bottler's permit;

(2) sell liquor in unbroken original containers on or from his licensed premises at retail to consumers for off-premises consumption only and not for the purpose of resale, except that if the permittee is a hotel, the permittee may deliver unbroken packages of liquor to bona fide guests of the hotel in their rooms for consumption in their rooms;

(3) sell malt and vinous liquors in original containers of not less than six ounces; and

(4) sell liquor to holders of airline beverage permits as provided in Section 34.05 of this code.

Sec. 22.02. FEE. The annual state fee for a package store permit is $500.

Sec. 22.03. DELIVERIES TO CUSTOMERS. (a) The holder of a package store permit or wine only package store permit issued for a location within a city or town or within two miles of the corporate limits of a city or town, who also holds a local cartage permit, may make deliveries of and collections for alcoholic beverages off the premises in areas where the sale of the beverages is legal. The permittee must travel by the most direct route and may make deliveries and collections only within the county or the city or town or within two miles of its corporate limits, and only in response to bona fide orders placed by the

customer, either in person at the premises, in writing, by mail, or by telegraph or telephone. This section shall not be construed as preventing a holder of a package store permit or wine only package store permit from delivering alcoholic beverages to the holder of a carrier's permit for transportation to persons who have placed bona fide orders and who are located in an area that the holder of a package store permit or wine only package store permit, who also holds a local cartage permit, is authorized to directly deliver to under this section. The holder of a package store permit or wine only package store permit may also deliver alcoholic beverages to the holder of a carrier's permit for transportation outside of this state in response to bona fide orders placed by persons authorized to purchase the beverages.

(b) The holder of a package store permit who also holds a local cartage permit may transport alcoholic beverages to a commercial airline in a regional airport located all or partly in an adjoining county if the airport is governed by a board, commission, or authority, some of whose members reside in the county where the package store is located.

Sec. 22.04. LIMITATION ON PACKAGE STORE INTERESTS. (a) No person may hold or have an interest, directly or indirectly, in more than five package stores or in their business or permit.

(b) For the purpose of this section:

(1) a person has an interest in any permit in which his spouse has an interest; and

(2) as to a corporate permittee, the stockholders, managers, officers, agents, servants, and employees of the corporation have an interest in the permit, business, and package stores of the corporation.

(c) The limitations prescribed in this section do not apply to an original or renewal package store permit issued before May 1, 1949, and in effect on that date. The commission or administrator shall renew each permit of that type on proper application if the applicant is otherwise qualified. If a person who holds or has an interest in more than five package store permits under the authority of this subsection has one of the permits cancelled, voluntarily or for cause, he may not obtain an additional permit in lieu of the cancelled permit. No person who has more than five package store permits may place any of the permits in suspense with the commission.

(d) This section does not apply to the stockholders, managers, officers, agents, servants, or employees of a corporation operating hotels, with respect to package stores operated by the corporation in hotels.

Sec. 22.05. CONSOLIDATION OF PERMITS. If one person or two or more persons related within the first degree of consanguinity have a majority of the ownership in two or more legal entities holding package store permits, they may consolidate the package store businesses into a single legal entity. That single legal entity may then be issued permits for all the package stores, notwithstanding any other provision of this code. After the consolidation, none of the permits may be transferred to another county.

Sec. 22.06. PROHIBITED INTERESTS. (a) Except as otherwise provided in Section 102.05 of this code and in Subsection (b) of this section, no person who holds a package store permit or owns an interest in a package store may have a direct or indirect interest in any of the following:

(1) a manufacturer's, retail dealer's on-premise, or general, branch, or local distributor's license;

(2) a wine and beer retailer's, wine and beer retailer's off-premise, or mixed beverage permit; or

(3) the business of any of the permits or licenses listed in Subdivisions (1) and (2) of this subsection.

(b) A package store permit and a retail dealer's off-premise license may be issued to the same person.

Sec. 22.07. VIOLATION WHEN LICENSE ALSO HELD. If a person holding a package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both the package store permit and the retail dealer's off-premise license for the premises where the violation was committed.

Sec. 22.08. TRANSFER OF BEVERAGES. The owner of more than one package store who is also the holder of a local cartage permit may transfer alcoholic beverages between any of his licensed premises in the same county between the hours of 7 a.m. and 9 p.m. on any day when the sale of those beverages is legal, subject to rules prescribed by the commission.

Sec. 22.10. OPENING CONTAINERS PROHIBITED. Except as authorized under Section 52.01 of this code, no person may break or open a container containing liquor or beer or possess an opened container of liquor or beer on the premises of a package store.

Sec. 22.11. CONSUMPTION ON PREMISES PROHIBITED. Except as authorized under Section 52.01, no person may sell, barter, exchange, deliver, or give away any drink or drinks of alcoholic beverages from a container that has been opened or broken on the premises of a package store.

Sec. 22.12. BREACH OF PEACE. The commission or administrator may suspend or cancel a package store permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

Sec. 22.13. AGE OF PACKAGE STORE EMPLOYEES. (a) A package store permittee may not knowingly utilize or employ any person under the age of 21 to work on the premises of a package store in any capacity or to deliver alcohol off the premises of a package store.

(b) This section shall not apply to a person who was under the age of 21 and employed by a package store on September 1, 1995.

(c) This section shall not apply to a person who is employed by the person's parent or legal guardian to work in a package store that is owned by the parent or legal guardian.

Sec. 22.14. SEPARATE PREMISES REQUIRED. (a) The premises of a package store shall be completely separated from the premises of other businesses by a solid, opaque wall from floor to ceiling, without connecting doors, shared bathroom facilities, or shared entry foyers.

(b) The premises of a package store shall have a front door through which the public may enter which opens onto a street, parking lot, public sidewalk, or the public area of a mall or shopping center.

(c) For all premises built or first occupied as a package store on or after September 1, 1995, the premises of a package store shall include:

(1) a rear or side entrance which opens onto a street, parking lot, public sidewalk, or the public area or common area of a mall or shopping center, which may be used for receipt and processing of merchandise but which shall in any event serve as an emergency exit from the premises; and

(2) a bathroom which complies with Title III of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Section 12101 et seq.).

(d) Subsections (a), (b), and (c) shall not apply to a package store that qualifies for exemption under Section 11.50 or to a package store in a hotel that qualifies for exemption under Section 102.05.

(e) The holder of a package store permit may sell nonalcoholic products and may conduct other lawful business on the premises of a package store, but the premises must be closed to entry by the general public during all hours in which the sale of liquor by a package store is prohibited by law. For purposes of this subsection, "the general public" shall mean retail customers and shall not include vendors, service personnel, and other persons entering the premises for purposes other than the purchase of goods sold on the premises.

Sec. 22.15. CONDUCTING SEPARATE BUSINESSES AS A COMMON OPERATION. (a) No package store permittee, except for permittees wholly owned by the same persons, may conduct business in a manner so as to directly or indirectly coordinate operations with another package store as if they shared common ownership. For purposes of this section, "coordinate operations as if they shared common ownership" includes engaging in any of the following practices:

(1) cooperatively setting prices or credit policies or allowing any third party to do so on their behalf;

(2) sharing advertising;

(3) utilizing the same trade name, trademark, or slogan as another package store in the same county;

(4) sharing or utilizing the same bookkeeping or computer-processing service, unless the bookkeeping or computer-processing service is in the business of providing such services to the general public;

(5) transferring funds, merchandise, or equipment from one package store business to another;

(6) utilizing the same person as an employee or independent contractor for two or more package store businesses in any capacity, unless, in the case of an independent contractor, the independent contractor is in the business of providing similar services to the general public; and

(7) negotiating, or allowing a third party to negotiate, quantity discounts for alcoholic beverages to be purchased by the package store business utilizing the sales volume of another package store business to increase the discount.

(b) The prohibition set forth in Subsection (a)(3) regarding trade names, trademarks, and slogans shall not prevent any package store business from utilizing a trade name, trademark, or slogan which the business was using on September 1, 1995.

(c) Before the commission may renew a package store permit, an individual who is an owner or officer of the permittee must file with the commission a sworn affidavit stating that the permittee fully complies with the requirements of this section.

(d) Any package store permittee who is injured in his business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county where the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover triple damages plus costs of suit including reasonable attorney's fees.

Sec. 22.16. OWNERSHIP BY PUBLIC CORPORATIONS PROHIBITED. (a) A package store permit may not be owned or held by a public corporation, or by any entity which is directly or indirectly owned or controlled, in whole or in part, by a public corporation, or by any entity which would hold the package store permit for the benefit of a public corporation.

(b) For purposes of this section, a public corporation means:

(1) any corporation or other legal entity whose shares or other evidence of ownership are listed on a public stock exchange; or

(2) any corporation or other legal entity in which more than 35 persons hold an ownership interest in the entity.

(c) Before the commission may renew a package store permit, an individual who is an owner or officer of the permittee must file with the commission a sworn affidavit stating that the permittee fully complies with the requirements of this section.

(d) This section shall not apply to a package store located in a hotel.

(e) Any package store permittee who is injured in his business or property by another package store permittee or by any other person by reason of anything prohibited in this section may institute suit in any district court in the county where the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover triple damages plus costs of suit including reasonable attorney's fees.

(f) This section shall not apply to a corporation:

(1) which was a public corporation as defined by this section on April 28, 1995; and

(2) which holds a package store permit on April 28, 1995, or which has an application pending for a package store permit on April 28, 1995; and

(3) which has provided to the commission on or before December 31, 1995, a sworn affidavit stating that such corporation satisfies the requirements of Subdivisions (1) and (2).

CHAPTER 23. LOCAL DISTRIBUTOR'S PERMIT (LP)

Sec. 23.01. AUTHORIZED ACTIVITIES. (a) The holder of a local distributor's permit may:

(1) purchase alcoholic beverages from wholesalers authorized to sell them for resale, but may purchase only those brands available for general distribution to all local distributor's permittees;

(2) sell and distribute the alcoholic beverages to mixed beverage and private club registration permittees; and

(3) rent or sell to mixed beverage and private club registration permittees any equipment, fixtures, or supplies used in the selling or dispensing of distilled spirits.

(b) A local distributor's permittee may purchase liquor only from a wholesaler's, general class B wholesaler's, or local class B wholesaler's permittee and may purchase only the types of liquor the particular wholesaler is authorized by his permit to sell.

Sec. 23.02. FEE. The annual state fee for a local distributor's permit is $100. The fee is in addition to and subject to the same conditions as the fee paid for the holder's package store permit.

Sec. 23.03. ELIGIBILITY FOR PERMIT. The commission or the administrator may issue a local distributor's permit only to a holder of a package store permit.

Sec. 23.04. MAY TRANSFER BEVERAGES. If the holder of a local distributor's permit also holds a local cartage permit, he may transfer alcoholic beverages:

(1) to any place where the sale of alcoholic beverages is legal in the city or county where his premises are located; and

(2) to a regional airport located all or partly in an adjoining county if the airport is governed by a board, commission, or authority, some of whose members reside in the county where the local distributor's premises are located.

Sec. 23.05. SIZE OF CONTAINERS. (a) A holder of a local distributor's permit may not sell distilled spirits to the holder of a mixed beverage or private club permit in individual containers containing less than one fluid ounce.

(b) A holder of a local distributor's permit may sell to holders of mixed beverage permits distilled spirits, wine, and vinous liquor in containers containing not less than one ounce nor more than two ounces or in any other container authorized by this code.

Sec. 23.06. SIZE OF DELIVERY. A holder of a local distributor's permit may not deliver less than two and four-tenths gallons of distilled spirits in a single delivery.

CHAPTER 24. WINE ONLY PACKAGE STORE PERMIT (Q)

Sec. 24.01. AUTHORIZED ACTIVITIES. (a) The holder of a wine only package store permit may:

(1) purchase ale, wine, and vinous liquors in this state from the holder of a winery, wine bottler's, wholesaler's, or class B wholesaler's permit; and

(2) sell those beverages to consumers at retail on or from the licensed premises in unbroken original containers of not less than six ounces for off-premises consumption only and not for the purpose of resale.

(b) The holder of a wine only package store permit whose premises is located in a wet area permitting the legal sale of wine for off-premises consumption only as determined by an election held under Section 251.19 may only purchase, sell, or possess vinous liquor on those licensed premises.

(c) The qualifications for a wine only package store permit whose premises is in a wet area permitting the legal sale of wine for off-premises consumption only as determined by an election held under Section 251.19 are the same as the qualifications for a permit issued under Chapter 26 of this code, including the citizenship requirements prescribed by Section 6.03.

NOTE: TABC is enjoined from enforcing the Texas state residency and Texas state citizenship requirements in Section 6.03 which are referenced in Section 24.01(c).

Sec. 24.02. FEE. The annual state fee for a wine only package store permit is $75.

Sec. 24.03. DELIVERIES AND COLLECTIONS. The holder of a wine only package store permit may make deliveries to and collections from customers as provided in Section 22.03 of this code.

Sec. 24.04. DESIGNATION OF PLACE OF STORAGE. The owner of more than one wine only package store who is also the holder of a local cartage permit may designate one of his places of business as a place of storage. He may transfer alcoholic beverages to and from his place of storage and his other stores in the same county, subject to rules prescribed by the commission.

Sec. 24.05. PROHIBITED INTERESTS. (a) No person who holds a wine only package store permit or owns an interest in a wine only package store may have a direct or indirect interest in any of the following:

(1) a manufacturer's or general, branch, or local distributor's license;

(2) the business of any of the licenses listed in Subdivision (1) of this subsection.

(b) A person may hold both a wine only package store permit and a retail dealer's off-premise license.

(c) A person may not hold a wine and beer retailer's or wine and beer retailer's off-premise permit at the same location where the person holds a wine only package store permit.

Sec. 24.06. VIOLATION WHEN LICENSE ALSO HELD. If a person holding a wine only package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both the wine only package store permit and the retail dealer's off-premise license for the premises where the violation was committed.

Sec. 24.07. WHEN LICENSE ALSO HELD: HOURS OF SALE, ETC. A holder of a wine only package store permit who also holds a retail dealer's off-premise license for the same location may remain open and sell ale, wine, vinous liquors, and beer, for off-premises consumption only, on any day and during the same hours that the holder of a wine and beer retailer's permit may sell ale, beer, and wine, except that he may not sell wine or vinous liquor containing more than 17 percent alcohol by volume on a Sunday or after 10 p.m. on any day.

Sec. 24.09. OPENING CONTAINERS PROHIBITED. Except as provided by Section 52.01, a person may not break or open a container of liquor or beer or possess an opened container of liquor or beer on the premises of a wine only package store.

Sec. 24.10. BEVERAGE FROM OPENED CONTAINER. Except as provided by Section 52.01, a person may not sell, barter, exchange, deliver, or give away a drink of alcoholic beverage from a container that has been opened or broken on the premises of a wine only package store.

Sec. 24.11. BREACH OF PEACE. The commission or administrator may suspend or cancel a wine only package store permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

Sec. 24.12. WINE AND ALE SAMPLING. (a) The holder of a wine only package store permit may conduct free product samplings of wine or ale on the permit holder's premises during regular business hours as provided by this section.

(b) An agent or employee of the holder of a wine only package store permit may open, touch, or pour wine or ale, make a presentation, or answer questions at a sampling event.

(c) For the purposes of this code and any other law or ordinance:

(1) a wine only package store permit does not authorize the sale of alcoholic beverages for on-premise consumption; and

(2) none of the permit holder's income may be considered to be income from the sale of alcoholic beverages for on-premise consumption.

(d) Any wine or ale used in a sampling event under this section must be purchased from or provided by the retailer on whose premises the sampling event is held.

(e) When a sampling event under this section is held on the premises of a wine only package store permit located in an area which is wet for the sale of wine but which is not wet for the sale of higher alcohol content wines that may be sold under an unrestricted wine only package store permit, the only wines that may be sampled are wines which may be legally sold by the wine only package store permittee as restricted under Section 251.81.

CHAPTER 25. WINE AND BEER RETAILER'S PERMIT (BG/V/Y)

Sec. 25.01. AUTHORIZED ACTIVITIES. The holder of a wine and beer retailer's permit may sell:

(1) for consumption on or off the premises where sold, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume and not more than 17 percent by volume; and

(2) for consumption on the premises traditional port or sherry containing alcohol in excess of one-half of one percent by volume and not more than 24 percent by volume.

Sec. 25.02. FEE. (a) Except as provided in Subsection (b) and Section 25.03, the annual state fee for a wine and beer retailer's permit is $175.

(b) The annual state fee for a wine and beer retailer's permit in connection with an establishment located in a county with a population of 1.4 million or more is $750. The original application fee for a wine and beer retailer's permit in connection with an establishment located in a county with a population of 1.4 million or more is $1,000.

Sec. 25.03. RAILWAY CARS AND EXCURSION BOATS; PERMITS, FEES.(a) A wine and beer retailer's permit may be issued for railway dining, buffet, or club cars on the payment of an annual state fee of $30 for each car.

(b) A wine and beer retailer's permit may be issued for a regularly scheduled excursion boat which is licensed by the United States Coast Guard to carry passengers on the navigable waters of the state and which has a tonnage of not less than 35 tons, a length of not less than 55 feet, and a passenger capacity of not less than 45 passengers. The annual state fee for the permit is $130.

(c) Application for a permit for a railway car or an excursion boat and payment of the required fee shall be made directly to the commission.

(d) A permit for a railway car or an excursion boat is inoperative in a dry area.

Sec. 25.04. ISSUANCE, CANCELLATION, AND SUSPENSION OF PERMIT. (a) A wine and beer retailer's permit is issued by the commission or administrator. The qualification of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's on-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit.

Sec. 25.05. HEARINGS ON PERMIT APPLICATION: NOTICE AND ATTENDANCE. (a) On receipt of an original application for a wine and beer retailer's permit, the county judge shall give notice of all hearings before him concerning the application to the commission, the sheriff, and the chief of police of the incorporated city in which, or nearest which, the premises for which the permit is sought are located.

(b) The individual natural person applying for the permit or, if the applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who will be primarily responsible for the management of the premises shall attend any hearing involving the application.

Sec. 25.051. MASTERS IN CERTAIN COUNTIES. (a) The county judge of a county with a population of 1.3 million or more may appoint a master to hear a permit application under this chapter in the manner provided by Section 61.311 of this code for the appointment of a master to hear a license application.

(b) A master shall give notice of a hearing before the master to each person entitled to notice of a hearing before a judge under Section 25.05 of this code.

Sec. 25.052. DELEGATION OF DUTIES OF COUNTY JUDGE. A county judge may delegate the duty to hear a permit application under this chapter in the manner provided by Section 61.312 of this code for the delegation of the duty to hear a license application.

Sec. 25.06. DENIAL OF ORIGINAL APPLICATION. (a) The county judge shall deny an original application for a wine and beer retailer's permit if he finds that the applicant, or the applicant's spouse, during the five years immediately preceding the application, was finally convicted of a felony or one of the following offenses:

(1) prostitution;

(2) a vagrancy offense involving moral turpitude;

(3) bookmaking;

(4) gambling or gaming;

(5) an offense involving controlled substances as defined in Chapter 481, Health and Safety Code or other dangerous drugs;

(6) a violation of this code resulting in the cancellation of a license or permit, or a fine of not less than $500;

(7) more than three violations of this code relating to minors;

(8) bootlegging; or

(9) an offense involving firearms or a deadly weapon.

(b) The county judge shall also deny an original application for a permit if he finds that five years have not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(c) The commission shall refuse to issue a renewal of a wine or beer retailer's permit if it finds:

(1) that the applicant, or the applicant's spouse, has been convicted of a felony or one of the offenses listed in Subsection (a) of this section at any time during the five years immediately preceding the filing of the application for renewal; or

(2) that five years have not elapsed since the termination of a sentence, parole, or probation served by the applicant, or the applicant's spouse, of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(d) In this section the word "applicant" includes the individual natural person holding or applying for the permit or, if the holder or applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.

Sec. 25.09. POSSESSION OF CERTAIN BEVERAGES PROHIBITED. (a) Except as provided by this section, a wine and beer retailer's permittee or an officer of the permittee may not possess distilled spirits or liquor containing alcohol in excess of 17 percent by volume on the licensed premises.

(b) The commission by rule may allow a wine and beer retailer's permittee or the permittee's officer to possess and use alcoholic beverages in excess of 17 percent by volume on the licensed premises for cooking purposes.

Sec. 25.10. APPLICATION OF OTHER CODE PROVISIONS. Sections 61.78, 61.81, 61.82, and 61.84 of this code also apply to a wine and beer retailer's permit. The restrictions in this code relating to beer as to the application of local restrictions, sales to minors and intoxicated persons, age of employees, and the use of blinds or barriers apply to the sale of alcoholic beverages by a wine and beer retailer's permittee.

Sec. 25.11. SEATING AREA REQUIRED. A wine and beer retailer's permittee must have an area designated on the premises for the permittee's customers to sit if they wish to consume beverages sold by the permittee on the premises.

Sec. 25.12. PREMISES IN A FOOD COURT. (a) Notwithstanding any provision of this code to the contrary, the premises of a wine and beer retailer's permittee who leases space in a food court includes the seating area that the permittee shares with the other lessees that occupy the food court.

(b) For the purposes of this section, "food court" means an area in a shopping mall that includes a seating area and the locations of three or more separate but adjacent business establishments engaged primarily in the sale of food and beverages for consumption in the seating area.

Sec. 25.13. FOOD AND BEVERAGE CERTIFICATE. (a) A holder of a wine and beer retailer's permit may be issued a food and beverage certificate by the commission if food service is the primary business being operated on the premises by the permittee.

(b) An applicant or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees. The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service as the primary business on the premises for which a food and beverage certificate has been issued. The commission may exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from the requirement that food service be the primary business on the premises.

(c) The fee for a food and beverage certificate shall be set at a level sufficient to recover the cost of issuing the certificate and administering this section.

(d) A certificate issued under this section expires on the expiration of the primary wine and beer retailer's permit. A certificate may be canceled at any time if the commission finds that the holder of the certificate is not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises. The commission may impose a fine not to exceed $5,000 on the holder of a food and beverage certificate not operating as a food service establishment and may, upon finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section, cancel the permittee's wine and beer retailer's permit.

(e) Section 11.11 does not apply to the holder of a food and beverage certificate.

Sec. 25.14. ISSUANCE OF PERMIT AUTHORIZED FOR CERTAIN AREAS. (a) Notwithstanding any other provision of this code, a permit under this chapter may be issued for a premises in an area in which the voters have approved the following alcoholic beverage ballot issues in a local option election:

(1) "The legal sale of beer and wine for off-premise consumption only."; and

(2) either:

(A) "The legal sale of mixed beverages."; or

(B) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(b) A premises that qualifies for a permit under this chapter because it is located in an area that approved the ballot issue described by Subsection (a)(2)(B) may be issued a permit under this chapter only if the premises is issued a food and beverage certificate.

NOTE: Section 25.14 applies to a permit or license issued on or after September 1, 2013, regardless of when the local option election approving the sale of mixed beverages was held. (House Bill 2818, 83rd Legislature, Regular Session, 2013)

CHAPTER 26. WINE AND BEER RETAILER'S OFF-PREMISE PERMIT (BQ)

Sec. 26.01. AUTHORIZED ACTIVITIES. (a) The holder of a wine and beer retailer's off-premise permit may sell for off-premises consumption only, in unbroken original containers, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 17 percent by volume.

(b) The holder of a wine and beer retailer's off-premise permit may conduct free product samplings of wine, beer, and malt liquor containing alcohol in excess of one-half of one percent by volume but not more than 17 percent by volume on the permit holder's premises during regular business hours as provided by Section 26.08.

Sec. 26.02. FEE. The annual state fee for a wine and beer retailer's off-premise permit is $60.

Sec. 26.03. ISSUANCE, CANCELLATION, AND SUSPENSION OF PERMIT. (a) A wine and beer retailer's off-premise permit is issued by the commission or administrator. The qualifications of applicants and the application for an issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's off-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's off-premise license also apply to the cancellation and suspension of a wine and beer retailer's off-premise permit.

Sec. 26.04. APPLICATION OF OTHER CODE PROVISIONS. Sections 61.78, 61.81, 61.82, and 61.84 of this code also apply to a wine and beer retailer's off-premise permit. The restrictions in this code relating to beer as to the application of local restrictions, sales to minors and intoxicated persons, and age of employees apply to the sale of alcoholic beverages by a wine and beer retailer's off-premise permittee.

Sec. 26.05. WARNING SIGN REQUIRED. (a) Each holder of a wine and beer retailer's off-premise permit shall display in a prominent place on his premises a sign stating in letters at least two inches high: IT IS A CRIME (MISDEMEANOR) TO CONSUME LIQUOR OR BEER ON THESE PREMISES. The commission or administrator may require the holder of the permit to also display the sign in a language other than English if it can be observed or determined that a substantial portion of the expected customers speak the other language as their familiar language.

(b) A permittee who fails to comply with this section commits a misdemeanor punishable by a fine of not more than $25.

Sec. 26.06. MASTERS IN CERTAIN COUNTIES. The county judge of a county with a population of 1.3 million or more may appoint a master to hear a permit application under this chapter in the manner provided by Section 61.311 of this code for the appointment of a master to hear a license application.

Sec. 26.07. DELEGATION OF DUTIES OF COUNTY JUDGE. A county judge may delegate the duty to hear a permit application under this chapter in the manner provided by Section 61.312 of this code for the delegation of the duty to hear a license application.

Sec. 26.08. SAMPLING EVENT. (a) An employee of the holder of a wine and beer retailer's off-premise permit may open, touch, or pour wine, beer, or malt liquor, make a presentation, or answer questions at a sampling event.

(b) For purposes of this code and any other law or ordinance:

(1) a wine and beer retailer's off-premise permit does not authorize the sale of alcoholic beverages for on-premises consumption; and

(2) none of the permit holder's income may be considered to be income from the sale of alcoholic beverages for on-premises consumption.

(c) Any wine, beer, or malt liquor used in a sampling event under this section must be purchased from or provided by the retailer on whose premises the sampling event is held. This section does not authorize the holder of a wine and beer retailer's off-premise permit to withdraw or purchase alcoholic beverages from the holder of a wholesaler's permit or a distributor's license or provide alcoholic

beverages for a sampling on a retailer's premises that is not purchased from the retailer. The amount of alcoholic beverages purchased from the retailer may not exceed the amount of alcoholic beverages used in the sampling event.

CHAPTER 27. TEMPORARY AND SPECIAL WINE AND BEER RETAILER'S PERMITS

SUBCHAPTER A. TEMPORARY WINE AND BEER RETAILER'S PERMIT (BH/HP)

Sec. 27.01. AUTHORIZED ACTIVITIES. The holder of a temporary wine and beer retailer's permit may sell for consumption on or off the premises where sold, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 17 percent by volume.

Sec. 27.011. SALE OUTSIDE PERMIT HOLDER'S COUNTY. A holder of a temporary wine and beer retailer's permit that sells wine, beer, or malt liquor under that permit in a county other than the county in which the premises covered by the permit required by Section 27.04 is located must:

(1) purchase the beverages from a distributor or wholesaler authorized under this code to sell the beverages in the county in which the permit holder sells the beverages under this chapter; and

(2) report to the commission, in the manner prescribed by the commission by rule, the amount of beverages purchased and sold under this section, by type.

Sec. 27.02. FEE. The state fee for a temporary wine and beer retailer's permit is $30. No refund shall be allowed for the surrender or nonuse of the permit.

Sec. 27.03. DURATION OF PERMIT. (a) Except as provided by Subsection (b), a temporary wine and beer retailer's permit may be issued for a period of not more than four days.

(b) A temporary wine and beer retailer's permit issued under Section 27.07 may be issued for a period of five days. On notice to the commission, the commission may extend the permit for one additional day to accommodate the postponement of scheduled racing events due to an act of nature.

Sec. 27.04. REQUIRED BASIC PERMIT. A temporary wine and beer retailer's permit may be issued only to a holder of a wine and beer retailer's permit, a holder of a mixed beverage permit, or a nonprofit historic preservation organization that has been in existence for at least 30 years.

Sec. 27.05. ISSUANCE AND USE OF PERMIT; RULES AND REGULATIONS. (a) Temporary wine and beer retailer's permits are issued by the administrator, the commission, or an authorized representative of the commission. The commission shall adopt rules and regulations governing the issuance and use of temporary wine and beer retailer's permits.

(b) The permits shall be issued only for the sale of authorized alcoholic beverages at picnics, celebrations, or similar events, or events described by Section 27.07.

(c) The administrator or commission may refuse to issue a permit if there is reason to believe the issuance of the permit would be detrimental to the public.

Sec. 27.06. CANCELLATION OR SUSPENSION OF BASIC PERMIT. The basic permit under which a temporary wine and beer retailer's permit was issued may be cancelled or suspended for a violation on the premises covered by the temporary permit that would result in the cancellation or suspension of the basic permit if committed on the premises covered by the basic permit.

Sec. 27.07. USE OF PERMIT IN CERTAIN RACING FACILITIES. (a) The commission may issue a temporary wine and beer retailer's permit to the holder of a mixed beverage permit covering premises located in a facility with a seating capacity of more than 150,000 that is open to the public for use in areas of the facility not otherwise covered by a license or permit during a motor vehicle racing event sponsored by a professional motor racing association.

(b) The commission may not issue more than four temporary wine and beer retailer's permits under this section in a calendar year to a mixed beverage permit holder.

(c) The holder of a temporary wine and beer retailer's permit under this section may not engage in the following activities on the areas covered by the permit:

(1) sell alcoholic beverages in factory-sealed containers;

(2) sell more than two drinks to a single consumer at one time;

(3) sell alcoholic beverages at more than 50 percent of the food and beverage concession stands that are open for business at any one time; and

(4) sell alcoholic beverages after:

(A) 75 percent of the feature race is complete on the day that race is held; and

(B) one hour before the scheduled completion of the last spectator event on a day other than the feature race day.

SUBCHAPTER B. SPECIAL THREE-DAY WINE AND BEER PERMIT (SB)

Sec. 27.11. AUTHORIZED ACTIVITIES. The holder of a special three-day wine and beer permit may sell for consumption on the premises for which the permit is issued, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 17 percent by volume.

Sec. 27.12. FEE. The state fee for a special three-day wine and beer permit is $30.

Sec. 27.13. ISSUANCE OF PERMIT. (a) The commission may issue a special three-day wine and beer permit directly to a nonprofit charitable, civic, or religious organization for the temporary serving of wine and beer at a picnic, celebration, or similar event sponsored by the organization.

(b) The commission by rule may limit the number of special three-day wine and beer permits issued in each calendar year to a single nonprofit charitable, civic, or religious organization for events sponsored by that organization.

(c) If a special three-day wine and beer permit is issued for a premises in an area in which the sale of beer for on-premise consumption has been authorized by a local option election, but the sale of wine for on-premise consumption has not been authorized, then the permittee is only authorized to sell beer.

Sec. 27.14. APPLICATION OF WINE AND BEER RETAILER'S PERMIT PROVISIONS. A provision of this code that applies to a wine and beer retailer permit applies to a special three-day wine and beer permit unless the provision conflicts with a provision of this subchapter.

Sec. 27.15. RULES. The commission may adopt rules as necessary to implement and administer this subchapter.

CHAPTER 28. MIXED BEVERAGE PERMIT (MB/RM)

Sec. 28.01. AUTHORIZED ACTIVITIES. (a) The holder of a mixed beverage permit may sell, offer for sale, and possess mixed beverages, including distilled spirits, for consumption on the licensed premises:

(1) from sealed containers containing not less than one fluid ounce nor more than two fluid ounces or of any legal size; and

(2) from unsealed containers.

(b) The holder of a mixed beverage permit for an establishment in a hotel may deliver mixed beverages, including wine and beer, to individual rooms of the hotel or to any other location in the hotel building or grounds, except a parking area or the licensed premises of another alcoholic beverage establishment, without regard to whether the place of delivery is part of the licensed premises. A permittee in a hotel may allow a patron or visitor to enter or leave the licensed premises, even though the patron or visitor possesses an alcoholic beverage, if the beverage is in an open container and appears to be possessed for present consumption.

(c) The holder of a mixed beverage permit may also:

(1) purchase wine, beer, ale, and malt liquor containing alcohol of not more than 21 percent by volume in containers of any legal size from any permittee or licensee authorized to sell those beverages for resale; and

(2) sell the wine, beer, ale, and malt liquor for consumption on the licensed premises.

Sec. 28.02. FEE. (a) The annual state fee for an original mixed beverage permit is $3,000.

(b) The annual state fee for the first renewal of a mixed beverage permit is $2,250.

(c) The annual state fee for the second renewal of a mixed beverage permit is $1,500.

(d) The annual state fee for the third and each subsequent renewal of a mixed beverage permit is $750.

Sec. 28.03. INFORMATION REQUIRED OF APPLICANTS. In addition to the information required of applicants for permits under this code, the applicant for a mixed beverage permit must file with his original and renewal application a sworn statement in a form prescribed by the commission or administrator containing the following information:

(1) the name and residential address of the lessor of the premises;

(2) the name and address of the lessee of the premises;

(3) the amount of monthly rental on the premises and the date of expiration of the lease;

(4) whether the lease or rental agreement includes furniture and fixtures;

(5) whether the business is to be operated under a franchise and, if so, the name and address of the franchisor;

(6) the name and address of the accountant of the business;

(7) a list of all bank accounts, including account numbers, used in connection with the business; and

(8) any information required by the commission or administrator relevant to the determination of all persons having a financial interest of any kind in the granting of the mixed beverage permit.

Sec. 28.04. CHANGE IN CORPORATE CONTROL. (a) A mixed beverage permit held by a corporation may not be renewed if the commission or administrator finds that legal or beneficial ownership of over 50 percent of the stock of the corporation has changed since the time the original permit was issued.

(b) The commission or administrator may adopt reasonable rules and regulations in accordance with the provisions of this section.

(c) A corporation which is barred from renewing a permit because of this section may file an application for an original permit and may be issued an original permit if otherwise qualified.

(d) This section does not apply to a change in corporate control:

(1) brought about by the death of a shareholder if the shareholder's surviving spouse or descendants are the shareholder's successors in interest; or

(2) brought about when legal or beneficial ownership of over 50 percent of the stock of the corporation has been transferred:

(A) to a person who possesses the qualifications required of other applicants for permits and is currently an officer of the corporation and has been an officer of the corporation ever since the date the original permit was issued; or

(B) if the permittee notifies the commission, on completed forms and attachments prescribed by the commission, of the proposed transfer prior to the date the transfer is to become effective and the commission does not find that circumstances exist that would be grounds for the denial of a renewal of the permit under Section 11.46 and provided the ownership of the corporation immediately after the transfer satisfies the requirements of this code.

(e) Nothing in this section shall be construed to grant any property right to any permit or construed to prevent the commission from suspending or canceling a permit at any time after notice and hearing for a violation of this code.

Sec. 28.05. RENEWAL OF PERMIT BY DESCENDANT OR SURVIVING SPOUSE. If the surviving spouse or surviving descendant of a holder of a mixed beverage permit qualifies as the successor in interest to the permit as provided in Section 11.10 of this code, the descendant or surviving spouse may continue to renew the permit by paying a renewal fee equal to the fee the permittee would be required to pay had he lived.

Sec. 28.06. POSSESSION OF ALCOHOLIC BEVERAGE NOT COVERED BY INVOICE. (a) No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may possess or permit to be possessed on the premises for which the permit is issued any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

(b) A person who violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not more than $1,000 or by confinement in the county jail for no more than 30 days or by both.

(c) No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may knowingly possess or permit to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

(d) A person who violates Subsection (c) of this section commits a misdemeanor punishable by a fine of not less than $500 nor more than $1,000 and by confinement in the county jail for not less than 30 days nor more than two years. The commission or administrator shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or to have been convicted of violating Subsection (c) of this section.

(e) The commission by rule may allow the holder of a mixed beverage permit or an officer, agent, or employee of the permit holder to possess and use alcoholic beverages that are not covered by an invoice on the permitted premises for cooking purposes.

Sec. 28.07. PURCHASE AND TRANSPORTATION OF ALCOHOLIC BEVERAGES. (a) All distilled spirits sold by a holder of a mixed beverage permit must be purchased from a holder of a local distributor's permit in the county in which the premises of a mixed beverage permittee is located.

(b) If a holder of a mixed beverage permit is in a county where there are no local distributors, he may purchase alcoholic beverages in the nearest county where local distributors are located and may transport them to his premises provided that he is also a holder of a beverage cartage permit. The transporter may acquire the alcoholic beverages only on the written order of the holder of the mixed beverage permit. The alcoholic beverages must be accompanied by a written statement furnished and signed by the local distributor showing the name and address of the consignee and consignor, the origin and destination of the shipment, and any other information required by the commission or administrator. The person in charge of the alcoholic beverages while they are being transported shall exhibit the written statement to any representative of the commission or any peace officer on demand, and the statement shall be accepted by the representative or officer as prima facie evidence of the lawful right to transport the alcoholic beverages.

(c) If a mixed beverage permittee holds a beverage cartage permit and his premises are located in a regional airport governed by a board, commission, or authority composed of members from two or more counties, and there is no local distributor at the airport, the mixed beverage permittee may purchase alcoholic beverages from any local distributor in a trade area served by the airport and transport them to his licensed premises. The transportation of the beverages must be in accordance with Subsection (b) of this section.

Sec. 28.08. REFILLING CONTAINERS PROHIBITED. No holder of a mixed beverage permit may refill with any substance a container which contained distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid.

Sec. 28.081. SUBSTITUTION OF BRAND WITHOUT CONSENT OF CONSUMER PROHIBITED. (a) The holder of a mixed beverage permit or a private club permit, or the agent, servant, or employee of a holder of a mixed beverage permit or private club permit commits an offense if the holder, agent, servant, or employee substitutes one brand of alcoholic beverage for a brand that has been specifically requested by a consumer, unless the consumer is notified and consents to the substitution.

(b) A holder of a permit who violates Subsection (a) of this section is liable in a civil suit to a consumer for damages resulting from the substitution. The court shall award the prevailing party in an action under this section attorney's fees and costs of action.

(c) The commission shall provide written notice of the provisions of this section to an applicant or permittee when issuing an original or renewal mixed beverage permit or private club permit on or after October 1, 1993.

Sec. 28.09. INVALIDATION OF STAMP. (a) A holder of a mixed beverage permit or any person employed by the holder who empties a bottle containing distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid, shall immediately after emptying the bottle invalidate the identification stamp on the bottle in the manner prescribed by rule or regulation of the commission or administration.

(b) Each holder of a mixed beverage permit shall provide at all service counters where distilled spirits are poured from bottles the necessary facilities for the invalidation of identification stamps on bottles so that persons emptying distilled spirits bottles may immediately invalidate the identification stamps on them.

(c) If an empty distilled spirits bottle has locked on it an automatic measuring and dispensing device of a type approved by the commission or administrator, which prevents the refilling of the bottle without unlocking the device and removing it from the bottle, the identification stamp is not required to be invalidated until immediately after the device has been unlocked and removed from the bottle.

(d) A holder of a mixed beverage permit or any of his officers, agents, or employees who is found in possession of an empty distilled spirits bottle which contained distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid and on which the identification stamp has not been invalidated in accordance with this section commits a separate offense for each bottle so possessed.

Sec. 28.10. CONSUMPTION RESTRICTED TO PREMISES; EXCEPTIONS. (a) Except as provided by this section or Section 28.01(b), a mixed beverage permittee may not sell an alcoholic beverage to another mixed beverage permittee or to any other person except for consumption on the seller's licensed premises.

(b) A mixed beverage permittee may not permit any person to take any alcoholic beverage purchased on the licensed premises from the premises where sold, except that:

(1) a person who orders wine with food and has a portion of the open container remaining may remove the open container of wine from the premises; and

(2) a mixed beverage permittee who also holds a brewpub license may sell or offer without charge on the premises of the brewpub, to an ultimate consumer for consumption on or off the premises, malt liquor, ale, or beer produced by the permittee, in or from a lawful container in an amount that does not exceed one-half barrel, provided that the aggregate amount of malt liquor, ale, and beer removed from the premises under this subdivision does not exceed 1,000 barrels annually.

(c) A mixed beverage permit holder who holds a food and beverage certificate may designate as part of the permit holder's premises a secured noncontiguous area located on a public sidewalk adjoining the premises if the designation is authorized by city ordinance. The ordinance may specify and limit the areas of the municipality in which this subsection is applicable. Alcoholic beverages may be delivered by an employee of the permit holder to patrons for consumption in the designated sidewalk area.

Sec. 28.101. PUBLIC CONSUMPTION. (a) This section applies only to a mixed beverage permit holder whose premises are located in a municipality that:

(1) has a population of less than 15,000;

(2) is located in a county with a population of less than 65,000; and

(3) contains a historic preservation district that borders a lake.

(b) Notwithstanding Section 28.10 or any other law, the holder of a mixed beverage permit whose permitted premises are located on property owned by a municipality that contains a municipally owned conference center and that borders a lake may permit a patron to leave the permitted premises, even though the patron possesses an alcoholic beverage, if:

(1) the beverage is in an open container and appears to be possessed for present consumption; and

(2) the public consumption of alcoholic beverages or possession of an open container of an alcoholic beverage is not prohibited on the municipally owned property where the permitted premises are located.

(c) This section does not affect the prohibition against possessing an open container in a passenger area of a motor vehicle under Section 49.031, Penal Code.

Sec. 28.11. BREACH OF PEACE. The commission or administrator may suspend or cancel a mixed beverage permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

Sec. 28.12. SALE OF MALT BEVERAGES TO PERMITTEE. The sale of malt beverages to a mixed beverage permittee by a local distributor's permittee or by a licensee authorized to sell them for resale is subject to the provisions of Section 61.73 of this code.

Sec. 28.13. ISSUANCE OF PERMIT FOR CERTAIN BOATS. (a) A mixed beverage permit may be issued for a boat if:

(1) the boat:

(A) carries at least 350 passengers;

(B) weighs at least 90 gross tons; and

(C) is at least 80 feet long; and

(2) the home port of the boat is in an area where the sale of mixed beverages is legal.

(a-1) A mixed beverage permit may be issued for a regularly scheduled excursion boat that is licensed by the United States Coast Guard to carry passengers on the navigable waters of the state if:

(1) the boat:

(A) carries at least 45 passengers;

(B) weighs at least 35 gross tons; and

(C) is at least 55 feet long;

(2) the home port of the boat is in an area where the sale of mixed beverages is legal; and

(3) the owner or operator of the boat is the sole permit holder for the boat.

(b) For purposes of Section 11.38 of this code, the home port of the boat is treated as the location of the licensed premises.

(d) A mixed beverage permit may be issued under this section to a boat regularly used for voyages in international waters regardless of whether the sale of mixed beverages is lawful in the area of the home port. A person having authority to deliver alcoholic beverages to a mixed beverage permit holder in the county where the licensed premises is located may deliver alcoholic beverages purchased by the permit holder. Subsections (a)(2) and (a-1)(2) do not apply to this subsection.

(e) The provisions of Section 109.53 that relate to residency requirements and compliance with Texas laws of incorporation:

(1) do not apply to the holders of a mixed beverage permit under Subsection (a); and

(2) do apply to the holder of a mixed beverage permit under Subsection (a-1).

(f) A permit for an excursion boat issued under Subsection (a-1) is inoperative in a dry area.

Sec. 28.14. MERGER OR CONSOLIDATION OF CORPORATIONS HOLDING MIXED BEVERAGE PERMITS. When two or more corporations which have substantially similar ownership and which hold mixed beverage permits issued by the commission merge or consolidate and pay to the commission a $100 fee for each licensed premises, the surviving corporation shall succeed to all the privileges of such corporations in the permits held by such corporations provided the surviving corporation is qualified to hold such permits under this code. For purposes of this section, two

corporations have substantially similar ownership if 90 percent or more of both corporations is owned by the same persons.

Sec. 28.15. STAMPS. (a) A mixed beverage permittee may not possess or permit a person to possess on the premises distilled spirits in any container that does not bear a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(b) A holder of a local distributor's permit may not knowingly sell, ship, or deliver distilled spirits in any container that does not bear a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(c) Identification stamps may be issued only to a holder of a local distributor's permit who shall affix the stamps as prescribed by the commission or administrator.

Sec. 28.151. POSSESSION OF CERTAIN STAMPS. A mixed beverage permittee may not possess a stamp used to show payment of a tax unless the stamp is affixed to a bottle or container of liquor.

Sec. 28.16. PERMIT INELIGIBILITY. A mixed beverage permit may not be issued to:

(1) a person whose permit was canceled for a violation of Section 28.06(c) of this code;

(2) a person who held an interest in a permit that was canceled for a violation of Section 28.06(c) of this code;

(3) a person who held 50 percent or more of the stock, directly or indirectly, of a corporation whose permit was canceled for a violation of Section 28.06(c) of this code;

(4) a corporation, if a person holding 50 percent or more of the corporation's stock, directly or indirectly, is disqualified from obtaining a permit under Subdivision (3) of this section; or

(5) a person who resides with a person who is barred from obtaining a permit because of a violation of Section 28.06(c) of this code.

Sec. 28.17. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a return, post the security required by the comptroller under Section 183.053, Tax Code, or make a tax payment. The administrative procedure law, Chapter 2001, Government Code, does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is provided. Notice of suspension shall be sent by registered or certified mail to the permittee or the permittee's agent, servant, or employee if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns, posts the security required by the comptroller under Section 183.053, Tax Code, and makes all required tax payments, including payment of penalties that are due.

NOTE: Section 183.053 Tax Code re-designated as 183.025 Tax Code amended by House Bill 3572, 83rd Legislature, Regular Session, 2013, effective January 1st, 2014.

Sec. 28.18. FOOD AND BEVERAGE CERTIFICATE. (a) A holder of a mixed beverage permit may be issued a food and beverage certificate by the commission if the gross receipts of mixed beverages sold by the holder are 50 percent or less of the total gross receipts from the premises.

(b) An applicant or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees. The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service on the premises for which a food and beverage certificate has been issued.

(c) The fee for a food and beverage certificate shall be set at a level sufficient to recover the cost of issuing the certificate and administering this section.

(d) On receipt of an application for a renewal of a mixed beverage permit by a holder who also holds a food and beverage certificate, the commission shall request certification by the comptroller to determine whether the holder is in compliance with Subsection (a). In determining compliance with

Subsection (a), the comptroller shall compare the permittee's gross receipts tax reports with the permittee's sales tax reports for the premises. If the comptroller does not certify that the holder is in compliance with Subsection (a), the commission may not renew the certificate.

(e) A certificate expires on the expiration of the primary mixed beverage permit. A holder of a mixed beverage permit who is denied renewal of a certificate may not apply for a new certificate until the day after the first anniversary of the determination of the comptroller under Subsection (d).

(f) Section 11.11 does not apply to the holder of a food and beverage certificate.

CHAPTER 29. MIXED BEVERAGE LATE HOURS PERMIT (LB)

Sec. 29.01. AUTHORIZED ACTIVITIES. The holder of a mixed beverage late hours permit may sell mixed beverages on Sunday between the hours of 1:00 a.m. and 2 a.m. and on any other day between the hours of 12 midnight and 2 a.m. if the premises covered by the permit are in an area where the sale of mixed beverages during those hours is authorized by this code.

Sec. 29.02. FEE. The annual state fee for a mixed beverage late hours permit is $150.

Sec. 29.03. APPLICATION OF PROVISIONS REGULATING MIXED BEVERAGE PERMITS. All provisions of this code which apply to a mixed beverage permit also apply to a mixed beverage late hours permit.

CHAPTER 30. DAILY TEMPORARY MIXED BEVERAGE PERMIT (TB)

Sec. 30.01. AUTHORIZED ACTIVITIES. The holder of a daily temporary mixed beverage permit may sell mixed beverages for consumption on the premises for which the permit is issued.

Sec. 30.02. FEE. The state fee for a daily temporary mixed beverage permit is $50 per day.

Sec. 30.03. ISSUANCE OF PERMIT. (a) The commission may, in its discretion, issue on a temporary basis a daily temporary mixed beverage permit. A daily temporary mixed beverage permit may be issued only to a holder of a mixed beverage permit for the temporary sale of authorized alcoholic beverages at picnics, celebrations, or similar events, or to a political party or political association supporting a candidate for public office or a proposed amendment to the Texas Constitution or other ballot measure, to an organization formed for a specific charitable or civic purpose, to a fraternal organization in existence for over five years with a regular membership, or to a religious organization. The commission shall not issue more than 10 temporary mixed beverage permits in each calendar year to a person who does not also hold a mixed beverage permit.

(b) The provisions of this code which apply to the application for and issuance of other permits do not apply to the application and issuance of a daily temporary mixed beverage permit.

Sec. 30.04. PURCHASE OF DISTILLED SPIRITS. Distilled spirits sold under a daily temporary mixed beverage permit must be purchased from the holder of a local distributor's permit.

Sec. 30.05. APPLICATION OF PROVISIONS REGULATING MIXED BEVERAGE PERMITS. All provisions of this code applicable to a mixed beverage permit also apply to a daily temporary mixed beverage permit unless there is a special provision to the contrary.

Sec. 30.06. ADOPTION OF RULES. The commission may adopt rules which it determines to be necessary to implement and administer the provisions of this chapter, including limitations on the number of times during any calendar year a qualified organization may be issued a permit.

CHAPTER 31. CATERER'S PERMIT (CB)

Sec. 31.01. AUTHORIZED ACTIVITIES. The holder of a caterer's permit may sell mixed beverages on a temporary basis at a place other than the premises for which the holder's mixed beverage permit is issued only in:

(1) an area where the sale of mixed beverages has been authorized by a local option election; or

(2) an area that:

(A) is adjacent to a county with a home-rule municipality with a population of more than 350,000:

(i) that has in its charter a provision allowing for limited purpose annexation for zoning;

(ii) that has previously disannexed territory annexed for limited purposes; and

(iii) that allows the sale of mixed beverages;

(B) does not comprise an entire county; and

(C) is not within the corporate limits of a municipality.

Sec. 31.02. FEE. The annual state fee for a caterer's permit is $500.

Sec. 31.03. ISSUANCE OF PERMIT. (a) A caterer's permit may be issued only to the holder of a mixed beverage permit.

(b) The commission shall adopt rules and regulations governing the application for and the issuance and use of caterer's permits.

(c) The provisions of this code which apply to the application for and issuance of other permits do not apply to the application for and issuance of a caterer's permit.

Sec. 31.04. APPLICATION OF PROVISIONS REGULATING MIXED BEVERAGE PERMITS. (a) A caterer's permit is auxiliary to the primary mixed beverage permit held by the permittee.

(b) The restrictions and regulations which apply to the sale of mixed beverages on the licensed premises also apply to the sale under the authority of a caterer's permit, and any act that is prohibited on the licensed premises is also prohibited when the permittee is operating other than on the licensed premises under a caterer's permit.

(c) Any act which if done on the licensed premises would be a ground for cancellation or suspension of the mixed beverage permit is a ground for cancellation of both the mixed beverage permit and the caterer's permit if done when the permittee is operating away from the licensed premises under the authority of the caterer's permit.

(d) All receipts from the sale of mixed beverages under the authority of the caterer's permit shall be treated for tax purposes as if they were made under the authority of the primary permit.

(e) If the primary permit ceases to be valid for any reason, the caterer's permit ceases to be valid.

(f) All provisions of this code applicable to the primary permit and not inconsistent with this chapter apply to a caterer's permit.

~~**Sec. 31.05. USE OF PERMIT IN MARINE PARK.** (a) In this section, "marine park" means an enclosed, restricted access area of not less than 245 acres nor more than 255 acres in a county with a population of over 950,000, which area constitutes a facility operated for the education or entertainment of the public involving the display of live fish, marine animals, and related aquatic, food service, and amusement activities and which holds appropriate permits issued by state and federal regulatory agencies authorizing the keeping of live fish, marine animals, or endangered species.~~

~~(b) The authority to use a caterer's permit in a marine park is limited to the holders of those permits who in their operations under their primary mixed beverage permits do not utilize the privilege granted by Section 11.49(b)(2) of the code to share premises, employees, business facilities, and services.~~

~~(c) Holders of caterer's permits meeting the requirements of Subsection (b) of this section and complying with all other provisions of this section may utilize their caterer's permits for indefinite periods anywhere in the marine park even though the ownership of the buildings and grounds on which the permit is to be used may be in an entity that, either directly or by affiliation, has an ownership interest in the holder of a manufacturer's license or a brewers permit or both; provided, however, that the caterer~~

~~shall not give any preferential treatment to the brand or brands in which the site owner may have an interest.~~

~~(d) For purposes of this section, preferential treatment is any practice by the caterer that, on the basis of information officially reported to the commission, results in sales of beverages identifiable with the site owner made by the caterer in the marine park during a calendar year that in the aggregate exceed by more than five percent the aggregate percentage share of the same brand or brands sold during the prior calendar year within the county in which the marine park is located; provided, however, that the computation may exclude sales made on those occasions when a caterer's permit is used to provide service for a private party where specific beverages are ordered and the total charges for those beverages are paid by only one person or entity.~~

~~(e) The consideration to be paid by the caterer's permit holder to the owner or operator of the marine park for the right to sell alcoholic beverages therein may not be made dependent to any degree on the sales volume of any specific brand or brands or on the number of containers of beverages identified with any particular producer.~~

~~(f) The willful sharing of employees, business machines, or services between the holder of the caterer's permit and the owner of the marine park or any affiliate of the owner is grounds for immediate revocation of the authority of the caterer's permit holder to provide service in the marine park.~~

~~(g) The commission or administrator may suspend for not more than 60 days or cancel the primary mixed beverage permit of any holder of a caterer's permit who violates this section.~~

~~(h) In the event that a marine park owner having, either directly or by affiliation, an ownership interest in the holder of a manufacturer's license or a brewer's permit or both is found to have violated or to have conspired with any other permittee or licensee to violate this section, the commission or administrator may suspend for not more than 60 days the permit or license or both or may revoke the authority of any holder of a caterer's permit to provide service in the marine park.~~

~~(i) Any permittee or licensee whose business or property is injured by a violation of this section may bring suit in any district court in the county in which the violation is alleged to have occurred to require enforcement by injunctive relief or to recover three times the actual damages incurred or for both injunctive relief and treble damages. The court in its discretion may allow the prevailing party its costs and reasonable and necessary attorney's fees incurred in the defense or prosecution of such an action.~~

NOTE: Section 31.05 repealed by Senate Bill 1090, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 31.06. PUBLIC CONSUMPTION. (a) This section applies only to the holder of a caterer's permit operating under the permit in an area in a municipality that:

(1) has a population of less than 15,000;

(2) is located in a county with a population of less than 65,000; and

(3) contains a historic preservation district that borders a lake.

(b) Notwithstanding any other law, the holder of a caterer's permit operating under the permit in an area located on property owned by a municipality that contains a municipally owned conference center and that borders a lake may permit a patron to leave the area, even though the patron possesses an alcoholic beverage, if:

(1) the beverage is in an open container and appears to be possessed for present consumption; and

(2) the public consumption of alcoholic beverages or possession of an open container of an alcoholic beverage is not prohibited on the municipally owned property where the area is located.

(c) This section does not affect the prohibition against possessing an open container in a passenger area of a motor vehicle under Section 49.031, Penal Code.

CHAPTER 32. PRIVATE CLUB REGISTRATION PERMIT (N)

Sec. 32.01. AUTHORIZED ACTIVITIES. (a) A private club registration permit authorizes alcoholic beverages belonging to members of the club to be:

(1) stored, possessed, and mixed on the club premises; and

(2) served for on-premises consumption only to members of the club and their families and guests, by the drink or in sealed, unsealed, or broken containers of any legal size.

(b) An applicant for or the holder of a private club registration permit may apply to the commission to have the activities authorized under the permit restricted to the storage and service of wine, beer, and malt liquor for members of the club. Except as otherwise provided by this chapter, an applicant for or the holder of a permit that is restricted under this subsection is subject to all the requirements of this chapter. The commission may adopt rules as necessary to implement this subsection.

Sec. 32.02. FEES. (a) Each private club registration permittee shall pay an annual state fee for each separate place of business.

(b) The annual state fee shall be computed at the election of the permittee by using one of the following methods:

(1) A fee based on the highest number of members in good standing during the year for which the permit fee is paid according to the following rates:

0 to 250 members	-	$ 750
251 to 450 members	-	$1,350
451 to 650 members	-	$1,950
651 to 850 members	-	$2,550
851 to 1,000 members	-	$3,000
Over 1,000 members	-	$3 per member; or

(2) Except as provided by Subsection (d) of this section, a fee for an original private club registration permit of $3,500, with a fee for the first renewal of a private club registration permit of $2,750, and a fee for the second and each subsequent renewal of a private club registration permit of $2,000.

(c) A permittee who elects to compute the permit fee based on Subsection (b)(1) of this section may not alter the method by which the fee is calculated until the second renewal or a renewal subsequent to the second renewal.

(d) A permit holder who has elected to restrict the holder's authorized activities under the permit as provided by Section 32.01(b) of this code shall pay an original permit fee of $1,500 and an annual renewal fee of $1,500.

(e) No later than 90 days before the expiration of the year for which the permit fee is paid, the permit holder may submit an amended application with as much additional fee as is required under the amended return.

(f) For a permittee who holds a valid permit on the effective date of this subsection and who elects to pay a permit fee as provided by Subsection (b)(2) of this section, the fee for renewal of that permit is:

(1) $2,750 for the first annual renewal since the original permit was issued; and

(2) $2,000 for a renewal subsequent to the first annual renewal.

(g) Fees collected under this section shall be deposited in the general revenue fund.

Sec. 32.03. QUALIFICATIONS FOR PERMIT. (a) A private club registration permit may only be issued to a club which meets the requirements of this section.

(b) The club must be an association of persons, whether unincorporated or incorporated under the laws of this state, for the promotion of some common object.

(c) Members of the club must be passed on and elected by a committee or board made up of members of the club, and no employee of the club shall be eligible to serve on the membership committee or board.

(d) No application for membership may be approved until the application has been filed with the chairman of the membership committee or board and approved by the chairman. The committee or board may authorize the chairman or a designated agent to issue preliminary memberships without the approval of the committee or board for a period not exceeding seven days on the request of an applicant for membership. A preliminary member has all of the privileges of membership in the club. If the committee or board does not approve the application before the expiration of the preliminary membership, the club shall pay to the state a fee of $3. The club shall remit the fees and record and report preliminary memberships as the commission or the administrator prescribes.

(e) At least 50 members of the club must reside in the county in which the premises of the club are located, or at least 100 members must reside in an area comprised of the county in which the premises of the club is located and an adjacent county or counties.

(f) The club must own, lease, or rent a building, or space in a building of such extent and character as in the judgment of the commission is suitable and adequate for the club's members and their guests.

(g) The club must provide regular food service adequate for its members and their guests.

(h) The club's total annual membership fees, dues, or other income, excluding proceeds from the disposition of alcoholic beverages but including service charges, must be sufficient to defray the annual rental of its leased or rented premises or, if the premises are owned by the club, sufficient to meet the taxes, insurance, and repairs and the interest on any mortgage on the premises.

(i) The club's affairs and management must be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting.

(j) No member or any officer, agent, or employee of the club may be paid or receive any money as salary or other compensation, directly or indirectly, from the disposition of alcoholic beverages to members of the club and their guests, other than charges for the service of the beverages.

(k) A private club registration permit may not be issued to or maintained by a club for a premises located in a dry area if the club operates a sexually oriented business, as defined by Section 243.002, Local Government Code, on the premises.

Sec. 32.04. APPLICATIONS FOR PERMITS; RENEWALS. (a) A private club which meets the requirements set forth in Section 32.03 of this code may apply for a private club registration permit on forms furnished by the commission and containing all information necessary to insure compliance with the provisions of this code.

(b) Each applicant shall furnish a true copy of his application to the commission's district office in the district in which the premises sought to be covered by the permit are located prior to the filing of the original application with the commission at Austin.

(c) Applications for a renewal permit shall be filed with the commission within 30 days prior to the expiration of the current permit.

Sec. 32.05. LOCKER SYSTEM. The locker system of storage is a system whereby the club rents a locker to a member in which he may store alcoholic beverages for consumption by himself and his guests. All alcoholic beverages stored at a club under the locker system must be purchased and owned by the member individually.

Sec. 32.06. POOL SYSTEM. (a) The pool system of storage may be used in any area. Under this system all members of a pool participate equally in the original purchase of all alcoholic beverages. The original purchase may be funded by a cash contribution from each member or from a loan to the club by a third person guaranteed by all the members. A person who provides a loan to the club under this subsection may be related or unrelated to the club. A loan for the original purchase may be repaid from the alcoholic beverages replacement account. The replacement of all alcoholic beverages shall be paid for either by money assessed equally from each member and collected in advance or by the establishment of an alcoholic beverages replacement account in which a designated percentage of each charge for the service of alcoholic beverages, as determined by the club's governing body, is deposited.

(b) If an alcoholic beverages replacement account is used:

(1) each service check may have printed on it the percentage of the service charge that is to be deposited in the alcoholic beverages replacement account;

(2) no money other than the designated percentage of service charges may be deposited in the replacement account;

(3) the replacement of alcoholic beverages may be paid for only from money in the replacement account;

(4) the club's governing body may transfer from the replacement account to the club's general operating account any portion of the replacement account that the governing body determines is in excess of the amount that will be needed to purchase replacement alcoholic beverages or repay a loan for the original purchase of alcoholic beverages, but it may make only one transfer in a calendar month; and

(5) the club shall maintain a monthly record of the total amount of alcoholic beverage service charges collected, the amount deposited in the replacement account, the amount used to purchase alcoholic beverages or repay a loan for the original purchase of alcoholic beverages, and the amount transferred to the club's general operating account.

(c) A private club may combine the club's alcoholic beverages replacement account, general operating account, and any other account into a single master account if the master account is maintained in accordance with generally accepted accounting principles and the club is able to generate statements reflecting the funds allocated to each component account. If the club contracts with a third party to provide management or other services for the club, the club may permit the club's master account to be combined with the master accounts of other clubs to which the third party provides similar services if the combined account is maintained in accordance with generally accepted accounting principles and the third party is able to generate, for the commissioner's review on request, statements reflecting the funds allocated to each component account of the combined account and the club's master account.

Sec. 32.07. DISPLAY OF PERMIT. A private club registration permit shall be displayed in a conspicuous place at all times on the licensed premises.

Sec. 32.08. PURCHASE AND TRANSPORTATION OF ALCOHOLIC BEVERAGES. (a) All distilled spirits sold by a club holding a private club registration permit must be purchased in this state from a holder of a local distributor's permit.

(b) If the club holding the permit is in an area where there are no local distributors, alcoholic beverages may be purchased in any area where local distributors are located and may be transported to the club premises if the club also holds a beverage cartage permit. The transporter may acquire the alcoholic beverages only on the written order of an officer or manager of the club holding the permit. The alcoholic beverages must be accompanied by a written statement furnished and signed by the local distributor showing the name and address of the consignee and consignor, the origin and destination of the shipment, and any other information required by the commission or administrator. The person in charge of the alcoholic beverages while they are being transported shall exhibit the written statement to any representative of the commission or any peace officer on demand, and the statement shall be accepted by the representative or officer as prima facie evidence of the lawful right to transport the alcoholic beverages.

(c) If a private club registration permittee holds a beverage cartage permit and his premises are located in a regional airport governed by a board, commission, or authority composed of members from two or more counties, and there is no local distributor at the airport, the private club registration permittee may purchase alcoholic beverages from any local distributor in a trade area served by the airport and transport them to his licensed premises. The transportation of the beverages must be in accordance with Subsection (b) of this section.

Sec. 32.09. TEMPORARY MEMBERS. (a) The manager or other person in charge of the club premises may allow a person to enter the club if he possesses a valid temporary membership card which has no erasures or changes and which has the temporary dates in a prominent position on the card. A temporary member may enjoy the club's services and privileges for a period of not more than three days

per invitation. A temporary member may bring not more than three guests to the club and must remain in their presence while they are at the club.

(b) At the time of his admission the temporary member shall pay the club a fee of $3, which shall represent the fee payable by the permittee to the state. All fees and payments from temporary members shall be collected in cash or through credit cards approved by the commission or administrator.

(c) Temporary memberships shall be governed by rules promulgated by the commission consistent with the provisions of this section.

Sec. 32.10. GUESTS. (a) Guests shall be limited to those who accompany a member or temporary member onto the premises or for whom a member, other than a temporary member, has made prior arrangements with the management of the club.

(b) Except as provided in Subsection (c) of this section no guest shall be permitted to pay, by cash or otherwise, for any service of alcoholic beverages. Any charge for a service rendered to a guest by the club must be billed by the club to the member or temporary member sponsoring the guest. A club shall bill a member other than a temporary member for the service of guests in the club's regular billing cycle.

(c) The manager of a hotel who is a member of a private club located within the hotel building may issue a guest card to a patron of the hotel who is staying in the hotel overnight or longer. The holder of the guest card may be served alcoholic beverages in the club or the holder's hotel room. The guest may not be allowed to pay, by cash or otherwise, at the time of service in the private club. The charge for service shall be billed to the hotel manager's account in the hotel and shall be collected by the hotel manager along with other hotel charges, including the charge for using the hotel room, when the patron leaves the hotel. The hotel records shall be available for inspection at the request of the commission. If the club operates under the locker system a guest shall be served from the locker rented to the manager of the hotel.

(d) The commission shall promulgate rules necessary to implement the provisions of this section.

Sec. 32.11. FRATERNAL AND VETERANS ORGANIZATIONS. (a) In this section:

(1) "Fraternal organization" means:

(A) any chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization or Texas state fraternal organization that, as the owner, lessee, or occupant, has operated an establishment for fraternal purposes for at least one year. If an American national fraternal organization, it must actively operate in not fewer than 31 states and have at least 300 local units in those 31 states, and must have been in active, continuous existence for at least 20 years. If a Texas state fraternal organization, it must actively operate in at least two counties of the state and have at least 10 local units in those two counties, and must have been in active, continuous existence for at least five years;

(B) a hall association or building association of a local unit described in Paragraph (A), all the capital stock of which is owned by the local unit or the members of the local unit, and which operates the clubroom facilities of the local unit;

(C) a building association not owned by a local unit described in Paragraph (A) but one that is composed wholly of members appointed by a county commissioners court to administer, manage, and control an exposition center containing an exhibition area of not less than 100,000 square feet and an arena with not less than 6,000 fixed seats, situated on property with an area of not less than 50 acres that is owned, together with all buildings, appurtenances, and parking areas, by a county;

(D) a chapter or other local unit of an American national fraternal organization that promotes physical fitness and provides classes in athletics to children and that, as owner, lessee, or occupant, has operated an establishment for fraternal purposes for at least one year. The fraternal organization must:

(i) actively operate in not fewer than 12 states;

(ii) have at least six local units in this state; and

(iii) have at least one unit in this state that has been in active, continuous existence for at least 75 years; or

(E) a chapter or other local unit of an American national fraternal organization that promotes the moral, educational, social, and recreational welfare of merchant seafarers and that, as owner, lessee, or occupant, has operated an establishment for fraternal purposes for at least one year. The fraternal organization must:

(i) actively operate in not fewer than 12 states;

(ii) have at least four local units in this state; and

(iii) have at least one unit in this state that has been in active, continuous existence for at least 15 years.

(2) "Veterans organization" means an organization composed of members or former members of the armed forces of the United States which is organized for patriotic and public service purposes, including the American Legion, Veterans of Foreign Wars, Disabled American Veterans, Jewish War Veterans, American GI Forum, Catholic War Veterans, or any veterans organization chartered by the United States Congress.

(b) The permit fee imposed by Section 32.02 and the provisions of Sections 32.03 and 32.10 requiring regular food service and prohibiting guests from paying in cash do not apply to a private club established by a fraternal or veterans organization. The private club is also exempt from Sections 32.05 and 32.06, and the members of the club may use any club funds owned by them jointly, including revenue from the service of alcoholic beverages, to replenish their joint stock of alcoholic beverages.

(c) The requirement that the fraternal or veterans organization hold a private club registration permit is satisfied by the issuance of a certificate by the commission that states that the organization meets the requirements of this section.

(d) All other provisions of this code apply to fraternal and veterans organizations.

(e) A fraternal or veterans organization that holds a permit under this chapter and the private club established under that permit are considered separate entities for the purposes of determining compliance with and enforcing this code. The fraternal or veterans organization shall establish a membership committee for the permitted entity for the purposes of Sections 32.03(c) and (d). Membership in the private club is governed by this code. Membership in the fraternal or veterans organization is not subject to the requirements of this code.

Sec. 32.12. INSPECTION OF PREMISES. The acceptance of a private club registration permit constitutes an express agreement and consent on the part of the private club that any authorized representative of the commission or any peace officer has the right and privilege to freely enter the club premises at any time to conduct an investigation or to inspect the premises for the purpose of performing a duty imposed by this code.

Sec. 32.13. INSPECTION OF BOOKS AND RECORDS. All books and records pertaining to the operation of any permittee club, including a current listing, correct to the last day of the preceding month, of all members of the club who have liquor stored on the club premises under either the locker or pool system shall be made available to the commission or its authorized representatives on request.

Sec. 32.14. UNREGISTERED CLUBS; PROHIBITED ACTIVITIES. (a) No permittee, licensee, or any other person shall deliver, transport, or carry an alcoholic beverage to, into, or on the premises of any establishment, location, room, or place purporting to be a club, or holding itself out to the public or any person as a club or private club, unless the club holds a private club registration permit.

(b) No person may store, possess, mix, or serve by the drink or in broken or unsealed containers an alcoholic beverage on the premises of any establishment, location, room, or place purporting to be a club or private club unless the club holds a private club registration permit.

(c) An alcoholic beverage stored or possessed on the premises of any establishment, location, room, or place purporting to be a club, or holding itself out to the public or any person as a club or private club, is declared to be an illicit beverage and subject to seizure without a warrant unless a private club registration permit has been issued for the premises, location, room, or place.

Sec. 32.15. REMOVAL OF BEVERAGES FROM PREMISES. A private club, irrespective of location or system of storage of alcoholic beverages, may not permit any person to remove any alcoholic beverages from the club premises, except as authorized by Subsection (b) of Section 28.10 of this code.

Sec. 32.16. UNAUTHORIZED MEMBERSHIP. No private club registration permittee may allow its average membership to exceed that authorized by its permit.

Sec. 32.17. CANCELLATION OR SUSPENSION OF PERMIT; GROUNDS. (a) The commission or administrator may cancel or suspend for a period of time not exceeding 60 days, after notice and hearing, an original or renewal private club registration permit on finding that the permittee club has:

(1) sold, offered for sale, purchased, or held title to any alcoholic beverage so as to constitute an open saloon;

(2) refused to allow an authorized agent or representative of the commission or a peace officer to come on the club premises for the purposes of inspecting alcoholic beverages stored on the premises or investigating compliance with the provisions of this code;

(3) refused to furnish the commission or its agent or representative when requested any information pertaining to the storage, possession, serving, or consumption of alcoholic beverages on club premises;

(4) permitted or allowed any alcoholic beverages stored on club premises to be served or consumed at any place other than on the club premises;

(5) failed to maintain an adequate building at the address for which the private club registration permit was issued;

(6) caused, permitted, or allowed any member of a club in a dry area to store any liquor on the club premises except under the locker system;

(7) caused, permitted, or allowed any person to consume or be served any alcoholic beverages on the club premises:

(A) at any time on Sunday between the hours of 1:15 a.m. and 10 a.m. or on any other day at any time between the hours of 12:15 a.m. and 7 a.m., if the club does not have a private club late hours permit, except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to the customer; or

(B) at any time on Sunday between the hours of 2 a.m. and 10 a.m. or on any other day at any time between the hours of 2 a.m. and 7 a.m., if the club has a private club late hours permit, except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to the customer; or

(8) violated or assisted, aided or abetted the violation of any provision of this code.

(b) As used in Subsection (a)(1) of this section, the term "open saloon" means any place where an alcoholic beverage is sold or offered for sale for beverage purposes by the drink or in broken or unsealed containers, or a place where any alcoholic beverage is sold or offered for sale for on-premises consumption.

(c) After notice and an opportunity for a hearing, the commission or administrator may cancel or suspend the private club registration permit of a permit holder who has restricted the holder's authorized activities under the permit as provided by Section 32.01(b) of this code on a determination that the permit holder is storing or serving alcoholic beverages to club members other than, or in addition to, wine, beer, and malt liquor.

Sec. 32.18. APPEALS FROM ORDERS OF COMMISSION OR ADMINISTRATOR. An appeal from an order of the commission or administrator refusing, cancelling, or suspending a private club registration permit shall be taken to the district court of the county in which the private club is located. The proceeding on appeal shall be under the substantial evidence rule. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

(1) all appeals shall be perfected and filed within 30 days after the order, decision, or ruling of the commission or administrator becomes final and appealable;

(2) all causes shall be tried before the judge within 20 days from the filing, and neither party shall be entitled to a jury; and

(3) the order, decision, or ruling of the commission or administrator may be suspended or modified by the district court pending a trial on the merits, but the final judgment of the district court shall not be modified or suspended pending appeal.

Sec. 32.19. AIDING OR ABETTING VIOLATION. A person who commits, assists, aids, or abets a violation of this chapter commits an offense.

Sec. 32.20. STAMPS. (a) A private club registration permittee may not possess or permit a person to possess on the premises distilled spirits in any container that does not bear a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(b) A holder of a local distributor's permit may not knowingly sell, ship, or deliver distilled spirits in any container that does not bear a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(c) Identification stamps may be issued only to a holder of a local distributor's permit who shall affix the stamps as prescribed by the commission or administrator.

Sec. 32.201. POSSESSION OF CERTAIN STAMPS. A private club registration permittee may not possess a stamp used to show payment of a tax unless the stamp is affixed to a bottle or container of liquor.

Sec. 32.21. PERMIT INELIGIBILITY. A private club registration permit may not be issued to:

(1) a person whose permit was canceled for a violation of Section 28.06(c) of this code;

(2) a person who held an interest in a permit that was canceled for a violation of Section 28.06(c) of this code;

(3) a person who held 50 percent or more of the stock, directly or indirectly, of a corporation whose permit was canceled for a violation of Section 28.06(c) of this code;

(4) a corporation, if a person holding 50 percent or more of the corporation's stock, directly or indirectly, is disqualified from obtaining a permit under Subdivision (3) of this section; or

(5) a person who resides with a person who is barred from obtaining a permit because of a violation of Section 28.06(c) of this code.

Sec. 32.22. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a return or make a tax payment. Chapter 2001, Government Code does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice of suspension shall be sent by registered or certified mail to the permittee, the permittee's agent, servant, or employee if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments, including payment of penalties that are due.

Sec. 32.23. FOOD AND BEVERAGE CERTIFICATE. (a) A holder of a private club registration permit may be issued a food and beverage certificate by the commission if the gross receipts of mixed beverages served by the holder are 50 percent or less of the total gross receipts from the premises.

(b) An applicant or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees. The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service on the premises for which a food and beverage certificate has been issued.

(c) The fee for a food and beverage certificate shall be set at a level sufficient to recover the cost of issuing the certificate and administering this section.

(d) On receipt of an application for a renewal of a private club registration permit by a holder who also holds a food and beverage certificate, the commission shall request certification by the comptroller to determine whether the holder is in compliance with Subsection (a). In determining

compliance with Subsection (a), the comptroller shall compare the permittee's gross receipts tax reports with the permittee's sales tax reports for the premises. If the comptroller does not certify that the holder is in compliance with Subsection (a), the commission may not renew the certificate.

(e) A certificate expires on the expiration of the primary private club registration permit. A holder of a private club registration permit who is denied renewal of a certificate may not apply for a new certificate until the day after the first anniversary of the determination of the comptroller under Subsection (d).

(f) Section 11.11 does not apply to the holder of a food and beverage certificate.

Sec. 32.24. BREACH OF PEACE. The commission or administrator may suspend or cancel a private club registration permit after giving the holder notice and the opportunity to show compliance with the requirements of law for the retention of the permit if the commission or administrator finds that:

(1) a breach of the peace has occurred on the premises covered by the permit or on a premises under the control of the holder; and

(2) the breach of the peace resulted from the holder's improper supervision of a person who was allowed on the premises covered by the permit or on a premises under the holder's control.

CHAPTER 33. OTHER PRIVATE CLUB PERMITS (N/NB/NE)

SUBCHAPTER A. PRIVATE CLUB LATE HOURS PERMIT (NL)

Sec. 33.01. AUTHORIZED ACTIVITIES. The holder of a private club late hours permit may allow persons to consume or be served alcoholic beverages on club premises on Sunday between the hours of 1:00 a.m. and 2 a.m. and on any other day between the hours of 12 midnight and 2 a.m. if the licensed premises are in an area where consumption or service of alcoholic beverages in a public place during those hours is authorized by this code.

Sec. 33.02. FEE. The annual state fee for a private club late hours permit is $750.

Sec. 33.03. APPLICATION OF CODE PROVISIONS. All provisions of this code which apply to a private club registration permit also apply to a private club late hours permit.

SUBCHAPTER B. DAILY TEMPORARY PRIVATE CLUB PERMIT (TN)

Sec. 33.21. AUTHORIZED ACTIVITIES. The holder of a daily temporary private club permit may serve alcoholic beverages for consumption on the premises for which the permit is issued.

Sec. 33.22. FEE. The state fee for a daily temporary private club permit is $50 a day.

Sec. 33.23. ISSUANCE OF PERMIT. (a) The commission may issue a daily temporary private club permit only to:

(1) a holder of a private club registration permit for the temporary serving of alcoholic beverages at a picnic, celebration, or similar event sponsored by:

(A) a political party or political association supporting a candidate for public office or a proposed amendment to the Texas Constitution or other ballot measure;

(B) a charitable or civic organization;

(C) a fraternal organization with a regular membership that has been in continuous existence for not less than five years; or

(D) a religious organization; or

(2) a nonprofit corporation for a fund-raising event for the nonprofit corporation that lasts not longer than eight hours.

(b) The commission may not issue more than two daily temporary private club permits under Subsection (a)(1) in each calendar year for events sponsored by the same party, association, or

organization. A daily temporary private club permit may only be issued in the county where the private club registration permit is issued under Subsection (a)(1).

(c) A daily temporary private club permit issued under Subsection (a)(2) may only be issued in the county where the nonprofit corporation is located. A nonprofit corporation may be issued only one daily temporary private club permit under Subsection (a)(2) in each calendar year.

Sec. 33.24. PURCHASE OF DISTILLED SPIRITS. Distilled spirits sold under a daily temporary private club permit must be purchased from the holder of a local distributor's permit.

Sec. 33.25. APPLICATION OF PRIVATE CLUB PERMIT PROVISIONS. (a) A provision of this code that applies to a private club registration permit applies to a daily temporary private club permit issued under Section 33.23(a)(1) unless the provision conflicts with a provision of this chapter.

(b) The commission by rule shall establish the procedure for obtaining and operating under a daily temporary private club permit issued under Section 33.23(a)(2).

Sec. 33.26. ADOPTION OF RULES. The commission may adopt rules to implement and administer this chapter.

CHAPTER 34. AIRLINE BEVERAGE PERMIT (AB)

Sec. 34.01. AUTHORIZED ACTIVITIES. The holder of an airline beverage permit may:

(1) sell or serve alcoholic beverages in or from any size container on a commercial passenger airplane operated in compliance with a valid license, permit, or certificate issued under the authority of the United States or of this state, even though the plane, in the course of its flight, may cross an area in which the sale of alcoholic beverages is prohibited; and

(2) store alcoholic beverages in sealed containers of any size at any airport regularly served by the permittee, in accordance with rules and regulations promulgated by the commission.

Sec. 34.02. FEE. The annual fee for an airline beverage permit is $2,200.

Sec. 34.03. ELIGIBILITY FOR PERMIT. The commission or administrator may issue an airline beverage permit to any corporation operating a commercial airline in or through the state. Application and payment of the fee shall be made directly to the commission.

Sec. 34.04. TAXES. (a) The taxes imposed by this code shall be paid on all alcoholic beverages on a commercial passenger aircraft departing from an airport in this state, in accordance with rules and regulations prescribed by the commission.

(b) The preparation and service of alcoholic beverages by the holder of an airline beverage permit is exempt from the tax imposed by the Limited Sales, Excise and Use Tax Act. An airline beverage service fee of five cents is imposed on each individual serving of an alcoholic beverage served by the permittee inside the state. The fee accrues at the time the container containing an alcoholic beverage is delivered to the passenger. The permittee may absorb the cost of the fee or may collect it from the passenger. The permittee shall remit the fees to the commission each month under a reporting system prescribed by the commission.

~~(c) In August 2013, a permittee shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under the reporting system prescribed by the commission. The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.~~

~~(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under the reporting system prescribed by the commission.~~

~~(e) Subsections (c) and (d) and this subsection expire September 1, 2015.~~

NOTE: Subsections (c), (d), and (e), Section 34.04 repealed by Senate Bill 559, 83rd Legislative Session, Regular, 2013, effective June 14, 2013.

Sec. 34.05. SALE OF LIQUOR TO PERMITTEE. (a) Only the holder of a package store permit may sell liquor to the holder of an airline beverage permit. For the purposes of this code, a sale of liquor to a holder of an airline beverage permit shall be considered as a sale at retail to a consumer.

(b) The holder of a package store permit may sell liquor in any size container authorized by Section 101.46 of this code to holders of an airline beverage permit, and may purchase liquor in any size container for resale from the holders of a wholesaler's permit. A holder of a wholesaler's permit may import, sell, offer for sale, or possess for resale to package store permittees to resell to holders of airline beverage permittees liquor in any authorized size containers.

Sec. 34.06. INAPPLICABLE PROVISION. Section 109.53 of this code does not apply to an airline beverage permit.

CHAPTER 35. AGENT'S PERMIT (A)

Sec. 35.01. AUTHORIZED ACTIVITIES. The holder of an agent's permit may:

(1) represent permittees other than retailers within the state who are authorized to sell liquor to retail dealers in the state; and

(2) solicit and take orders for the sale of liquor from authorized permittees.

Sec. 35.02. FEE. The annual state fee for an agent's permit is $10.

Sec. 35.03. EVIDENCE OF AGENCY OR EMPLOYMENT REQUIRED. An agent's permit may not be issued to a person until he shows to the satisfaction of the commission that he has been employed by or authorized to act as the agent of the holder of a permit as described by Section 35.01 of this code.

Sec. 35.04. CERTAIN EMPLOYEES EXEMPT. An agent's permit is not required for an employee of a permit holder who sells liquor but remains on the licensed premises when making the sale.

Sec. 35.05. SAMPLES. The holder of an agent's permit may not transport or carry liquor as samples, but may carry or display empty sample containers.

Sec. 35.06. INELIGIBILITY FOR MANUFACTURER'S AGENT'S PERMIT. A person holding an agent's permit may not be issued a manufacturer's agent's permit.

Sec. 35.07. UNAUTHORIZED REPRESENTATION. A holder of an agent's permit in soliciting or taking orders for the sale of liquor may not represent himself to be an agent of any person other than the person designated in his permit application.

Sec. 35.08. GRACE PERIOD. A person may engage in the activities specified in Section 35.01 for an initial grace period of five days during which the person shall procure an agent's permit from the commission.

CHAPTER 36. MANUFACTURER'S AGENT'S PERMIT (T)

Sec. 36.01. AUTHORIZED ACTIVITIES. The holder of a manufacturer's agent's permit may:

(1) represent only the holders of nonresident seller's permits; and

(2) solicit and take orders for the sale of liquor from permittees authorized to import liquor for the purpose of resale.

Sec. 36.02. FEE. The annual state fee for a manufacturer's agent's permit is $10.

Sec. 36.03. AUTHORIZATION BY PRINCIPAL REQUIRED. A manufacturer's agent's permit may not be issued to a person until he shows to the satisfaction of the commission that he has been authorized to act as agent of the principal he proposes to represent.

Sec. 36.04. INELIGIBILITY FOR AGENT'S PERMIT. A holder of a manufacturer's agent's permit may not be issued an agent's permit.

Sec. 36.05. SAMPLES. The holder of a manufacturer's agent's permit may not transport or carry liquor as samples, but may carry or display empty sample containers.

Sec. 36.06. SOLICITATION FROM HOLDER OF MIXED BEVERAGE OR PRIVATE CLUB PERMIT. A holder of a manufacturer's agent's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

Sec. 36.07. UNAUTHORIZED REPRESENTATION. A holder of a manufacturer's agent's permit in soliciting or taking orders for the sale of liquor may not represent himself as an agent of a person other than the person designated in his permit application.

Sec. 36.08. RESTRICTION AS TO SOURCE OF SUPPLY. A manufacturer's agent's permittee may not represent a person with respect to an alcoholic beverage unless the person represented is the primary American source of supply of the beverage as defined in Section 37.10 of this code.

Sec. 36.09. GRACE PERIOD. A person may engage in the activities specified in Section 36.01 for an initial grace period of five days during which the person shall procure a manufacturer's agent's permit from the commission.

CHAPTER 37. NONRESIDENT SELLER'S PERMIT (S)

Sec. 37.01. AUTHORIZED ACTIVITIES. (a) The holder of a nonresident seller's permit may:

(1) solicit and take orders for liquor from permittees authorized to import liquor into this state; and

(2) ship liquor into this state, or cause it to be shipped into this state, in consummation of sales made to permittees authorized to import liquor into the state.

(b) The holder of a nonresident seller's permit who owns a winery or brewery outside of the state may conduct samplings of the kinds of alcoholic beverages the permit holder is authorized to produce, including tastings, at a retailer's premises. An employee of the winery or brewery may open, touch, or pour the alcoholic beverages, make a presentation, or answer questions at a sampling event.

(c) Any alcoholic beverages used in a sampling event under this section must be purchased from the retailer on whose premises the sampling event is held. This section does not authorize the holder of a nonresident seller's permit or manufacturer's agent's permit to withdraw or purchase alcoholic beverages from the holder of a wholesaler's permit or provide alcoholic beverages for a sampling event on a retailer's premises that is not purchased from the retailer. The amount of alcoholic beverages purchased from the retailer may not exceed the amount of alcoholic beverages used in the sampling event.

Sec. 37.02. FEE. The annual state fee for a nonresident seller’s permit is $150.00.

Sec. 37.03. PERMIT REQUIRED. A nonresident seller's permit is required of any distillery, winery, importer, broker, or person who sells liquor to permittees authorized to import liquor into this state, regardless of whether the sale is consummated inside or outside the state.

Sec. 37.04. INTEREST IN BREWER'S PERMIT. A person who holds a nonresident seller's permit may have an interest in the business, assets, corporate stock, or permit of a person who holds a brewer's permit.

Sec. 37.05. APPOINTMENT OF AGENT FOR SERVICE OF NOTICE. (a) No person may be issued a nonresident seller's permit until he shows that he has filed a certificate with the secretary of state certifying that he has appointed a resident of this state as his agent for the purposes of this section. The certificate shall contain the name, street address, and business of the agent.

(b) A notice of a hearing for the refusal, cancellation, or suspension of a permit may be served on any of the following:

(1) the agent designated in the certificate on file with the secretary of state;

(2) any person authorized to sell liquor in this state as agent of the permittee; or

(3) the permittee or, if the permittee is a corporation, any officer of the corporation.

(c) If a permittee fails to maintain a designated agent, notice of a hearing may be served on the secretary of state. In that case, the secretary of state shall forward the notice to the permittee by registered mail, return receipt requested, and the receipt shall be prima facie evidence of service on the permittee.

(d) Provisions of this code generally applicable to hearings for the refusal, cancellation, or suspension of a permit also to apply to proceedings relating to the refusal, cancellation, or suspension of a nonresident seller's permit.

Sec. 37.06. DESIGNATION OF AGENTS. Every holder of a nonresident seller's permit shall designate, in the manner required by the commission and on forms prescribed by it, those persons authorized as agents to represent the permittee in this state. The failure to do so is a violation of this code.

Sec. 37.07. PROHIBITED ACTIVITIES. No holder of a nonresident seller's permit, nor any officer, director, agent, or employee of the holder, nor any affiliate of the holder, regardless of whether the affiliation is corporate or by management, direction, or control, may do any of the following:

(1) hold or have an interest in the permit, business, assets, or corporate stock of a person authorized to import liquor into this state for the purpose of resale unless the interest was acquired on or before January 1, 1941, or unless the permittee is a Texas corporation holding a manufacturer's license and a brewer's permit issued before April 1, 1971;

(2) fail to make or file a report with the commission as required by a rule of the commission;

(3) sell liquor for resale inside this state that fails to meet the standards of quality, purity, and identity prescribed by the commission;

(4) advertise any liquor contrary to the laws of this state or to the rules of the commission, or sell liquor for resale in this state in violation of advertising or labeling rules of the commission;

(5) sell liquor for resale inside this state or cause it to be brought into the state in a size of container prohibited by this code or by rule of the commission;

(6) solicit or take orders for liquor from a person not authorized to import liquor into this state for the purpose of resale;

(7) induce, persuade, or influence, or attempt to induce, persuade, or influence, a person to violate this code or a rule of the commission, or conspire with a person to violate this code or a rule of the commission; or

(8) exercise a privilege granted by a nonresident seller's permit while an order or suspension against the permit is in effect.

Sec. 37.08. CANCELLATION OR SUSPENSION: NOTICE TO IMPORTERS. When a non-resident seller's permit is cancelled or suspended, the commission shall immediately notify in writing all permittees authorized to import liquor into the state.

Sec. 37.09. RESTRICTION ON IMPORTATION. No person who holds a permit authorizing the importation of liquor, nor his agent or employee, may purchase or order liquor for importation from any person other than a nonresident seller's permittee. An importer may not purchase or order liquor from a nonresident seller's permittee whose permit is under suspension after the importer has received notice of the suspension.

Sec. 37.10. RESTRICTION AS TO SOURCE OF SUPPLY. (a) No holder of a nonresident seller's permit may solicit, accept, or fill an order for distilled spirits or wine from a holder of any type of wholesaler's or winery permit unless the nonresident seller is the primary American source of supply for the brand of distilled spirits or wine that is ordered.

(b) In this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler, or the exclusive agent of any of those. To be the "primary American source of supply" the nonresident seller must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by Texas [~~American~~] wholesalers and Texas wineries. Except as provided by Subsection (c), a product may have only one primary American source of supply to Texas.

(c) A product may have more than one primary American source of supply to Texas if the product is a wine that is bottled or produced outside of the United States.

Sec. 37.12. INSPECTION OF RECORDS, DOCUMENTS, ETC. (a) In this section, "officer" means a representative of the commission, the attorney general, or an assistant or representative of the attorney general.

(b) If an officer wishes to examine the books, accounts, records, minutes, letters, memoranda, documents, checks, telegrams, constitution and bylaws, or other records of a nonresident seller's permittee, he shall make a written request to the permittee or his duly authorized manager or representative or, if the permittee is a corporation, to any officer of the corporation. An officer may examine the records as often as he considers necessary.

(c) When a request for an examination is made, the person to whom it is directed shall immediately allow the officer to conduct the examination, and the person shall answer under oath any question asked by the officer relating to the records.

(d) The officer may investigate the organization, conduct, and management of any nonresident seller's permittee and may make copies of any records which in the officer's judgment may show or tend to show that the permittee has violated state law or the terms of his permit.

(e) An officer may not make public any information obtained under this section except to a law enforcement officer of this state or in connection with an administrative or judicial proceeding in which the state or commission is a party concerning the cancellation or suspension of a nonresident seller's permit, the collection of taxes due under state law, or the violation of state law.

(f) The commission shall cancel or suspend a nonresident seller's permit in accordance with this code if a permittee or his authorized representative fails or refuses to permit an examination authorized by this section or to permit the making of copies of any document as provided by this section, without regard to whether the document is inside or outside the state, or if the permittee or his authorized representative fails or refuses to answer a question of an officer incident to an examination or investigation in progress.

Sec. 37.13. SOLICITATION FROM HOLDER OF MIXED BEVERAGE OR PRIVATE CLUB PERMIT. A holder of a nonresident seller's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

Sec. 37.14. MONTHLY REPORTS. The commission shall promulgate rules requiring holders of nonresident seller's permits to file monthly reports of liquor sold to persons within this state. The reports shall be supported by copies of invoices. The commission shall prescribe and furnish forms for this purpose.

CHAPTER 38. INDUSTRIAL PERMIT (I)

Sec. 38.01. AUTHORIZED ACTIVITIES. The holder of an industrial permit may import, transport, and use alcohol or denatured alcohol for the manufacture and sale of any of the following products:

(1) denatured alcohol;

(2) patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(3) flavoring extracts, syrups, condiments, and food products; and

(4) scientific, chemical, mechanical, and industrial products, or products used for scientific, chemical, mechanical, industrial, or medicinal purposes.

Sec. 38.02. EXEMPTIONS. The following persons or entities are exempt from the requirement of obtaining an industrial permit:

(1) a pharmacist for the filling of prescriptions issued by a physician in the legitimate practice of medicine;

(2) a state institution;

(3) a bona fide or chartered school, college, or university when using alcohol for a scientific or laboratory use; and

(4) a hospital, sanatorium, or other bona fide institution for the treatment of the sick.

Sec. 38.03. PROHIBITED ACTS. (a) No person may purchase, transport, or use alcohol for any purpose enumerated in this chapter without an industrial permit unless the person is exempt under Section 38.02 of this code from the requirement of obtaining a permit.

(b) No person may sell, possess, or divert any of the products enumerated in Subdivisions (1) through (4) of Section 38.01 of this code for beverage purposes or under circumstances from which he might reasonably deduce that the intention of the purchaser is to use those products for beverage purposes.

Sec. 38.04. FEE. The annual state fee for an industrial permit is $60.

Sec. 38.05. OTHER CODE PROVISIONS INAPPLICABLE. No provisions of this code other than this chapter apply to alcohol intended for industrial, medicinal, mechanical, or scientific purposes.

Sec. 38.06. ACTIVITIES TAX FREE. The taxes imposed by this code do not apply to activities authorized in Section 38.01 of this code.

CHAPTER 41. CARRIER PERMIT (C)

Sec. 41.01. AUTHORIZED ACTIVITIES. (a) The holder of a carrier permit may transport liquor into and out of this state and between points within the state.

(b) The holder may transport liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

(c) The holder of a carrier permit who transports liquor to the premises of a wholesaler, including to a location from which the wholesaler is temporarily conducting business under Section 109.62, shall provide to the consignee a shipping invoice that clearly states:

(1) the name and address of the consignor and consignee;

(2) the origin and destination of the shipment; and

(3) any other information required by this code or commission rule, including the brands, sizes of containers, types, and quantities of liquor contained in the shipment.

Sec. 41.02. FEE. The annual state fee for a carrier permit is $30.

Sec. 41.03. ELIGIBILITY FOR PERMIT. A carrier permit may be issued to:

(1) a water carrier;

(2) an airline;

(3) a railway;

(4) a motor carrier registered under Chapter 643, Transportation Code; or

(5) a common carrier operating under a certificate issued by the Interstate Commerce Commission.

Sec. 41.04. REQUIRED INFORMATION. The holder of a carrier permit shall furnish information required by the commission concerning the transportation of liquor.

Sec. 41.05. TRANSPORTATION OF WINE OUT OF STATE. At the request of a holder of a winery permit, a common carrier that does not hold a carrier permit may transport wine from the premises of the holder of the winery permit or from another location where the holder of a winery permit may legally store wine to a destination out of this state, if the common carrier may otherwise legally transport wine and the holder of the winery permit furnishes to the commission any documentation required by the commission concerning the transportation and the receipt of the wine at the destination out of this state.

CHAPTER 42. PRIVATE CARRIER PERMIT (O)

Sec. 42.01. AUTHORIZED ACTIVITIES. (a) The holder of a private carrier permit who is also a holder of a brewer's, distiller's and rectifier's, winery, wholesaler's, class B wholesaler's, or wine bottler's permit may transport liquor from the place of purchase to the holder's place of business and from the place of sale or distribution to the purchaser in a vehicle owned or leased in good faith by the holder or in a vehicle owned or leased by the holder of a permit issued under Chapter 35 if the transportation is for a lawful purpose.

(b) The holder of a private carrier permit may transport liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

Sec. 42.02. FEE. The annual state fee for a private carrier permit is $30.

Sec. 42.03. APPLICATION OF MOTOR CARRIER LAWS. A person desiring to transport liquor for hire shall comply with the provisions of the motor carrier laws when engaging in the business of transporting liquor for hire.

Sec. 42.04. VEHICLES USED FOR TRANSPORTING LIQUOR. (a) Each application for a private carrier permit must contain a full description of the motor vehicles used by the applicant for transporting liquor as well as all other information required by the commission.

(b) Each vehicle used for the transportation of liquor within the state shall have printed or painted on it the designation required by the commission.

(c) A permittee may not transport liquor in any vehicle which is not fully described in his application for a permit.

(d) A holder of a winery permit is exempt from the requirements of this section for the transportation of its wine.

Sec. 42.05. TRANSPORTATION OF ALE AND MALT LIQUOR: RULES. The commission may issue rules prescribing the manner in which ale and malt liquor may be transported in the state by private carrier's permittees who also hold class B wholesaler's permits.

CHAPTER 43. LOCAL CARTAGE PERMIT (E/ET)

Sec. 43.01. AUTHORIZED ACTIVITIES. (a) A warehouse or transfer company that holds a local cartage permit may transport liquor for hire inside the corporate limits of any city or town in the state.

(b) A package store, wine only package store, or local distributor's permittee who also holds a local cartage permit may transfer alcoholic beverages in accordance with Sections 22.08, 23.04, and 24.04 of this code.

Sec. 43.02. FEE. The annual state fee for a local cartage permit is $30.

Sec. 43.03. PERMIT REQUIRED. No person may transport liquor for hire inside a city or town unless he holds a local cartage permit. No person may transport liquor in violation of the motor carrier laws of this state.

Sec. 43.04. ELIGIBILITY FOR PERMIT. The commission may issue a local cartage permit to a warehouse or transfer company or to a holder of a package store, wine only package store, or local distributor's permit.

Sec. 43.05. VEHICLES USED BY PERMITTEE. (a) No local cartage permittee may transport liquor unless:

(1) a description of each vehicle used in the transportation, as required by the commission, has been submitted to the commission; and

(2) each vehicle has been plainly marked or lettered to indicate that it is being used for the transportation of liquor by a local cartage permittee.

(b) The transportation of liquor by a permittee in a vehicle not described and marked in accordance with this section is a violation of this code and is a ground for the cancellation of the permit.

Sec. 43.06. CERTAIN TRANSPORTATION PROHIBITED. No holder of a local cartage permit may for hire transport liquor between incorporated cities or towns in this state.

Sec. 43.07. VIOLATION OF CODE, RULE. If a holder of a local cartage permit who also holds a package store permit or wine only package store permit violates any provision of this code or any rule or regulation of the commission, the violation is a ground for the suspension or cancellation of any or all permits or licenses held by that person for the premises where the offense was committed.

CHAPTER 44. BEVERAGE CARTAGE PERMIT (PE)

Sec. 44.01. AUTHORIZED ACTIVITIES. A beverage cartage permit authorizes the holder of a mixed beverage or private club registration permit to transfer alcoholic beverages from the place of purchase to the licensed premises as provided in this code.

Sec. 44.02. FEE. The annual state fee for a beverage cartage permit is $20.

Sec. 44.03. ELIGIBILITY FOR PERMIT. The commission may issue a beverage cartage permit to the holder of a mixed beverage or private club registration permit.

CHAPTER 45. STORAGE PERMIT (L/K)

Sec. 45.01. AUTHORIZED ACTIVITIES. The holder of a storage permit may store liquor in a public bonded warehouse for which a permit has been issued or in a private warehouse owned or leased by the holder and operated by the holder.

Sec. 45.02. FEE. The annual state fee for a storage permit is $100.

Sec. 45.03. ELIGIBILITY FOR PERMIT; RESTRICTIONS; EXCEPTIONS. (a) A storage permit may be issued to a holder of a brewer's, distiller's and rectifier's, winery, wholesaler's, class B wholesaler's, or wine bottler's permit.

(b) A permit must be obtained for each place of storage.

~~(c)~~ Except as provided by this subsection, a storage permit may not be issued for a location outside the county in which the permittee's business is located. Subject to Section 45.04, the holder of a winery permit may obtain a storage permit for a location inside or outside the county in which the permit holder's business is located.

(d) Except as provided by Section 45.04 of this code, no storage permit may be issued for a location in a dry area.

(e) A permit is not required for the storage of stock in trade on the licensed premises.

Sec. 45.04. WINERY STORAGE PERMIT. A holder of a winery permit whose winery is located in a county all or part of which is in a dry area may obtain a storage permit to store the winery's product in a dry area of that county if:

(1) the holder of the winery permit obtains a permit for each place of storage; and

(2) the product to be stored is owned by the holder of the winery permit and remains in the possession of the holder.

CHAPTER 46. BONDED WAREHOUSE PERMIT (J/JD)

Sec. 46.01. AUTHORIZED ACTIVITIES. The holder of a bonded warehouse permit may store liquor for any permittee who holds a permit authorizing its storage in a public bonded warehouse.

Sec. 46.02. FEE. The annual state fee for a bonded warehouse permit is $150.

Sec. 46.03. QUALIFICATIONS FOR PERMIT. (a) A bonded warehouse permit may be issued to any public bonded warehouse that:

(1) derives at least 50 percent of its gross revenue in a bona fide manner during each three-month period from the storage of goods or merchandise other than liquor; and

(2) is not located in a dry area.

(b) A bonded warehouse permit may be issued to a public bonded warehouse described by Subsection (a)(1) of this section that is located in a dry area only for the storage of the wine of the holder of a winery permit who holds a permit authorizing its storage in a public bonded warehouse.

Sec. 46.04. STORAGE INFORMATION. The holder of a bonded warehouse permit shall furnish such information concerning the liquor stored and withdrawn as may be required by the commission.

CHAPTER 47. LOCAL INDUSTRIAL ALCOHOL MANUFACTURER'S PERMIT (LI)

Sec. 47.01. AUTHORIZED ACTIVITIES. The holder of a local industrial alcohol manufacturer's permit may:

(1) manufacture, rectify, and refine industrial alcohol, which term as used in this chapter means an alcohol which is produced for industrial purposes only and is not fit for human consumption;

(2) denature alcohol produced under the permit;

(3) sell denatured or industrial alcohol produced under the permit to holders of local industrial alcohol manufacturer's permits or industrial permits and to qualified persons outside the state; and

(4) blend industrial alcohol produced under the permit with petroleum distillates and sell or use the resulting product as a motor fuel.

Sec. 47.02.FEE. The annual state fee for a local industrial alcohol manufacturer's permit is $100.

Sec. 47.03. TRANSPORTATION. (a) A local industrial alcohol manufacturer's permittee may transport the alcohol produced under the local industrial alcohol manufacturer's permit by railway tank car, barge, or motor truck if the tank car, barge, or motor truck is owned by him or leased in good faith.

(b) The permittee must comply with all applicable state and federal laws regulating transportation.

(c) The permittee may not transport alcohol under the authority of this section unless, at the time the transportation occurs, the tank car, barge, or motor truck is fully described in a sworn statement on file with the commission.

(d) The permittee may transport the alcohol to a wet area by crossing a dry area if that route is necessary or convenient.

Sec. 47.04. STORAGE FACILITY. (a) A local industrial alcohol manufacturer's permit applicant or permittee may request in the permit application or in writing after the permit is issued that the commission or administrator authorize the permittee to store alcohol at a storage facility under the permittee's control that is located off the licensed premises. The permittee shall supply any information regarding the storage that the commission or administrator requires.

(b) A request under this section may include a request that the permittee be permitted to transport the alcohol to the storage facility by pipeline or other means.

(c) If the request is granted, the commission or administrator may attach any conditions regarding the use of the facility or transportation of alcohol to the facility that the commission or administrator considers proper.

(d) A storage facility authorized under this section is treated as a part of the licensed premises for the purpose of the permittee's consent to inspection under Section 101.04 of this code.

Sec. 47.05. PLANT PLAN REQUIREMENTS. If the plant plans submitted by the applicant establish to the satisfaction of the commission that the plant is not capable of producing alcohol for beverage purposes and if no change in the plant is made without commission approval, the permit for which application is made shall be considered to be an industrial permit as that term is used in Section 109.53 of this code.

Sec. 47.06. EXEMPTION FOR STATE INSTITUTIONS. A state institution is exempt from these provisions of the code when manufacturing industrial alcohol for scientific or laboratory use.

Sec. 47.07. LOCAL OPTION STATUS OF AREA. Whether an area is wet or dry under the local option laws does not affect the eligibility of an applicant to hold a permit under this chapter.

CHAPTER 48. PASSENGER TRAIN BEVERAGE PERMIT (PT)

Sec. 48.01. AUTHORIZED ACTIVITIES. The holder of a passenger train beverage permit has the same rights with respect to the sale of alcoholic beverages on a passenger train to which this chapter applies as the holder of an airline beverage permit has with respect to the sale of alcoholic beverages on a commercial passenger airplane under Section 34.01 of this code.

Sec. 48.02. FEE. The annual fee for a passenger train beverage permit is $500.

Sec. 48.03. ELIGIBILITY FOR PERMIT. The commission or administrator may issue a passenger train beverage permit to any corporation organized under the Business Organizations Code or former Title 112, Revised Statutes, or under the Rail Passenger Service Act of 1970, as amended (45 U.S.C.A. Section 501 et seq.), operating a commercial passenger train service in or through the state. Application and payment of the fee shall be made directly to the commission.

Sec. 48.04. TAXES. (a) The taxes imposed by this code shall be paid on all alcoholic beverages on a commercial passenger train departing from a depot in this state in accordance with the rules prescribed by the commission.

(b) The preparation and service of alcoholic beverages by the holder of a passenger train beverage permit is exempt from the tax imposed by the Limited Sales, Excise, and Use Tax Act (Section 151.001 et seq., Tax Code). A passenger train service fee of five cents is imposed on each individual serving of an alcoholic beverage served by the permittee inside the state. The fee accrues at the time the container containing an alcoholic beverage is delivered to the passenger. The permittee shall remit the fees to the commission each month under a reporting system prescribed by the commission.

~~(c) In August 2013, a permittee shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under the reporting system prescribed by the commission. The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.~~

~~(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under the reporting system prescribed by the commission.~~

~~(e) Subsections (c) and (d) and this subsection expire September 1, 2015.~~

NOTE: Subsections (c), (d), and (e), Section 48.04 repealed by Senate Bill 559, 83rd Legislature. Regular Session, 2013, effective June 14, 2013.

Sec. 48.05. INAPPLICABLE PROVISION. Section 109.53 of this code does not apply to a passenger train beverage permit.

CHAPTER 49. MARKET RESEARCH PACKAGER'S PERMIT (MR)

Sec. 49.01. AUTHORIZED ACTIVITIES. (a) The holder of a market research packager's permit may:

(1) receive from a winery, distiller's, or brewer's permittee or a manufacturer's licensee in this state alcoholic beverages produced by and belonging to the permittee or licensee;

(2) receive alcoholic beverages produced by and belonging to an authorized person outside this state;

(3) place the alcoholic beverages in containers or packaging material as a service to the producer of the beverages in connection with a market research program; and

(4) return the alcoholic beverages to the licensee, permittee, or authorized person from whom they were received.

(b) The holder of a market research packager's permit may not exercise any right of title to the alcoholic beverages received, other than possession. The permittee has no lien on the beverages to secure payment for amounts due from the owner of the beverages.

(c) Since the holder of a market research packager's permit may exercise no right of title to alcoholic beverages other than possession, the provisions of Section 109.53 of this code do not apply to a market research packager's permit.

Sec. 49.02. FEE. The annual state fee for a market research packager's permit is $100.

Sec. 49.03. ELIGIBILITY FOR PERMIT. The commission may issue a market research packager's permit in a wet or dry area.

CHAPTER 50. PROMOTIONAL PERMIT (PR)

Sec. 50.001. AUTHORIZED ACTIVITIES. The holder of a promotional permit may, on behalf of a distiller, brewer, rectifier, manufacturer, winery, or wine bottler with whom the promotional permit holder has entered into a contract for the purposes of this chapter, engage in activities to promote and enhance the sale of an alcoholic beverage in this state, including activities that take place on the premises of the holder of a permit or license under this code.

Sec. 50.002. FEE. (a) The annual state fee for a promotional permit is $300.

(b) A local fee may not be charged for the application or issuance of a promotional permit.

Sec. 50.003. PROHIBITED ACTIVITIES. The holder of a promotional permit may not hold an interest, directly or indirectly, in a permit or license issued under this code other than a contract to promote and enhance the sale of alcoholic beverages as authorized by this chapter.

Sec. 50.004. NONAPPLICABILITY OF CERTAIN REQUIREMENTS TO PERMIT HOLDER. Notwithstanding Section 6.03, 11.46, 11.61, or 109.53, or any other law, the holder of a promotional permit is not required to be a resident of this state.

CHAPTER 51. MINIBAR PERMIT (MI)

Sec. 51.01. ELIGIBILITY FOR PERMIT. The commission or the administrator may issue a minibar permit only to the holder of a mixed beverage permit issued for operation in a hotel.

Sec. 51.02. AUTHORIZED ACTIVITIES. The holder of a minibar permit may sell the following alcoholic beverages out of a minibar:

(1) distilled spirits in containers of not less than one ounce nor more than two ounces;

(2) wine and vinous liquors in containers of not more than 13 fluid ounces; and

(3) beer, ale, and malt liquor in containers of not more than 12 fluid ounces.

Sec. 51.03. LIMITED ACCESS TO MINIBAR. (a) Minibars shall be of such design as to prevent access to alcoholic beverages to all persons who do not have a minibar key. The minibar key shall be different from the hotel guestroom key, and the permittee shall not provide the minibar key to any person who is not of legal drinking age.

(b) A permittee may not provide a minibar key to any person other than an employee of the permittee or a registered guest of the hotel.

Sec. 51.04. STOCKING RESTRICTIONS. (a) All employees handling distilled spirits, wine, beer, ale, and malt liquor being stocked in the minibar must be at least 18 years of age.

(b) A minibar may not be restocked or replenished during any hours that a mixed beverage permittee may not sell alcoholic beverages at the location as provided by Section 105.03 of this code and it may contain no more than 40 individual containers of alcoholic beverages at any one time.

(c) A minibar may only be maintained, serviced, or stocked with alcoholic beverages by a person who is an employee of the holder of a minibar permit, and no other person shall be authorized to add alcoholic beverages to a minibar or, with the exception of a registered hotel guest consumer, to remove alcoholic beverages from a minibar.

(d) The holder of a minibar permit shall adhere to standards of quality and purity of alcoholic beverages prescribed by the commission and shall destroy any alcoholic beverages contained in a minibar on the date which is considered by the manufacturer of the alcoholic beverage to be the date the product becomes inappropriate for sale to a consumer.

Sec. 51.05. FEE. The annual state fee for an original minibar permit is $2,000. The annual state fee for the first renewal of a minibar permit is $1,500. The annual state fee for the second renewal of a minibar permit is $1,000. The annual state fee for the third and each subsequent renewal of a minibar permit is $750.

Sec. 51.06. PROHIBITED INTERESTS. The holder of a minibar permit may not have a direct or indirect interest in a package store permit, and no package store may be located on the premises of a hotel in which a mixed beverage permittee holds a minibar permit.

Sec. 51.07. MIXED BEVERAGE PERMIT IS PRIMARY. All purchases made by a minibar permittee shall be made under the authority of and subject to the limitations imposed on the mixed beverage permit held by the permittee. All sales made by a minibar permittee shall, for tax purposes, be considered sales under the mixed beverage permit held by the permittee and shall be taxed accordingly. To ensure that the marketing of alcoholic beverages for stocking minibars is not used by suppliers for purposes of inducement or unauthorized or illegal advertising, it is further provided that:

(1) No person who holds a permit or license authorizing sale of any alcoholic beverage to mixed beverage permittees may sell or offer to sell alcoholic beverages to a minibar permittee at a cost less than the seller's laid-in cost plus the customary and normal profit margin applicable to other container sizes. The laid-in cost shall be defined as the manufacturer's or supplier's invoice price, plus all applicable freight, taxes, and duties.

(2) Proof of laid-in cost shall become a part of the permanent records of each permittee or licensee supplying alcoholic beverages to minibar permittees and be available for a period of two years for inspection by the commission.

(3) No alcoholic beverages offered for use in a minibar may be sold in connection with or conveyed as part of any promotional program providing a discount on the purchase of any other type, size, or brand of alcoholic beverage.

(4) Distilled spirits in containers with a capacity of more than one but less than two fluid ounces must be invoiced separately from any other alcoholic beverage, and the price must be shown on the invoice.

(5) Distilled spirits in containers with a capacity of more than one but less than two fluid ounces may not be returned by the holder of a minibar permit. Neither may the beverages be exchanged by the holder of a minibar permit or redeemed for any reason other than damage noted at the time of delivery and approved by the commission. Claims for breakage or shortage after delivery to a minibar permittee shall not be allowed.

(6) No person holding a wholesaler's, local distributor's, or package store permit may participate in the cost of producing any room menu, beverage list, table tent, or any other device or novelty, written or printed, relating to the sale of distilled spirits in containers with a capacity of more than one but less than two fluid ounces. No permittee or licensee authorized to sell alcoholic beverages to a minibar permittee may pay for or contribute to the cost of providing in-house television or radio announcements to be used by any holder of a minibar permit to promote the sale of alcoholic beverages.

Sec. 51.08. DISTILLED SPIRITS PURCHASES. Distilled spirits purchased for resale in a minibar must be purchased in unbroken cases, and the cases shall bear the appropriate identification stamps.

Sec. 51.09. COIN-OPERATED MACHINES PROHIBITED. Nothing in this chapter shall be construed as authorizing nor may the commission or administrator authorize the sale of any alcoholic beverage from a coin-operated machine or similar device operated by the consumer.

Sec. 51.10. COMMISSION MAY ADOPT RULES. The commission may adopt rules necessary to regulate the use and operation of minibars.

CHAPTER 52. PACKAGE STORE TASTING PERMIT (PS)

Sec. 52.01. AUTHORIZED ACTIVITIES. (a) Except as provided by this subsection, the holder of a package store tasting permit may conduct product tastings of distilled spirits, wine, beer, and malt-based or spirit-based coolers on the permitted premises of the holder's package store or wine only package store during regular business hours as provided by this section. The holder of a wine only package store permit and a package store tasting permit may conduct product tastings only of alcoholic beverages the permit holder is authorized to sell under Section 24.01.

(b) Written notification of a product tasting must be posted on the licensed premises of the permit holder's package store not later than 48 hours before the tasting event. The notification shall clearly state:

(1) the type and brand of alcoholic beverage to be tasted;

(2) the date and hours the tasting is to take place; and

(3) the address of the premises where the tasting is to occur.

(c) A copy of the notification shall be kept on file and available for inspection on the premises during all tasting hours.

(d) Sample portions at a product tasting shall be limited to no more than:

(1) one-half ounce for distilled spirits;

(2) one ounce for wine; and

(3) one ounce for beer and coolers.

(e) Not more than 20 different products may be made available for tasting at any one time

(g) No charge of any sort may be made for a sample serving.

(h) A person may be served more than one sample. Samples may not be served to a minor or to an obviously intoxicated person. No samples may be removed from the licensed premises.

(i) During the tasting, not more than two containers of each brand or type of product being tasted may be open on the premises at one time.

(j) At the conclusion of the tasting, all empty or open containers of alcoholic beverages used in the tasting shall be removed from the premises or stored in a locked, secure area on the licensed premises.

(k) A tasting event authorized by this section may not be advertised except by on-site communications, by direct mail, by electronic mail, or on the permit holder's Internet website.

(l) Except as provided by Subsection (m) or elsewhere in this code, a person other than the permittee or the permittee's agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this chapter.

(m) The holder of a distiller's or rectifier's permit, distiller's agent's permit, nonresident seller's permit, or manufacturer's agent's permit or that permit holder's agent or employee may participate in and conduct product tastings of alcoholic beverages at a retailer's premises and may open, touch, or pour alcoholic beverages, make a presentation, or answer questions at the tasting. Any alcoholic beverage tasted under this subsection must be purchased from the package store permit holder on whose premises the tasting is held. The permit holder may not require the purchase of more alcoholic beverages than are necessary for the tasting. This section does not authorize the holder of a distiller's or rectifier's permit,

distiller's agent's permit, nonresident seller's permit, or manufacturer's agent's permit to withdraw or purchase an alcoholic beverage from the holder of a wholesaler's permit or provide an alcoholic beverage for tasting on a retailer's premises that is not purchased from the retailer.

Sec. 52.02. FEE. The annual state fee for a package store tasting permit is $25. The fee is in addition to and subject to the same conditions as the fee paid for the holder's package store permit.

Sec. 52.03. ELIGIBILITY FOR PERMIT. The commission or the administrator may only issue a package store tasting permit to a holder of a package store permit or wine only package store permit. For the purposes of this code and any other law of the state or political subdivision of the state, a package store tasting permit may not be considered a permit authorizing the sale of alcoholic beverages for on-premise consumption. Since no charge may be made for a sample tasted on the premises of a package store, none of a package store's or wine only package store's revenue may be deemed to be revenue from the on-premise sale of alcoholic beverages.

CHAPTER 53. TEMPORARY CHARITABLE AUCTION PERMIT (CA)

Sec. 53.001. AUTHORIZED ACTIVITIES. The holder of a temporary charitable auction permit may auction alcoholic beverages for consumption off premises to raise money to support charitable works of the permit holder.

Sec. 53.002. FEE. (a) The state fee for a temporary charitable auction permit is $25.

(b) A local fee may not be charged for the application for the issuance of a temporary charitable auction permit.

Sec. 53.003. DURATION OF PERMIT. A temporary charitable auction permit may be issued for a period of not more than five days.

Sec. 53.004. PERMIT. The commission may issue a temporary charitable auction permit only to an organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)).

Sec. 53.005. AUCTION LOCATION. (a) The holder of a temporary charitable auction permit may conduct an auction in any area where the sale of the type of alcoholic beverage to be auctioned is authorized by a local option election.

(b) The holder of a temporary charitable auction permit may conduct an auction at a premises of another permit or license holder if:

(1) the alcoholic beverages to be auctioned are kept separate from the alcoholic beverages sold, stored, or served at the premises; and

(2) the alcoholic beverages subject to the auction, whether sold or unsold, are removed from the premises immediately following the auction.

Sec. 53.006. AUCTION NOTICE. Before an auction is held, the holder of a temporary charitable auction permit shall provide to the branch office of the commission located closest to the auction site written notice of:

(1) the date, time, and place of the auction; and

(2) the inventory of the alcoholic beverages to be auctioned.

Sec. 53.007. DISPOSITION OF PROCEEDS. The proceeds from an auction authorized by this chapter shall be deposited to the account of the holder of a temporary charitable auction permit.

Sec. 53.008. PROHIBITED ACTIVITIES. The holder of a temporary charitable auction permit may not:

(1) auction distilled spirits, wine, ale, or malt liquor that has not been donated to the organization;

(2) auction alcoholic beverages if any taxes are owed on the beverages;

(3) conduct more than one auction during each calendar year; and

(4) pay a commission or promotional allowance to a person to:

(A) arrange or conduct an auction under this chapter; or

(B) arrange the donation of alcoholic beverages to be auctioned by the organization.

Sec. 53.009. RULES. (a) The commission shall adopt rules governing the issuance and use of a temporary charitable auction permit.

(b) The commission shall adopt rules establishing penalties for the violation of rules adopted under this chapter. A penalty established by the commission under this subsection may not exceed a penalty that the commission may impose on the holder of another temporary license or permit.

CHAPTER 54. OUT-OF-STATE WINERY DIRECT SHIPPER'S PERMIT (DS)

Sec. 54.01. AUTHORIZED ACTIVITIES. The holder of an out-of-state winery direct shipper's permit may sell and deliver wine that is produced or bottled by the permittee to an ultimate consumer located in the State of Texas. Delivery must be by the holder of a carrier permit.

Sec. 54.02. PROHIBITED ACTIVITIES. The holder of an out-of-state winery direct shipper's permit may not:

(1) sell or ship wine to a minor;

(2) deliver wine to a consumer using a carrier that does not hold a carrier's permit under this code;

(3) deliver to the same consumer in this state more than nine gallons of wine within any 30-day period or more than 36 gallons of wine within any 12-month period; or

(4) sell to ultimate consumers more than 35,000 gallons of wine annually.

Sec. 54.03. QUALIFICATIONS FOR PERMIT. An out-of-state winery direct shipper's permit may only be issued to a person who:

(1) does not hold a winery permit in the State of Texas;

(2) operates a winery located in the United States and holds all state and federal permits necessary to operate the winery, including the federal winemaker's and blender's basic permit;

(3) holds a Texas sales tax permit;

(4) expressly submits to personal jurisdiction in Texas state and federal courts and expressly submits to venue in Travis County, Texas, as proper venue for any proceedings that may be initiated by or against the commission; and

(5) does not directly or indirectly have any financial interest in a Texas wholesaler or retailer as those terms are used in Section 102.01.

Sec. 54.04. PERMIT FEE. The annual state fee for an out-of-state winery direct shipper's permit is $75.

Sec. 54.05. IDENTIFICATION REQUIREMENTS. (a) All wine sold or shipped by the holder of an out-of-state winery direct shipper's permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains wine; and

(2) the package may only be delivered to a person described in Subsection (b).

(b) Wine sold or shipped by a holder of an out-of-state winery direct shipper's permit may not be delivered to any person other than:

(1) the person who purchased the wine;

(2) a recipient designated in advance by such purchaser; or

(3) a person at the delivery address who is age 21 or over.

(c) Wine may be delivered only to a person who is age 21 or over after the person accepting the package:

(1) presents valid proof of identity and age; and

(2) personally signs a receipt acknowledging delivery of the package.

Sec. 54.06. REPORTS AND RECORDKEEPING. (a) The holder of an out-of-state winery direct shipper's permit shall maintain records of all sales and deliveries made under the permit.

(b) The holder of an out-of-state winery direct shipper's permit shall maintain complete sales and delivery records for all sales and deliveries made under the permit for at least five years from the date of sale. These records shall be made available upon request for inspection by the commission or any other appropriate state agency.

(c) The commission shall establish rules requiring the holder of an out-of-state winery direct shipper's permit to periodically file reports providing the commission with such information as the commission may determine is needed to more efficiently and effectively enforce the state laws applicable to the permit holder.

Sec. 54.07. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales made by the holder of an out-of-state winery direct shipper's permit shall be deemed to have been made in the State of Texas for delivery in the State of Texas.

(b) The holder of an out-of-state winery direct shipper's permit shall be responsible for paying the following state taxes related to sales and deliveries made under this chapter:

(1) excise taxes on the wine sold, payable at the same rate and in the same manner as if the permittee were a Texas winery located in Texas; and

(2) state sales and use taxes all payable at the same rate and in the same manner as if the permittee were a Texas winery located in Texas.

(c) An ultimate consumer who purchases wine from the holder of an out-of-state winery direct shipper's permit under this chapter shall be considered to be purchasing the wine from a Texas permittee and shall not be charged the administrative fee for personal imports set forth in Section 107.07.

Sec. 54.08. RESALE PROHIBITED. A consumer purchasing wine from the holder of an out-of-state winery direct shipper's permit may not resell the wine, and any such wine that is resold is an illicit beverage as defined in Section 1.04(4).

Sec. 54.09. DELIVERY AREAS. Wine shipped under this chapter may be delivered to persons located in a dry area.

Sec. 54.10. WINE LABEL APPROVAL NOT REQUIRED. If the holder of an out-of-state winery direct shipper's permit has satisfied all federal label approval requirements for a particular brand of wine, then no further label approval shall be required by the commission.

Sec. 54.11. RULES. The commission shall adopt rules and forms necessary to implement this chapter.

Sec. 54.12. PENALTY FOR SHIPPING WITHOUT A PERMIT. Any person who does not hold an out-of-state winery direct shipper's permit who sells and ships alcohol from outside of Texas to an ultimate consumer in Texas commits on first offense a Class B misdemeanor, on second offense a Class A misdemeanor, and on third offense a state jail felony.

CHAPTER 55. MANUFACTURER'S AGENT'S WAREHOUSING PERMIT (AW)

Sec. 55.01. AUTHORIZED ACTIVITIES. (a) The holder of a manufacturer's agent's warehousing permit may:

(1) receive beer, ale, or malt liquor from the holder of a nonresident brewer's permit or nonresident manufacturer's license and store the alcoholic beverages on the permitted premises;

(2) ship, cause to be shipped, sell, and otherwise transfer the beer, ale, or malt liquor to licensed or permitted distributors and wholesalers in this state and to persons outside this state who are qualified to receive the beer, ale, or malt liquor under the regulatory laws of the state or other jurisdiction in which the beer, ale, or malt liquor is received; and

(3) return beer, ale, or malt liquor to the manufacturer or brewer from which it was originally received.

(b) The holder of a manufacturer's agent's warehousing permit may ship only to wholesalers and distributors in this state who have been issued a territorial designation by the actual manufacturer or brewer of the brand or brands to be shipped. This territorial designation for the sale of beer must be under and a part of the agreement entered into between the actual manufacturer of the brand and the distributor under Subchapters C and D, Chapter 102. This chapter does not affect the requirement that the actual manufacturer, and the agreement between the actual manufacturer and the distributor, comply with Subchapters C and D, Chapter 102.

(c) Beer, ale, or malt liquor received at premises permitted under this chapter that is not labeled and approved for sale in this state may be held and stored at the premises and may be shipped from the premises if it is consigned and transported to qualified persons in other states or jurisdictions where its sale is legal.

(d) The provisions of this code related to the residency of an applicant for a permit do not apply to a permit under this chapter.

Sec. 55.02. FEE. The commission by rule shall set the amount of the annual state fee for a manufacturer's agent's warehousing permit.

Sec. 55.03. ELIGIBILITY FOR PERMIT. A manufacturer's agent's warehousing permit may be issued to an entity:

(1) that receives beer, ale, or malt liquor from [~~of which at least 50 percent of the ownership interests are owned by~~] another entity, or that other entity's immediate successor in interest, that:

(A) is located and chartered in the United Mexican States;

(B) has held a nonresident manufacturer's license, nonresident brewer's permit, and a nonresident seller's permit for the two years preceding the date of the application; and

(C) during each of those two years has shipped or caused to be shipped into this state for ultimate sale to qualified distributors and wholesalers in this state at least one-half million barrels of beer, ale, or malt liquor of the various brands manufactured or brewed by the entity; and

(2) whose employees, located in this state or elsewhere, hold permits and licenses issued under Chapters 36 and 73 to perform the activities authorized under those chapters on behalf of the entity.

Sec. 55.04. LOCATION OF PREMISES. The premises of a permit holder under this chapter must be located in an area that is wet for the sale of beer, ale, and malt liquor.

Sec. 55.05. REPORTING REQUIREMENTS. The commission shall require monthly reports from a permit holder under this chapter showing the brands, types, sizes of containers, and quantities of beer, ale, or malt liquor received at and shipped from the premises to persons authorized to receive them. The reports must conform in all respects to the requirements and forms prescribed by the commission and contain any other information required by the commission.

SUBTITLE B. LICENSES

CHAPTER 61. PROVISIONS GENERALLY APPLICABLE TO LICENSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.01. LICENSE REQUIRED. No person may manufacture or brew beer for the purpose of sale, import it into this state, distribute or sell it, or possess it for the purpose of sale without having first obtained an appropriate license or permit as provided in this code. Each licensee shall display his license at all times in a conspicuous place at the licensed place of business.

Sec. 61.02. NATURE OF LICENSE; SUCCESSION ON DEATH, BANKRUPTCY, ETC. (a) A license issued under this code is a purely personal privilege and is subject to revocation as provided

in this code. It is not property, is not subject to execution, does not pass by descent or distribution, and ceases on the death of the holder.

(b) On the death of the licensee or of a person having an interest in the license, or on bankruptcy, receivership, or partnership dissolution, the receiver or successor in interest may apply to the county judge of the county where the licensed premises are located for certification that he is the receiver or successor in interest. On certification, unless good cause for refusal is shown, the commission or administrator shall grant permission, by letter or otherwise, for the receiver of successor in interest to operate the business during the unexpired portion of the license. The license may not be renewed, but the receiver or successor in interest may apply for an original license. A receiver or successor in interest operating for the unexpired portion of the license is subject to the provisions of this code relating to the suspension or cancellation of a license.

Sec. 61.03. EXPIRATION OR SUSPENSION OF LICENSE. (a) Except as provided by Subsections (d) and (e) or another provision of this code, any license except a branch, importer's, importer's carrier's, or temporary license expires on the second anniversary of the date on which it is issued. Notwithstanding Section 5.50(b), the commission shall require double the amount of fees and surcharges otherwise applicable under this code for a license with a two-year term.

(b) A secondary license which requires the holder of the license to first obtain another license, including a late hours license or temporary license, expires on the same date the basic or primary license expires. The commission may not prorate or refund any part of the fee for the secondary license if the application of this section results in the expiration of the license in less than two years.

(c) An action by the commission resulting in the suspension of a basic or primary license also acts to suspend any secondary license held by the holder of the basic or primary license.

(d) The commission by rule may require that the expiration date for an individual license holder's license is the first anniversary of the date on which the license is issued due to the license holder's violation history.

(e) The commission may issue a license with an expiration date less than two years after the date the license is issued in order to maintain a reasonable annual distribution of renewal application review work and license fees. If the commission issues a license with an expiration date less than two years after the date the license is issued, the commission shall prorate the license fee on a monthly basis so that the license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid.

Sec. 61.031. NOTIFICATION OF EXPIRED OR SUSPENDED LICENSE. (a) The commission shall verify that the holder of an expired or suspended retail license is not operating in violation of this code. The verification, including any inspection of the premises by commission personnel, must occur within a reasonable time after the date the license expires or is suspended.

(b) The commission shall promptly notify each wholesaler, as that term is ordinarily used and understood in Section 102.01, who regularly supplies retailers in the geographic area that the holder’s retail license has expired or has been suspended.

Sec. 61.04. LICENSE NOT ASSIGNABLE. No holder of a license may assign his license to another person.

Sec. 61.05. NAME OF BUSINESS. No person may conduct a business engaged in the manufacture, distribution, importation, or sale of beer as owner or part owner except under the name to which the license covering his place of business is issued.

Sec. 61.06. PRIVILEGES LIMITED TO LICENSED PREMISES; DELIVERIES. No person licensed to sell beer, except a manufacturer or distributor, may use or display a license or exercise a privilege granted by the license except at the licensed premises. Deliveries of beer and collections may be made off the licensed premises in areas where the sale of beer is legal inside the county where the license is issued, but only in response to orders placed by the customer in person at the licensed premises or by mail or telephone to the licensed premises.

Sec. 61.07. AGENT FOR SERVICE. Each manufacturer, distributor, or person shipping or delivering beer into this state shall file a certificate with the secretary of state designating the name, street

address, and business of his agent on whom process may be served. If a certificate is not filed, service may be had on the secretary of state in any cause of action arising out of a violation of this code; and the secretary of state shall send any citation served on him by registered mail, return receipt requested, to the person for whom the citation is intended. The receipt is prima facie evidence of service on the person.

Sec. 61.08. STATEMENT OF STOCK OWNERSHIP. The commission at any time may require an officer of a corporation holding a license to file a sworn statement showing the actual owners of the stock of the corporation, the amount of stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders.

Sec. 61.09. CHANGE OF LOCATION. If a licensee desires to change the licensee's [~~his~~] place of business, the licensee [~~he~~] may do so by applying to the commission [~~county judge~~] on a form prescribed by the commission and obtaining the commission's [~~his~~] consent. The application may be subject to protest and hearing in the same way as an application for an original license. In the case of a required protest hearing, the [~~The~~] county judge may deny the application for any cause for which an original license application may be denied. No additional license fee for the unexpired term of the license shall be required in the case of an application for a change of location.

Sec. 61.10. REPLACEMENT OF LICENSE. If a license is mutilated or destroyed, the commission or administrator may issue another license as a replacement in a manner acceptable to the commission or administrator.

Sec. 61.11. WARNING SIGN REQUIRED. (a) Each holder of a license who is not otherwise required to display a sign under Section 411.204, Government Code, shall display in a prominent place on the license holder's premises a sign giving notice that it is unlawful for a person to carry a weapon on the premises unless the weapon is a concealed handgun [~~of the same category~~] the person is licensed to carry under Subchapter H, Chapter 411, Government Code.

(b) The sign must be at least 6 inches high and 14 inches wide, must appear in contrasting colors, and shall be displayed in a conspicuous manner clearly visible to the public. The commission or administrator may require the holder of the license to also display the sign in a language other than English if it can be observed or determined that a substantial portion of the expected customers speak the other language as their familiar language.

NOTE: Section 61.11 amended by House Bill 3142, 83rd Legislature, Regular Session, 2013, effective May 31, 2013.

Sec. 61.111. HEALTH RISKS WARNING SIGN. (a) The commission by rule shall require the holder of a license authorizing the sale of beer for on-premises consumption to display a warning sign on the door to each restroom on the licensed premises that informs the public of the risks of drinking alcohol during pregnancy.

(b) The commission's rules shall specify the language of the warning and the size and graphic design of the sign, including font size and type.

Sec. 61.12. RESTRICTION ON CONSUMPTION. No licensee except a holder of a license authorizing on-premises consumption of beer may permit beer to be consumed on the premises where it is sold.

Sec. 61.13. CONDUCT SURETY BOND. (a) Except as provided in Subsection (e) of this section, an applicant for a license or a holder of a license issued under Chapter 69 of this code shall file with the commission a surety bond in the amount of $5,000 or $10,000 if the applicant for a license or holder of a license has a business located within 1,000 feet of the property line of a public school, conditioned on the applicant's or holder's conformance with alcoholic beverage law.

(b) A surety bond required under this section shall contain the following statements on the face of the bond:

(1) that the holder of the license will not violate a law of the state relating to alcoholic beverages or a rule of the commission; and

(2) that the holder of the license agrees that the amount of the bond shall be paid to the state if the license is revoked or on final adjudication that the holder violated a provision of this code, regardless of whether the actions of an employee of a holder are not attributable to the holder under Section 106.14.

(c) The commission shall adopt rules relating to the:

(1) form of a surety bond;

(2) qualifications for a surety;

(3) method for filing and obtaining approval of the bond by the commission; and

(4) release or discharge of the bond.

(d) A holder of a license required to file a surety bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or savings institution authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or savings institution authorized to do business in this state.

(e) A holder of a license issued under this code who has held a permit for three years or more before the date the holder applied for renewal of the license is not required to furnish a surety bond if the holder:

(1) has not had a license or permit issued under this code revoked in the five years before the date the holder applied for renewal of the license;

(2) is not the subject of a pending permit or license revocation proceeding; and

(3) has continuously operated on the licensed premises for three years or more before the date the holder applied for renewal of the license.

(f) If a holder of a license is exempt from furnishing a conduct surety bond under Subsection (e) of this section, the holder shall be exempt from furnishing the bond at another location where the holder applies for or holds a license.

Sec. 61.14. ALTERING FORM OF BUSINESS ENTITY. (a) The holder of a license issued under this chapter, including a food and beverage certificate, may alter the form of the business entity that holds the license if the ownership of the newly created business entity is identical to the ownership of the former business entity.

(b) Before the 10th day preceding the date the holder of the license converts to a different form of business, the holder of the license shall:

(1) file notice with the commission on a form prescribed by the commission of the change in the form of the business entity; and

(2) pay a $100 fee for each licensed premises affected by the change in form of the business entity.

(c) After satisfying the requirements of Subsection (b) and establishing the newly created business entity, that entity may use the license and exercise any privileges granted by the license.

Sec. 61.15. CERTAIN APPLICATIONS PROHIBITED. Section 11.13 applies to an application for a license under this subtitle.

SUBCHAPTER B. APPLICATION AND ISSUANCE OF LICENSES

Sec. 61.31. APPLICATION FOR LICENSE. (a) A person may file an application for a license to manufacture, distribute, store, or sell beer with the commission on forms prescribed by the commission. On receipt of an application, the commission or administrator shall determine whether a protest has been filed against the application. If a protest against the application has been filed, the commission or administrator shall investigate the protest. If the commission or administrator finds that no reasonable grounds exist for the protest, or if no protest has been filed, the commission or administrator shall issue a license if the commission or administrator finds that all facts stated in the

application are true and no legal ground to refuse a license exists. If the commission or administrator finds that reasonable grounds exist for the protest, the commission or administrator shall reject the protested application and require the applicant to file the application with the county judge of the county in which the applicant desires to conduct business and submit to a hearing [~~in termtime or vacation with the county judge of the county in which he desires to conduct business. He shall file the application in duplicate~~].

(b) The county judge shall set a protested [~~the~~] application for a hearing to be held not less than 5 nor more than 10 days after the date the county judge receives the protested application [~~is filed~~].

(c) Each applicant for an original license, other than a branch or temporary license, shall pay a hearing fee of $25 [~~$5~~] to the county clerk at the time of the hearing. The county clerk shall deposit the fee in the county treasury. The applicant is liable for no other fee except the annual license fee prescribed by this code.

(d) No person may sell beer during the pendency of his original license application. No official may advise a person to the contrary.

Sec. 61.311. MASTERS IN CERTAIN COUNTIES. (a) The county judge of a county with a population of 1.3 million or more may appoint a master to hear an application under this chapter.

(b) A master must be a citizen of this state and must be well informed in the law of this state.

(c) A master is entitled to a salary set by the county judge and approved by the commissioners court of the county in which the master serves.

(d) An order referring a case to a master may:

(1) specify or limit the powers of the master and direct the master to report only on particular issues, do particular acts, or receive and report only on evidence;

(2) set the time and place for beginning and closing a hearing; and

(3) set a date for filing a report.

(e) Except as limited or specified by an order referring a case, a master may:

(1) swear witnesses for hearings;

(2) examine witnesses;

(3) hear evidence;

(4) rule on admissibility of evidence;

(5) make findings of fact on evidence;

(6) recommend an order to be entered by the referring judge; and

(7) do any other act necessary and proper for the efficient performance of the master's duties under the order.

(f) At the conclusion of a hearing, a master shall transmit to the referring judge any papers relating to the case, including the master's findings.

(g) A referring judge may adopt, modify, correct, reject, reverse, or recommit for further information a master's report.

(h) An applicant is entitled to a hearing before the judge, and the master shall give each applicant written notice of that right and a copy of the master's findings. A request for a hearing before the judge must be filed with the judge not later than the third day after the date notice of the master's findings is received by the applicant. The right to a hearing before the judge may be waived.

(i) A master may be an employee of the alcoholic beverage commission designated by the administrator. The commission is entitled to receive reimbursement for its expenses in connection with furnishing a master under this subsection. If the commission and the commissioners court of the county in which the master serves do not have a contract providing for reimbursement of expenses, the county judge may not appoint a master to hear an application under this subsection.

Sec. 61.312. DELEGATION OF DUTIES OF COUNTY JUDGE. (a) A county judge may file an order with the commissioners court of the county delegating to another county officer the duty to hear applications under this chapter.

(b) An order of a county officer acting under the delegated authority of the county judge in regard to a license has the same effect as an order of the county judge.

(c) During the period in which the order is in effect, the county judge may withdraw the authority delegated in relation to any application and the county judge may hear that application.

(d) The county judge may at any time revoke an order delegating duties under this section.

(e) In this section:

(1) "County officer" includes a judge of a statutory county court.

(2) "Statutory county court" has the meaning assigned by Section 21.009, Government Code.

Sec. 61.32. PROTEST HEARING BY COUNTY JUDGE. (a) If the county judge finds that all facts stated in the application are true and no legal ground to refuse a license exists, he shall enter an order certifying those findings and give the applicant a copy of the order. If the county judge finds otherwise, he shall enter an order accordingly.

(b) If the county judge enters an order favorable to the applicant, the applicant shall present a copy of the order to the commission [~~assessor and collector of taxes of the county and pay that officer the appropriate license fee. The assessor and collector of taxes then shall report to the commission on a form prescribed by the commission, certifying that the application was approved and that all required fees have been paid and furnishing any other information the commission requires. The assessor and collector of taxes shall attach a copy of the original application to the report~~].

(c) In the case of an application to sell beer at retail, the county judge may give due consideration to any recommendations made by representatives of the commission, the state senator who represents the area in question, the state representative who represents the area in question, the county commissioner who represents the area in question, or the sheriff or county or district attorney of the county where the license is sought, or the mayor, city council member or commissioner who represents the area in question, or chief of police of the incorporated city where the applicant seeks to conduct business.

Sec. 61.33. ACTION BY COMMISSION OR ADMINISTRATOR AFTER PROTEST HEARING. (a) On receiving an order [~~a report~~] from the county judge [~~assessor and collector of taxes~~] under Section 61.32(b) [~~of this code~~], the commission or administrator shall issue the appropriate license if the commission or administrator finds that the applicant is entitled to a license. The license shall show the class of business the applicant is authorized to conduct, the amount of fees paid, the address of the place of business, the date the license is issued and the date it expires, and any other information the commission considers proper.

(b) The commission or administrator may refuse to issue a license after receiving the order from [~~report of~~] the county judge [~~assessor and collector of taxes~~] if the commission or administrator possesses information from which it is determined that any statement in the license application is false or misleading or that there is other legal reason why a license should not be issued. If the commission or administrator refuses to issue a license, the commission [~~it~~] or administrator [~~he~~] shall enter an order accordingly and the applicant is entitled to a refund of any license fee the applicant [~~he~~] paid [~~the assessor and collector of taxes~~] in connection with the application.

Sec. 61.34. APPEAL FROM DENIAL. (a) If the county judge, commission, or administrator denies an application, the applicant may appeal within 30 days from the date the order becomes final and appealable to the district court of the county where the application was made. The appeal is governed by Section 11.67 of this code, and the court may hear the appeal in termtime or vacation.

(b) If the judgment of the district court is in favor of the applicant, regardless of whether an appeal is taken, the applicant shall present a copy of the judgment [~~shall be presented~~] to the commission [~~assessor and collector of taxes of the county where the application was made. The assessor and collector of taxes shall accept the fees required by this code and proceed as provided under Section 61.32 of this code as if the county judge had approved the application~~].

(c) If a license is issued on the basis of a district court judgment and that judgment is reversed on appeal, the mandate of the appellate court automatically invalidates the license and the applicant is entitled to a proportionate refund of fees for the unexpired portion of the license. As much of

the proceeds from license fees collected under this subtitle as is necessary may be appropriated for the payment of those refunds.

(d) A person appealing from an order under this section shall give bond for all costs incident to the appeal and shall be required to pay those costs if the judgment on appeal is unfavorable to the applicant, but not otherwise. No bond is required on appeals filed on behalf of the state.

Sec. 61.35. LICENSE FEES. (a) A separate license fee is required for each place of business that manufactures, imports, or sells beer.

(b) All license fees, except those for temporary licenses, shall be deposited as provided in Section 205.02 [~~of this code~~]. Each license application must be accompanied by a cashier's check, a teller's check, a check drawn on the account of a corporation applying for a license or on the account of a corporation that is an agent for the person applying for a license, a money order, or payment by credit card, charge card, or other electronic form of payment approved by commission rule for the amount of the state fee, payable to the order of the comptroller. [~~The assessor and collector of taxes shall make statements of the amounts collected by him under this code to the commission at the times and in the manner required by the commission or administrator.~~]

(c) No licensee may obtain a refund on the surrender or nonuse of a license except as provided by this code.

(d) The commissioner may not refund a license fee except when the [~~If a~~] licensee [~~engaged in selling beer~~] is prevented from continuing in business by a local option election or when an application for a license is rejected by the commission or administrator[~~, he is entitled to a refund of a proportionate amount of the license fees he has paid covering the unexpired term of his license~~]. As much of the proceeds from license fees [~~derived under the provisions of this subtitle~~] as is necessary may be appropriated for that purpose.

(e) The commission by rule shall establish a method for transmitting five percent of the license fee to the assessor and collector of taxes of the county in which the applicant's business is located.

Sec. 61.36. LOCAL FEE AUTHORIZED. (a) The governing body of an incorporated city or town may levy and collect a fee not to exceed one-half of the state fee for each license, except a temporary or agent's beer license, issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half the state fee for each license, except a temporary or agent's beer license, issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the licensee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 351, Tax Code, and the local sales and use tax levied under Chapter 321, Tax Code.

(b) The commission or administrator may cancel a license if it finds the licensee has not paid a fee levied under this section. A licensee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than $10 nor more than $200.

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate licensees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

(d) The commission or administrator may cancel or deny a license for the retail sale of alcoholic beverages, including a license held by the holder of a food and beverage certificate, if it finds that the license holder or applicant has not paid delinquent ad valorem taxes due on that licensed premises or due from a business operated on that premises to any taxing authority in the county of the premises. For purposes of this subsection, a license holder or applicant is presumed delinquent in the payment of taxes due if the license holder or applicant:

(1) is placed on a delinquent tax roll prepared under Section 33.03, Tax Code;

(2) has received a notice of delinquency under Section 33.04, Tax Code; and

(3) has not made a payment required under Section 42.08, Tax Code.

(e) In this section, “applicant” has the meaning assigned by Section 11.45.

Sec. 61.37. CERTIFICATION OF WET OR DRY STATUS. (a) The county clerk of the county in which an application for a license is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by any valid order of the commissioners court.

(b) The city secretary or clerk of the city in which an application for a license is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by charter or ordinance.

(c) Once a license is issued, the certification that the location or address is in a wet area may not be changed until after a subsequent local option election to prohibit the sale of alcoholic beverages.

(d) Notwithstanding any other provision of this code, if the county clerk, city secretary, or city clerk certifies that the location or address given in the application is not in a wet area or refuses to issue the certification required by this section, the applicant is entitled to a hearing before the county judge to contest the certification or refusal to certify. The applicant must submit a written request to the county judge for a hearing under this subsection. The county judge shall conduct a hearing required by this subsection not later than the 30th day after the date the county judge receives the written request.

Sec. 61.38. NOTICE OF APPLICATION. (a) Every original applicant [~~When an application~~] for a license to manufacture, [~~or~~] distribute, or [~~beer is filed, the county clerk shall post at the courthouse door a written notice containing the substance of the application and the date set for hearing.~~

[~~(b) When an original application to sell beer at retail at a location previously licensed is filed, the county clerk shall post at the courthouse door a written notice containing the substance of the application and the date set for hearing.~~

[~~(c) When an original application to~~] sell beer at retail shall give notice of the application by electronic or nonelectronic publication at the applicant's own expense in [~~at a location not previously licensed is filed, the county clerk shall publish notice for~~] two consecutive issues of [~~in~~] a newspaper of general circulation published in the city or town in which the applicant's place of business is [~~to be~~] located. If no newspaper [~~of general circulation~~] is published in that city or town, the notice must [~~shall~~] be published in a newspaper of general circulation published in the county where the applicant's business is [~~to be~~] located. If no newspaper [~~of general circulation~~] is published in that county, the notice must [~~shall~~] be published in a qualified newspaper [~~which is~~] published in the closest neighboring county and [~~is~~] circulated in the county where the applicant's business is located [~~license is sought~~].

(b) The notice must [~~shall~~] be printed in 10-point boldface type and must include:

(1) [~~shall set forth~~] the type of license applied for;

(2) the exact location of the business for which the license is sought;

(3) the name of each [~~the~~] owner of the business and, if the business is operated under an assumed name, [~~or owners;~~] the trade name together with the name of each owner[~~, if operating under an assumed name~~]; and

(4) if [~~in~~] the [~~case of a corporate~~] applicant is a corporation, the names and titles of all officers [~~of the corporation~~].

(c) An applicant for a renewal license is not required to publish notice. [~~At the time the application is filed, the applicant shall deposit with the clerk the cost of publishing notice, which the clerk shall use to pay for the publication.~~]

NOTE: Section 61.38 amended by Senate Bill 1035 and Senate Bill 1090, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 61.381. NOTICE BY SIGN. (a) An applicant for a license issued under this code for a location not previously licensed for the on-premises consumption of alcoholic beverages must, not later than the 60th day before the date the license is issued, prominently post an outdoor sign at the location stating that alcoholic beverages are intended to be served on the premises, the type of license, and the name and business address of the applicant.

(b) The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The administrator may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language. The commission shall provide such sign and may charge a fee therefor.

(c) This section does not apply to an applicant for a license issued under Chapter 64, 65, 66, or 71.

Sec. 61.382. NOTICE BY MAIL. (a) Except as provided by Subsection (b), a person who submits an original application for a license authorizing the retail sale of beer for on-premises consumption shall give written notice of the application to each residential address and established neighborhood association located within 300 feet of any property line of the premises for which the license is sought.

(b) The notice required by Subsection (a) does not apply to an application that contains an application for a food and beverage certificate.

(c) The notice required by this section must be:

(1) delivered by mail at the applicant's expense;

(2) provided in English and a language other than English if it is likely that a substantial number of residents in the area speak a language other than English as their familiar language; and

(3) provided not earlier than the 14th day and not later than the 7th day before the date the application is filed.

(d) The applicant shall submit with an application for a license described by Subsection (a) a list of each residential address provided notice under this section.

(e) The notice must be provided on a form prescribed by the commission and must contain:

(1) the type of license and type of business for which the applicant has applied;

(2) the exact location of the place of business for which the license is sought;

(3) the name of each owner of the business or, if the business is operated under an assumed name, the trade name and the name of each owner;

(4) if the applicant is a corporation, the name and title of each officer; and

(5) a description of the procedure for protesting the application.

Sec. 61.39. MAY CONTEST APPLICATION. Any person may contest the facts stated in an application for a license to distribute, manufacture, or sell beer at retail, or the applicant's right to secure a license. The person may not be required to pay security for the costs which may be incurred in the contest if the case should be decided in favor of the applicant.

Sec. 61.40. PREMISES INELIGIBLE FOR LICENSE. Section 11.44 of this code, which describes certain premises that are ineligible for a license, applies to licenses issued under this subtitle.

Sec. 61.41. SECOND LICENSE AT SAME LOCATION; EFFECT ON EXISTING LICENSE. (a) Except as provided by Subsection (d), no license may be issued for a premises, location, or place of business for which a license is in effect unless the holder of the existing license has shown to the satisfaction of the commission that the license holder will no longer exercise any privilege granted by the existing license at that location.

(b) If the holder of the existing license desires to transfer the license to another location, the license holder may apply for a transfer of location in accordance with this code.

(c) If the holder of the existing license has made a declaration required by the commission that the license holder will no longer use the license, the license holder may not manufacture or sell beer or possess it for the purpose of sale until the license has been reinstated. The holder may apply to the commission [~~county judge~~] for the reinstatement of the license in the same manner and according to the same procedure as in the case of an original license application. The county judge or the commission or administrator may deny reinstatement of the license for any cause for which an original license application may be denied.

(d) Notwithstanding Subsection (a) and Sections 11.49 and 109.53, more than one manufacturer's or nonresident manufacturer's license may be issued for a single premises if the license

holder for the premises has contracted with an entity under an alternating brewery proprietorship or contract brewing arrangement [~~or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state for the use of the license holder's premises for manufacturing purposes or to provide manufacturing services~~].

Sec. 61.42. MANDATORY GROUNDS FOR REFUSAL: DISTRIBUTOR OR RETAILER. (a) The county judge shall refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant is a minor;

(2) the applicant is indebted to the state for any taxes, fees, or penalties imposed by this code or by rule of the commission;

(3) the place or manner in which the applicant for a retail dealer's license may conduct his business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(4) the applicant is in the habit of using alcoholic beverages to excess or is mentally or physically incompetent;

(5) the applicant is not a United States citizen or has not been a citizen of Texas for a period of one year immediately preceding the filing of his application, unless he was issued an original or renewal license on or before September 1, 1948;

NOTE: TABC is enjoined from enforcing the Texas state residency and Texas state citizenship requirements in Section 61.42(a)(5).

(6) the applicant was finally convicted of a felony during the five years immediately preceding the filing of his application;

(7) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; or

(8) as to a corporation, it is not incorporated under the laws of this state, or at least 51 percent of the corporate stock is not owned at all times by persons who individually are qualified to obtain a license, except that this subdivision does not apply to a holder of any renewal of a distributor's license which was in effect on January 1, 1953, or to an applicant or a beer retailer's on-premise license for a railway car.

NOTE: TABC is enjoined from enforcing the Texas state residency and Texas state citizenship requirements in Section 61.42(a)(8).

(b) The county judge, commission, or administrator shall refuse to approve or issue an original retail dealer's or retail dealer's on-premise license unless the applicant for the license files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit for the place of business for which the license is sought.

(c) The county judge, commission, or administrator shall refuse to approve or issue for a period of one year a retail dealer's on-premise license or a wine and beer retailer's permit for a premises where a license or permit has been canceled during the preceding 12 months as a result of a shooting, stabbing, or other violent act, or as a result of an offense involving drugs, prostitution, or trafficking of persons.

Sec. 61.421. REFUSAL OF LICENSE AUTHORIZING ON-PREMISES CONSUMPTION. (a) In this section, "applicant" has the meaning assigned by Section 11.45.

(b) The commission or administrator, with or without a hearing, or the county judge, shall refuse to issue or approve an original or renewal license authorizing on-premises consumption of alcoholic beverages if the commission, administrator, or county judge has reasonable grounds to believe and finds that, during the three years preceding the date the license application was filed, a license or

permit previously held under this code by the applicant, a person who owns the premises for which the license is sought, or an officer of a person who owns the premises for which the license is sought was canceled or not renewed as a result of a shooting, stabbing, or other violent act.

(c) This section does not apply to the issuance of an original or renewal license authorizing on-premises consumption for a location that holds a food and beverage certificate but does not hold a late hours license.

Sec. 61.43. DISCRETIONARY GROUNDS FOR REFUSAL: DISTRIBUTOR OR RETAILER. (a) The county judge may refuse to approve an application for a license as a distributor or retailer if the county judge has reasonable grounds to believe and finds that:

(1) the applicant has been finally convicted in a court of competent jurisdiction for the violation of a provision of this code during the two years immediately preceding the filing of an application;

(2) five years has not elapsed since the termination, by pardon or otherwise, of a sentence imposed for conviction of a felony;

(3) the applicant has violated or caused to be violated a provision of this code or a rule or regulation of the commission, for which a suspension was not imposed, during the 12-month period immediately preceding the filing of an application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant for a retail dealer's license does not have an adequate building available at the address for which the license is sought before conducting any activity authorized by the license;

(6) the applicant or a person with whom the applicant is residentially domiciled had an interest in a license or permit which was cancelled or revoked within the 12-month period immediately preceding the filing of an application;

(7) the applicant failed or refused to furnish a true copy of the application to the commission's district office in the district in which the premises sought to be licensed are located;

(8) the premises on which beer is to be sold for on-premises consumption does not have:

(A) running water, if it is available; or

(B) separate free toilets for males and females, properly identified, on the premises for which the license is sought or, if the premises is a restaurant that derives less than 50 percent of its gross revenue from the sale of alcohol, is 2,500 square feet or less, and has an occupancy rating of 50 persons or less, at least one toilet, properly identified, on the premises for which the license is sought;

(9) the applicant for a retail dealer's license will conduct business in a manner contrary to law or in a place or manner conducive to a violation of the law; or

(10) the place, building, or premises for which the license is sought was used for selling alcoholic beverages in violation of the law at any time during the six months immediately preceding the filing of the application or was used, operated, or frequented during that time for a purpose or in a manner which was lewd, immoral, offensive to public decency, or contrary to this code.

(b) Subsection (a)(8) does not apply to an application under this section if the premises for which the application is submitted is part of a larger business complex with multiple tenant or commercial spaces, including a mall, that is open to the public and that offers the facilities required by Subsection (a)(8).

Sec. 61.44. REFUSAL OF DISTRIBUTOR'S OR RETAILER'S LICENSE: PROHIBITED INTERESTS. (a) The county judge may refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant has a financial interest in an establishment authorized to sell distilled spirits, except as authorized in Section 22.06, 24.05, or 102.05 of this code;

(2) a person engaged in the business of selling distilled spirits has a financial interest in the business to be conducted under the license sought by the applicant, except as authorized in Section 22.06, 24.05, or 102.05 of this code; or

(3) the applicant is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling distilled spirits, except as authorized in Section 22.06, 24.05, or 102.05 of this code.

(b) The county judge may refuse to approve an application for a retail dealer's license if he has reasonable grounds to believe and finds that:

(1) the applicant has a real interest in the business or premises of the holder of a manufacturer's or distributor's license; or

(2) the premises sought to be licensed are owned in whole or part by the holder of a manufacturer's or distributor's license.

Sec. 61.45. REFUSAL OF RETAILER'S OR DISTRIBUTOR'S LICENSE: PROHIBITED INTEREST IN PREMISES. (a) The county judge may refuse to approve an application for a retail dealer's license if he has reasonable grounds to believe and finds that:

(1) the applicant owns or has an interest in the premises covered by a manufacturer's or distributor's license; or

(2) the holder of a manufacturer's or distributor's license owns or has an interest in the premises sought to be licensed.

(b) The county judge may refuse to approve an application for a distributor's license if he has reasonable grounds to believe and finds that:

(1) the applicant owns or has an interest in the premises covered by a retail dealer's license; or

(2) a holder of a retail dealer's license owns or has an interest in the premises sought to be licensed.

Sec. 61.46. MANUFACTURER'S LICENSE: GROUNDS FOR REFUSAL. (a) This section applies to any applicant for a manufacturer's license, including a domestic corporation or foreign corporation qualified to do business in Texas, administrator or executor, or other person. This section does not apply to a holder of a subsequent renewal of a manufacturer's license which was in effect on January 1, 1953.

(b) The county judge shall refuse to approve an application for a manufacturer's license if he has reasonable grounds to believe and finds that the applicant has failed to state under oath that it will engage in the business of brewing and packaging beer in this state within three years after the issuance of its original license in sufficient quantities as to make its operation that of a bona fide brewing manufacturer.

(c) In the case of a corporate applicant, the statement shall be sworn to and subscribed by one of the corporation's principal officers.

Sec. 61.47. RETAIL LICENSE: REFUSAL BY COMMISSION OR ADMINISTRATOR. If the county judge approves an application for a license as a retail dealer, the commission or administrator may refuse to issue a license for any reason which would have been a ground for the county judge to have refused to approve the application.

Sec. 61.48. RENEWAL APPLICATION. An application to renew a license shall be filed with the commission [~~in writing with the assessor and collector of taxes of the county in which the licensed premises are located~~] no earlier than 30 days before the license expires but not after it expires. The application shall be signed by the applicant and shall contain complete information required by the commission showing that the applicant is not disqualified from holding a license. The application shall be accompanied by the appropriate license fee [~~plus a filing fee of $2. The assessor and collector of taxes shall deposit the $2 filing fee in the county treasury and shall account for it as a fee of office~~]. No applicant for a renewal may be required to pay any fee other than license fees and the filing fee unless the applicant [~~he~~] is required by the commission or administrator to submit to a renewal hearing before the county judge.

Sec. 61.49. ACTION ON RENEWAL APPLICATION BY [~~TRANSMITTED TO~~] COMMISSION; REFUND OF FEE. When the renewal application has been filed in accordance with Section 61.48 [~~of this code, the assessor and collector of taxes shall transmit to the commission the original copy of the application plus a certification that all required fees have been paid for the ensuing license period. On receiving the application and certification~~], the commission or administrator may in its discretion issue a renewal license or if an application for a renewal is protested reject the application and require the applicant to file an application with the county judge and submit to a hearing as is required by Section 61.31 [~~in the case of an original application~~]. [~~When an application for renewal is rejected, the applicant is entitled to a refund of any license fee that was paid to the assessor and collector of taxes at the time the renewal application was filed.~~]

Sec. 61.50. RENEWAL OF RETAIL DEALER'S LICENSE: GROUNDS FOR REFUSAL. The commission or administrator, without a hearing, may refuse to issue a renewal of a retail dealer's license and require the applicant to make an original application if it is found that circumstances exist which would warrant the refusal of an original application under any pertinent provision of this code.

Sec. 61.51. PREMISES DEFINED; DESIGNATION OF LICENSED PREMISES. "Premises" is defined in Section 11.49 of this code. The designating of licensed premises by license applicants is also covered by that section.

Sec. 61.52. ADMINISTRATIVE PENALTY IN CERTAIN COUNTIES. Section 11.321 applies to an original or renewal application for a retail dealer's on-premise license, other than a license with a food and beverage certificate, for an establishment located in a county with a population of 1.4 million or more.

SUBCHAPTER C. CANCELLATION AND SUSPENSION OF LICENSES

Sec. 61.71. GROUNDS FOR CANCELLATION OR SUSPENSION: RETAIL DEALER. (a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) made a false statement or a misrepresentation in his original application or a renewal application;

(5) with criminal negligence sold, served, or delivered an alcoholic beverage to a minor;

(6) sold, served, or delivered an alcoholic beverage to an intoxicated person;

(7) sold, served, or delivered an alcoholic beverage at a time when its sale is prohibited;

(8) entered or offered to enter an agreement, condition, or system which would constitute the sale or possession of alcoholic beverages on consignment;

(9) possessed on the licensed premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant, or employee to do so, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(10) does not have at his licensed premises:

(A) running water, if it is available; and

(B) separate toilets for both sexes which are properly identified, or, if the premises is a restaurant that derives less than 50 percent of its gross revenue from the sale of alcohol, is 2,500 square feet or less, and has an occupancy rating of 50 persons or less, at least one toilet that is properly identified;

(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;

(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in doing so, in an establishment where beer is sold for on-premises consumption;

(13) conspired with a person to violate Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule promulgated under Section 5.40 of this code, or accepted a benefit from an act prohibited by any of these sections or rules;

(14) refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the commission or a peace officer;

(15) permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;

(16) maintained blinds or barriers at his place of business in violation of this code;

(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;

(19) purchased beer for the purpose of resale from a person other than the holder of a manufacturer's or distributor's license;

(20) acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages;

(21) owned an interest of any kind in the business or premises of the holder of a distributor's license;

(22) purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or permitted one to be consumed on the licensed premises while his license was under suspension;

(23) purchased, possessed, stored, sold, or offered for sale beer in or from an original package bearing a brand or trade name of a manufacturer other than the brand or trade name shown on the container;

(24) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(25) imported beer into this state except as authorized by Section 107.07 of this code;

(26) occupied premises in which the holder of a manufacturer's or distributor's license had an interest of any kind;

(27) knowingly permitted a person who had an interest in a permit or license which was cancelled for cause to sell, handle, or assist in selling or handling alcoholic beverages on the licensed premises within one year after the cancellation;

(28) was financially interested in a place of business engaged in the selling of distilled spirits or permitted a person having an interest in that type of business to have a financial interest in the business authorized by his license, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(29) is residentially domiciled with or related to a person engaged in selling distilled spirits, except as permitted by Section 22.06, 24.05, or 102.05 of this code, so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code;

(30) is residentially domiciled with or related to a person whose license has been cancelled within the preceding 12 months so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code; or

(31) failed to promptly report to the commission a breach of the peace occurring on the licensee's licensed premises.

(b) Subdivisions (9), (28), (29), and (30) of Subsection (a) of this section do not apply to a licensee whose business is located in a hotel in which an establishment authorized to sell distilled spirits in unbroken packages is also located if the licensed premises of the businesses do not coincide or overlap.

(c) The grounds listed in Subsection (a) of this section, except the ground contained in Subdivision (2), also apply to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. This subsection shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

(d) The grounds set forth in Subdivisions (1), (4)-(14), (16), (18), (19), (21), (23), and (26), of Subsection (a) of this section, also apply to an agent, servant, or employee of the licensee.

(e) The commission or administrator without a hearing may for investigative purposes summarily suspend a retail dealer's on-premise license for not more than seven days if the commission or administrator finds that a shooting, stabbing, or murder has occurred on the licensed premises which is likely to result in a subsequent act of violence. Notice of the order suspending the license shall be given to the licensee personally within 24 hours of the time the violent act occurs. If the licensee cannot be located, notice shall be provided by posting a copy of the order on the front door of the licensed premises.

(f) Except as provided by Subsection (g) or (j), the commission or administrator shall cancel an original or renewal dealer's on-premises or off-premises license if it is found, after notice and hearing, that the licensee knowingly allowed a person to possess a firearm in a building on the licensed premises. This subsection does not apply to a person:

(1) who holds a security officer commission issued under Chapter 1702, Occupations Code, if:

(A) the person is engaged in the performance of the person's duties as a security officer;

(B) the person is wearing a distinctive uniform; and

(C) the weapon is in plain view;

(2) who is a peace officer;

(3) who is a licensee or an employee of a licensee if the person is supervising the operation of the premises; or

(4) who possesses a concealed handgun [~~of the same category~~] the person is licensed to carry under Subchapter H, Chapter 411, Government Code, unless the person is on the premises of a business described by Section 46.035(b)(1), Penal Code.

NOTE: Section 61.71(f)(4) amended by House Bill 3142, 83rd Legislature, Regular Session, 2013, effective June 14, 2013.

(g) The commission may adopt a rule allowing:

(1) a gun or firearm show on the premises of a license holder, if the premises is owned or leased by a governmental entity or a nonprofit civic, religious, charitable, fraternal, or veterans' organization;

(2) the holder of a license for the sale of alcoholic beverages for off-premises consumption to also hold a federal firearms license; or

(3) the ceremonial display of firearms on the premises of the license holder.

(h) The length of a suspension must be appropriate for the nature and seriousness of the violation. In determining the length of a suspension, the commission or administrator shall consider:

(1) the type of license or permit held;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and

(4) the permittee's or licensee's previous violations.

(i) The length of a suspension may not be based on:

(1) the volume of alcoholic beverages sold;

(2) the receipts of the business;

(3) the taxes paid; or

(4) the financial condition of the permittee or licensee.

(j) The commission shall adopt rules allowing a historical reenactment on the premises of a license holder. Rules adopted under this subsection must prohibit the use of live ammunition in a historical reenactment.

(k) A hearing under Subsection (a) must be concluded not later than the 60th day after the date notice is provided under that subsection. The provisions of this subsection may not be waived by the license holder or the commission. This subsection applies only to a hearing in connection with a retail dealer's on-premise license, other than a license held with a food and beverage certificate, for premises located in a county with a population of 1.4 million or more.

(l) Section 11.61(b-1) applies to a retail dealer's on-premise license, other than a license held with a food and beverage certificate, for premises located in a county with a population of 1.4 million or more.

Sec. 61.711. RETAIL DEALER: CONVICTION OF OFFENSE RELATING TO DISCRIMINATION. The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found after notice and hearing that:

(1) the licensee has been finally convicted of any offense under a state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights or the discrimination against an individual on the basis of the individual's race, color, creed, or national origin; and

(2) the offense was committed on the licensed premises or in connection with the operation of the licensee's business.

Sec. 61.712. GROUNDS FOR CANCELLATION OR SUSPENSION: SALES TAX. The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a license if the commission or administrator finds that the licensee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the license; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.

Sec. 61.72. SUSPENSION OR CANCELLATION: RETAILER: PREMISES. Except for a violation of the credit or cash law, a penalty of suspension or cancellation of the license of a retail dealer shall be assessed against the license for the premises where the offense was committed.

Sec. 61.721. CANCELLATION OF PERMIT OR LICENSE IN CERTAIN MUNICIPALITIES. The commission or administrator may cancel an original or a renewal wine and beer retailer's permit or retail dealer's on-premise license and may refuse to issue any new alcoholic beverage permit or license for the same premises for one year after the date of cancellation if:

(1) the chief of police of the city or the sheriff of the county in which the premises are located has submitted a sworn statement to the commission stating specific allegations that the place or manner in which the permittee or licensee conducts its business endangers the general welfare, health, peace, morals, or safety of the community and further stating that there is a reasonable likelihood that such conduct would continue at the same location under another licensee or permittee; and

(2) the commission or administrator finds, after notice and hearing within the county where the premises are located, that the place or manner in which the permittee or licensee conducts its business does in fact endanger the general welfare, health, peace, morals, or safety of the community and that there is a reasonable likelihood that such conduct would continue at the same location under another licensee or permittee.

Sec. 61.73. RETAIL DEALER: CREDIT PURCHASE OR DISHONORED CHECK. (a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee purchased beer or the containers or original packages in which it is contained or packaged except by cash payment to the seller on or before delivery. No holder of either type of license may use a maneuver, device, subterfuge, or shift by which credit is accepted, including payment or attempted payment by a postdated

check or draft. Credit for the return of unbroken or undamaged containers or original packages previously paid for by the purchaser may be accepted as cash by the seller in an amount not more than the amount originally paid for them by the purchaser.

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it found, after notice and hearing, that the licensee gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.

Sec. 61.74. GROUNDS FOR CANCELLATION OR SUSPENSION: DISTRIBUTOR. (a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal general, local, or branch distributor's license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) violated Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule or regulation promulgated under Section 5.40 of this code;

(5) failed to comply with a requirement of the commission relating to the keeping of records or making of reports;

(6) failed to pay any tax due the state on any beer he sold, stored, or transported;

(7) refused to permit or interfered with an inspection of his licensed premises, vehicles, books, or records by an authorized representative of the commission;

(8) consummated a sale of beer outside the county or counties in which he was authorized to sell beer by his license;

(9) purchased, sold, offered for sale, distributed, or delivered beer while his license was under suspension;

(10) permitted the use of his license in the operation of a business conducted for the benefit of a person not authorized by law to have an interest in the business;

(11) made a false or misleading representation or statement in his original application or a renewal application;

(12) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(13) misrepresented any beer sold by him to a retailer or to the public;

(14) with criminal negligence sold or delivered beer to a minor; or

(15) purchased, possessed, stored, sold, or offered for sale beer in an original package bearing a brand or trade name of a manufacturer other than the brand or trade name of the manufacturer shown on the container.

(b) Each ground specified in Subsection (a) of this section also applies to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. The grounds specified in Subdivisions (7)-(9) and (13)-(15) also apply to an agent, servant, or employee of the licensee.

Sec. 61.75. SUSPENSION OF MANUFACTURER'S LICENSE. If a manufacturer violates a provision of this code or a rule of the commission, the commission or administrator may order the manufacturer to cease and desist from the violation and may suspend its license, after notice and hearing, until the licensee obeys the order.

Sec. 61.76. SUSPENSION INSTEAD OF CANCELLATION. When a cause for the cancellation of a license is prescribed by this code, the commission or administrator has the discretionary authority to suspend the license for not more than 60 days rather than to cancel the license.

Sec. 61.761. ALTERNATIVES TO SUSPENSION, CANCELLATION. Section 11.64 of this code relates to alternatives to the suspension or cancellation of a license.

Sec. 61.77. CERTAIN ACTS ALSO VIOLATIONS OF CODE. Any act of omission or commission which is a ground for cancellation or suspension of a license under Section 61.71, 61.74, or 61.75 of this code is also a violation of this code, punishable as provided in Section 1.05 of this code, except that the penalty for making a false statement in an application for a license or in a statement, report, or other instrument to be filed with the commission, which is required to be sworn, is provided in Section 101.69 of this code.

Sec. 61.78. VIOLATOR NOT EXCUSED BY CANCELLATION OR SUSPENSION. The cancellation or suspension of a license does not excuse the violator from the penalties provided in this code.

Sec. 61.79. NOTICE OF HEARING: REFUSAL, CANCELLATION, OR SUSPENSION OF LICENSE. Section 11.63 of this code relates to notice of a hearing for the refusal, cancellation, or suspension of a license.

Sec. 61.80. HEARING FOR CANCELLATION OR SUSPENSION OF LICENSE. The commission or administrator, on the motion of either, may set a date for a hearing to determine if a license should be cancelled or suspended. The commission or administrator shall set a hearing on the petition of the mayor or chief of police of the city or town in which the licensed premises are located or of the county judge, sheriff, or county attorney of the county in which the licensed premises are located. The commission or administrator shall notify the licensee of the hearing and of his right to appear and show cause why his license should not be cancelled or suspended.

Sec. 61.81. APPEAL FROM CANCELLATION, SUSPENSION, OR REFUSAL OF LICENSE. Section 11.67 of this code applies to an appeal from a decision or order of the commission or administrator refusing, cancelling, or suspending a license.

Sec. 61.82. MAY NOT RESTRAIN SUSPENSION ORDER. No suit of any nature may be maintained in a court of this state to restrain the commission or administrator or any other officer from enforcing an order of suspension issued by the commission or administrator.

Sec. 61.83. CANCELLATION OR SUSPENSION: WHEN EFFECTIVE. The manner in which the suspension or cancellation of a license takes effect is governed by Section 11.65 of this code.

Sec. 61.84. ACTIVITIES PROHIBITED DURING CANCELLATION OR SUSPENSION. (a) No person whose license is cancelled may sell or offer for sale beer for a period of one year immediately following the cancellation, unless the order of cancellation is superseded pending trial or unless he prevails in a final judgment rendered on an appeal prosecuted in accordance with this code.

(b) No person may sell or offer for sale an alcoholic beverage which he was authorized to sell under a license after the licensee has been suspended. If it is established to the satisfaction of the commission or administrator at a hearing that an alcoholic beverage was sold on or from a licensed premise during a period of suspension, the commission or administrator may cancel the license.

Sec. 61.85. DISPOSAL OF STOCK ON TERMINATION OF LICENSE. (a) A person whose license is cancelled or forfeited may, within 30 days of the cancellation or forfeiture, make a bulk sale or disposal of any stock of beer on hand at the time of the cancellation or forfeiture.

(b) The authority of the commission to promulgate rules relating to the disposal of beverages in bulk on the suspension or cancellation of a license or on the death, insolvency, or bankruptcy of a licensee is covered by Section 11.69 of this code.

Sec. 61.86. DISCIPLINE FOR ACTIONS OF AGENT. The commission or administrator may suspend or revoke the license of a person who is the employer of or represented by the holder of an agent's beer license as described by Section 73.01 or otherwise discipline the person based on an act or omission of the holder of the agent's beer license only if an individual employed by the person in a supervisory position:

(1) was directly involved in the act or omission of the holder of the agent's beer license;

(2) had notice or knowledge of the act or omission; or

(3) failed to take reasonable steps to prevent the act or omission.

Sec. 61.87. AFFIRMATION OF COMPLIANCE. A person who holds a license under Chapter 64, 65, or 66 may not be subject to an administrative sanction for selling or delivering an alcoholic beverage to a retailer not authorized to purchase and receive the alcoholic beverage if the license holder:

(1) reasonably believes that the retailer is authorized to purchase and receive that type of alcoholic beverage; and

(2) obtains from the retailer at the time of delivery a written affirmation, which may be printed or stamped on a sales invoice evidencing the sale or delivery of alcoholic beverages by the license holder, that the retailer is authorized to purchase and receive the type of alcoholic beverage sold and delivered by the license holder.

CHAPTER 62. MANUFACTURER'S LICENSE (BA)

Sec. 62.01. AUTHORIZED ACTIVITIES. (a) The holder of a manufacturer's license may:

(1) manufacture or brew beer and distribute and sell it in this state to the holders of general, local, and branch distributor's licenses and to qualified persons outside the state;

(2) dispense beer for consumption on the premises;

(3) bottle and can beer and pack it into containers for resale in this state, regardless of whether the beer is manufactured or brewed in this state or in another state and imported into Texas; [~~and~~]

(4) conduct samplings of beer, including tastings, at a retailer's premises; and

(5) enter into an alternating brewery proprietorship or contract brewing arrangement as provided by Section 62.14.

(b) An agent or employee of the holder of a manufacturer's license may open, touch, or pour beer, make a presentation, or answer questions at a sampling event.

Sec. 62.02. FEE. (a) Each person who establishes, operates, or maintains one or more licensed manufacturing establishments in this state under the same general management or ownership shall pay an annual state fee as follows:

(1) the fee for the first establishment is $750;

(2) the fee for the second establishment is $1,500;

(3) the fee for the third, fourth, and fifth establishments is $4,275 for each establishment; and

(4) the fee for each establishment in excess of five is $8,400.

(b) For the purposes of this section, two or more establishments are under the same general management or ownership if:

(1) they bottle the same brand of beer or beer brewed by the same manufacturer; or

(2) the persons (regardless of domicile) who establish, operate, or maintain the establishments are controlled or directed by one management or by an association of ultimate management.

Sec. 62.03. STATEMENT OF INTENTION. (a) Except as provided by Section 62.14, each applicant for a manufacturer's license shall file with an application a sworn statement that the applicant will be engaged in the business of brewing and packaging beer in this state in quantities sufficient to make the applicant's operation a bona fide brewing manufacturer within three years of the issuance of the original license. If the applicant is a corporation, the statement must be signed by one of its principal officers. The commission, administrator, or county judge may not approve an application unless it is accompanied by the required sworn statement.

(b) This section does not apply to the holder of a manufacturer's license which was in effect on January 1, 1953.

Sec. 62.04. RENEWAL OF LICENSE DURING PRELIMINARY STAGES OF OPERATION. (a) Renewal of a manufacturer's license may not be denied during the two-year period following the issuance of the original license on the ground that the licensee has not brewed and packaged

beer in this state if the licensee is engaged in good faith in constructing a brewing plant on the licensed premises or is engaged in one of the following preparatory stages of construction:

(1) preliminary engineering;

(2) preparing drawings and specifications;

(3) conducting engineering, architectural, or equipment studies; or

(4) preparing for the taking of bids from contractors.

(b) During the three-year period following the issuance of a manufacturer's license, as long as the licensee is engaged in construction or in a preliminary stage of construction enumerated in Subsection (a) of this section, the commission shall issue each renewal license to take effect immediately on the expiration of the expiring license and shall not require the licensee to make an original application.

(c) After two years and 11 months has expired following the issuance of an original manufacturer's license, the commission shall not issue a renewal license if it finds that the licensee has not complied with his sworn statement filed with his original application or that he has not begun construction of a plant or initiated any of the preliminary stages of construction enumerated in Subsection (a) unless the commission also finds that the applicant has been prevented from doing so by causes beyond his reasonable control. If the commission finds that the licensee has been prevented from complying by causes beyond his reasonable control it may grant one additional renewal for the licensee to comply with the terms of his sworn statement. Otherwise, the commission shall deny the renewal application and may not grant a subsequent original application by the licensee for a period of two years following the date of the denial.

(d) This section does not apply to the holder of a license that was in effect on January 1, 1953.

Sec. 62.05. RECORDS. (a) The holder of a manufacturer's license shall make and keep a record of each day's production or receipt of beer and of every sale of beer, including the name of each purchaser. Each transaction shall be recorded on the day it occurs. The licensee shall make and keep any other records that the commission or administrator requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least two years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code.

Sec. 62.06. ISSUANCE OF BREWER'S PERMIT. A holder of a manufacturer's license is entitled to be issued an original or renewal brewer's permit for the same location on application to the commission and payment of the required fee.

Sec. 62.07. IMPORTATION OF BEER: CONTAINERS, USE OF TANK CARS. The holder of a manufacturer's license may import beer into this state in barrels or other containers in accordance with the provisions of this code. No person may ship beer into the state in tank cars.

Sec. 62.08. WAREHOUSES; DELIVERY TRUCKS. (a) The holder of a manufacturer's or distributor's license may maintain or engage necessary warehouses for storage purposes in areas where the sale of beer is lawful and may make deliveries from the warehouses without obtaining licenses for them. The licensee may not import beer from outside the state directly or indirectly to an unlicensed warehouse.

(b) A warehouse or railway car in which orders for the sale of beer are taken or money from the sale of beer is collected is a separate place of business for which a license is required.

(c) A truck operated by a licensed distributor for the sale and delivery of beer to a licensed retail dealer at the dealer's place of business is not a separate place of business for which a license is required.

(d) The commission shall promulgate rules governing the transportation of beer, the sale of which is to be consummated at a licensed retailer's place of business.

Sec. 62.09. BEER FOR EXPORT. Regardless of any other provision of this code, a holder of a manufacturer's license may brew and package malt beverages or import them from outside the state, for shipment out of the state, even though the alcohol content, containers, packages, or labels make the

beverages illegal to sell within the state. The licensee may export the beverages out of state or deliver them at his premises for shipment out of state without being liable for any state tax on beer, ale, or malt liquor sold for resale in the state.

Sec. 62.11. CONTINUANCE OF OPERATION AFTER LOCAL OPTION ELECTION. The right of a manufacturer's licensee to continue operation after a prohibitory local option election is covered by Section 251.75 of this code.

~~**Sec. 62.12. SALES BY CERTAIN MANUFACTURERS.** (a) A manufacturer's licensee whose annual production of beer in this state does not exceed 75,000 barrels may sell beer produced under the license to those permittees, licensees, and persons to whom a general distributor's licensee may sell beer under Section 64.01(2) of this code. With regard to such a sale, the manufacturer has the same authority and is subject to the same requirements as apply to a sale made by a general distributor's licensee.~~

~~(b) The authority granted by this section is additional to that granted by Section 62.01 of this code.~~

NOTE: Section 62.12 repealed by Senate Bill 517, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 62.122. SALES BY CERTAIN MANUFACTURERS TO CONSUMERS. (a) A manufacturer's licensee whose annual production of beer together with the annual production of ale by the holder of a brewer's permit at the same premises does not exceed 225,000 barrels may sell beer produced on the manufacturer's premises under the license to ultimate consumers on the manufacturer's premises for responsible consumption on the manufacturer's premises.

(b) The total combined sales of beer to ultimate consumers under this section, together with the sales of ale to ultimate consumers by the holder of a brewer's permit under Section 12.052 at the same premises, may not exceed 5,000 barrels annually.

Sec. 62.13. LICENSED WAREHOUSE FOR IMPORTATION OF BEER. On application and payment of a fee to be set by the commission, the holder of a manufacturer's license may be issued a license for a warehouse located in an area where the sale of beer is lawful and may import beer from outside the state for delivery to the licensed warehouse for sale to beer distributors or for removal to other warehouses of the manufacturer. The manufacturer shall make and keep a record of the receipt, sale, and other movement of beer received at the licensed warehouse and any other records that the commission or administrator requires. This section applies only to a holder of a manufacturer's license who, on January 1, 1993, operated under Sections 62.12 and 203.08 of this code.

Sec. 62.14. USE OF FACILITIES. (a) The holder of [~~An entity or successor to an entity that on May 1, 2005, held~~] a manufacturer's or nonresident manufacturer's license [~~or whose brand was legally sold in this state~~] may contract with the holder of a manufacturer's license:

(1) to provide manufacturing services; or

(2) for the use of the license holder's manufacturing facilities under an alternating brewery proprietorship if each party to the proprietorship:

(A) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(B) if applicable, has posted with the commission a bond in an amount determined by the commission under Subsection (d) or (e) [~~or to provide manufacturing services~~].

(b) An entity [~~or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state~~] is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(b-1) Each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must hold a license at the location where manufacturing services are conducted under the arrangement.

(c) This section does not authorize a person acting as an agent for a manufacturer located outside of this state to contract with the holder of a manufacturer's license to manufacture beer on the person's behalf. A contract described by this subsection may only be entered into by the holder of a manufacturer's license and another person holding a license under this code.

(d) Subject to Subsection (e), the commission by rule may require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission not to exceed $200,000.

(e) An entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must post with the commission a bond in an amount determined by the commission of not less than $30,000 if the entity does not own a fee interest in a manufacturing facility.

CHAPTER 62A. MANUFACTURER'S SELF-DISTRIBUTION LICENSE (DB)

Sec. 62A.01. ELIGIBILITY FOR LICENSE. A manufacturer's self-distribution license may be issued only to the holder of a manufacturer's license under Chapter 62 or the holder of a nonresident manufacturer's license under Chapter 63.

Sec. 62A.02. AUTHORIZED ACTIVITIES. (a) A holder of a manufacturer's self-distribution license whose annual production of beer under the manufacturer's or nonresident manufacturer's license, together with the annual production of ale by the holder of a brewer's or nonresident brewer's permit at the same premises, does not exceed 125,000 barrels may sell beer produced under the manufacturer's or nonresident manufacturer's license to those persons to whom the holder of a general distributor's license may sell beer under Section 64.01(a)(2).

(b) The total combined sales of beer under this section, together with the sales of ale by the holder of a brewer's self-distribution permit under Section 12A.02 at the same premises, may not exceed 40,000 barrels annually.

(c) With regard to a sale under this section, the holder of a manufacturer's self-distribution license has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general distributor's license.

(d) Beer sold under this section may be shipped only from a manufacturing facility in this state.

Sec. 62A.03. FEE. The annual state fee for a manufacturer's self-distribution license is $250.

Sec. 62A.04. REPORT OF SALES TO RETAILERS. (a) Not later than the 15th day of each month, the holder of a manufacturer's self-distribution license shall file a report with the commission that contains information relating to the sales made by the license holder to a retailer during the preceding calendar month.

(b) The commission shall by rule determine the information that is required to be reported under this section and the manner in which the report must be submitted to the commission. The commission may require the report to contain the same information reported to the comptroller under Section 151.462, Tax Code.

CHAPTER 63. NONRESIDENT MANUFACTURER'S LICENSE (BS)

Sec. 63.01. AUTHORIZED ACTIVITIES. The holder of a nonresident manufacturer's license may transport beer into Texas only to holders of importer's licenses. The nonresident manufacturer's licensee may transport the beer in carriers or vehicles operated by holders of carrier's permits or in motor vehicles owned or leased by the nonresident manufacturer. The beer must be shipped in barrels or other containers in accordance with the provisions of this code and may not be shipped into the state in tank cars.

Sec. 63.02. FEE. The annual state fee for a nonresident manufacturer's license is $750. No county or city is entitled to a fee for the issuance of the license.

Sec. 63.03. LIABILITY FOR TAXES: BOND. The holder of a nonresident manufacturer's license that transports beer into Texas in a motor vehicle owned or leased by him is not primarily responsible for the payment of the taxes on the beer, which remains the responsibility of the holder of the importer's license. However, the nonresident manufacturer shall furnish the commission with a bond in an amount which, in the commission's judgment, will protect the revenue of the state from the tax due on the beer over any six-week period.

Sec. 63.04. APPLICATION OF CODE PROVISIONS AND RULES. A holder of a nonresident manufacturer's license is subject to all applicable provisions of this code and all applicable rules of the commission which apply to holders of manufacturer's licenses, including rules relating to the quality, purity, and identity of beer and to protecting the public health. The commission may suspend or cancel a nonresident manufacturer's license and apply penalties in the same manner as it does with respect to a manufacturer's license.

Sec. 63.05. USE OF FACILITIES. (a) The holder of [~~An entity or successor to an entity that on May 1, 2005, held~~] a manufacturer's or nonresident manufacturer's license [~~or whose brand was legally sold in this state~~] may contract with the holder of a nonresident manufacturer's license:

(1) to provide manufacturing services; or

(2) for the use of the license holder's manufacturing facilities under an alternating brewery proprietorship if each party to the proprietorship:

(A) has filed the appropriate Brewer's Notice and Brewer's Bond as required by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury; and

(B) if applicable, has posted with the commission a bond in an amount determined by the commission under Subsection (d) or (e) [~~or to provide manufacturing services~~].

(b) An entity [~~or successor to an entity that on May 1, 2005, held a manufacturer's or nonresident manufacturer's license or whose brand was legally sold in this state~~] is not required to own its manufacturing facilities if the entity operates under an alternating brewery proprietorship as provided by Subsection (a).

(b-1) Each entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must hold a license at the location where manufacturing services are conducted under the arrangement.

(c) This section does not authorize a person acting as an agent for a manufacturer located outside of this state to contract with the holder of a nonresident manufacturer's license to manufacture beer on the person's behalf. A contract described by this subsection may only be entered into by the holder of a nonresident manufacturer's license and another person holding a license under this code.

(d) Subject to Subsection (e), the commission by rule may require an entity that is a party to an alternating brewery proprietorship or contract brewing arrangement to post with the commission a bond in an amount determined by the commission not to exceed $200,000.

(e) An entity that is a party to an alternating brewery proprietorship or contract brewing arrangement must post with the commission a bond in an amount determined by the commission of not less than $30,000 if the entity does not own a fee interest in a manufacturing facility.

CHAPTER 64. GENERAL DISTRIBUTOR'S LICENSE (BB)

Sec. 64.01. AUTHORIZED ACTIVITIES. (a) The holder of a general distributor's license may:

(1) receive beer in unbroken original packages from manufacturers and brewpubs and from general, local, or branch distributors;

(2) distribute or sell beer in the unbroken original packages in which it is received to general, branch, or local distributors, to local distributor permittees, to permittees or licensees authorized to sell to ultimate consumers, to private club registration permittees, to authorized outlets located on any installation of the national military establishment, or to qualified persons for shipment and consumption outside the state; and

(3) serve free beer for consumption on the licensed premises.

(b) All sales made under the authority of this section except sales to general, local, or branch distributor's licensees must be made in accordance with Sections 61.73 and 102.31 of this code.

Sec. 64.02. FEE. The annual state fee for a general distributor's license is $300.

Sec. 64.03. SALE OF BEER TO PRIVATE CLUBS. The holder of a general distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

Sec. 64.04. RECORDS. (a) Each holder of a general, local or branch distributor's license shall make and keep a daily record of every receipt of beer and of every sale of beer, including the name of each purchaser. Each transaction shall be recorded on the day it occurs. The licensee shall make and keep any other records that the commission or administrator requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least two years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code.

Sec. 64.05. PERSONS INELIGIBLE FOR LICENSE. A general distributor's license may not be issued to a person who is the holder of a package store permit or a wine only package store permit.

Sec. 64.06. WAREHOUSES; DELIVERY TRUCKS. Section 62.08 of this code applies to the use of warehouses and delivery trucks by general distributor's licensees.

Sec. 64.07. MAY SHARE PREMISES. (a) Any number of general, local, and branch distributors may use the same delivery vehicles, premises, location, or place of business as licensed premises if the beer owned and stored by each of the distributors is segregated.

(b) If delivery vehicles are shared by any number of distributors who also hold any class of wholesaler's permits, liquor or beer may be transported. The provisions of Section 42.03 of this code do not apply and no distributor or wholesaler shall be required to obtain the certificate or permit described by that section to share a delivery vehicle for the transportation of liquor or beer.

(c) The provisions of Subsections (a) and (b) of this section that relate to shared delivery vehicles apply only to those general, local, or branch distributors who hold a territorial designation from a manufacturer under Section 102.51 of this code.

Sec. 64.08. BEER FOR USE IN FOOD PRODUCTS INDUSTRY. (a) The holder of a general distributor's license may sell beer to the holder of an industrial permit for use as an ingredient in the manufacturing and processing of food products.

(b) The beer must be sold in containers of not less than one-half barrel. The sale is subject to the requirements of Section 102.31 of this code. The seller shall keep records of shipments and sales of beer in a manner prescribed by the commission or administrator.

(c) The industrial permittee may not resell beer purchased under this section, divert the beer to use for beverage purposes, possess the beer with intent that it be used for beverage purposes, or possess the beer under circumstances from which it may reasonably be deduced that the beer is to be used for beverage purposes.

(d) Taxes imposed by this code do not apply to beer sold under this section.

Sec. 64.09. BEER FOR EXPORT. (a) In this section "beer for export" means beer a distributor holds for export to another state in which the distributor has been assigned a territory for the distribution and sale of the beer. The term includes beer that is illegal to sell in this state because of alcohol content, containers, packages, or labels.

(b) The holder of a general distributor's license who receives beer for export from the holder of a manufacturer's or nonresident manufacturer's license may:

(1) store the beer for export at the distributor's premises;

(2) transport the beer for export outside the state in the distributor's own vehicles; or

(3) deliver the beer for export to a common carrier for export and delivery outside the state.

(c) The holder of a general distributor's license is not liable for any state tax on the beer for export.

(d) Section 101.67 does not apply to beer for export.

CHAPTER 65. LOCAL DISTRIBUTOR'S LICENSE (BD)

Sec. 65.01. AUTHORIZED ACTIVITIES. (a) The holder of a local distributor's license may:

(1) receive beer in unbroken original packages from manufacturers and from general, branch, or local distributors;

(2) sell and distribute beer in the unbroken original packages in which it is received:

(A) to the following, if located in the county of the licensee's residence: local distributor permittees, permittees or licensees authorized to sell to ultimate consumers, private club registration permittees, authorized outlets located on any installation of the national military establishment, or qualified persons for shipment and consumption outside of the state; or

(B) to other licensed distributors in the state; and

(3) serve free beer for consumption on the licensed premises.

(b) All sales made under the authority of this section except sales to general, local, or branch distributor's licensees must be made in accordance with Sections 61.73 and 102.31 of this code.

Sec. 65.02. FEE. The annual state fee for a local distributor's license is $75.

Sec. 65.03. SALE OF BEER TO PRIVATE CLUBS. The holder of a local distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

Sec. 65.04. RECORDS. Section 64.04 of this code applies to recordkeeping by local distributor's licensees.

Sec. 65.05. PERSONS INELIGIBLE FOR LICENSE. A local distributor's license may not be issued to any person who is the holder of a package store permit or a wine only package store permit.

Sec. 65.06. WAREHOUSES; DELIVERY TRUCKS. Section 62.08 of this code applies to the use of warehouses and delivery trucks by local distributor's licensees.

Sec. 65.07. MAY SHARE PREMISES. The sharing of premises by distributors is covered by Section 64.07 of this code.

Sec. 65.08. BEER FOR EXPORT. (a) In this section "beer for export" means beer a distributor holds for export to another state in which the distributor has been assigned a territory for the distribution and sale of the beer. The term includes beer that is illegal to sell in this state because of alcohol content, containers, packages, or labels.

(b) The holder of a local distributor's license who receives beer for export from the holder of a manufacturer's or nonresident manufacturer's license may:

(1) store the beer for export at the distributor's premises;

(2) transport the beer for export outside the state in the distributor's own vehicles; or

(3) deliver the beer for export to a common carrier for export and delivery outside the state.

(c) The holder of a local distributor's license is not liable for any state tax on the beer for export.

(d) Section 101.67 does not apply to beer for export.

CHAPTER 66. BRANCH DISTRIBUTOR'S LICENSE (BC)

Sec. 66.01. AUTHORIZED ACTIVITIES. The holder of a branch distributor's license may engage in the same activities as a holder of a general distributor's license.

Sec. 66.02. FEE. The annual state fee for a branch distributor's license is $75 per year or fraction of a year.

Sec. 66.03. ISSUANCE OF LICENSE. (a) Except as provided in Subsection (b) of this section, a branch distributor's license may be issued only to the holder of a general distributor's license who first has obtained the primary license in the county of his residence or domicile. The branch distributor's license may be issued for premises in any county where the sale of beer is legal.

(b) A general distributor's licensee whose primary license was voided by a local option election under prior law, who took advantage of the right then existing to obtain a primary license in another county where he held a branch distributor's license without qualifying as a resident or domiciliary of that county, is not prevented from continuing to renew the primary license or from holding one or more branch licenses by the fact that the primary license is not in the county of his residence or domicile.

Sec. 66.04. PERSONS INELIGIBLE FOR LICENSE. A branch distributor's license may not be issued to a person who holds a package store permit or a wine only package store permit, or to a person who does not meet the qualifications to be issued an original general distributor's license.

Sec. 66.05. EXPIRATION OF LICENSE. A branch distributor's license expires at the same time as the holder's primary license.

Sec. 66.06. RENEWAL OF LICENSE. Application for renewal of a branch distributor's license may be made concurrently with the filing of the application for the renewal of the holder's primary license.

Sec. 66.07. SALE OF BEER TO PRIVATE CLUBS. The holder of a branch distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

Sec. 66.08. RECORDS. (a) Section 64.04 of this code applies to recordkeeping by branch distributor's licensees.

(b) The holder of a branch distributor's license may apply to the administrator for permission to maintain required records at the premises of the holder of the general distributor's license for that branch distributor licensee. If, in the judgment of the administrator, the licensee is deemed qualified, the administrator in writing may grant the application. If the administrator denies the application, he shall do so in writing and must base his denial on one of the grounds specified in Section 61.74 of this code or any other valid reason.

(c) In making a determination as to the qualifications of the holder of a branch distributor's license to maintain required records at another premises, the administrator shall consider the distributor's past record of compliance with the provisions of this code and the distributor's history of filing timely and correct reports to the commission.

Sec. 66.09. WAREHOUSES; DELIVERY TRUCKS. Section 62.08 of this code applies to the use of warehouses and delivery trucks by branch distributor's licensees.

Sec. 66.10. MAY SHARE PREMISES. The sharing of premises by distributors is covered by Section 64.07 of this code.

Sec. 66.11. BEER FOR EXPORT. (a) In this section "beer for export" means beer a distributor holds for export to another state in which the distributor has been assigned a territory for the distribution and sale of the beer. The term includes beer that is illegal to sell in this state because of alcohol content, containers, packages, or labels.

(b) The holder of a branch distributor's license who receives beer for export from the holder of a manufacturer's or nonresident manufacturer's license may:

(1) store the beer for export at the distributor's premises;

(2) transport the beer for export outside the state in the distributor's own vehicles; or

(3) deliver the beer for export to a common carrier for export and delivery outside the state.

(c) The holder of a branch distributor's license is not liable for any state tax on the beer for export.

(d) Section 101.67 does not apply to beer for export.

CHAPTER 67. IMPORTER'S LICENSE (BI)

Sec. 67.01. AUTHORIZED ACTIVITIES. A holder of an importer's license may import beer into this state only from the holder of a nonresident manufacturer's license. The beer may be transported by a railway carrier, a motor carrier registered under Chapter 643, Transportation Code, or by a common motor carrier operated under a certificate issued by the Interstate Commerce Commission. Each carrier must hold a carrier's permit issued under Chapter 41 of this code. All provisions of Chapter 41 relating to the transportation of liquor also apply to the transportation of beer. A carrier may not transport beer into the state unless it is consigned to an importer.

Sec. 67.02. FEE. The fee for an importer's license is $20 per year or fraction of a year.

Sec. 67.03. DEFINITION. As used in this subtitle, "importer" means a person who imports beer into the state in quantities in excess of 288 fluid ounces in any one day.

Sec. 67.04. ELIGIBILITY FOR LICENSE. An importer's license may be issued only to a holder of a manufacturer's or distributor's license.

Sec. 67.05. EXPIRATION OF LICENSE. An importer's license expires at the same time as the primary manufacturer's or distributor's license under which it is issued.

Sec. 67.06. APPLICATION FOR LICENSE. An application for an importer's license must contain all information required by the commission.

CHAPTER 68. IMPORTER'S CARRIER'S LICENSE (BJ)

Sec. 68.01. AUTHORIZED ACTIVITIES. An importer who holds an importer's carrier's license may import beer into this state in vehicles owned or leased in good faith by him.

Sec. 68.02. FEE. The fee for an importer's carrier's license is $20 per year or fraction of a year.

Sec. 68.03. ELIGIBILITY FOR LICENSE. An importer's carrier's license may be issued only to a holder of an importer's license.

Sec. 68.04. APPLICATION FOR LICENSE; DESCRIPTION OF VEHICLES. (a) An application for an importer's carrier's license must contain a description of the vehicles to be used and other information required by the commission.

(b) An importer may not import beer into the state in any vehicle not fully described in his application, except as permitted in Section 67.01 of this code.

Sec. 68.05. EXPIRATION OF LICENSE. An importer's carrier's license expires at the same time as the holder's primary importer's license.

Sec. 68.06. DESIGNATION OF VEHICLES. All vehicles used under an importer's carrier's license must have painted or printed on them the designation required by the commission.

CHAPTER 69. RETAIL DEALER'S ON-PREMISE LICENSE (BE)

Sec. 69.01. AUTHORIZED ACTIVITIES. The holder of a retail dealer's on-premise license may sell beer in or from any lawful container to the ultimate consumer for consumption on or off the premises where sold. The licensee may not sell beer for resale.

Sec. 69.02. FEE. (a) Except as provided in Subsection (b) and Section 69.03, the annual state fee for a retail dealer's on-premise license is $150.

(b) The annual state fee for a retail dealer's on-premise license in connection with an establishment located in a county with a population of 1.4 million or more is $750. The original application fee for a retail dealer's on-premise license in connection with an establishment located in a county with a population of 1.4 million or more is $1,000.

Sec. 69.03. ISSUANCE OF LICENSE FOR RAILWAY CARS. A retail dealer's on-premise license may be issued for a railway dining, buffet, or club car. Application for a license of this type shall be made directly to the commission, and the annual state fee is $30 for each car.

Sec. 69.04. HOTELS NOT DISQUALIFIED. The fact that a hotel holds a permit to sell distilled spirits in unbroken packages does not disqualify the hotel from also obtaining a license to sell beer for on-premises consumption.

Sec. 69.05. HEARINGS ON LICENSE APPLICATION: NOTICE AND ATTENDANCE.

(a) On receipt of an original application for a retail dealer's on-premise license, the county judge shall give notice of all hearings before him concerning the application to the commission, the sheriff, and the chief of police of the incorporated city in which, or nearest which, the premises for which the license is sought are located.

(b) The individual natural person applying for the license or, if the applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who will be primarily responsible for the management of the premises shall attend any hearing involving the application.

Sec. 69.06. DENIAL OF ORIGINAL APPLICATION. (a) The county judge shall deny an original application for a retail dealer's on-premise license if he finds that the applicant or the applicant's spouse, during the five years immediately preceding the application, was finally convicted of a felony or one of the following offenses:

(1) prostitution;

(2) a vagrancy offense involving moral turpitude;

(3) bookmaking;

(4) gambling or gaming;

(5) an offense involving controlled substances as defined in the Texas Controlled Substances Act or other dangerous drugs;

(6) a violation of this code resulting in the cancellation of a license or permit, or a fine of not less than $500;

(7) more than three violations of this code relating to minors;

(8) bootlegging; or

(9) an offense involving firearms or a deadly weapon.

(b) The county judge shall also deny an original application for a license if he finds that five years has not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(c) The commission shall refuse to issue a renewal of a retail dealer's on-premise license if it finds:

(1) that the applicant or the applicant's spouse has been finally convicted of a felony or one of the offenses listed in Subsection (a) of this section at any time during the five years immediately preceding the filing of the application for renewal; or

(2) that five years has not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony prosecution or prosecution for any of the offenses described in Subsection (a) of this section.

(d) In this section the word "applicant" includes the individual natural person holding or applying for the license or, of the holder or applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.

Sec. 69.09. ACQUISITION OF BEVERAGES FOR RESALE FROM OTHER LICENSEES PROHIBITED. No holder of a retail dealer's on-premise license may borrow or acquire from, exchange

with, or loan to any other holder of a retail dealer's on-premise license or holder of a retail dealer's off-premise license any alcoholic beverage for the purpose of resale.

Sec. 69.10. STORING OR POSSESSING BEER OFF PREMISES PROHIBITED. No holder of a retail dealer's on-premise license may own, possess, or store beer for the purpose of resale except on the licensed premises.

Sec. 69.11. EXCHANGE OR TRANSPORTATION OF BEER BETWEEN LICENSED PREMISES UNDER SAME OWNERSHIP. The owner of two or more licensed retail premises may not exchange or transport beer between them unless all of the conditions set out in Section 24.04 of this code are met, except that beer may be transferred between two licensed retail premises that are both covered by package store permits as provided in Section 22.08 of this code.

Sec. 69.12. POSSESSION OF CERTAIN BEVERAGES PROHIBITED. No retail dealer's on-premise licensee, nor the licensee's officer, agent, servant, or employee, may possess on the licensed premises an alcoholic beverage which is not authorized to be sold on the premises.

Sec. 69.13. BREACH OF PEACE: RETAIL ESTABLISHMENT. The commission or administrator may suspend or cancel the license of a retail beer dealer after giving the licensee notice and the opportunity to show compliance with all requirements of law for retention of the license if it finds that a breach of the peace has occurred on the licensed premises or on premises under the licensee's control and that the breach of the peace was not beyond the control of the licensee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

Sec. 69.14. SEATING AREA REQUIRED. A retail dealer's on-premise licensee must have an area designated on the premises for the permittee's customers to sit if they wish to consume beverages sold by the licensee on the premises.

Sec. 69.15. RESTRICTIONS ON LOCATION IN CERTAIN MUNICIPALITIES. (a) Section 11.52 of this code applies to the issuance of a retail dealer's on-premise license as if the license were a permit to which this section applies.

(b) Section 61.31(b) of this code does not apply to an application for a retail dealer's on-premise license.

Sec. 69.16. FOOD AND BEVERAGE CERTIFICATE. (a) A holder of a retail dealer's on-premise license may be issued a food and beverage certificate by the commission if food service is the primary business being operated on the premises by the permittee.

(b) An applicant or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees. The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service as the primary business on the premises for which a food and beverage certificate has been issued. The commission may exempt permittees who are concessionaires in public entertainment venues such as sports stadiums and convention centers from the requirement that food service be the primary business on the premises.

(c) The fee for a food and beverage certificate shall be set at a level sufficient to recover the cost of issuing the certificate and administering this section.

(d) A certificate issued under this section expires on the expiration of the primary retail dealer's on-premise license. A certificate may be canceled at any time if the commission finds that the holder of the certificate is not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 50 percent of the gross receipts of the premises. The commission may impose a fine not to exceed $5,000 on the holder of a food and beverage certificate not operating as a food service establishment and may, upon finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section, cancel the licensee's retail dealer's on-premise license.

(e) Section 61.13 does not apply to the holder of a food and beverage certificate.

Sec. 69.17. ISSUANCE OF LICENSE AUTHORIZED FOR CERTAIN AREAS. (a) Notwithstanding any other provision of this code, a license under this chapter may be issued for a

premises in an area in which the voters have approved the following alcoholic beverage ballot issues in a local option election:

(1) "The legal sale of beer and wine for off-premise consumption only."; and

(2) either:

(A) "The legal sale of mixed beverages."; or

(B) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(b) A premises that qualifies for a license under this chapter because it is located in an area that approved the ballot issue described by Subsection (a)(2)(B) may be issued a license under this chapter only if the premises is issued a food and beverage certificate.

NOTE: Section 69.17 applies to a permit or license issued on or after September 1, 2013, regardless of when the local option election approving the sale of mixed beverages was held. (House Bill 2818, 83rd Legislature, Regular Session, 2013)

CHAPTER 70. RETAIL DEALER'S ON-PREMISE LATE HOURS LICENSE (BL)

Sec. 70.01. AUTHORIZED ACTIVITIES. The holder of a retail dealer's on-premise late hours license may sell beer for consumption on the premises on Sunday between the hours of 1:00 a.m. and 2 a.m. and on any other day between the hours of 12 p.m. and 2 a.m. if the premises covered by the license are in an area where the sale of beer during the hours is authorized by this code.

Sec. 70.02. FEE. The annual state fee for a retail dealer's on-premise late hours license is $250.

Sec. 70.03. APPLICATION OF CERTAIN CODE PROVISIONS. All provisions of this code which apply to a retail dealer's on-premise license also apply to a retail dealer's on-premise late hours license.

Sec. 70.04. ISSUANCE OF LICENSE AUTHORIZED FOR CERTAIN AREAS. (a) Notwithstanding any other provision of this code, a license under this chapter may be issued for a premises in an area in which the voters have approved the following alcoholic beverage ballot issues in a local option election:

(1) "The legal sale of beer and wine for off-premise consumption only."; and

(2) either:

(A) "The legal sale of mixed beverages."; or

(B) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(b) A premises that qualifies for a license under this chapter because it is located in an area that approved the ballot issue described by Subsection (a)(2)(B) may be issued a license under this chapter only if the premises is issued a food and beverage certificate.

NOTE: Section 70.04 applies to a permit or license issued on or after September 1, 2013, regardless of when the local option election approving the sale of mixed beverages was held. (House Bill 2818, 83rd Legislature, Regular Session, 2013)

CHAPTER 71. RETAIL DEALER'S OFF-PREMISE LICENSE (BF)

Sec. 71.01. AUTHORIZED ACTIVITIES. The holder of a retail dealer's off-premise license may sell beer in lawful containers to consumers, but not for resale and not to be opened or consumed on or near the premises where sold.

Sec. 71.02. FEE. The annual state fee for a retail dealer's off-premise license is $60.

Sec. 71.03. AUTHORITY OF LICENSEE HOLDING PACKAGE STORE PERMIT OR WINE ONLY PACKAGE STORE PERMIT. (a) The holder of a retail dealer's off-premise license who also holds a package store permit may sell beer directly to consumers by the container, but not for resale and not to be opened or consumed on or near the premises where sold.

(b) The holder of a retail dealer's off-premise license who also holds a wine only package store permit may sell beer to consumers by the containers, but not for resale and not to be opened or consumed on or near the premises where sold.

(c) The sale of beer by a holder of a retail dealer's off-premise license who also holds a package store permit is subject to the same restrictions and penalties governing the sale of liquor by package stores with regard to:

(1) the hours of sale and delivery;
(2) blinds and barriers;
(3) employment of persons under the age of 18 or sales and deliveries to minors;
(4) sales and deliveries on Sunday; and
(5) advertising.

(d) The sale of beer by a holder of a retail dealer's off-premise license who also holds a wine only package store permit is subject to the same restrictions and penalties governing the sale of liquor by package stores with regard to:

(1) blinds and barriers;
(2) employment of persons under the age of 18 or sales and deliveries to minors;
(3) delivery to the licensee or permittee on Sunday; and
(4) advertising.

Sec. 71.04. POSSESSION OF CERTAIN BEVERAGES PROHIBITED. No retail dealer's off-premise licensee, nor his officer, may possess liquor containing alcohol in excess of 14 percent by volume on the licensed premises.

Sec. 71.05. ACQUISITION OF BEVERAGES FOR RESALE FROM OTHER LICENSEES PROHIBITED. No holder of a retail dealer's off-premise license may borrow or acquire from, exchange with, or loan to any other holder of a retail dealer's off-premise license or holder of a retail dealer's on-premise license any alcoholic beverage for the purpose of resale.

Sec. 71.06. STORING OR POSSESSING BEER OFF PREMISES PROHIBITED. No holder of a retail dealer's off-premise license may own, possess, or store beer for the purpose of resale except on the licensed premises.

Sec. 71.07. EXCHANGE OR TRANSPORTATION OF BEER BETWEEN LICENSED PREMISES UNDER SAME OWNERSHIP. Section 69.11 of this code relates to the exchange or transportation of beer between licensed premises by retail dealers.

Sec. 71.08. MITIGATING CIRCUMSTANCES: RETAIL DEALER'S OFF-PREMISE LICENSE. Section 11.64 of this code relates to mitigating circumstances with respect to cancellation or suspension of a retail dealer's off-premise license.

Sec. 71.09. BREACH OF PEACE: RETAIL ESTABLISHMENT. The application of sanctions for the occurrence of a breach of the peace at a retail beer establishment is covered by Section 69.13 of this code.

Sec. 71.10. WARNING SIGN REQUIRED. (a) Each holder of a retail dealer's off-premise license shall display in a prominent place on his premises a sign stating in letters at least two inches high: IT IS A CRIME (MISDEMEANOR) TO CONSUME LIQUOR OR BEER ON THESE PREMISES.

(b) A licensee who fails to comply with this section commits a misdemeanor punishable by a fine of not more than $25.

Sec. 71.11. BEER SAMPLING. (a) The holder of a retail dealer's off-premise license may conduct free product samplings of beer on the license holder's premises during regular business hours as provided by this section.

(b) An agent or employee of the holder of a retail dealer's off-premise license may open, touch, or pour beer, make a presentation, or answer questions at a sampling event.

(c) For the purposes of this code and any other law or ordinance:

(1) a retail dealer's off-premise license does not authorize the sale of alcoholic beverages for on-premise consumption; and

(2) none of the license holder's income may be considered to be income from the sale of alcoholic beverages for on-premise consumption.

(d) Any beer used in a sampling event under this section must be purchased from or provided by the retailer on whose premises the sampling event is held.

CHAPTER 72. TEMPORARY LICENSES (BH)

Sec. 72.01. AUTHORIZED ACTIVITIES. The holder of a temporary license may sell beer in the county where the license is issued to ultimate consumers in or from any lawful container for consumption on or off the premises where sold.

Sec. 72.02. FEE. The state fee for a temporary license is $30. No refund shall be allowed for the surrender or nonuse of a temporary license.

Sec. 72.03. DURATION OF LICENSE. A temporary license may be issued for a period of not more than four days.

Sec. 72.04. REQUIRED BASIC LICENSE OR PERMIT. A temporary license may be issued only to a holder of a retail dealer's on-premise license or a wine and beer retailer's permit.

Sec. 72.05. ISSUANCE AND USE OF LICENSE; RULES. (a) Temporary licenses shall be issued by the administrator or the commission or the commission's authorized representative. The commission shall adopt rules governing the issuance and use of temporary licenses.

(b) Licenses shall be issued only for the sale of beer at picnics, celebrations, or similar events.

(c) The administrator or commission may refuse to issue a license if there is reason to believe the issuance of the license would be detrimental to the public.

Sec. 72.06. CANCELLATION OR SUSPENSION OF PRIMARY LICENSE OR PERMIT. The primary license or permit under which a temporary license was issued may be cancelled or suspended for a violation of this code on the premises covered by the temporary license that would justify the cancellation or suspension of a license under Section 61.71 of this code.

CHAPTER 73. AGENT'S BEER LICENSE (BK)

Sec. 73.01. AUTHORIZED ACTIVITIES. Subject to the limitations imposed in Section 73.011 of this code or elsewhere in this code, the holder of an agent's beer license, acting as an employee or representative of a licensed manufacturer of beer located inside or outside the state or as an employee or representative of a licensed distributor, may:

(1) promote the sale of beer through methods such as solicitation, display, advertising, and personal contact with licensed retailers of beer and their agents, servants, and employees, and with consumers of beer; and

(2) sell beer and offer it for sale.

Sec. 73.011. LIMITATIONS ON AUTHORITY OF AGENT'S BEER LICENSEE. (a) A holder of an agent's beer license who is an employee or agent of a manufacturer's licensee or a nonresident manufacturer's licensee may not represent that the holder is the agent of or is acting on behalf of a licensed distributor. An agent may not engage in conduct that is prohibited by Section 102.75 of this code or other provisions of this code.

(b) A holder of an agent's beer license may not make a representation, solicitation, or offer that this code or the rules of the commission prohibits the agent's employer from offering, making, or fulfilling.

Sec. 73.02. FEE. (a) The annual state fee for an agent's beer license is $10.

(b) The commission may not refund any part of the fee for any reason.

(c) No manufacturer or distributor may pay the license fee for any person or reimburse any person for the payment of the fee.

Sec. 73.03. LICENSE REQUIRED. A person whose compensation is based mainly on the activities specified in Section 73.01 may not engage in those activities unless he holds an agent's beer license.

Sec. 73.04. QUALIFICATION FOR LICENSE. The commission shall not issue an agent's beer license to a person unless it is shown to the satisfaction of the commission that the applicant is employed or has good prospects for employment as agent or representative of a manufacturer or distributor.

Sec. 73.05. GRACE PERIOD. A person may engage in the activities specified in Section 73.01 for an initial grace period of five days during which he shall procure an agent's beer license from the commission.

Sec. 73.06. EMPLOYMENT OF UNLICENSED AGENT PROHIBITED. No manufacturer or distributor may use or be the beneficiary of the services of any person to carry on the activities specified in Section 73.01 if he does not hold an agent's beer license and is not covered by the grace period provided by Section 73.05 of this code.

Sec. 73.07. EMPLOYMENT OF AGENT WHOSE LICENSE HAS BEEN SUSPENDED OR CANCELLED. (a) No manufacturer or distributor may employ or continue to employ in any capacity a person whose agent's beer license has been suspended by the commission during the period of suspension.

(b) No manufacturer or distributor may employ or continue to employ in any capacity a person whose agent's beer license has been cancelled for cause by the commission within one year after the date of the cancellation.

Sec. 73.08. RULES. The commission may promulgate reasonable rules defining the qualifications and regulating the conduct of holders of agent's beer licenses.

Sec. 73.09. APPLICATION FOR LICENSE. (a) An application for an agent's beer license is filed with the commission or any designated employee of the commission. The application must be on a form prescribed by the commission and include all information required by the commission.

(b) The commission, administrator, or a designated employee of the commission shall act on applications, and the county judge has no authority over the issuance or approval of agent's beer licenses.

Sec. 73.10. RENEWAL OF LICENSE. An application for the renewal of an agent's beer license shall be made to the commission not more than 30 days before the license expires. The commission shall prescribe forms for that purpose and shall prescribe what information is required in the application.

Sec. 73.11. SUSPENSION OR CANCELLATION OF LICENSE. An agent's beer license may be suspended or cancelled by the commission for a violation of any rule or regulation of the commission or for any of the reasons a manufacturer's or distributor's license may be suspended or cancelled. The same procedure applicable to the suspension or cancellation of the manufacturer's or distributor's license shall be followed in the suspension or cancellation of an agent's beer license.

CHAPTER 74. BREWPUB LICENSE (BP)

Sec. 74.01. AUTHORIZED ACTIVITIES. (a) A holder of a brewpub license for a brewpub located in a wet area, as that term is described by Section 251.71 of this code, may:

(1) manufacture, brew, bottle, can, package, and label malt liquor, ale, and beer;

(2) sell or offer without charge, on the premises of the brewpub, to ultimate consumers for consumption on or off those premises, malt liquor, ale, or beer produced by the holder, in or from a lawful container, to the extent the sales or offers are allowed under the holder's other permits or licenses; and

(3) sell food on the premises of the holder's breweries.

(b) The holder of a brewpub license may establish, operate, or maintain one or more licensed brewpubs in this state under the same general management or ownership. The holder shall pay the fee assessed by the commission for each establishment. For the purposes of this subsection, two or more establishments are under the same general management or ownership if:

(1) the establishments bottle the same brand of malt liquor, beer, or ale or bottle malt liquor, beer, or ale brewed by the same manufacturer; or

(2) the person, regardless of domicile, who establishes, operates, or maintains the establishments is controlled or directed by one management or by an association of ultimate management.

(c) A holder of a brewpub license must also hold a wine and beer retailer's permit, a mixed beverage permit, or a retail dealer's on-premise license.

(d) The holder of a brewpub license may not hold or have an interest either directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or other person, in a manufacturer's or distributor's license or any other license or permit in the manufacturing or wholesaling levels of the alcoholic beverage industry regardless of the specific names given to permits or licenses in Title 3 of this code. The holder shall be considered a "retailer" for purposes of Section 102.01 of this code.

(e) A holder of a retail dealer's on-premise license who obtains a brewpub license may not manufacture, brew, bottle, can, package, label, sell, or offer without charge malt liquor or ale.

~~(f) A holder of a brewpub license may not sell an alcoholic beverage for resale.~~

(g) The holder of a brewpub license may deliver malt liquor, ale, or beer manufactured by the holder to a location other than the holder's premises for the purpose of submitting the malt liquor, ale, or beer for an evaluation at an organized malt liquor, ale, or beer tasting, competition, or review. At a tasting, competition, or review, a holder of a brewpub license may:

(1) dispense without charge malt liquor, ale, or beer manufactured by the holder to a person attending the event for consumption on the premises of the event; and

(2) discuss with a person attending the event the manufacturing and characteristics of the malt liquor, ale, or beer.

NOTE: Subsection (f), Section 74.01, repealed by Senate Bill 515, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 74.02. FEE. The annual state fee for a brewpub license is $500.

Sec. 74.03. PRODUCTION LIMIT. The total annual production of malt liquor, ale, and beer by a holder of a brewpub license may not exceed 10,000 [~~5,000~~] barrels for each licensed brewpub [~~established, operated, or maintained by the holder in this state~~].

Sec. 74.04. LICENSE APPLICATION, RENEWAL, AND MAINTENANCE; RECORDS; LICENSE ISSUANCE. All provisions of this code that apply to a brewpub licensee's wine and beer retailer's permit, mixed beverage permit, or retail dealer's on-premise license also apply to the brewpub license.

Sec. 74.05. STATEMENT OF INTENT. An applicant for a brewpub license shall file with the application a sworn statement that the applicant shall be engaged in the business of brewing and packaging malt liquor, ale, or beer in this state in quantities sufficient to operate a brewpub not later than six months after the date of issuance of the original license. If the applicant is a corporation, the statement must be signed by a principal corporate officer. The commission, administrator, or [~~A~~] county judge may not issue a brewpub license to an applicant who does not submit the required sworn statement with the application for a license.

Sec. 74.06. QUALITY STANDARDS. Manufacturing or brewing equipment used by a holder of a brewpub license, and process, labeling, and packaging conducted by a holder of a brewpub license, shall conform to standards and tax requirements imposed by this code and the commission's rules for the manufacture of beer and the brewing of ale and malt liquor and shall conform to any standards that may

be applied by the agency of the United States charged with supervising and inspecting the manufacture and brewing of alcoholic beverages.

Sec. 74.07. CONTAINER SIZE. In addition to any other container for beer, ale, or malt liquor authorized elsewhere in this code, a holder of a brewpub license may store or serve to consumers beer, ale, or malt liquor manufactured by the holder of the license at the premises of the brewpub license from any container having the capacity of one barrel or whole multiples of one barrel.

Sec. 74.08. SALES BY BREWPUB LICENSE HOLDERS TO RETAILERS. (a) In addition to the activities authorized by Section 74.01, the holder of a brewpub license who holds a wine and beer retailer's permit and who sells alcoholic beverages manufactured only on the brewpub's premises may:

(1) sell malt liquor or ale produced under the license to those retailers or qualified persons to whom the holder of a general class B wholesaler's permit may sell malt liquor or ale under Section 20.01; and

(2) sell beer produced under the license to:

(A) those retailers to whom the holder of a general distributor's license may sell beer under Section 64.01; or

(B) qualified persons to whom the holder of a general distributor's license may sell beer for shipment and consumption outside the state under Section 64.01.

(b) With regard to a sale under Subsection (a)(1), the holder of a brewpub license has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general class B wholesaler's permit.

(c) With regard to a sale under Subsection (a)(2), the holder of a brewpub license has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general distributor's license.

(d) The total amount of malt liquor, ale, and beer sold under this section to persons in this state may not exceed 1,000 barrels annually for each licensed brewpub location or 2,500 barrels annually for all brewpubs operated by the same licensee.

Sec. 74.09. SALES TO DISTRIBUTORS. (a) In addition to the activities authorized by Section 74.01, the holder of a brewpub license may sell beer produced under the license to the holder of a general, local, or branch distributor's license.

(b) The holder of a brewpub license who sells beer under Subsection (a) shall comply with the requirements of Section 102.51.

Sec. 74.10. SALES TO WHOLESALERS. (a) In addition to the activities authorized by Section 74.01, the holder of a brewpub license may sell ale and malt liquor to the holder of a local class B wholesaler's permit.

(b) The holder of a brewpub license who sells ale or malt liquor under Subsection (a) shall comply with the requirements of Section 102.81.

Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Not later than the 15th day of each month, the holder of a brewpub license shall file a report with the commission that contains information relating to the sales made by the brewpub to a retailer during the preceding calendar month.

(b) The commission shall by rule determine the information that is required to be reported under this section and the manner in which the report must be submitted to the commission. The commission may require the report to contain the same information reported to the comptroller under Section 151.462, Tax Code.

CHAPTER 75. STORAGE LICENSE (SL)

Sec. 75.01. AUTHORIZED ACTIVITIES. (a) The holder of a storage license who also holds a customs broker's license issued under 19 U.S.C. Section 1641(b) may import and store beer, ale, and malt liquor in a county with a population of 300,000 or less that borders the United Mexican States for:

(1) storage purposes only in a wet area, as that term is described by Section 251.71, from the holder of a nonresident manufacturer's license or nonresident brewer's permit whose manufacturing premises are located in the United Mexican States; and

(2) transfer to qualified persons located in the United States outside of this state.

(b) Only holders of a carrier permit may transport beer, ale, or malt liquor to or from the holder of a storage license. All provisions of Chapter 41 relating to the transportation of liquor also apply to transportation of beer, ale, or malt liquor under this chapter.

Sec. 75.02. RECORDS. (a) Each holder of a storage license shall make and keep a daily record of each receipt of beer, ale, or malt liquor. Each transaction shall be recorded on the day it occurs. The license holder shall make and keep any other records that the administrator or commission requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least four years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code.

Sec. 75.03. PREMISES. The holder of a storage license may not share the location or business with another holder of a license or permit issued under this code. Designation of a portion of a building, grounds, or appurtenances for exclusion under Section 11.49(b) is not available to the holder of a storage license.

Sec. 75.04. FEE. The annual fee for a storage license is $200.

Sec. 75.05. LICENSING. The licensing provisions of Chapter 61 apply to storage licenses. The commission or administrator may suspend for not more than 60 days or cancel an original or renewal storage license if the commission or administrator determines, after notice and hearing, that the license holder violated a provision of this code or a rule of the commission during the existence of the license or during the immediately preceding license period.

SUBTITLE C. PROVISIONS APPLICABLE TO PERMITS AND LICENSES

CHAPTER 81. COMMON NUISANCE

Sec. 81.001. DEFINITION. In this chapter, "common nuisance" means a common nuisance as defined by Section 125.001, Civil Practice and Remedies Code, or by Section 101.70(a) of this code.

Sec. 81.002. APPLICABILITY OF CHAPTER. This chapter applies only to a permit or license that authorizes the retail sale or service of alcoholic beverages for on-premises consumption of alcoholic beverages, other than a permit or license held with a food and beverage certificate.

Sec. 81.003. SUBMISSION OF INFORMATION BY CERTAIN OFFICIALS. For the purposes of Section 81.004 or 81.005, the district or county attorney of the county or the city attorney of the city in which the premises are located may provide information to the commission, administrator, or county judge, as appropriate, indicating that the holder of, or applicant for, a permit or license covering the premises has used or can reasonably be expected to use or allow others to use the premises in a manner that constitutes a common nuisance.

Sec. 81.004. APPLICATION FOR ORIGINAL OR RENEWAL PERMIT OR LICENSE. The commission, administrator, or county judge, as applicable, may refuse to issue an original or renewal permit or license, after notice and an opportunity for a hearing, if the commission, administrator, or county judge finds that, at any time during the 12 months preceding the permit or license application, a common nuisance existed on the premises for which the permit or license is sought, regardless of whether the acts constituting the common nuisance were engaged in by the applicant or whether the applicant controlled the premises at the time the common nuisance existed. The commission, administrator, or county judge, as applicable, may issue an original or renewal permit or license if, at the hearing, it is found that the applicant did not control the premises at the time the common nuisance existed and the applicant has taken reasonable measures to abate the common nuisance.

Sec. 81.005. CANCELLATION OR SUSPENSION OF PERMIT OR LICENSE. (a) The commission or administrator may suspend for not more than 60 days or cancel a permit or license if the commission or administrator finds, after notice and hearing, that the permit or license holder used or allowed others to use the permitted or licensed premises in a manner that constitutes a common nuisance.

(b) If the commission or administrator receives information from an official under Section 81.003, the commission or administrator shall consider the information and, if the commission or administrator finds the information sufficient to indicate that cancellation or suspension under Subsection (a) may be appropriate, provide notice and hold a hearing under that subsection to determine whether to suspend or cancel the permit or license.

(c) Notwithstanding Section 11.64, the commission or administrator may not give a permit or license holder the opportunity to pay a civil penalty rather than have the permit or license suspended.

Sec. 81.006. ORDER IMPOSING ADDITIONAL CONDITIONS ON PERMIT OR LICENSE HOLDER. (a) The commission, administrator, or county judge, as applicable, may, after notice and hearing under Section 81.004 or 81.005, issue an order imposing any condition on a permit or license holder that is reasonably necessary to abate a common nuisance on the premises.

(b) The commission or administrator may suspend for not more than 60 days or cancel the permit or license of a permit or license holder who violates an order issued under this section. The commission or administrator may offer the permit or license holder the opportunity to pay a civil penalty rather than have the permit or license suspended.

Sec. 81.007. TEMPORARY ORDER DURING PENDENCY OF PROCEEDING. (a) Before holding a hearing and making a determination under Section 81.004 or 81.005, the commission, administrator, or county judge, as applicable, may, if there is evidence showing a reasonable likelihood that a common nuisance exists on the premises for which the permit or license is held or sought, issue an order imposing any condition on the permit or license holder or the applicant for the permit or license that is reasonably necessary to abate a common nuisance on the premises. An order issued under this section is effective until:

(1) the expiration of the time for appealing the determination under Section 81.004 or 81.005; or

(2) if the determination is appealed, until all appeals are finally decided.

(b) A hearings officer or county judge may issue an order under this section on the hearings officer's or county judge's own motion or the motion of a person listed in Section 81.003 or, for an original or renewal permit or license application, any individual entitled to protest the issuance of the original or renewal permit or license.

(b-1) If an individual other than a person described in Subsection (b) who is entitled to protest the issuance of the original or renewal permit or license files a motion for a temporary order under this section, the commission, administrator, or county judge, as applicable, may not issue a temporary order without conducting a hearing.

(c) The hearings officer or county judge may impose any sanction on a person who violates an order issued under Subsection (a) that is necessary to secure compliance with the order.

(d) A hearing under this section must be held not later than the 10th day after the date notice is served on all interested parties. Failure to hold a hearing in the time prescribed by this subsection does not invalidate an order issued under this section.

(e) A person who requests an order under this section may not be required to post security for costs in connection with the application or any hearing conducted as a result of the application.

TITLE 4. REGULATORY AND PENAL PROVISIONS

CHAPTER 101. GENERAL CRIMINAL PROVISIONS

SUBCHAPTER A. PROCEDURAL PROVISIONS

Sec. 101.01. RESTRAINING ORDERS AND INJUNCTIONS. (a) If a credible person by affidavit informs the attorney general or a county or district attorney that a person is violating or is about to violate a provision of this code, or that a permit or license was wrongfully issued, the attorney general or county or district attorney shall begin proceedings in district court to restrain the person from violating the code or operating under the permit or license.

(b) The court may issue a restraining order without a hearing, and on notice and hearing may grant an injunction, to prevent the threatened or further violation or operation. The court may require the complaining party to file a bond in an amount and with the conditions the court finds necessary.

(c) If the court finds that a person has violated a restraining order or injunction issued under this section, it shall enter a judgment to that effect. The judgment operates to cancel without further proceedings any license or permit held by the person. The district clerk shall notify the county judge of the county where the premises covered by the permit or license are located and shall notify the commission when a judgment is entered that operates to cancel a license or permit.

(d) No license or permit may be issued to a person whose license or permit is cancelled under Subsection (c) of this section for one year after the cancellation.

Sec. 101.02. ARREST WITHOUT WARRANT. A peace officer may arrest without a warrant any person he observes violating any provision of this code or any rule or regulation of the commission. The officer shall take possession of all illicit beverages the person has in his possession or on his premises as provided in Chapter 103 of this code.

Sec. 101.03. SEARCH AND SEIZURE. (a) A search warrant may issue under Chapter 18, Code of Criminal Procedure, 1965, as amended, to search for, seize, and destroy or otherwise dispose of in accordance with this code:

(1) an illicit beverage;

(2) any equipment or instrumentality used, or capable or designed to be used, to manufacture an illicit beverage;

(3) a vehicle or instrumentality used or to be used for the illegal transportation of an illicit beverage;

(4) unlawful equipment or materials used or to be used in the illegal manufacturing of an illicit beverage;

(5) a forged or counterfeit stamp, die, plate, official signature, certificate, evidence of tax payment, license, permit, or other instrument pertaining to this code; or

(6) any instrumentality or equipment, or parts of either of them, used or to be used, or designed or capable of use, to manufacture, print, etch, indite, or otherwise make a forged or counterfeit instrument covered by Subdivision (5) of this subsection.

(b) Any magistrate may issue a search warrant on the affidavit of a credible person, setting forth the name or description of the owner or person in charge of the premises (or stating that the name and description are unknown), the address or description of the premises, and showing that the described premises is a place where this code has been or is being violated. If the place to be searched is a private dwelling occupied as such and no part of it is used as a store, shop, hotel, boarding house, or for any other purpose except as a private residence, the affidavit must be made by two credible persons.

(c) All provisions of Chapter 18, Code of Criminal Procedure, 1965, as amended, apply to the application, issuance, and execution of the warrant except those that conflict with this section.

(d) The officer executing the warrant shall seize all items described in Subsection (a) of this section, and those items may not be taken from his custody by a writ of replevin or any other process. The officer shall retain the items pending final judgment in the proceedings.

(e) This section does not require a peace officer to obtain a search warrant to search premises covered by a license or permit.

Sec. 101.04. CONSENT TO INSPECTION; PENALTY. (a) By accepting a license or permit, the holder consents to the commission, an authorized representative of the commission, or a peace officer entering the licensed premises at any time to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this code.

(b) A person commits an offense if the person refuses to allow the commission, an authorized representative of the commission, or a peace officer to enter a licensed or permitted premises as required by Subsection (a). An offense under this section is a Class A misdemeanor.

Sec. 101.05. NEGATION OF EXCEPTION: INFORMATION, COMPLAINT, OR INDICTMENT. An information, complaint, or indictment charging a violation of this code need not negate an exception to an act prohibited by this code, but the exception may be urged by the defendant as a defense to the offense charged.

Sec. 101.06. TESTIMONY OF ACCOMPLICE. A conviction for a violation of this code cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

Sec. 101.07. DUTY OF PEACE OFFICERS. All peace officers in the state, including those of cities, counties, and state, shall enforce the provisions of this code and cooperate with and assist the commission in detecting violations and apprehending offenders.

Sec. 101.08. DUTY OF COUNTY COURT. When a violation of this code occurs, the county court shall make a recommendation to the commission as to cancellation or suspension of any permit or license connected with the violation.

Sec. 101.09. REPORTS OF CONVICTIONS. Every county and district clerk in the state shall furnish the commission or its representative, on request, a certified copy of the judgment of conviction and of the information against a person convicted of a violation of this code. The clerk may not charge a fee for furnishing the copy.

Sec. 101.10. WHOLESALE OR RETAIL SALE: PRIMA FACIE EVIDENCE. (a) Proof that a retail permittee sold or delivered more than three gallons of distilled spirits to a person in a single or continuous transaction is prima facie evidence that the sale was at wholesale.

(b) Proof that a permittee authorized to sell distilled spirits at wholesale sold or delivered less than three gallons of distilled spirits in a single transaction is prima facie evidence that the sale was a retail sale.

(c) The presumption created by Subsection (b) of this section does not apply to the lawful delivery of 2.4 gallons or more of distilled spirits under the authority of a local distributor's permit.

SUBCHAPTER B. OFFENSES RELATING TO DRY AREAS

Sec. 101.31. ALCOHOLIC BEVERAGES IN DRY AREAS. (a) Except as otherwise provided in this code, no person in a dry area may manufacture, distill, brew, sell, import into the state, export from the state, transport, distribute, warehouse, store, solicit or take orders for, or possess with intent to sell an alcoholic beverage.

(b) An offense under this section is a Class B misdemeanor.

(c) If it is shown on the trial of an offense under this section that the person has previously been convicted two or more times of an offense under this section, the offense is a state jail felony.

Sec. 101.32. PRIMA FACIE EVIDENCE OF INTENT TO SELL. (a) Possession of more than one quart of liquor in a dry area is prima facie evidence that it is possessed with intent to sell.

(b) Possession in a dry area of more than 24 twelve-ounce bottles of beer, or an equivalent amount, is prima facie evidence of possession with intent to sell.

Sec. 101.33. DELIVERY OF LIQUOR IN DRY AREA. Section 107.03 of this code relates to the delivery of liquor in a dry area.

SUBCHAPTER C. CONTAINERS

Sec. 101.41. CONTAINERS, PACKAGING, AND DISPENSING EQUIPMENT OF BEER: LABELS. (a) No manufacturer or distributor, directly or indirectly or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may manufacture, sell, or otherwise introduce into commerce any container, packaging, or dispensing equipment of beer that does not meet the requirements of this section.

(b) Every container of beer must have a label or imprint in legible type showing the full name and address of the manufacturer and, if it contains a special brand brewed for a distributor, of the distributor. Any box, crate, carton, or similar device in which containers of beer are sold or transported must have a label meeting the same requirements.

(c) The label of a container of beer must state the net contents in terms of United States liquor measure.

(d) No container, packaging material, or dispensing equipment may bear a label or imprint that:

(1) by wording, lettering, numbering, or illustration, or in any other manner refers or alludes to or suggests a manufacturing process, aging, analysis, or a scientific fact;

(2) refers or alludes to the "proof," "balling," or "extract" of the product;

(3) is untrue in any respect; or

(4) by ambiguity, omission, or inference tends to create a misleading impression, or causes or is calculated to cause deception of the consumer with respect to the product.

Sec. 101.42. RETURNABLE CONTAINER: ACCEPTANCE BY ANOTHER MANUFACTURER. No manufacturer of beer may purchase, accept as a return, or use a barrel, half-barrel, keg, case, or bottle permanently branded or imprinted with the name of another manufacturer.

Sec. 101.43. MISBRANDING OF BREWERY PRODUCT. (a) No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may sell or otherwise introduce into commerce a brewery product that is misbranded.

(b) A product is misbranded if:

(1) it is misbranded within the meaning of the federal Food and Drug Act;

(2) the container is so made or filled as to mislead the purchaser, or if its contents fall below the recognized standards of fill;

(3) it misrepresents the standard of quality of products in the branded container; or

(4) it is so labeled as to purport to be a product different from that in the container.

Sec. 101.45. CONTAINERS OF WINE: MAXIMUM CAPACITY. A person may not sell wine to a retail dealer in a container with a capacity greater than eight gallons.

Sec. 101.46. CONTAINERS OF LIQUOR: MINIMUM CAPACITIES. (a) Except as provided by Subsections (b), (c), and (d) of this section, no person may import, sell, or possess with intent to sell any liquor in a container with a capacity of less than 20 milliliters. A container of liquor offered for sale that has a capacity of less than six fluid ounces must substantially conform to the labeling requirements of the Bureau of Alcohol, Tobacco, and Firearms for larger containers in which liquor is sold. Holders of distiller's or rectifier's permits wishing to sell liquor bottled in containers of less than six fluid ounces to wholesalers must sell such containers of liquor to wholesalers in units of unbroken, sealed cases. Wholesalers shall sell liquor bottled in containers of less than six fluid ounces to package stores in units of unbroken, sealed cases. Containers of liquor with a capacity of less than six fluid ounces offered for sale in a package store must be sold in units of sealed packages featuring multiple bottles of liquor.

(b) Subsection (a) of this section does not apply to permittees or licensees while engaged in supplying airline beverage or mixed beverage permittees, nor to the possession or sale of liquor by an airline beverage or mixed beverage permittee, but none of the permittees or licensees covered by this subsection may possess liquor in a container with a capacity of less than one fluid ounce.

(c) Subsection (a) of this section does not apply to liquor imported under Section 107.07 of this code.

(d) Spirit coolers, as described by the definition of "distilled spirits" in Section 1.04 of this code, may be sold in containers with a capacity of less than 355 milliliters as well as in containers with any other capacity authorized by this code for distilled spirits.

Sec. 101.47. CARRIER MAY TRANSPORT LIQUOR IN SMALLCONTAINERS. The commission may authorize a common carrier of persons engaged in interstate commerce to transport liquor in containers of less than 20 milliliters if the liquor is not for sale, use, or consumption in the state.

Sec. 101.48. COMMISSION'S REGULATORY AUTHORITY. Sections 5.39 and 5.40 of this code relate to the commission's authority to regulate liquor containers and beer container deposits.

SUBCHAPTER D. MISCELLANEOUS OFFENSES

Sec. 101.61. VIOLATION OF CODE OR RULE. A person who fails or refuses to comply with a requirement of this code or a valid rule of the commission violates this code.

Sec. 101.62. OFFENSIVE NOISE ON PREMISES. No licensee or permittee, on premises under his control, may maintain or permit a radio, television, amplifier, piano, phonograph, music machine, orchestra, band, singer, speaker, entertainer, or other device or person that produces, amplifies, or projects music or other sound that is loud, vociferous, vulgar, indecent, lewd, or otherwise offensive to persons on or near the licensed premises.

Sec. 101.63. SALE TO CERTAIN PERSONS. (a) A person commits an offense if the person with criminal negligence sells an alcoholic beverage to an habitual drunkard or an intoxicated or insane person.

(b) Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $500, by confinement in jail for not more than one year, or by both.

(c) If a person has been previously convicted of a violation of this section or of Section 106.03 of this code, a violation is a misdemeanor punishable by a fine of not less than $500 nor more than $1,000, by confinement in jail for not more than one year, or by both.

Sec. 101.64. INDECENT GRAPHIC MATERIAL. No holder of a license or permit may possess or display on the licensed premises a card, calendar, placard, picture, or handbill that is immoral, indecent, lewd, or profane.

Sec. 101.65. BEVERAGES MADE FROM CERTAIN MATERIALS PROHIBITED. No person may manufacture, import, sell, or possess for the purpose of sale an alcoholic beverage made from:

(1) any compound made from synthetic materials;
(2) substandard wines;
(3) imitation wines; or
(4) must concentrated at any time to more than 80 degrees Balling.

Sec. 101.66. BEVERAGES OF CERTAIN ALCOHOL CONTENT PROHIBITED. No person may manufacture, sell, barter, or exchange a beverage that contains alcohol in excess of one-half of one percent by volume and not more than four percent of alcohol by weight, except beer, wine coolers, and spirit coolers.

Sec. 101.67. PRIOR APPROVAL OF MALT BEVERAGES. (a) No person may ship or cause to be shipped into the state, import into the state, manufacture and offer for sale in the state, or distribute, sell, or store in the state any beer, ale, or malt liquor unless:

(1) a sample of the beverage or a sample of the same type and quality of beverage has been first submitted to an independent, reputable laboratory or the commission for analysis to verify the alcohol content of the beverage; and

(2) the label of the beverage has been first submitted to the commission or its representative and found to comply with all provisions of this code relating to the labeling of the particular type of beverage.

(b) Only a brewer's or nonresident brewer's permittee or a manufacturer's or nonresident manufacturer's licensee may apply for and receive label approval on beer, ale, or malt liquor.

(c) This section does not apply to the importation of beer for personal consumption and not for sale.

(d) If the commission determines that the product analysis provided by the independent laboratory or the sample and the label required by Subsection (a) comply with the provisions of this code and the rules of the commission, the commission shall issue a certificate of approval upon receipt of a fee in an amount that is sufficient to cover the cost of administering this section. A copy of the certificate shall be kept on file in the office of the commission.

(e) The commission by rule shall establish the procedures for accepting analysis of beer, ale, or malt liquor by an independent laboratory under Subsection (a)(1).

Sec. 101.671. PRIOR APPROVAL OF DISTILLED SPIRITS AND WINE. (a) Before an authorized permittee may ship distilled spirits or wine into the state or sell distilled spirits or wine within the state, the permittee must register the distilled spirits or wine with the commission and provide proof that the permittee is the primary American source of supply for purposes of Section 37.10. Except for rare or vintage wine that is acquired at auction and for which no certificate is available, the [~~The~~] registration application must include a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau for the product. Rare or vintage wine purchased at auction and registered by the commission under this subsection must comply with all other provisions of this code, including provisions regarding the sale, purchase, importation, and distribution of that wine.

(b) On registration of a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau, the commission shall approve the product under this section and issue a letter to that effect to the permittee. The commission may not require additional approval for the product unless there is a change to the label or product that requires reissuance of the federal certificate of label approval. The commission shall accept the certificate of label approval as constituting full compliance with any applicable standards adopted under Section 5.38 regarding quality, purity, and identity of distilled spirits or wine.

(c) The commission may not register a product unless the application is accompanied by a fee set by the commission in an amount that is sufficient to cover the cost of administering this section. A copy of the registration shall be kept on file in the office of the commission.

(d) The commission by rule may [~~shall~~] establish procedures for accepting:

(1) federal certificates of label approval for registration under this section; and

(2) proof, such as a letter of authorization, that a permittee is the primary American source of supply of the product or brand for purposes of Section 37.10.

Sec. 101.68. CONSIGNMENT SALE PROHIBITED. A person commits an offense if he is a party to, or directly or indirectly interested in or connected with, a consignment sale of an alcoholic beverage.

Sec. 101.69. FALSE STATEMENT. Except as provided in Section 103.05(d), a person who makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the commission and required to be sworn commits an offense punishable by imprisonment in the Texas Department of Criminal Justice for not less than 2 nor more than 10 years.

Sec. 101.70. COMMON NUISANCE. (a) A room, building, boat, structure, or other place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of this code or under circumstances contrary to the purposes of this code, the beverages themselves, and all

property kept or used in the place, are a common nuisance. A person who maintains or assists in maintaining the nuisance commits an offense.

(b) The county or district attorney in the county where the nuisance exists or the attorney general may sue in the name of the state for an injunction to abate and temporarily and permanently enjoin it. Except as otherwise provided in this section, the proceeding is conducted as other similar proceedings.

(c) The plaintiff is not required to give a bond. The final judgment is a judgment in rem against the property and a judgment against the defendant. If the court finds against the defendant, on final judgment it shall order that the place where the nuisance exists be closed for one year or less and until the owner, lessee, tenant, or occupant gives bond with sufficient surety as approved by the court in the penal sum of at least $1,000. The bond must be payable to the state and conditioned:

(1) that this code will not be violated;

(2) that no person will be permitted to resort to the place to drink alcoholic beverages in violation of this code; and

(3) that the defendant will pay all fines, costs, and damages assessed against him for any violation of this code.

(d) On appeal, the judgment may not be superseded except on filing an appeal bond in the penal sum of not more than $500, in addition to the bond for costs of the appeal. That bond must be approved by the trial court and must be posted before the judgment of the court may be superseded on appeal. The bond must be conditioned that if the judgment of the trial court is finally affirmed it may be forfeited in the same manner and for any cause for which a bond required on final judgment may be forfeited for an act committed during the pendency of an appeal.

Sec. 101.71. INSPECTION OF VEHICLE. No holder of a permit issued under Title 3, Subtitle A, of this code, may refuse to allow the commission or its authorized representative or a peace officer, on request, to make a full inspection, investigation, or search of any vehicle.

Sec. 101.72. CONSUMPTION OF ALCOHOLIC BEVERAGE ON PREMISES LICENSED FOR OFF-PREMISES CONSUMPTION. (a) A person commits an offense if the person knowingly consumes liquor or beer on the premises of a holder of a wine and beer retailer's off-premise permit or a retail dealer's off-premise license.

(b) A person is presumed to have knowingly violated Subsection (a) of this section if the warning sign required by either Section 26.05 or 71.10 of this code is displayed on the premises.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than $25 nor more than $200.

(d) If a person has been convicted of a violation of this section occurring within a year of a subsequent violation, the subsequent violation is a misdemeanor punishable by a fine of not less than $100 nor more than $200.

Sec. 101.73. EXPUNGEMENT OF CONVICTION FOR CONSUMPTION ON PREMISES LICENSED FOR OFF-PREMISES CONSUMPTION. (a) A person convicted of not more than one violation of Section 101.72 of this code within 12 months, after the first anniversary of the conviction, may apply to the court in which he was convicted to have the conviction expunged.

(b) The application shall contain the applicant's sworn statement that he was not convicted of an additional violation of Section 101.72 of this code during the previous 12 months.

(c) If the court finds that the applicant was not convicted of another violation of Section 101.72 of this code during the preceding 12 months, the court shall order the conviction, together with all complaints, verdicts, fines, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

Sec. 101.74. OFFENSES RELATING TO BINGO. (a) An organization licensed to conduct bingo under Chapter 2001, Occupations Code, may not offer an alcoholic beverage as a bingo prize or as a door prize at a bingo occasion.

(b) A person who holds a permit or license at the manufacturing or wholesale levels of the alcoholic beverage industry or a person who holds a package store permit may not participate in advertising any bingo game or pay or contribute toward payment of the printing of bingo cards or of the supplying of any novelties of any sort to be used during or in connection with the conduct of a bingo game.

Sec. 101.75. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR SCHOOLS. (a) A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a facility that is a public or private school, including a parochial school, that provides all or any part of prekindergarten through twelfth grade.

(b) This section does not apply to the possession of an open container or the consumption at an event duly authorized by appropriate authorities and held in compliance with all other applicable provisions of this code.

(c) An offense under this section is a Class C misdemeanor.

(d) In this section, "open container" has the meaning assigned in Section 109.35.

CHAPTER 102. INTRA-INDUSTRY RELATIONSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.01. TIED HOUSE PROHIBITED. (a) In this section, "tied house" means any overlapping ownership or other prohibited relationship between those engaged in the alcoholic beverage industry at different levels, that is, between a manufacturer and a wholesaler or retailer, or between a wholesaler and a retailer, as the words "wholesaler," "retailer," and "manufacturer" are ordinarily used and understood, regardless of the specific names given permits under Subtitle A, Title 3, of this code.

(b) In considering an original or renewal application for a permit issued under Subtitle A, Title 3, of this code, the commission or administrator may make any investigation or request any additional information necessary to enforce this section and to provide strict adherence to a general policy of prohibiting the tied house and related practices. The activities prohibited by this section are unfair competition and unlawful trade practices.

(c) No person having an interest in a permit issued under Subtitle A, Title 3, of this code may secure or hold, directly or indirectly, an ownership interest in the business or corporate stocks, including a stock option, convertible debenture, or similar interest, in a permit or business of a permittee of a different level who maintains licensed premises in Texas.

(d) No person may act or serve as officer, director, or employee of the businesses of permittees at different levels.

(e) No permittee may own the premises, fixtures, or equipment of a permittee of a different level.

(f) No permittee may secure or in any manner obtain the use of any premises, fixtures, or equipment on the credit of a permittee of a different level.

(g) No permittee may loan to, or by means of his credit secure a loan for, a permittee of a different level. If a permittee secures a loan from a source outside the state, there is a presumption of a tied house relationship or subterfuge, and the permittee securing the loan has the burden of showing that he has not violated this section.

(h) No permittee may enter with a permittee of a different level or with another person or legal entity into a conspiracy or agreement to control or manage, financially or administratively, directly or indirectly, in any form or degree, the business or interests of a permittee of a different level.

(i) No permittee may enter with another permittee into any type of profit-sharing agreement or any agreement relating to the repurchase of any assets or any agreement attempting to effectuate the shipment or delivery of an alcoholic beverage on consignment.

(j) On finding that a person has violated any provision of Subsections (c) through (i) of this section, the commission or administrator shall suspend for not less than six months or cancel the permit of any permittee involved. A person who held or had an interest in a permit cancelled under the subsection is ineligible to hold or have an interest in a permit for one year after the cancellation.

(k) This section does not apply to the application for renewal of a permit held by an applicant who was engaged in the legal alcoholic beverage business in this state under a charter or permit before August 24, 1935, or to an application for a nonresident seller's or wholesaler's permit held by an applicant who continuously has been the holder of a permit of that type since January 1, 1941.

Sec. 102.02. PROVIDING SAMPLES. Notwithstanding any other provision of this code, the holder of a wholesaler's permit or the holder's agent, representative, or employee may furnish or give a sample of liquor to a holder of a permit authorizing the sale of that category of alcoholic beverage at retail if the retail permittee has not previously purchased that brand from that wholesaler permittee. The wholesaler may give the retail permittee not more than 750 milliliters of any brand of distilled spirits, not more than three liters of any brand of wine in that package, and not more than one six-pack of any other alcoholic beverage so packaged. The retail permittee or the permittee's agent, servant, or employee may sample the product on the licensed premises only if the wholesaler or the wholesaler's agent, servant, or employee is present.

Sec. 102.03. PERSONS BARRED FROM INTEREST IN PREMISES OF RETAIL LIQUOR OUTLET. (a) This section applies to the holder of a brewer's, distiller's and rectifier's, winery, wholesaler's, class B wholesaler's, or wine bottler's permit.

(b) No holder of a permit named in Subsection (a) of this section may directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, own an interest of any kind in the premises where a package store permittee, wine only package store permittee, or mixed beverage permittee conducts his business.

Sec. 102.04. PERSONS BARRED FROM INTEREST IN MIXED BEVERAGE BUSINESS. (a) This section applies to any person who has an interest in the business of a distiller-rectifier, brewer, wholesaler, class B wholesaler, winery, wine bottler, or local distributor's permittee. This section also applies to the agent, servant, or employee of a person who has an interest in one of those businesses.

(b) Except as permitted in Section 23.01 of this code, no person to whom this section applies may:

(1) have a direct or indirect interest in the business, premises, equipment, or fixtures of a mixed beverage establishment;

(2) furnish or lend any money, service, or other thing of value to a mixed beverage permittee or guarantee the fulfillment of a financial obligation of a mixed beverage permittee;

(3) enter or offer to enter into an agreement, condition, or system which in effect amounts to the shipment and delivery of alcoholic beverages on consignment;

(4) furnish, rent, lend, or sell to a mixed beverage permittee any equipment, fixtures, or supplies used in the selling or dispensing of alcoholic beverages;

(5) pay or make an allowance to a mixed beverage permittee for a special advertising or distributing service, or allow the permittee an excessive discount;

(6) offer to a mixed beverage permittee a prize, premium, or other inducement, except as permitted by Section 102.07 (b) of this code; or

(7) advertise in the convention program or sponsor a function at a meeting or convention or a trade association of holders of mixed beverage permits, unless the trade association was incorporated before 1950.

Sec. 102.05. HOTEL: MULTIPLE INTERESTS AUTHORIZED. A hotel may hold a package store permit, mixed beverage permit, wine and beer retailer's permit, and retail dealer's license if the businesses are completely segregated from each other.

Sec. 102.06. RELATIONSHIP BETWEEN AGENT OR MANUFACTURER'S AGENT AND PACKAGE STORE. No holder of an agent's or manufacturer's agent's permit may directly or indirectly have an interest in a package store permit or wine only package store permit or be residentially

domiciled with a person who has a financial interest in a package store permit or wine only package store permit.

Sec. 102.07. PROHIBITED DEALINGS WITH RETAILER OR CONSUMER. (a) Except as provided in Subsections (b), (d), and (g), no person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, nor the agent, servant, or employee of such a person, may:

(1) own or have a direct or indirect interest in the business, premises, equipment, or fixtures of a retailer;

(2) furnish, give, or lend any money, service, or thing of value to a retailer;

(3) guarantee a financial obligation of a retailer;

(4) make or offer to enter an agreement, condition, or system which will in effect amount to the shipment and delivery of alcoholic beverages on consignment;

(5) furnish, give, rent, lend, or sell to a retail dealer any equipment, fixtures, or supplies to be used in selling or dispensing alcoholic beverages, except that alcoholic beverages may be packaged in combination with other items if the package is designed to be delivered intact to the ultimate consumer and the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales;

(6) pay or make an allowance to a retailer for a special advertising or distribution service;

(7) allow an excessive discount to a retailer; or

(8) offer a prize, premium, gift, or similar inducement to a retailer or to the agent, servant, or employee of a retailer.

(b) A permittee covered by Subsection (a) of this section may furnish to a retailer without cost advertising specialties showing the name of the product advertised. The total value of all advertising specialties for any one brand furnished to a retailer in any one calendar year may not exceed $78. Not more than once a year, the administrator on the administrator's own motion or on the motion of the permittee may increase or decrease the total amount of advertising specialties permitted under this subsection by not more than six percent based on the consumer price index and previous adjustments, if any. For the purposes of this subsection, "consumer price index" means the annual average over a calendar year of the consumer price index (all items, United States city average) published monthly by the Bureau of Labor Statistics, United States Department of Labor, or its successor in function. Permittees covered by Subsection (a) of this section may not pool or combine their dollar limitations to provide a retailer with advertising specialties valued in excess of the maximum permitted under this subsection.

(c) No person who owns or has an interest in the business of a package store or wine only package store, nor the agent, servant, or employee of the person, may allow an excessive discount on liquor.

(d) A permittee covered under Subsection (a) may offer prizes, premiums, or gifts to a consumer. The use of rebates or coupons redeemable by the public for the purchase of alcoholic beverages is prohibited. The holder of a winery permit may furnish to a retailer without cost recipes, recipe books, book matches, cocktail napkins, or other advertising items showing the name of the winery furnishing the items or the brand name of the product advertised if the individual cost of the items does not exceed $1.

(e) A permittee covered under Subsection (a) may conduct a sweepstakes promotion. A purchase or entry fee may not be required of any person to enter a sweepstakes event authorized under this subsection. A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

(f) Notwithstanding Subsection (a) of this section, Section 108.05 of this code, or any other provision of this code, a holder of a brewer's permit, nonresident brewer's permit, distiller's and rectifier's permit, winery permit, nonresident seller's permit, manufacturer's license, or nonresident manufacturer's license may, in order to promote the brand name of the permittee's or licensee's products, contract with a person licensed under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) for on-site

advertising signs, for advertising in programs, and to supplement purses for races even though the licensees under that Act or the owners or operators of the racing facilities also hold a mixed beverage permit or other permit or license under this code. In addition, a permittee or licensee described by this subsection may contract for off-site advertising promoting specific races. A part of the cost of an advertisement or promotion authorized by this section may not be charged to or paid, directly or indirectly, by the holder of a wholesale permit, general class B wholesaler's permit, local class B wholesaler's permit, local distributor's permit, general distributor's license, or local distributor's license, except through the price paid by that holder for products purchased from the holder's supplier.

(g) Subsection (a) does not prohibit a permittee covered under Subsection (a) from prearranging or preannouncing a promotional activity otherwise permitted by this code with a retailer about a promotional activity to be held on the retailer's premises. [~~A holder of a wholesaler's or class B wholesaler's permit may prearrange a promotional activity only for distilled spirits or wine.~~] Notwithstanding any other provision, a permittee may:

(1) preannounce a promotion to a consumer; or

(2) preannounce the purchase of wine, [~~or~~] distilled spirits, ale, or malt liquor to a consumer.

Sec. 102.071. SALE OF GLASSWARE AND NONALCOHOLIC BEVERAGES. (a) In this section:

(1) "Branded glassware" means glassware that contains the name, emblem, or logo of or any reference to a brand of alcoholic beverage.

(2) "Unbranded glassware" means glassware that does not contain the name, emblem, or logo of or any reference to a brand of alcoholic beverage.

(b) Notwithstanding Sections 102.04 and 102.07 or any other provision of this code, the holder of a wholesaler's permit who is primarily engaged in the wholesale sale of distilled spirits and wine may sell branded or unbranded glassware to retailers, provided that the glassware is not marketed or sold in a manner:

(1) to influence a retailer to purchase any quantity of alcoholic beverages;

(2) to affect the terms by which a retailer may purchase alcoholic beverages; or

(3) that threatens the independence of a retailer.

(c) Section 102.32 applies to payment for unbranded glassware or glassware bearing the name, emblem, or logo of a brand of distilled spirits or wine by the holder of a wholesaler's permit under Subsection (b).

(d) Sections 61.73 and 102.31 apply to payment for glassware bearing the name, emblem, or logo of a brand of malt beverage by the holder of a wholesaler's permit or a distributor's license.

(e) Section 102.32 applies to payment for a nonalcoholic beverage sold by the holder of a wholesaler's permit or a distributor's license to a retailer if:

(1) the nonalcoholic beverage is produced or sold by a manufacturer of alcoholic beverages other than malt beverages; or

(2) the name, emblem, logo, or brand of a manufacturer of alcoholic beverages other than malt beverages appears on the label of the nonalcoholic beverage.

(f) Sections 61.73 and 102.31 apply to payment for a nonalcoholic beverage sold by the holder of a wholesaler's permit or a distributor's license to a retailer if:

(1) the nonalcoholic beverage is produced or sold by a manufacturer of malt beverages; or

(2) the name, emblem, logo, or brand of a manufacturer of malt beverages appears on the label of the nonalcoholic beverage.

(g) For the purposes of Subchapters C and D, the sale, by the holder of a distributor's license, of a nonalcoholic beverage produced or sold by a manufacturer of malt beverages or that bears the name, emblem, logo, or brand of a manufacturer of malt beverages is the same as a sale of beer.

Sec. 102.08. WHOLESALER: LIQUOR MANUFACTURED BY AFFILIATE. (a) No holder of a wholesaler's permit may own, possess, or sell any liquor manufactured, distilled, or rectified by a

person, firm, or corporation that is directly or indirectly affiliated with the wholesale permittee, regardless of whether the affiliation is corporate, by management, direction, or control, or through an officer, director, agent, or employee.

(b) This section does not apply to a holder of a wholesaler's permit who held the permit on January 1, 1941, and has held it continuously since that date, who was on that date selling liquor manufactured, distilled, or rectified by such an affiliate.

Sec. 102.09. WHOLESALER: INTEREST IN DISTILLER AND RECTIFIER. No holder of a wholesaler's permit may be affiliated with the holder of a distiller's and rectifier's permit, or with a person, firm, or corporation engaged in distilling or rectifying liquor inside or outside this state, regardless of whether the affiliation is direct or indirect, through an officer, director, agent, or employee, or by management, direction, or control.

Sec. 102.10. DISTILLER AND RECTIFIER: INTEREST IN WHOLESALER. (a) This section applies to the following:

(1) a holder of a distiller's and rectifier's permit;

(2) a person, firm, or corporation engaged in distilling or rectifying liquor, either inside or outside this state;

(3) an officer, director, agent, or employee of an entity named in subdivision (1) or (2) of this subsection; or

(4) an affiliate of an entity named in Subdivision (1) or (2) of this subsection, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) No entity named in Subsection (a) of this section may have any interest in the permit, business, assets, or corporate stock of a holder of a wholesaler's permit.

Sec. 102.11. MANUFACTURER OR DISTRIBUTOR: PROHIBITED INTERESTS. No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

(1) own any interest in the business or premises of a retail dealer of beer;

(2) hold or have an interest in a license to sell brewery products for on-premises consumption, except to the extent that a manufacturer's license permits on-premises consumption.

Sec. 102.12. COMMERCIAL BRIBERY BY MANUFACTURER OR DISTRIBUTOR. No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may give or permit to be given money or any thing of value in an effort to induce agents, employees, or representatives of customers or prospective customers to influence their employees or principals to purchase or contract to purchase brewery products from the manufacturer or distributor or to refrain from buying those products from other persons.

Sec. 102.13. EXCLUSIVE OUTLET AGREEMENT AS TO BREWERY PRODUCTS. No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may require, by agreement or otherwise, that a retailer engaged in the sale of brewery products purchase any of those products from him to the total or partial exclusion of the products sold or offered for sale by a competitor or require the retailer to take or dispose of a certain quota of the product.

Sec. 102.14. MANUFACTURER OR DISTRIBUTOR: FURNISHING EQUIPMENT OR FIXTURES. (a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to a person engaged in selling brewery products for on-premises consumption.

(b) This section does not apply to equipment, fixtures, or supplies furnished, given, loaned, rented, or sold before November 16, 1935, except that transactions made before that date may not be used as consideration for an agreement made after that date with respect to the purchase of brewery products. If a manufacturer or distributor of brewery products or an agent or employee of one of them removes the equipment, fixtures, or supplies from the premises of the person to whom they were furnished, given, loaned, rented, or sold, the exemption granted by this subsection no longer applies to the equipment, fixtures, or supplies.

(c) Notwithstanding any other provision of this code, a manufacturer or distributor may, with written approval of the administrator, sell for cash devices designed to extract brewery products from legal containers subject to the following conditions:

(1) the legal containers must not exceed a one-eighth barrel capacity and must not be reused or refilled;

(2) the selling price of such devices may be no less than the cost of acquisition to the manufacturer or distributor; and

(3) such devices which extract brewery products from legal containers covered by this section may not be furnished, given, rented, or sold by the manufacturer or distributor to a licensee or permittee authorized to sell or serve brewery products for on-premise consumption, or to the ultimate consumer.

Sec. 102.15. MANUFACTURER OR DISTRIBUTOR: PROHIBITED DEALINGS WITH RETAILER. (a) Except as provided by Subsection (b), no [~~No~~] manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

(1) furnish, give, or lend any money or other thing of value to a person engaged or about to be engaged in selling brewery products for on-premises or off-premises consumption, or give the person any money or thing of value for his use, benefit, or relief; or

(2) guarantee the repayment of a loan or the fulfillment of a financial obligation of a person engaged in or about to be engaged in selling beer at retail.

(b) Subsection (a) does not prohibit a manufacturer or distributor from prearranging or preannouncing a promotional activity otherwise permitted by this code with a retailer about a promotional activity to be held on the retailer's premises. Notwithstanding any other provision, a manufacturer or distributor may:

(1) preannounce a promotion to a consumer; or

(2) preannounce the purchase of beer to a consumer.

Sec. 102.16. UNLAWFUL AGREEMENTS. (a) A brewer, distiller and rectifier, winery permittee, or alcoholic beverage manufacturer, or the agent, servant, or employee of any of them, commits an offense if he orally or in writing enters or offers to enter into an agreement or other arrangement with a wholesaler or other person in the state:

(1) by which a person is required or influenced, or that is intended to require or influence a person, to purchase, otherwise obtain, produce, or require a certain volume or quota of business, more or less, of one or more types or brands of alcoholic beverages, either in a certain area, in a certain period of time, or on fulfillment of any condition; or

(2) to require or influence a person, or attempt to require or influence a person, to sell an alcoholic beverage in a manner contrary to law or in a manner calculated to induce a violation of the law.

(b) The commission or administrator shall investigate suspected violations of this section, and if either of them finds or has good reason to believe that this section has been or is being violated, the commission or administrator shall give the affected parties notice of hearing as provided in this code. On finding that a person has violated or is violating a provision of this section, the commission or administrator shall enter an order prohibiting the violator or his agents to directly or indirectly ship any of his goods into the state for a period not to exceed one year. No person may violate that order.

(c) The commission shall adopt necessary rules to effectuate this section.

Sec. 102.17. CONTRACT FOR SALE OF LIQUOR. A brewer, distiller and rectifier, winery permittee, manufacturer, or nonresident seller of liquor and the holder of a wholesaler's permit may enter into a contract for the sale and purchase of a specified quantity of liquor to be delivered over an agreed period of time, but only if the contract is first submitted to the commission or administrator and found by the commission or administrator not to be calculated to induce a violation of this code.

Sec. 102.18. MANUFACTURER: PROHIBITED INTERESTS. (a) This section applies to the following:

(1) a holder of a manufacturer's or nonresident manufacturer's license;

(2) an officer, director, agent, or employee of an entity named in Subdivision (1) of this subsection; or

(3) an affiliate of an entity named in Subdivision (1) of this subsection, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) No entity named in Subsection (a) of this section may have any interest in the license, business, assets, or corporate stock of a holder of a general, local, or branch distributor's license.

Sec. 102.19. PROMOTIONAL GIFT WINE. A holder of a winery permit may give one or more unopened bottles of Texas-made wine produced or bottled by the winery to a person 21 years of age or older on the premises of a convention center or civic center that holds a mixed beverage permit if no charge is made by the winery or by the mixed beverage permittee for the wine. A recipient of a bottle of wine under this section must take the unopened gift bottle off the premises of the mixed beverage permittee.

Sec. 102.20. RESTOCKING AND ROTATION OF ALCOHOLIC BEVERAGES AUTHORIZED. Restocking of a display and rotation of alcoholic beverage stock in a retail establishment from the retailer's storeroom, salesroom, display counter, or cooler by a representative of a wholesaler or distributor is lawful. The commission or administrator may publish guidelines regarding this activity as the commission or administrator determines to be necessary.

Sec. 102.21. CONTINUITY OF CERTAIN PROTECTIONS FOR BEER DISTRIBUTORS. The protections provided to beer distributors by Subchapters C and D apply regardless of whether there is a transfer or change of ownership of a brand at the manufacturing level.

NOTE: Section 102.21, Alcoholic Beverage Code, as added by this Act, is not intended to change the law but is intended to affirm the policy of this state that the protections provided to beer distributors by Subchapters C and D, Chapter 102, Alcoholic Beverage Code, apply to a distributor regardless of whether there is a transfer or change of ownership of a brand in the manufacturing tier.

Sec. 102.22. VERIFICATION OF USE OF FACILITIES. (a) A person who holds a permit issued under Chapter 12 or 13 or a license issued under Chapter 62 or 63 shall verify to the commission on an annual basis that a brewing or manufacturing facility owned or controlled by the permit or license holder is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates.

(b) The commission shall adopt a form for the verification required under this section.

SUBCHAPTER B. REGULATION OF CREDIT TRANSACTIONS

Sec. 102.31. CASH PAYMENT REQUIRED. (a) This section applies to:

(1) the sale of beer or its containers or the original packages in which it is received, packaged, or contained by a distributor's licensee to a retail dealer's on-premise or off-premise licensee, a wine and beer retailer's permittee, or a wine and beer retailer's off-premise permittee; and

(2) the sale of malt beverages by a local distributor's permittee, or by any licensee authorized to sell those beverages for resale, to a mixed beverage or daily temporary mixed beverage permittee.

(b) No person directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may make a sale covered by this section except for cash on or before delivery to the purchaser.

(c) A person who engages in a subterfuge by which credit is extended to the purchaser violates this code. Acceptance of a postdated check is not a cash sale, but a valid check or draft payable on demand may be accepted as cash. If a check or draft is accepted in payment, it must be deposited in the bank for payment or presented for payment within two days after it is received. If the check or draft is dishonored by the drawee, the licensee or permittee who accepted it shall report that fact to the

commission within two days after receiving notice of dishonor. The report shall be on a form prescribed by the commission and shall contain any information the commission requires.

(d) Sundays and legal holidays are not counted in determining time periods under this section.

(e) The commission may promulgate rules to give effect to this section.

Sec. 102.32. SALE OF LIQUOR: CREDIT RESTRICTIONS. (a) In this section:

(1) "Wholesale dealer" means a wholesaler, class B wholesaler, winery, wine bottler, or local distributor's permittee.

(2) "Retailer" means a package store, wine only package store, wine and beer retailer's, wine and beer retailer's off-premise, or mixed beverage permittee, any other retailer, or a private club registration permittee. For purposes of this section, the holder of a winery permit issued under Chapter 16 is a retailer when the winery permit holder purchases wine from the holder of a wholesaler's permit issued under Chapter 19 for resale to ultimate consumers in unbroken packages.

(3) "Month" means a calendar month.

(b) No wholesale dealer may sell and no retailer may purchase liquor except for cash or on terms requiring payment by the retailer in accordance with Subsection (c) of this section.

(b-1) A wholesale dealer who accepts a check or draft as payment from a retailer for the purchase of liquor must deposit the check or draft in the bank for payment or present the check or draft for payment within five business days after it is received.

(c) On purchases made from the 1st through 15th day of a month, payment must be made on or before the 25th day of that month. On purchases made on the 16th through the last day of a month, payment must be made on or before the 10th day of the following month. An account is not delinquent if payment is received by the wholesale dealer not later than the fourth business day after the date payment is due under this subsection.

(d) Each delivery of liquor shall be accompanied by an invoice giving the date of purchase. If a retailer becomes delinquent in the payment of an account for liquor, the wholesale dealer immediately shall report that fact in writing, including by electronic mail or facsimile transmission, to the commission or administrator. A wholesale dealer may not sell any liquor to a retailer who is delinquent until the delinquent account is paid in full and cleared from the records of the commission. An account becomes delinquent if it is not paid when it is required to be paid under Subsection (c).

(d-1) The commission or administrator may not accept the voluntary cancellation or suspension of a permit or allow a permit to be renewed or transferred if the permit holder is delinquent in the payment of an account for liquor under this section. A person whose permit is canceled by the commission or whose permit has expired is not eligible to hold any other permit or license under this code until the person has cured any delinquency of the person under this section.

(e) A wholesale dealer who accepts a postdated check, a note or memorandum, or participates in a scheme to assist a retailer in the violation of this section commits an offense.

(f) The commission shall adopt rules and regulations to give effect to this section.

SUBCHAPTER C. TERRITORIAL LIMITS ON SALE OF BEER

Sec. 102.51. SETTING OF TERRITORIAL LIMITS. (a) Each holder of a manufacturer's or nonresident manufacturer's license shall designate territorial limits in this state within which the brands of beer the licensee manufactures may be sold by general, local, or branch distributor's licensees.

(b) Each holder of a general, local, or branch distributor's license shall enter into a written agreement with each manufacturer from which the distributor purchases beer for distribution and sale in this state setting forth the sales territory within which each brand of beer purchased by that distributor may be distributed and sold. No holder of a general, local, or branch distributor's license shall make any sales of any brand of beer outside the sales territory specified in the written agreement. No such agreement shall interfere with the rights of retailers to purchase beer as provided in Section 102.53. A

manufacturer may not assign all or any part of the same sales territory to more than one distributor. A copy of the agreement and any amendments to it shall be filed with the administrator.

(c) This Act is promulgated pursuant to the authority of the state under the provisions of the Twenty-first Amendment to the United States Constitution to promote the public interest in the fair, efficient, and competitive distribution of beer, to increase competition in such areas, and to assure product quality control and accountability by allowing manufacturers to assign sales territories within this state.

Sec. 102.52. RIGHTS OF DISTRIBUTORS. Nothing in Section 102.51 of this code limits or alters the right of a holder of a general, local, or branch distributor's license to sell beer to any other holder of a general, local, or branch distributor's license, except that a distributor who has purchased beer from another distributor may distribute and sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by the general, local, or branch distributor making the purchase.

Sec. 102.53. RIGHTS OF RETAILERS. Nothing in Section 102.51 or 102.52 of this code limits or alters the right of a holder of a retail license or permit to purchase beer at the licensed premises of any general, local, or branch distributor's licensee in the state and transport that beer to his licensed premises, except that the retailer may sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by a distributor.

Sec. 102.54. ADDITIONAL REQUIREMENTS FOR APPLICANTS FOR DISTRIBUTOR'S LICENSE. (a) In addition to any other requirements necessary for issuance or renewal of a distributor's license, the commission or administrator shall require an applicant for a license or a holder of a license to show that the applicant or holder:

(1) has entered into or will acquire a written agreement designating an assigned territory from a manufacturer in accordance with this subchapter and Subchapter D;

(2) has received or has applied for and will maintain all licenses or permits required to engage in business in the assigned territory as a holder of a distributor's license, including any state or federal licenses or permits;

(3) has ordered, received, and stored or has committed to order, receive, and store a sufficient amount of beer that the distributor is authorized to sell to ensure that the distributor can supply the reasonable needs of all retailers in the assigned territory;

(4) has received and stored or has committed to receive and store beer received from a manufacturer in a manner complying with a product quality control standard established by the manufacturer or the commission; and

(5) has or will have the ability to sell, deliver, and promote each brand of beer sold by the distributor to all retailers in the assigned territory:

(A) in a manner that complies with the product quality control standards of the manufacturer or of the commission; and

(B) on a continuing and recurring basis in response to reasonable market demand for a brand of beer by the retailer or the retailer's customers in the assigned territory.

(b) In determining whether an applicant for or holder of a distributor's license meets the requirement of Subsection (a)(5), the commission or administrator may require the applicant or holder to show that the applicant or holder has or will have:

(1) storage facilities of a sufficient size to store each brand of beer in an amount equal to the demand for the product from all retailers in the holder's or applicant's assigned territory;

(2) an inventory or a commitment to acquire an inventory of each brand of beer in an amount equal to the demand for the brand from all retailers in the holder's or applicant's assigned territory;

(3) a sufficient number of employees to provide the holder or applicant with the ability:

(A) to sell, deliver on a reasonably prompt basis, and promote each brand of beer to all retailers in the holder's or applicant's assigned territory; and

(B) to prepare and submit in a timely manner any fee or tax payments or reports required by any authorized governmental regulatory authority, including the Bureau of Alcohol, Tobacco, and Firearms and the commission; and

(4) a sufficient number of delivery vehicles and rolling stock to provide the holder or the applicant with the capability of transporting, selling, delivering, or promoting each brand of beer to all retailers in the assigned territory.

(c) The commission or administrator shall refuse to approve an application for a distributor's license or shall refuse to renew a distributor's license if the commission or administrator finds the holder or applicant has failed to comply with any of the requirements of Subsection (a) or (b).

(d) In this section:

(1) "Distributor" means a person who holds a license issued under Chapter 64 or 65.

(2) "Manufacturer" means a person who holds a license issued under Chapter 62, [~~or~~] 63, or 74.

(3) "Retailer" means a person who holds a permit or license issued under Chapters 25 through 34, Chapter 48, Chapters 69 through 72, or Chapter 74.

Sec. 102.55. TERRITORIAL ASSIGNMENTS; DEFINITIONS. (a) In this subchapter and Subchapter D, and as the terms relate to an agreement between a manufacturer and a distributor describing the sales territory in which a distributor may sell the beer of a manufacturer:

(1) "Brand" means any word, name, group of letters, symbol, or trademark or a combination of any word, name, group of letters, symbol, or trademark that is adopted and used by a manufacturer on a label or on packaging to identify a specific beer or malt beverage and to distinguish the beer or malt beverage product from the label or packaging of another beer or malt beverage produced or marketed by any manufacturer. The term does not include the name of the manufacturer unless the name of the manufacturer is included in the name of the brand.

(2) "Brand extension" means a brand that incorporates a brand name or brand logo, or a substantial part of an existing brand name or brand logo, of the same manufacturer.

(3) "Manufacturer" means a person who holds a license issued under Chapter 62, 63, or 74.

(b) A brand extension is not a new or different brand.

(c) A manufacturer shall assign a brand extension to the distributor to whom the brand was originally assigned, if the distributor elects to distribute and sell the brand extension.

NOTE: A territorial agreement in effect on April 11, 1995, between a manufacturer and a distributor in which a manufacturer has not assigned all or part of a territory to more than one distributor is considered to be an enforceable agreement requiring a manufacturer to not assign any part of the assigned territory to more than one distributor. A territorial agreement in effect on April 11, 1995, in which a manufacturer has previously assigned all or part of the same sales territory to more than one distributor is not affected by the amendment to Section 102.51, Alcoholic Beverage Code, enacted by Section 1 of this Act. A territorial agreement in effect on April 11, 1995, in which a manufacturer has previously assigned all or part of the same sales territory to more than one distributor is governed by Section 102.51, Alcoholic Beverage Code, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose. (Chapter 152, Acts of the 74th Legislature, Regular Session, 1995.)

Sec. 102.56. APPLICATION OF TERRITORIAL LIMITS TO CERTAIN PERMIT HOLDERS. (a) This section applies only to a holder of a local distributor's permit under Chapter 23 that operates in a county in which 8,000 or more alcoholic beverage licenses or permits of any type have been issued under this code and are in effect. Subsections (b) and (d) apply only to the delivery of a brand of ale, beer, or malt liquor to a holder of a mixed beverage permit or a private club permit whose premises is located in a county in which 8,000 or more alcoholic beverage licenses or permits of any type have been issued under this code and are in effect.

(b) A holder of a local distributor's permit under Chapter 23 who has purchased a brand of ale, beer, or malt liquor from the holder of a general, local, or branch distributor's license or from the holder of a general class B wholesaler's or local class B wholesaler's permit may not deliver the brand of ale, beer, or malt liquor to any holder of a mixed beverage permit or private club permit whose premises is located inside that county and outside the territory assigned to the distributor or wholesaler who sold the product under a territorial limit agreement authorized by this subchapter.

(c) Except as provided by Subsection (d), a holder of a local distributor's permit may purchase a brand of ale, beer, or malt liquor only from a distributor or wholesaler who has been assigned the territory where the premises of the holder of the local distributor's permit is located.

(d) A holder of a local distributor's permit who delivers a brand of ale, beer, or malt liquor to a holder of a mixed beverage permit or private club permit whose premises is located inside that county and outside the assigned territory where the premises of the holder of a local distributor's permit is located must purchase the brand of ale, beer, or malt liquor from a distributor or wholesaler who has been assigned the territory where the premises of the holder of the mixed beverage or private club permit is located.

SUBCHAPTER D. BEER INDUSTRY FAIR DEALING LAW

Sec. 102.71. DEFINITIONS. In this subchapter:

(1) "This Act" means this subchapter which shall have the short title and may be cited as the "Beer Industry Fair Dealing Law."

(2) "Agreement" means any contract, agreement, or arrangement, whether expressed or implied, whether oral or written, for a definite or indefinite period between a manufacturer and a distributor pursuant to which a distributor has the right to purchase, resell, and distribute any brand or brands of beer offered by a manufacturer.

(3) "Distributor" means those persons licensed under Section 64.01 or 65.01 of this code.

(4) "Manufacturer" means those persons licensed under Section 62.01, [~~or~~] 63.01, or 74.01 [~~of this code~~].

(5) "Territory" or "sales territory" means the geographic area of distribution and sale responsibility designated by an agreement between a distributor and manufacturer, as provided in Section 102.51 of this code, for any brands of the manufacturer.

(6) "Good cause" means the failure by any party to an agreement, without reasonable excuse or justification, to comply substantially with an essential, reasonable, and commercially acceptable requirement imposed by the other party under the terms of an agreement.

Sec. 102.72. PURPOSES. (a) This act is promulgated pursuant to authority of the state under the provisions of the 21st amendment to the United States Constitution to promote the public's interest in the fair, efficient, and competitive distribution of beer within this state by requiring manufacturers and distributors to conduct their business relations so as to assure:

(1) that the beer distributor is free to manage its business enterprise, including the right to independently establish its selling prices; and

(2) that the public, retailers, and manufacturers are served by distributors who will devote their reasonable efforts and resources to the sales and distribution of all the manufacturer's products which the distributor has the right to sell and distribute and maintain satisfactory sales levels in the sales territory assigned the distributor.

(b) This Act shall govern all relations between manufacturers and their distributors, including any renewals or amendments to agreements between them, to the full extent consistent with the constitutions and laws of this state and the United States.

(c) The effect of this Act may not be varied by agreement. Any agreement purporting to do so is void and unenforceable to the extent of such variance only.

Sec. 102.73. TERMINATION AND NOTICE OF CANCELLATION. (a) Except as provided in Subsection (c) of this section, and except as may be specifically agreed upon at the time by the parties, no manufacturer or beer distributor may cancel, fail to renew, or otherwise terminate an agreement unless the manufacturer or distributor furnishes prior notification in accordance with Subsection (b) of this section to the affected party.

(b) The notification required under Subsection (a) of this section shall be in writing and must be received by the affected party not less than 90 days before the date on which the agreement will be cancelled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, failure to renew, or otherwise terminate an agreement, a statement of reasons therefor, and the date on which such action shall take effect.

(c) A manufacturer or distributor may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification for any of the following reasons:

(1) in the event of insolvency or bankruptcy or dissolution or liquidation of the other party;

(2) in the event the other party shall make an assignment for the benefit of creditors or similar disposition of substantially all of the assets of such party's business;

(3) in the event of a conviction or plea of guilty or no contest to a charge of violating a law or regulation or the revocation or suspension of a license or permit for a period of 30 days or more relating to the business and which materially and adversely affects the party's ability to continue in business; or

(4) in the event of the failure to pay amounts owing the other when due, upon demand therefor, in accordance with agreed payment terms.

Sec. 102.74. CANCELLATION. No manufacturer or beer distributor may cancel, fail to renew, or otherwise terminate an agreement unless the party intending such action has good cause for such cancellation, failure to renew, or termination and, in any case in which prior notification is required under Section 102.73 of this code, the party intending to act has furnished said prior notification and the affected party has not eliminated the reasons specified in such notification as the reasons for cancellation, failure to renew, or termination within 90 days after the receipt of such notification.

Sec. 102.75. PROHIBITED CONDUCT. (a) No manufacturer shall:

(1) induce or coerce, or attempt to induce or coerce, any distributor to engage in any illegal act or course of conduct;

(2) require a distributor to assent to any unreasonable requirement, condition, understanding, or term of an agreement prohibiting a distributor from selling the product of any other manufacturer or manufacturers;

(3) fix or maintain the price at which a distributor may resell beer;

(4) fail to provide to each distributor of its brands a written contract which embodies the manufacturer's agreement with its distributor;

(5) require any distributor to accept delivery of any beer or any other item or commodity which shall not have been ordered by the distributor;

(6) adjust the price at which the manufacturer sells beer to a distributor based on the price at which a distributor resells beer to a retailer, but a manufacturer is free to set its own price so long as any price adjustment is based on factors other than a distributor's increase in the price it charges to a retailer and not intended to otherwise coerce illegal behavior under this section; or

(7) accept payment in exchange for an agreement setting forth territorial rights.

(b) Nothing in this section shall interfere with the rights of a manufacturer or distributor to enter into contractual agreements that could be construed as governing ordinary business transactions, including, but not limited to, agreements concerning allowances, rebates, refunds, services, capacity, advertising funds, promotional funds, or sports marketing funds.

(c) It is the public policy and in the interest of this state to assure the independence of members of the three-tier system, but nothing in this code may be construed to prohibit contractual agreements between members of the same tier who hold the same licenses and permits.

Sec. 102.76. TRANSFER OF BUSINESS ASSETS OR STOCK. (a) No manufacturer shall unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock of a distributor or all or any portion of a distributor's assets, distributor's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling the distributor, including the distributor's rights and obligations under the terms of an agreement whenever the person or persons to be substituted meet reasonable standards imposed not only upon the distributor but upon all other distributors of that manufacturer of the same general class, taking into account the size and location of the sales territory and market to be served. Upon the death of one of the partners of a partnership operating the business of a distributor, no manufacturer shall deny the surviving partner or partners of such partnership the right to become a successor-in-interest to the agreement between the manufacturer and such partnership. Provided that the survivor has been active in the management of the partnership and/or is otherwise capable of carrying on the business of the partnership.

(b) Notwithstanding the provisions of Subsection (a) of this section, upon the death of a distributor no manufacturer shall deny approval for any transfer of ownership to a surviving spouse or adult child of an owner of a distributor; provided, however, that such subsequent transfers of such ownership by such surviving spouse or adult child shall thereafter be subject to the provisions of Subsection (a) of this section.

Sec. 102.77. REASONABLE COMPENSATION. (a) Any manufacturer who, without good cause, cancels, terminates, or fails to renew any agreement, or unlawfully denies approval of, or unreasonably withholds consent, to any assignment, transfer, or sale of a distributor's business assets or voting stock or other equity securities, shall pay such distributor with whom it has an agreement pursuant to Section 102.51 of this code the fair market value of the distributor's business with relation to the affected brand or brands. In determining fair market value, consideration shall be given to all elements of value, including but not limited to goodwill and going concern value.

(b) In the event that the manufacturer and the distributor are unable to mutually agree on whether or not good cause exists for cancellation under Section 102.74 of this code or on the reasonable compensation to be paid for the value of the distributor's business, as defined herein, the matter may, at the option of either the distributor or manufacturer, be submitted to three arbitrators, one of whom shall be named in writing by each party and the third of whom shall be chosen by the two arbiters so selected. Should the arbiters selected fail to choose a third arbiter within 10 days, a judge of a district court in the county in which the distributor's principal place of business is located shall select the third arbiter. Arbitration shall be conducted in accordance with the Texas General Arbitration Act, as amended (Article 224, Revised Civil Statutes of Texas, 1925). Arbitration costs shall be paid one-half by the distributor and one-half by the manufacturer. The award of the arbitrators shall be binding on the parties unless appealed within 10 days from the date of the award. All proceedings on appeal shall be in accordance with and governed by the Texas General Arbitration Act, as amended (Article 224, Revised Civil Statutes of Texas, 1925).

Sec. 102.78. RIGHT OF FREE ASSOCIATION. No manufacturer or distributor shall restrict or inhibit, directly or indirectly, the right of free association among manufacturers or distributors for any lawful purpose.

Sec. 102.79. JUDICIAL REMEDIES. (a) If a manufacturer or distributor who is a party to an agreement pursuant to Section 102.51 of this code fails to comply with this Act or otherwise engages in conduct prohibited under this Act, or if a manufacturer and distributor are not able to mutually agree on reasonable compensation under Section 102.77 of this code and the matter is not to be submitted to arbitration, the aggrieved manufacturer or distributor may maintain a civil action in a court of competent jurisdiction in the county in which the distributor's principal place of business is located.

(b) In any action under Subsection (a) of this section, the court may grant such relief as the court determines is necessary or appropriate considering the purposes of this Act.

(c) The prevailing party in any action under Subsection (a) of this section shall be entitled to actual damages, including the value of the distributor's business, as specified in Section 102.77 of this code, reasonable attorney's fees, and court costs.

Sec. 102.80. COVERAGE AND EFFECTIVE DATE. This Act shall cover agreements in existence on the date of enactment of this Act and also shall apply to agreements entered into and any cancellation, termination, failure to renew, amendment, or material modification of any agreement occurring after the date of enactment of this Act.

Sec. 102.81. ALE AND MALT LIQUOR. This subchapter and Subchapter C of this chapter apply to agreements concerning ale and malt liquor in the same manner as they apply to agreements concerning beer, and each particular class of permittee dealing with ale and malt liquor is subject to those provisions that apply to functionally corresponding licensees within the beer industry.

Sec. 102.82. STATUTE OF LIMITATIONS. A person must bring suit on an action arising under this chapter not later than four years after the day the cause of action accrues. If a termination related to a change in ownership of the brand occurs, the cause of action accrues when either the new brand owner or the transferring or selling brand owner provides notice of termination to the distributor.

NOTE: The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

CHAPTER 103. ILLICIT BEVERAGES

Sec. 103.01. ILLICIT BEVERAGES PROHIBITED. No person may possess, manufacture, transport, or sell an illicit beverage.

Sec. 103.02. EQUIPMENT OR MATERIAL FOR MANUFACTURE OF ILLICIT BEVERAGES. No person may possess equipment or material designed for, capable of use for, or used in manufacturing an illicit beverage.

Sec. 103.03. SEIZURE OF ILLICIT BEVERAGES, ETC. A peace officer may seize without a warrant:

(1) any illicit beverage, its container, and its packaging;

(2) any vehicle, including an aircraft or watercraft, used to transport an illicit beverage;

(3) any equipment designed for use in or used in manufacturing an illicit beverage; or

(4) any material to be used in manufacturing an illicit beverage.

Sec. 103.04. ARREST OF PERSON IN POSSESSION. A peace officer may arrest without a warrant any person found in possession of:

(1) an illicit beverage;

(2) any equipment designed for use in or used in manufacturing an illicit beverage; or

(3) any material to be used in manufacturing an illicit beverage.

Sec. 103.05. REPORT OF SEIZURE. (a) A peace officer who makes a seizure under Section 103.03 of this code shall make a report in triplicate which lists each item seized and the place and name of the owner, operator, or other person from whom it is seized. One copy of the report shall be verified by oath.

(b) The verified copy shall be retained in the permanent files of the commission or other agency making the seizure. The copy is subject to inspection by any member of the legislature or by any authorized law enforcement agency of the state.

(c) One copy of the report shall be delivered to the person from whom the seizure is made.

(d) A peace officer who makes a false report of the property seized commits a felony punishable by confinement in the Texas Department of Criminal Justice for not less than two years and not more than five years.

(e) A peace officer who fails to file the reports of a seizure as required by this section commits a misdemeanor punishable by a fine of not less than $50 nor more than $100 or by confinement in jail for not less than 10 nor more than 90 days or by both. The commission shall insure that the reports are made by peace officers.

Sec. 103.06. BEVERAGE DELIVERED TO COMMISSION. Any alcoholic beverage, its container, and its packaging which has been seized by a peace officer, as provided in Section 103.03 of this code, may not be replevied and shall be delivered to the commission for immediate public or private sale in the manner the commission considers best.

Sec.103.07. BEVERAGE OF ILLICIT MANUFACTURE OR UNFIT FOR CONSUMPTION. (a) The commission may not sell alcoholic beverages seized by a peace officer, as provided in Section 103.03, that are unfit for public consumption or are of illicit manufacture.

(b) Alcoholic beverages are unfit for public consumption if:

(1) the manufacturer or wholesaler of the beverages determines that the beverages are inappropriate for sale to a consumer;

(2) the beverages are damaged; or

(3) the code date affixed by the manufacturer to the beverages has expired.

(c) If the commission determines that seized alcoholic beverages are unfit for public consumption or are of illicit manufacture, the commission shall destroy the alcoholic beverages.

Sec. 103.08. SALE OF BEER. (a) Any beer, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that beer has been seized, the commission shall promptly notify a holder of a general, local, or branch distributor's license who handles the brand of beer seized and who operates in the county in which it was seized. If the beer was seized in a dry area, the commission shall notify either the general, local, or branch distributor who handles the brand operating nearest the area or the manufacturer brewing the beer. The commission and the distributor or manufacturer shall jointly determine whether the beer is in a salable condition.

(c) If the beer is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall be offered for sale to the distributor or manufacturer. If offered to a distributor, the beer shall be sold at the distributor's cost price less any state taxes which have been paid on the beer, F.O.B. the distributor's place of business. If the beer is offered to a manufacturer, it shall be sold at the manufacturer's cost price to its nearest distributor, less any state taxes which have been paid on the beer, F.O.B., the nearest distributor's place of business. In either case, the storage or warehousing charges necessarily incurred as a result of the seizure shall be added to the cost price.

(d) If the distributor or manufacturer does not exercise the right to purchase salable beer or to purchase returnable bottles, containers, or packages at their deposit price within 10 days, the commission shall sell the beer, bottles, containers, or packages at public or private sale as provided in this chapter.

Sec. 103.09. SALE OF LIQUOR. (a) Any liquor, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that liquor has been seized, the commission shall promptly notify a holder of a wholesaler's permit, a general class B wholesaler's permit, or a local class B wholesaler's permit who handles the brand of liquor seized and who operates in the county in which it was seized. If the liquor was seized in a dry area, the commission shall notify the wholesaler who handles the brand seized who operates nearest the area. The commission and the wholesaler shall jointly determine whether the liquor is in a salable condition.

(c) If the liquor is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall first be offered for sale to the wholesaler notified at the wholesaler's cost price F.O.B. its place of business, plus any storage or warehousing charges necessarily incurred as a result of the seizure.

(d) If the wholesaler does not exercise the right to purchase salable liquor, containers, or packages at the price specified in this section within 10 days, the commission shall sell the liquor, container, or packages at public or private sale, as provided in this chapter.

Sec. 103.10. EXERCISE OF DISCRETION IN CASE OF MISTAKE. The preceding sections of this subchapter shall not be construed as preventing the commission from exercising its discretion if illicit alcoholic beverages are seized as the result of an accidental shipment or other reasonable mistake. Under those circumstances, the commission may issue orders and make disposition of the alcoholic beverages as it finds just and reasonable.

Sec. 103.11. PROCEEDS FROM SALE. (a) The proceeds from the sale of seized alcoholic beverages, their containers, and their packaging shall be placed in escrow in a suspense account established by the commission for that purpose, pending the outcome of the forfeiture suit provided for in this chapter.

(b) Proceeds in escrow which are not forfeited to the state as a result of the suit shall be refunded to the alleged violator. Should the state illegally seize and sell any alcoholic beverages, the person legally entitled to possession of the beverages at the time of the seizure may recover from the state the fair market value of the beverages seized and sold, with the reimbursement paid out of the proceeds held in escrow from the sale and, if the funds in escrow are not sufficient, from the confiscated liquor fund.

Sec. 103.12. CEILING PRICES DURING EMERGENCY. If the federal government provides a method by which illicit alcoholic beverages or other property belonging to or forfeited to the state is sold at ceiling prices during a national emergency, the commission may comply with federal law or regulations in the sale or disposal of the beverages or property, even to the extent of partially or wholly abrogating provisions of this code that are inconsistent with the federal law or regulations.

Sec. 103.13. BONDING OF SEIZED VEHICLES PENDING SUIT. Any person with an ownership or a security interest in a vehicle that has been seized under Section 103.03 may recover possession of the vehicle pending suit for forfeiture by executing a bond with surety equal to double the appraised value of the vehicle. The bond shall be approved by the officer who made the seizure and shall secure the return of the vehicle to the custody of the seizing officer on the day of trial of the forfeiture suit.

Sec. 103.14. INSTITUTION OF SUIT FOR FORFEITURE. (a) The attorney general or the county or district attorney in the county in which a seizure is made shall institute a suit for forfeiture of the property or the proceeds in escrow from any sale of illicit beverages, or both, when notified by the commission or by the seizing officer that a seizure has been made under Section 103.03 of this code.

(b) The forfeiture suit shall be brought in the name of the State of Texas against the property or the proceeds in escrow, or both, and shall be brought in a court of competent jurisdiction in the county in which the seizure was made.

Sec. 103.15. NOTICE OF FORFEITURE SUIT. (a) Notice of the pendency of a suit for forfeiture under this chapter shall be served in the manner prescribed by law on any person in possession of the property at the time of seizure.

(b) If no person was in possession at the time of seizure or if the location of anyone who was in possession is unknown, notice of the suit shall be posted for 20 consecutive days immediately preceding the date of the suit at the courthouse door in the county in which the seizure was made.

Sec. 103.16. FORFEITURE OF A SEIZED VEHICLE. (a) In a suit for forfeiture of a vehicle seized under Section 103.03 of this code, the state shall have the burden of proving that the vehicle was used to transport an illicit beverage and that all intervenors under Subsection (b) of this section, if any, knowingly violated some provision of this code.

(b) Any person with an ownership or security interest in the vehicle may intervene in the suit for forfeiture to establish his rights. An intervenor under the provisions of this section has the burden of proving that he has a valid ownership or security interest in the vehicle.

(c) If the state fails to prove that the vehicle was used to transport an illicit beverage, the court shall render judgment returning the vehicle to the owner.

(d) If the state proves that the vehicle was used to transport an illicit beverage and that all intervenors, if any, knowingly violated some provision of this code, the court shall render judgment forfeiting the vehicle to the state.

(e) If the state proves that the vehicle was used to transport an illicit beverage but fails to prove that any intervenor knowingly violated some provision of this code, the court shall render judgment delivering possession of the vehicle to the innocent intervenor with the highest priority to possession of the vehicle.

Sec. 103.17. FORFEITURE OF OTHER SEIZED PROPERTY. (a) In any suit for forfeiture of proceeds in escrow from a sale of illicit beverages or of property other than vehicles, or both, seized under Section 103.03 of this code, the state shall have the burden of proving that:

(1) the alcoholic beverages were illicit;

(2) the equipment is designed to be used on or is used in manufacturing an illicit beverage; or

(3) the material is to be used in manufacturing an illicit beverage.

(b) If the state fails to prove the facts necessary for forfeiture, the court shall render judgment returning possession of the property or of the proceeds in escrow to the owner or the person in possession at the time of seizure.

(c) If the state proves the facts necessary for forfeiture, the court shall render judgment forfeiting the property or the proceeds in escrow, or both, to the state and ordering disposal in accordance with the provisions of Section 103.20 or Section 103.18(c) of this code.

Sec. 103.18. INTERVENTION BY SECURED CREDITORS. (a) In any suit for forfeiture of proceeds in escrow from any sale of illicit beverages or of property other than vehicles, or both, seized under Section 103.03 of this code, any person who has a security interest in any of the seized property may intervene to establish his rights.

(b) An intervenor under the provisions of this section shall have the burden of proving that he has a valid security interest in the property and that he had no knowledge that the property in which he has a security interest had been used or was to be used in violation of this code at the time the security interest was created.

(c) If an intervenor under this section establishes a security interest and a lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall issue an order of sale directed to the sheriff or any constable of the county in which the property was seized. The order shall command the sheriff or constable to conduct a sale at the courthouse door of all or part of the property, whichever the court considers proper, in the same manner as personal property is sold under execution.

(d) The proceeds of a sale under Subsection (c) of this section shall be applied first to the payment of the costs of suit and the expenses incident to the sale. After the costs of suit and expenses of sale have been approved by the court that tried the suit, any remaining proceeds shall be applied toward payment of creditors secured by the property, according to their priorities. After all secured creditors are satisfied, any remaining proceeds shall be paid to the commission to be allocated in accordance with the provisions of Section 103.23 of this code.

(e) If all intervenors under this section fail to establish a valid security interest of lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall order disposal of the property in accordance with the provisions of Section 103.20 of this code.

Sec. 103.19. TRANSFER OF SECURITY INTERESTS. All security interests in property sold under this chapter shall be transferred to the proceeds of the sale.

Sec. 103.20. DISPOSITION OF FORFEITED PROPERTY. (a) The commission may sell property, other than proceeds in escrow, forfeited to the state at a public or private sale in the manner the commission considers best.

(b) If in the opinion of the commission or the administrator the property is needed for the use of the commission, the commission may retain and use the property until it is no longer needed, at which time it shall be sold in accordance with Subsection (a) of this section.

Sec. 103.21. BILL OF SALE TO PURCHASER. When executing a sale under this chapter, the commission or the sheriff or constable shall issue a bill of sale to each purchaser of property. The bill of sale shall convey a valid and unimpaired title in the property to the purchaser.

Sec. 103.22. COSTS OF FORFEITURE SUITS. The commission is entitled to recover from the proceeds of a forfeiture sale all costs of a forfeiture suit brought under this chapter, including:

(1) all usual court costs, including the cost of serving process;

(2) expenses of the forfeiture sale; and

(3) reasonable attorney's fees.

Sec. 103.23. ALLOCATION OF PROCEEDS OF SALE. Proceeds from a forfeiture sale and proceeds in escrow which are forfeited to the state in a forfeiture suit shall be disposed of by depositing 35 percent of the proceeds in a separate fund in the state treasury designated as the confiscated liquor fund and depositing 65 percent of the proceeds in the general revenue fund. The confiscated liquor fund may be appropriated to the commission to defray the expenses of accumulating evidence pertaining to violations of this code; assembling, storing, transporting, selling, and accounting for confiscated alcoholic beverages, containers, devices, and property; and any other purposes deemed necessary by the commission in administering and enforcing this code. Any unexpended balance in the confiscated liquor fund at the end of a biennium shall remain in the fund subject to further appropriation for the same purposes.

CHAPTER 104. REGULATION OF RETAILERS

Sec. 104.01. LEWD, IMMORAL, INDECENT CONDUCT. No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

(1) the use of loud and vociferous or obscene, vulgar, or indecent language, or permitting its use;

(2) the exposure of person or permitting a person to expose his person;

(3) rudely displaying or permitting a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment;

(4) solicitation of any person to buy drinks for consumption by the retailer or any of his employees;

(5) being intoxicated on the licensed premises;

(6) permitting lewd or vulgar entertainment or acts;

(7) permitting solicitations of persons for immoral or sexual purposes;

(8) failing or refusing to comply with state or municipal health or sanitary laws or ordinances; or

(9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so.

Sec. 104.02. BLINDS AND BARRIERS. (a) No person may install or maintain a blind or barrier in the opening or door of a retail alcoholic beverage establishment or paint the windows, at or above a point 54 inches above the ground or sidewalk beneath the window, in a manner that will obstruct the view of the general public.

(b) No person may install or maintain a curtain, hanging, sign, or other obstruction that prevents a clear view of the interior of a package store or wine only package store, except a drug store that holds one of those permits may display drug merchandise notwithstanding this subsection.

Sec. 104.03. CONSPIRACY; ACCEPTING UNLAWFUL BENEFIT. A retail dealer or his agent, servant, or employee commits an offense if he conspires with another person to violate or accepts the benefits of a violation of this code or a valid rule of the commission.

Sec. 104.04. DRAFT MALT BEVERAGE [~~BEER~~] DISPENSER: SIGN REQUIRED. No retail dealer may dispense draft beer, malt liquor, or ale unless each faucet or other dispensing apparatus

is equipped with a sign clearly indicating the name or brand of the product being dispensed through the faucet or apparatus. The sign must be in full sight of the purchaser, and the letters on it must be legible.

Sec. 104.05. SALE IN ORIGINAL PACKAGING. (a) This section applies to a permittee or licensee who is authorized to sell beer, malt liquor, or ale to an ultimate consumer for consumption off the permitted or licensed premises.

(b) The holder of a permit or license described in Subsection (a) of this section may resell beer, malt liquor, or ale only in the packaging in which the holder received the beer, malt liquor, or ale or may resell the contents of the packages as individual containers.

(c) Except for purposes of resale as individual containers, a licensee or permittee may not:

(1) mutilate, tear apart, or cut apart original packaging in which beer, malt liquor, or ale was received; or

(2) repackage beer, malt liquor, or ale in a manner misleading to the consumer or that results in required labeling being omitted or obscured.

(d) Nothing in this code prevents a retailer from making a claim for the replacement of alcoholic beverages delivered to the retailer by a wholesaler or distributor in a damaged condition. A wholesaler or distributor may not give a refund for or replace alcoholic beverages that were damaged while in the possession of the retailer.

(e) To assure and control product quality, the holder of a distributor's license, wholesaler's permit, or class B wholesaler's permit, at the time of a regular delivery, may withdraw, with the permission of the retailer, a quantity of beer, ale, or malt liquor in its undamaged original packaging from the retailer's stock, if:

(1) the distributor, wholesaler, or class B wholesaler replaces the stock with beer, ale, or malt liquor of identical brands, quantities, and packages as the beer, ale, or malt liquor withdrawn;

(2) the stock is withdrawn before the date considered by the manufacturer of the product to be the date the product becomes inappropriate for sale to a consumer; and

(3) the quantity of stock withdrawn does not exceed the equivalent of 25 cases of 24 12-ounce containers.

(f) A consignment sale of an alcoholic beverage is not authorized under Subsection (e) of this section.

Sec. 104.06. MONITORING OF GROSS RECEIPTS. (a) On the issuance and renewal of a license or permit that allows on-premises consumption of any alcoholic beverage the commission shall determine whether the holder receives, or for the issuance of a license or permit is to receive, 51 percent or more of the gross receipts of the premises for which the license or permit is issued from the holder’s sale or service of alcoholic beverages for on-premises consumption.

(b) The commission shall:

(1) adopt rules for making a determination under Subsection (a); and

(2) require a holder of a license or permit to provide any information or document that the commission needs to make a determination.

(c) If the commission makes a determination under Subsection (a) that a holder of a license or permit receives 51 percent or more of the gross receipts of the premises from the sale or service of alcoholic beverages, the holder shall comply with the requirements of Section 31, Article 4413(29ee), Revised Statutes, and shall continue to comply with those requirements until the commission determines that the holder receives less than 51 percent of the gross receipts of the premises from the sale or service of alcoholic beverages for on-premises consumption.

Sec. 104.07. POSTING OF CERTAIN NOTICES REQUIRED. (a) The holder of a permit or license under Chapter 25, 26, 28, 32, 69, or 71, other than the holder of a food and beverage certificate, shall display a sign containing the following notice in English and in Spanish:

WARNING: Obtaining forced labor or services is a crime under Texas law. Call the national human trafficking hotline: 1-888-373-7888. You may remain anonymous.

(b) The sign must be at least 8-1/2 inches high and 11 inches wide and displayed in a conspicuous manner clearly visible to the public and employees of the permit or license holder. The

English notice must cover approximately two-thirds of the sign, and the Spanish notice must cover approximately one-third of the sign.

CHAPTER 105. HOURS OF SALE AND CONSUMPTION

Sec. 105.01. HOURS OF SALE: LIQUOR. (a) Except as provided in Sections 105.02, 105.03, 105.04, and 105.08, no person may sell, offer for sale, or deliver any liquor: (1) on New Year's Day, Thanksgiving Day, or Christmas Day;

(2) on Sunday; or

(3) before 10 a.m. or after 9 p.m. on any other day.

(b) When Christmas Day or New Year's Day falls on a Sunday, Subsection (a) of this section applies to the following Monday.

Sec. 105.02. HOURS OF SALE: WHOLESALERS AND LOCAL DISTRIBUTORS TO RETAILERS. (a) A holder of a wholesaler's permit may sell, offer for sale, or deliver liquor to a retailer anytime except Sunday and Christmas Day.

(b) A local distributor's permittee may sell, offer for sale, or deliver liquor to a retailer between 5 a.m. and 9 p.m. on any day except:

(1) Sunday;

(2) Christmas Day; or

(3) a day on which a package store permittee is prohibited from selling liquor.

Sec. 105.03. HOURS OF SALE: MIXED BEVERAGES. (a) No person may sell or offer for sale mixed beverages at any time not permitted by this section.

(b) A mixed beverage permittee may sell and offer for sale mixed beverages between 7 a.m. and midnight on any day except Sunday. On Sunday he may sell mixed beverages between midnight and 1:00 a.m. and between 10 a.m. and midnight, except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to the customer.

(c) In a city or county having a population of 800,000 or more, according to the last preceding federal census, or 500,000 or more, according to the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001, a holder of a mixed beverage late hours permit may also sell and offer for sale mixed beverages between midnight and 2 a.m. on any day.

(d) In a city or county other than a city or county described by Subsection (c), the extended hours prescribed in Subsection (c) of this section are effective for the sale of mixed beverages and the offer to sell them by a holder of a mixed beverages late hours permit:

(1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and

(2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

(e) A violation of a city ordinance or order of a commissioners court adopted pursuant to Subsection (d) of this section is a violation of this code.

Sec. 105.04. HOURS OF SALE: WINE AND BEER RETAILER. The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's permit or a wine and beer retailer's off-premise permit are the same as those prescribed for the sale of beer under Section 105.05 of this code, except that no sale shall be allowed between 2 a.m. and noon on Sunday.

Sec. 105.05. HOURS OF SALE: BEER. (a) No person may sell, offer for sale, or deliver beer at any time not permitted by this section.

(b) A person may sell, offer for sale, or deliver beer between 7 a.m. and midnight on any day except Sunday. On Sunday he may sell beer between midnight and 1:00 a.m. and between noon and midnight, except that permittees or licensees authorized to sell for on-premise consumption may sell beer between 10:00 a.m. and noon if the beer is served to a customer during the service of food to the customer.

(c) In a city or county having a population of 800,000 or more, according to the last preceding federal census, or 500,000 or more, according to the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001, a holder of a retail dealer's on-premise late hours license may also sell, offer for sale, and deliver beer between midnight and 2 a.m. on any day.

(d) In a city or county other than a city or county described by Subsection (c), the extended hours prescribed in Subsection (c) of this section, or any part of the extended hours prescribed in Subsection (c) of this section are effective for the sale, offer to sell, and delivery of beer by a holder of a retail dealer's on-premise late hours license:

(1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and

(2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

(e) A violation of a city ordinance or order of a commissioners court adopted pursuant to Subsection (d) of this section is a violation of this code.

Sec. 105.051. SALE OF BEER BY DISTRIBUTOR'S LICENSEE. The holder of a general, local, or branch distributor's license may sell, offer for sale, or deliver beer 24 hours a day Monday through Saturday and between midnight and 1 a.m. and between noon and midnight on Sunday.

Sec. 105.06. HOURS OF CONSUMPTION. (a) In this section:

(1) "Extended hours area" means an area subject to the extended hours of sale provided in Section 105.03 or 105.05 of this code.

(2) "Standard hours area" means an area which is not an extended hours area.

(a-1) For the purposes of this section, a licensed or permitted premises is a public place.

(b) In a standard hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 1:15 a.m. and 12 noon or on any other day between 12:15 a.m. and 7 a.m.

(c) In an extended hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a.m. and 12 noon and on any other day between 2:15 a.m. and 7 a.m.

(d) Proof that an alcoholic beverage was possessed with intent to consume in violation of this section requires evidence that the person consumed an alcoholic beverage on that day in violation of this section.

(e) An offense under this section is a Class C misdemeanor.

Sec. 105.07. HOURS OF SALE AND CONSUMPTION: SPORTS VENUE. (a) In this section, "sports venue" means a public entertainment facility property, as defined by Section 108.73, that is primarily designed and used for live sporting events.

(b) Notwithstanding any other provision of this code, in addition to any other period during which the sale and consumption of alcohol is authorized under this code:

(1) a licensed or permitted premises located in a sports venue may sell alcoholic beverages between 10 a.m. and noon;

(2) a person may consume alcoholic beverages at a sports venue between 10 a.m. and noon.

Sec. 105.08. HOURS OF SALE AND CONSUMPTION: WINERY. The holder of a winery permit may sell, offer for sale, and deliver wine, and a person may consume wine on the premises of a winery:

(1) between 8 a.m. and midnight on any day except Sunday; and

(2) between 10 a.m. and midnight on Sunday; and

(3) between midnight and 2 a.m. on New Year's Day.

Sec. 105.081. HOURS OF SALE AND CONSUMPTION: BREWER OR MANUFACTURER. (a) The holder of a brewer's permit may sell, offer for sale, and deliver ale or malt liquor and a person may consume ale or malt liquor on the brewer's premises:

(1) between 8 a.m. and midnight on any day except Sunday; and

(2) between 10 a.m. and midnight on Sunday.

(b) The holder of a manufacturer's license may sell, offer for sale, and deliver beer and a person may consume beer on the manufacturer's premises:

(1) between 8 a.m. and midnight on any day except Sunday; and

(2) between 10 a.m. and midnight on Sunday.

NOTE: Sec 105.081 added by Senate Bill 518, 83rd Legislature, Regular Session, 2013, effective June 14, 2013.

Sec. 105.081. HOURS OF SALE AND CONSUMPTION: DISTILLERY. (a) The holder of a distiller's and rectifier's permit may sell and offer for sale distilled spirits for on-premises consumption and a person may consume distilled spirits on the permitted premises during the same hours mixed beverages may be sold and offered for sale by a mixed beverage permit holder under Section 105.03(b).

(b) The holder of a distiller's and rectifier's permit may sell and offer for sale distilled spirits to ultimate consumers for off-premises consumption during the same hours as the holder of a package store permit may sell and offer for sale distilled spirits to ultimate consumers for off-premises consumption.

NOTE: Section 105.081 added by Senate Bill 905, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 105.09. HOURS OF SALE AND CONSUMPTION: CERTAIN EVENTS. Notwithstanding any other provision of this code, in addition to any other period during which the sale and consumption of alcohol is authorized under this code:

(1) a licensed or permitted premises located at a festival, fair, or concert may sell alcoholic beverages between 10 a.m. and noon; and

(2) a person may consume alcoholic beverages at a festival, fair, or concert between 10 a.m. and noon.

Sec. 105.10. PENALTY. (a) A person commits an offense if the person, in violation of this chapter or Section 32.17(a)(7):

(1) sells or offers for sale an alcoholic beverage during prohibited hours; or

(2) consumes or permits the consumption of an alcoholic beverage on the person's licensed or permitted premises during prohibited hours.

(b) An offense under this section is a Class A misdemeanor.

CHAPTER 106. PROVISIONS RELATING TO AGE

Sec. 106.01. DEFINITION. In this code, "minor" means a person under 21 years of age.

Sec. 106.02. PURCHASE OF ALCOHOL BY A MINOR. (a) A minor commits an offense if the minor purchases an alcoholic beverage. A minor does not commit an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

(b) An offense under this section is punishable as provided by Section 106.071.

Sec. 106.025. ATTEMPT TO PURCHASE ALCOHOL BY A MINOR. (a) A minor commits an offense if, with specific intent to commit an offense under Section 106.02 of this code, the minor does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) An offense under this section is punishable as provided by Section 106.071.

Sec. 106.03. SALE TO MINORS. (a) A person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor.

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 years old or older by displaying an apparently valid proof of identification that contains a physical description and photograph consistent with the minor's appearance, purports to establish that the minor is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license or identification card issued by the Department of Public Safety, a passport, or a military identification card.

(c) An offense under this section is a Class A misdemeanor.

(d) Subsection (b) does not apply to a person who accesses electronically readable information under Section 109.61 that identifies a driver's license or identification certificate as invalid.

NOTE: The defenses added by this Act to Subsection (b), Section 106.03, Alcoholic Beverage Code, are available to a person regardless of when the offense was committed but only for trials commencing on or after the effective date of this Act.

Sec. 106.04. CONSUMPTION OF ALCOHOL BY A MINOR. (a) A minor commits an offense if he consumes an alcoholic beverage.

(b) It is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse.

(c) An offense under this section is punishable as provided by Section 106.071.

(d) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition. For the purposes of this subsection:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction of an offense under this section; and

(2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

(e) Subsection (a) does not apply to a minor who:

(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2) was the first person to make a request for medical assistance under Subdivision (1); and

(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A) remained on the scene until the medical assistance arrived; and

(B) cooperated with medical assistance and law enforcement personnel.

NOTE: The change in law made by this Act applies only to an offense committed on or after September 1, 2011. For purposes of this section, an offense is committed before September 1, 2011, if any element of the offense occurs before September 1, 2011. (Acts of the 82nd Legislature, Regular Session, 2011)

Sec. 106.041. DRIVING OR OPERATING WATERCRAFT UNDER THE INFLUENCE OF ALCOHOL BY MINOR. (a) A minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense under this section, the offense is punishable by:

(1) a fine of not less than $500 or more than $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115, the court shall order a minor convicted of an offense under this section to perform community service for:

(1) not less than 20 or more than 40 hours, if the minor has not been previously convicted of an offense under this section; or

(2) not less than 40 or more than 60 hours, if the minor has been previously convicted of an offense under this section.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol.

(f) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition or deferred adjudication.

(g) An offense under this section is not a lesser included offense under Section 49.04, 49.045, or 49.06, Penal Code.

(h) For the purpose of determining whether a minor has been previously convicted of an offense under this section:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and

(2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

(i) A peace officer who is charging a minor with committing an offense under this section is not required to take the minor into custody but may issue a citation to the minor that contains written notice of the time and place the minor must appear before a magistrate, the name and address of the minor charged, and the offense charged.

(j) In this section:

(1) “Child” has the meaning assigned by Section 51.02, Family Code.

(2) “Motor vehicle” has the meaning assigned by Section 32.34(a), Penal Code.

(3) “Public place” has the meaning assigned by Section 1.07, Penal Code.

(4) "Watercraft" has the meaning assigned by Section 49.01, Penal Code.

Sec. 106.05. POSSESSION OF ALCOHOL BY A MINOR. (a) Except as provided in Subsection (b) of this section, a minor commits an offense if he possesses an alcoholic beverage.

(b) A minor may possess an alcoholic beverage:

(1) while in the course and scope of the minor’s employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code;

(2) if the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; or

(3) if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

(c) An offense under this section is punishable as provided by Section 106.071.

(d) Subsection (a) does not apply to a minor who:

(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2) was the first person to make a request for medical assistance under Subdivision (1); and

(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A) remained on the scene until the medical assistance arrived; and

(B) cooperated with medical assistance and law enforcement personnel.

NOTE: The change in law made by this Act applies only to an offense committed on or after September 1, 2011. For purposes of this section, an offense is committed before September 1, 2011, if any element of the offense occurs before September 1, 2011. (Acts of the 82nd Legislature, Regular Session, 2011)

Sec. 106.06. PURCHASE OF ALCOHOL FOR A MINOR; FURNISHING ALCOHOL TO A MINOR. (a) Except as provided in Subsection (b) of this section, a person commits an offense if he purchases an alcoholic beverage for or gives or makes available an alcoholic beverage to a minor with criminal negligence.

(a) Except as provided in Subsection (b) of this section, a person commits an offense if he purchases an alcoholic beverage for or gives or with criminal negligence makes available an alcoholic beverage to a minor.

(b) A person may purchase an alcoholic beverage for or give an alcoholic beverage to a minor if he is the minor's adult parent, guardian, or spouse, or an adult in whose custody the minor has been committed by a court, and he is visibly present when the minor possesses or consumes the alcoholic beverage.

(c) An offense under this section is a Class A misdemeanor.

(d) A judge, acting under Article 42.12, Code of Criminal Procedure, who places a defendant charged with an offense under this section on community supervision under that article shall, if the defendant committed the offense at a gathering where participants were involved in the abuse of alcohol, including binge drinking or forcing or coercing individuals to consume alcohol, in addition to any other condition imposed by the judge:

(1) require the defendant to:

(A) perform community service for not less than 20 or more than 40 hours; and

(B) attend an alcohol awareness program approved under Section 106.115; and

(2) order the Department of Public Safety to suspend the driver's license or permit of the defendant or, if the defendant does not have a driver's license or permit, to deny the issuance of a driver's license or permit to the defendant for 180 days.

(e) Community service ordered under Subsection (d) is in addition to any community service ordered by the judge under Section 16, Article 42.12, Code of Criminal Procedure, and must be related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that the court considers appropriate for rehabilitative purposes.

NOTE: The change in law made by this Act applies only to an offense committed on or after September 1, 2011. For purposes of this section, an offense is committed before September 1, 2011, if any element of the offense occurs before September 1, 2011. (Acts of the 82nd Legislature, Regular Session, 2011)

Sec. 106.07. MISREPRESENTATION OF AGE BY A MINOR. (a) A minor commits an offense if he falsely states that he is 21 years of age or older or presents any document that indicates he is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.

(b) An offense under this section is punishable as provided by Section 106.071.

Sec. 106.071. PUNISHMENT FOR ALCOHOL-RELATED OFFENSE BY MINOR. (a) This section applies to an offense under Section 106.02, 106.025, 106.04, 106.05, or 106.07.

(b) Except as provided by Subsection (c), an offense to which this section applies is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense to which this section applies, the offense is punishable by:

(1) a fine of not less than $250 or more than $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115:

(1) the court shall order a minor placed on deferred disposition for or convicted of an offense to which this section applies to perform community service for:

(A) not less than eight or more than 12 hours, if the minor has not been previously convicted of an offense to which this section applies; or

(B) not less than 20 or more than 40 hours, if the minor has been previously convicted once of an offense to which this section applies; and

(2) the court shall order the Department of Public Safety to suspend the driver's license or permit of a minor convicted of an offense to which this section applies or, if the minor does not have a driver's license or permit, to deny the issuance of a driver's license or permit for:

(A) 30 days, if the minor has not been previously convicted of an offense to which this section applies;

(B) 60 days, if the minor has been previously convicted once of an offense to which this section applies; or

(C) 180 days, if the minor has been previously convicted twice or more of an offense to which this section applies.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

(f) In this section:

(1) a prior adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction; and

(2) a prior order of deferred disposition for an offense alleged under this section is considered a conviction.

(g) In this section, "child" has the meaning assigned by Section 51.02, Family Code.

(h) A driver's license suspension under this section takes effect on the 11th day after the date the minor is convicted.

(i) A defendant who is not a child and who has been previously convicted at least twice of an offense to which this section applies is not eligible to receive a deferred disposition or deferred adjudication.

Sec. 106.08. IMPORTATION BY A MINOR. No minor may import into this state or possess with intent to import into this state any alcoholic beverage.

Sec. 106.09. EMPLOYMENT OF MINORS. (a) Except as provided in Subsections (b), (c), and (e) of this section, no person may employ a person under 18 years of age to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so.

(b) A holder of a wine only package store permit may employ a person 16 years old or older to work in any capacity.

(c) A holder of a permit or license providing for the on-premises consumption of alcoholic beverages may employ a person under 18 years of age to work in any capacity other than the actual selling, preparing, or serving of alcoholic beverages.

(d) The fact that a person is 18, 19, or 20 years of age is not a ground for refusal of an original or renewal permit or license issued under Chapter 35, 36, or 73 [~~of this code~~], provided that such a person to whom a permit or license is issued may carry out the activities authorized by those chapters only while in the actual course and scope of the person's employment.

(e) The holder of a permit or license providing for the on-premises consumption of alcoholic beverages who also holds a food and beverage certificate may employ a person under 18 years of age to work as a cashier for transactions involving the sale of alcoholic beverages if the alcoholic beverages are served by a person 18 years of age or older.

Sec. 106.10. PLEA OF GUILTY BY MINOR. No minor may plead guilty to an offense under this chapter except in open court before a judge.

Sec. 106.115. ATTENDANCE AT ALCOHOL AWARENESS COURSE; LICENSE SUSPENSION. (a) On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to attend an alcohol awareness program approved by the Department of State Health Services under this section or a drug and alcohol driving awareness program approved by the Texas Education Agency [~~Texas Commission on Alcohol and Drug Abuse~~]. On conviction of a minor of an offense under one or more of those sections, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend an [~~the~~] alcohol awareness program or a drug and alcohol driving awareness program described by this subsection. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require the defendant to attend an [~~the~~] alcohol awareness program or a drug and alcohol driving awareness program described by this subsection. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Department of State Health Services [~~Texas Commission on Alcohol and Drug Abuse~~]:

(1) is responsible for the administration of the certification of approved alcohol awareness programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of the approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding alcohol awareness programs approved under this section; and

(4) shall monitor, coordinate, and provide training to a person who provides an alcohol awareness program.

(b) When requested, an alcohol awareness program may be taught in languages other than English.

(b-1) If the defendant resides in a county with a population of 75,000 or less and access to an alcohol awareness program is not readily available in the county, the court may allow the defendant to take an online alcohol awareness program if the Department of State Health Services approves online courses or require the defendant to perform not less than eight hours of community service related to alcohol abuse prevention or treatment and approved by the Department of State Health Services under Subsection (b-3) instead of attending the alcohol awareness program. Community service ordered under this subsection is in addition to community service ordered under Section 106.071(d).

(b-2) For purposes of Subsection (b-1), if the defendant is enrolled in an institution of higher education located in a county in which access to an alcohol awareness program is readily available, the court may consider the defendant to be a resident of that county. If the defendant is not enrolled in such an institution of higher education or if the court does not consider the defendant to be a resident of the county in which the institution is located, the defendant's residence is the residence listed on the defendant's driver's license or personal identification certificate issued by the Department of Public Safety. If the defendant does not have a driver's license or personal identification certificate issued by the Department of Public Safety, the defendant's residence is the residence on the defendant's voter registration certificate. If the defendant is not registered to vote, the defendant's residence is the residence on file with the public school district on which the defendant's enrollment is based. If the defendant is not enrolled in public school, the defendant's residence is determined as provided by commission rule.

NOTE: In Section 106.115(b-2), "commission" refers to the Department of State Health Services.

(b-3) The Department of State Health Services shall create a list of community services related to alcohol abuse prevention or treatment in each county in the state to which a judge may sentence a defendant under Subsection (b-1).

(c) The court shall require the defendant to present to the court, within 90 days of the date of final conviction, evidence in the form prescribed by the court that the defendant, as ordered by the court, has satisfactorily completed an alcohol awareness program or performed the required hours of community service. For good cause the court may extend this period by not more than 90 days. If the defendant presents the required evidence within the prescribed period, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.

(d) If the defendant does not present the required evidence within the prescribed period, the court:

(1) shall order the Department of Public Safety to:

(A) suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; or

(B) if the defendant has been previously convicted of an offense under one or more of the sections listed in Subsection (a), suspend the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; and

(2) may order the defendant or the parent, managing conservator, or guardian of the defendant to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence to the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service.

(e) The Department of Public Safety shall send notice of the suspension or prohibition order issued under Subsection (d) by first class mail to the defendant. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the period covered by the suspension or prohibition.

Sec. 106.116. REPORTS OF COURT TO COMMISSION. Unless the clerk is otherwise required to include the information in a report submitted under Section 101.09, the clerk of a court, including a justice court, municipal court, or juvenile court, shall furnish to the commission on request a notice of a conviction of an offense under this chapter or an adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter. The report must be in the form prescribed by the commission.

Sec. 106.117. REPORT OF COURT TO DEPARTMENT OF PUBLIC SAFETY. (a) Each court, including a justice court, municipal court, or juvenile court, shall furnish to the Department of Public Safety a notice of each:

(1) adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter;

(2) conviction of an offense under this chapter;

(3) order of deferred disposition for an offense alleged under this chapter; and

(4) acquittal of an offense under Section 106.041.

(b) The notice must be in a form prescribed by the Department of Public Safety and must contain the driver’s license number of the defendant, if the defendant holds a driver’s license.

(c) The Department of Public Safety shall maintain appropriate records of information in the notices and shall provide the information to law enforcement agencies and courts as necessary to enable those agencies and courts to carry out their official duties. The information is admissible in any action in which it is relevant. A person who holds a driver’s license having the same number that is contained in a record maintained under this section is presumed to be the person to whom the record relates. The presumption may be rebutted only by evidence presented under oath.

(d) The information maintained under this section is confidential and may not be disclosed except as provided by this section. A provision of Chapter 58, Family Code, or other law limiting collection or reporting of information on a juvenile or other minor or requiring destruction of that information does not apply to information reported and maintained under this section.

Sec. 106.12. EXPUNGEMENT OF CONVICTION OF A MINOR. (a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 21 years, may apply to the court in which he was convicted to have the conviction expunged.

(b) The application shall contain the applicant's sworn statement that he was not convicted of any violation of this code while a minor other than the one he seeks to have expunged.

(c) If the court finds that the applicant was not convicted of any other violation of this code while he was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

(d) The court shall charge an applicant a fee in the amount of $30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

Sec. 106.13. SANCTIONS AGAINST RETAILER. (a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 90 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that the licensee or permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor or with criminal negligence permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises.

(b) For a second offense the commission or administrator may cancel the license or permit or suspend it for not more than six months. For a third offense within a period of 36 consecutive months the commission or administrator may cancel the permit or suspend it for not more than 12 months.

(c) The commission or administrator may relax the provisions of this section concerning suspension and cancellation and assess a sanction the commission or administrator finds just under the circumstances if, at a hearing, the licensee or permittee establishes to the satisfaction of the commission or administrator:

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped; or

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee.

Sec. 106.14. ACTIONS OF EMPLOYEE. (a) For purposes of this chapter and any other provision of this code relating to the sales, service, dispensing, or delivery of alcoholic beverages to a person who is not a member of a private club on the club premises, a minor, or an intoxicated person or the consumption of alcoholic beverages by a person who is not a member of a private club on the club premises, a minor, or an intoxicated person, the actions of an employee shall not be attributable to the employer if:

(1) the employer requires its employees to attend a commission-approved seller training program;

(2) the employee has actually attended such a training program; and

(3) the employer has not directly or indirectly encouraged the employee to violate such law.

(b) The commission shall adopt rules or policies establishing the minimum requirements for approved seller training programs. Upon application, the commission shall approve seller training programs meeting such requirements that are sponsored either privately, by public community colleges, or by public or private institutions of higher education that offer a four-year undergraduate program and a degree or certificate in hotel or motel management, restaurant management, or travel or tourism management. The commission may charge an application fee to be set by the commission in such amount as is necessary to defray the expense of processing the application.

(c) The commission may approve under this section a seller training program sponsored by a licensee or permittee for the purpose of training its employees whether or not such employees are located

at the same premises. This subsection shall only apply to licensees or permittees who employ at least 150 persons at any one time during the license or permit year who sell, serve, or prepare alcoholic beverages.

(d) The commission may approve under this section a seller training program conducted by a hotel management company or a hotel operating company for the employees of five or more hotels operated or managed by the company if:

(1) the seller training program is administered through the corporate offices of the company; and

(2) the hotels employ a total of at least 200 persons at one time during the license or permit year who sell, serve, or prepare alcoholic beverages.

(e) After notice and hearing, the commission may cancel or suspend the commission's approval of a seller training program, the commission's certification of a trainer to teach a seller training program, or the commission's certification of a seller-server if the program, trainer, or seller-server violates this code or a commission rule. The commission may give a program, trainer, or seller-server the opportunity to pay a civil penalty rather than be subject to suspension under this subsection. Sections 11.62 through 11.67 apply to the program approval or certification as if the program approval or certification were a license or permit under this code.

Sec. 106.15. PROHIBITED ACTIVITIES BY PERSONS YOUNGER THAN 18. (a) A permittee or licensee commits an offense if he employs, authorizes, permits, or induces a person younger than 18 years of age to dance with another person in exchange for a benefit, as defined by Section 1.07, Penal Code, on the premises covered by the permit or license.

(b) An offense under Subsection (a) is a Class A misdemeanor.

(c) In addition to a penalty imposed under Subsection (b), the commission or administrator shall:

(1) suspend for a period of five days the license or permit of a person convicted of a first offense under Subsection (a);

(2) suspend for a period of 60 days the license or permit of a person convicted of a second offense under Subsection (a); and

(3) cancel the license or permit of a person convicted of a third offense under Subsection (a).

(d) This section does not apply to a gift or benefit given for a dance at a wedding, anniversary, or similar event.

(e) A person does not commit an offense under Subsection (a) if the person younger than 18 years of age falsely represents the person’s age to be at least 18 years of age by displaying an apparently valid Texas driver’s license or an identification card issued by the Department of Public Safety containing a physical description consistent with the person’s appearance.

CHAPTER 107. TRANSPORTATION AND IMPORTATION

Sec. 107.01. TRANSPORTATION OF LIQUOR: STATEMENT REQUIRED. (a) No person may transport liquor into this state or on a public highway, street, or alley in this state unless the person accompanying or in charge of the shipment has with him, available for exhibition and inspection, a written statement furnished and signed by the shipper showing the name and address of the consignor and the consignee, the origin and destination of the shipment, and any other information required by rule or regulation of the commission.

(b) The person in charge of the shipment while it is being transported shall exhibit the statement to the commission, an authorized representative of the commission, or a peace officer on demand, and it is a violation of this code to fail or refuse to do so. The representative or officer shall accept the written statement as prima facie evidence of the legal right to transport the liquor.

Sec. 107.02. TRANSPORTATION OF BEER: STATEMENT REQUIRED. (a) It is lawful for a person to transport beer from any place where its sale, manufacture, or distribution is authorized to

another place in the state where its sale, manufacture, or distribution is authorized, or from the state boundary to a place where its sale, manufacture, or distribution is authorized, even though the route of transportation may cross a dry area.

(a-1) A person transporting beer to the premises of a distributor, including to a location from which the distributor is temporarily conducting business under Section 109.62, shall provide to the consignee a shipping invoice that clearly states:

(1) the name and address of the consignor and consignee;

(2) the origin and destination of the shipment; and

(3) any other information required by this code or commission rule, including the brands, sizes of containers, and quantities of beer contained in the shipment.

(b) A shipment of beer must be accompanied by a written statement furnished and signed by the shipper showing:

(1) the name and address of the consignor and consignee;

(2) the origin and destination of the shipment; and

(3) any other information required by the commission or administrator.

(c) The person in charge of the shipment while it is being transported shall exhibit the written statement to any representative of the commission or peace officer who demands to see it. The statement shall be accepted by the representative or peace officer as prima facie evidence of the legal right to transport the beer.

(d) A person who transports beer not accompanied by the required statement, or who fails to exhibit the statement after a lawful demand, violates this code.

Sec. 107.03. DELIVERY OF LIQUOR IN DRY AREA. No carrier may transport and deliver liquor to a person in a dry area in this state except for a purpose authorized by this code.

Sec. 107.04. DELIVERY OF BEER IN DRY AREA. A common carrier may not deliver beer in a dry area unless it is consigned to a local or general distributor's licensee who has previously stated that he intends to transport it to a licensed place of business in a wet area. A common carrier who transports beer to a distributor in a dry area shall comply strictly with this section and Section 107.02 of this code.

Sec. 107.05. IMPORTATION OF LIQUOR. (a) No person may import liquor into the state and deliver it to a person not authorized to import it.

(b) This section does not apply to the transportation of liquor into the state as authorized by Section 107.07 of this code.

Sec. 107.06. IMPORTATION OF BEER. (a) No person may import beer into the state except the holder of a manufacturer's or general, local, or branch distributor's license.

(b) No person may transport beer into this state unless it is consigned and delivered to one of the licensees named in Subsection (a) of this section.

(c) This section does not apply to the importation or transportation of military beer consigned to a military installation or to the importation of beer as authorized under Section 107.07 of this code.

Sec. 107.07. IMPORTATION FOR PERSONAL USE; IMPORTATION BY RAILROAD COMPANIES. (a) A person may import not more than 24 12-ounce bottles or an equivalent quantity of malt beverages, 3 gallons of wine, and 1 gallon of distilled spirits for the person's own personal use without being required to hold a permit. A person importing alcoholic beverages into the state under this subsection must pay the state tax on alcoholic beverages and an administrative fee of $3 and must affix the required tax stamps. No minor and no intoxicated person may import any alcoholic beverages into the state. A person importing alcoholic beverages under this subsection must personally accompany the alcoholic beverages as the alcoholic beverages enter the state. A person may not use the exemptions set forth in this subsection more than once every thirty days.

(d) A railroad company operating in this state may import beer owned by the company in quantities necessary to meet the needs of its passengers, but it may not sell or serve beer in a dry area.

(e) The administrative fees collected under this section shall be used by the commission for the administrative costs of enforcing the requirements of Subsection (a).

(f) Except as provided by Chapter 54, any person in the business of selling alcoholic beverages in another state or country who ships or causes to be shipped any alcoholic beverage directly to any Texas resident under this section is in violation of this code.

(f) In computing the total amount of taxes and administrative fees to be collected on alcoholic beverages imported by a person into the state for personal use, the commission may round the amount up to the nearest quarter of a dollar.

NOTE: Sec. 107.07(b) and (c) repealed by House Bill 1936, 82nd Legislature, Regular Session, 2011, effective September 1, 2011.

Sec. 107.08. TRANSPORTATION OF BEVERAGES FOR PERSONAL CONSUMPTION. A person who purchases an alcoholic beverage for his own consumption may transport it from a place where its sale is legal to a place where its possession is legal without holding a license or permit.

Sec. 107.09. SINGLE INVOICE AUTHORIZED. If the holder of a general, local, or branch distributor's license also holds a wholesaler's, general class B wholesaler's, or local class B wholesaler's permit, a written statement or invoice required as evidence of the sale of beer or liquor may be on the same business form that is designed to reflect the sale of both liquor and beer, if all information required by this code to be shown on a statement or invoice is reflected on the form and all other records required by this code are maintained.

Sec. 107.10. TRANSPORTATION OF WINE COOLERS OR SPIRIT COOLERS. (a) A holder of a wholesaler's, general class B wholesaler's, or local class B wholesaler's permit may transport and sell wine coolers without a prior order if the holder complies with the provisions of this code and rules of the commission applicable to the transportation and sale of beer by a holder of a distributor's license.

(b) A holder of a wholesaler's permit may transport and sell spirit coolers without a prior order if the holder complies with the provisions of this code and rules of the commission applicable to the transportation and sale of beer by a holder of a distributor's license.

Sec. 107.11. IMPORTATION OF PERSONAL COLLECTION. (a) A person who is relocating a household may import, or contract with a motor carrier or another person to import, a personal malt beverage, wine, or distilled spirit collection as a part of that person's household goods.

(b) Section 107.07 does not apply to a person who is importing a personal malt beverage, wine, or distilled spirit collection under Subsection (a).

CHAPTER 108. ADVERTISING

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO ADVERTISING

Sec. 108.01. DECEPTIVE, DISPARAGING, OR OTHERWISE UNLAWFUL ADVERTISING. (a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may publish, disseminate, or cause to be published or disseminated by any medium enumerated in Subsection (b) [~~of this section~~] an advertisement of a brewery product that:

(1) causes or is reasonably calculated to cause deception of the consumer with respect to the product advertised;

(2) directly or by ambiguity, omission, or inference tends to create a misleading impression;

(3) is untrue in any particular;

(4) [~~refers to the alcohol content of the product;~~

[~~(5)~~] disparages a competitor's product; or

(5) [~~(6)~~] is obscene or indecent.

(b) The media covered by this section include:

(1) radio broadcasting;

(2) newspapers, periodicals, and other publications;

(3) signs and outdoor advertising; and

(4) any printed or graphic matter.

Sec. 108.02. PROHIBITED FORMS OF ADVERTISING. No person may advertise an alcoholic beverage or the sale of an alcoholic beverage by the employment or use of a sound vehicle or handbill on a public street, alley, or highway.

Sec. 108.03. REGULATION OF PROMOTIONAL ACTIVITIES. The commission shall adopt rules permitting and regulating the use of business cards, menu cards, stationery, service vehicles and equipment, and delivery vehicles and equipment that bear alcoholic beverage advertising. The commission shall also adopt rules permitting and regulating the use of insignia advertising beer, distilled spirits, or wine by brand name on caps, regalia, or uniforms worn by employees of manufacturers, distributors, distillers, or wineries or by participants in a game, sport, athletic contest, or revue if the participants are sponsored by a manufacturer, distributor, distiller, or winery.

Sec. 108.035. PACKAGING OF CERTAIN PROMOTIONAL ITEMS AUTHORIZED. Notwithstanding any other provision of this code, a person who holds a brewer's permit, nonresident brewer's permit, manufacturer's license, or nonresident manufacturer's license, or the person's agent or employee, may package alcoholic beverages in combination with other items if the package is designed to be delivered intact to the wholesaler or distributor and the additional items are branded and have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

Sec. 108.04. ACTS OF PROMOTIONAL OR COURTESY NATURE: ADMINISTRATIVE DISCRETION. The commission may promulgate rules which shall set definite limitations consistent with the general provisions of this code, relaxing the restrictions of Sections 102.07, 102.14, 102.15, and 108.06, with respect to:

(1) the sale or gift of novelties advertising the product of a manufacturer or distributor;

(2) the making of gifts to civic, religious, or charitable organizations;

(3) the cleaning and maintenance of coil connections for dispensing draught beer;

(4) the lending of equipment for special occasions; and

(5) acts of a purely courtesy nature.

Sec. 108.041. CARBON DIOXIDE FILTERS PROVIDED TO RETAILERS. (a) A manufacturer or distributor of beer may provide carbon dioxide filters to beer retailers for draught systems using carbon dioxide or a carbon dioxide and nitrogen blend, commonly referred to as "beer gas."

(b) The cost of providing, maintaining, and replacing the carbon dioxide filters shall be borne by the manufacturer.

Sec. 108.042. ACTS OF PROMOTIONAL OR COURTESY NATURE: WINE DISPENSING. The commission shall adopt rules that set definite limitations, consistent with the general provisions of this code, relaxing the restrictions of Section 102.07 to allow the holder of a wholesaler's, general class B wholesaler's, or local class B wholesaler's permit or the permit holder's agent to perform the cleaning and maintenance of coil connections for the dispensing of wine.

Sec. 108.05. ALLOWANCE FOR ADVERTISEMENT OR DISTRIBUTION. No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may pay or make an allowance to a retail dealer for an advertising or distribution service.

Sec. 108.06. PRIZES AND PREMIUMS. No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may offer a prize, premium, gift, or other inducement to a dealer in or consumer of brewery products.

Sec. 108.061. SWEEPSTAKES PROMOTIONS AUTHORIZED. Notwithstanding the prohibition against prizes given to a consumer in Section 108.06 and subject to the rules of the commission, a manufacturer or nonresident manufacturer may offer a prize to a consumer if the offer is a part of a promotional sweepstakes activity. A purchase or entry fee may not be required of any person to enter in a sweepstakes authorized under this section. A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

Sec. 108.07. ADVERTISING OF MIXED BEVERAGE ESTABLISHMENTS. The provisions of this code applicable to outdoor advertising and to advertising in or on the premises do not apply to establishments for which a mixed beverage permit has been issued. The commission or administrator shall promulgate reasonable rules relating to that type of advertising, and violation of any of those rules is a violation of this code.

Sec. 108.08. ADVERTISING IN CERTAIN ECONOMIC DEVELOPMENT FACILITIES. (a) Notwithstanding any other provision of this code or any rule adopted under the authority of this code, the provisions of this code relating to the regulation of or limitations on outdoor advertising signage, advertising revenue, or advertising signage in or on a licensed premises do not apply to an entity which owns a professional sports franchise which plays a majority of its home games in a municipally owned or leased regional economic development facility that is in a station or terminal complex of a rapid transit authority and to which Subchapter E, Chapter 451, Transportation Code, applies or to such a facility.

(b) A part of the cost of advertising revenue paid by a manufacturer to an entity under this section may not be charged to or paid, directly or indirectly, by the holder of a wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, local distributor's permit, general distributor's license, or local distributor's license, except through the price paid by that holder for products purchased from the holders' supplier.

Sec. 108.09. [CERTAIN] ADVERTISING WHERE PRODUCT MAY BE PURCHASED [BY WINERY]. (a) Notwithstanding [~~Section 102.07 or~~] any other provision of this code, a member of the manufacturing or wholesale tier [~~winery~~] may include information in its [~~the winery's~~] advertising that informs the public of where its [~~the winery's~~] products may be purchased.

(b) A member of the manufacturing tier [~~winery~~] may not give compensation to or receive compensation from a licensed or permitted member of the wholesale or retail tier for advertising described by Subsection (a). A member of the wholesale tier may not give compensation to or receive compensation from a licensed or permitted member of the manufacturing or retail tier for advertising described by Subsection (a).

Sec. 108.10. BRANDED PROMOTIONAL VEHICLES. Notwithstanding any other provision of this code, the holder of a manufacturer's or nonresident manufacturer's license or a nonresident seller's permit may display a branded promotional vehicle on the licensed or permitted premises of a retailer, whether outside or inside a structure on the premises, for not more than five hours per day.

SUBCHAPTER B. OUTDOOR ADVERTISING

Sec. 108.51. DEFINITIONS. In this subchapter:

(1) "Outdoor advertising" means any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufacturers, sells, or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building but within five feet of an exterior wall facing a street or highway so that it is visible by a person of ordinary vision from outside the building. "Outdoor advertising" does not include advertising appearing on radio or television, in a public vehicular conveyance for hire, on a race car while participating at a professional

racing event or at a permanent motorized racetrack facility, on a boat participating in a racing event or a boat show, on an aircraft, on a bicycle or on the clothing of a member of a bicycle team participating in an organized bicycle race, or in a newspaper, magazine, or other literary publication published periodically. For the purpose of this definition the word "sign," with respect to a retailer, does not include an identifying label affixed to a container as authorized by law or to a card or certificate of membership in an association or organization if the card or certificate is not larger than 80 square inches.

(2) "Billboard" means a structure directly attached to the land, a house, or a building having one or more spaces used to display a sign or advertisement of an alcoholic beverage or a person engaged in the manufacture, sale, or distribution of alcoholic beverages, whether or not the structure is artificially lighted. "Billboard" does not include a bench or a wall or other part of a structure used as a building, fence, screen, front, or barrier.

(3) "Electric sign" means a structure or device other than an illuminated billboard by which artificial light produced by electricity is used to advertise the alcoholic beverage business by a person who manufactures, sells, or distributes alcoholic beverages or to advertise an alcoholic beverage.

Sec. 108.52. PERMISSIBLE OUTDOOR ADVERTISING. (a) No outdoor advertising is permitted in this state except that which is authorized by this section or under rules of the commission or administrator promulgated pursuant to Section 108.03 of this code.

(b) Billboards and electric signs are permitted if they are not located in a manner contrary to this code.

(c) Retail licensees and permittees may erect or maintain one sign at each place of business which may read as follows:

(1) if a beer retailer, the sign may read "Beer";

(2) if an off-premises beer retailer, the sign may read "Beer" or "Beer to Go";

(3) if a wine and beer retailer, the sign may read "Beer," "Beer and Wine," or "Beer, Wine and Ale";

(4) if a wine and beer off-premises retailer, the sign may read "Beer," "Beer to Go," "Beer and Wine," "Beer and Wine to Go," "Beer, Wine and Ale," or "Beer, Wine and Ale to Go";

(5) if a package store permittee, the sign may read "Package Store," "Liquors," or "Wines and Liquors," and if a retail dealer's off-premise license is also held, the sign may read "Package Store," "Wines, Liquors and Beer," or "Wine, Liquors and Beer to Go"; or

(6) if a wine only package store permittee, the sign may read "Wine" or "Wines," and if a retail dealer's off-premise license is also held, the sign may read "Wines and Beer," "Wine and Beer," or "Wine and Beer to Go."

(d) A sign erected under Subsection (c) of this section may be placed inside or outside the place of business so as to be visible to the general public. None of the letters on a sign may be more than 12 inches in height, and no sign may contain any wording, insignia, or device representative of the brand or name of an alcoholic beverage. The commission or administrator may permit a licensee or permittee to erect or maintain one sign at each entrance or side of a building occupied by him if it faces more than one street or highway.

(e) Billboards, electric signs, or other signs to designate the firm name or business of a permittee or licensee authorized to manufacture, rectify, bottle, or wholesale alcoholic beverages may be displayed at the licensee's or permittee's place of business.

(f) A display composed of alcoholic beverages or printed or lithographed material advertising alcoholic beverages located inside the licensed premises is permitted if the alcoholic beverages or advertising material is not placed within six inches of a window or opening facing a street, alley, or highway. A card or certificate of membership in an association or organization is not "advertising material" for the purpose of this subsection if it is not larger than 80 square inches.

(g) Outdoor advertising of an alcoholic beverage or of the business of any person engaged in the manufacture, sale, or distribution of an alcoholic beverage is permitted to be placed on or affixed to a bench unless:

(1) the advertising is prohibited by an ordinance of an incorporated city or town; or

(2) the advertising is in an area or zone where the sale of alcoholic beverages is prohibited by law.

(h) In addition to the signs authorized by this section, any retail licensee or permittee whose trade name or corporate name includes one or more of the words or phrases regulated by Subsection (c) of this section may also have one sign designating the trade name or corporate name of the retail licensee's or permittee's business. The commission or administrator may permit a retail licensee or permittee to erect and maintain one sign at each entrance or side of a building occupied by the retail licensee or permittee if the building faces more than one street or highway. Signs erected pursuant to this subsection shall comply with all local regulations concerning the erection of signs.

(i) Except as provided by Subsection (j), outdoor advertising of an alcoholic beverage or of the business of any person engaged in the manufacture, sale, or distribution of an alcoholic beverage may be placed on or affixed to the outside of a public transportation passenger vehicle or vehicle for hire. In this subsection:

(1) "Public transportation passenger vehicle" means a vehicle operated by a political subdivision and used for the transportation of passengers for a fee.

(2) "Vehicle for hire" includes a van, taxi, limousine, pedicab, and rickshaw and any other means of transportation available to the public for a fee.

(j) An incorporated city or town may, by ordinance, prohibit outdoor advertising described by Subsection (i) on or affixed to a vehicle for hire.

Sec. 108.53. BILLBOARDS AND ELECTRIC SIGNS: WHEN PERMIT IS REQUIRED. (a) No person may erect a billboard or electric sign advertising an alcoholic beverage within 200 feet of a retail establishment authorized to sell that beverage unless he has first obtained a permit for that purpose from the commission. No permit is required for a billboard or electric sign that is not located within 200 feet of a retail establishment authorized to sell the advertised alcoholic beverage.

(b) The commission or administrator shall provide permit application forms, which may contain any information the commission or administrator deems necessary. The application shall contain a statement that the erection or maintenance of the billboard or electric sign will not have the effect of advertising or directing patronage to a particular retail establishment authorized to sell alcoholic beverages. Application shall be made under oath, addressed to the commission or administrator.

(c) The commission or administrator shall issue a permit if either of them finds that all statements in the application are true and the erection or maintenance of the billboard or electric sign will not be contrary to this code or to a rule of the commission. Otherwise, the commission or administrator shall refuse to issue a permit.

(d) Notwithstanding the restrictions imposed by this section, but consistent with other provisions of this code, the commission shall promulgate rules allowing for signs advertising alcoholic beverages at charitable or civic events such as fairs, rodeos, or other events of a temporary nature. This subsection does not authorize, nor shall any rule of the commission authorize, a retailer of alcoholic beverages to derive, directly or indirectly, any money or consideration of any kind as a result of alcoholic beverage advertising, and the commission's rules shall reflect the intent that the charity or civic endeavor receive the proceeds, if any, from such advertising signs.

Sec. 108.54. NONCONFORMING OUTDOOR ADVERTISING: SEIZURE, REMOVAL. (a) No person may erect, maintain, or display any outdoor advertising, billboard, or electric sign which does not conform in all respects to the provisions of this code. A billboard or electric sign that does not conform is illegal equipment which is subject to seizure and forfeiture as provided in this code.

(b) The owner of any outdoor advertising that does not conform to the provisions of this code is responsible for removing it from public view immediately, and the failure to do so is a violation of this code.

Sec. 108.55. LOCAL REGULATION OF BILLBOARDS, ELECTRIC SIGNS. No person may erect or maintain a billboard, electric sign, or any outdoor advertising in violation of an ordinance of an incorporated city or town.

Sec. 108.56. DRY AREAS. (a) Except as provided by Subsection (b), no person may erect or maintain a billboard or electric sign in an area or zone where the sale of alcoholic beverages is prohibited by law.

(b) A person may erect or maintain a billboard in an area or zone where the sale of alcoholic beverages is prohibited by law if:

(1) the premises that the billboard advertises is located in a county with a population of 250,000 or less; and

(2) the billboard is within 1,500 feet of the premises that the billboard advertises; and

(3) a United States highway that merges into and becomes an interstate highway separates the premises and the billboard; or

(4) the billboard is located adjacent to a wet precinct separated by a United States highway that merges into and becomes an interstate highway in a county with a population of 250,000 or less and advertises directions to a winery located in the adjacent wet precinct.

SUBCHAPTER C. INDUSTRY PUBLIC ENTERTAINMENT FACILITIES ACT

Sec. 108.71. PURPOSE. This subchapter governs the statutory duties, rights, and relations among licensees and permittees operating under this subchapter, including their relations with the owners and operators of public entertainment facilities. This subchapter expressly authorizes alcoholic beverage distillers, manufacturers, distributors, and wholesalers, except as provided by Section 108.74, to promote and sponsor events and advertise alcoholic beverage brands and products at public entertainment facilities without establishing unlawful intertier relations, including with retail permittees operating at those facilities.

Sec. 108.72. SHORT TITLE. This subchapter may be cited as the Industry Public Entertainment Facilities Act.

Sec. 108.73. DEFINITIONS. In this subchapter:

(1) "Independent concessionaire" means a licensed or permitted member of the retail tier or a holder of a private club permit, caterer's permit, or food and beverage certificate who:

(A) has a written concession agreement from the owner, operator, or lessee of a public entertainment facility;

(B) receives no monetary benefit, directly or indirectly, by any scheme or device or in any form or degree from the alcoholic beverage industry including a benefit in the form of capital improvements, furniture, fixtures, or equipment, unless otherwise authorized by this code or commission rules; and

(C) is not owned, in whole or in part, by the public entertainment facility, or a subsidiary, agent, manager, or company managing the facility, and who does not own, in whole or in part, or manage the public entertainment facility.

(2) "Public entertainment facility" means an arena, stadium, automobile race track, amphitheater, auditorium, theater, civic center, convention center, or similar facility that is primarily designed and used for live artistic, theatrical, cultural, educational, charitable, musical, sporting, nationally sanctioned automobile racing, or entertainment events. The term does not include a facility the primary purpose of which is the sale of food or alcoholic beverages, including a bar, nightclub, restaurant, hotel, bowling alley, pool hall, or dance hall, or a facility that derives 75 percent or more of the facility's annual gross revenue from the on-premise sale of alcoholic beverages.

(3) "Public entertainment facility property" means property on which a public entertainment facility and a licensed or permitted premises are located and related surrounding property.

(4) "Sponsorship signs" means any manner of advertising, promotional, or sponsorship signage, or any representation, device, display, regalia, insignia, indicia, design, slogan, trade name, brand name, product name, permittee or licensee name, advertising specialties, marketing services, or other materials indicating participation in or sponsorship of all or part of a public entertainment facility

or an event or venue at a public entertainment facility, including the sponsorship or naming of all or part of the facility or event, wherever located, whether indoor or outdoor, including billboards, awnings, and electric signs, however manufactured, comprising whatever materials, and however disseminated, including by writing, printing, graphics, newspaper, periodicals, radio, television, cable, Internet, electronic, satellite, and other media or communication modalities.

Sec. 108.74. EXCEPTION OF CERTAIN WHOLESALER FROM APPLICATION OF THIS SUBCHAPTER. A person who holds a permit under Chapter 19 and whose revenues from the sale of alcoholic beverages are predominately obtained from the sale of distilled spirits and wine may not enter into advertising, sponsorship, or promotional agreements as authorized by Section 108.75.

Sec. 108.75. ADVERTISING AND PROMOTION IN PUBLIC ENTERTAINMENT FACILITY. (a) A member of the distiller, manufacturing, distributor, or wholesaler tier may promote, sponsor, or advertise an entertainment event or venue or promote or advertise an alcoholic beverage brand or product at a public entertainment facility if the alcoholic beverage promoted, sold, or served at the event, venue, or facility is furnished by an independent concessionaire.

(b) An independent concessionaire may not receive direct monetary benefit from advertising, promotional, or sponsorship revenues generated by operation of a public entertainment facility. A member of the manufacturing or distributing tier may not, directly or indirectly through the owner or operator of a public entertainment facility, furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to an independent concessionaire. A public entertainment facility owner or operator or a member of the distiller, manufacturing, distributor, or wholesaler tier may not directly or indirectly control the quantity or brand of alcoholic beverages bought or sold by an independent concessionaire. An independent concessionaire must enter into a written concession agreement with an owner, lessee, or operator of a public entertainment facility.

(c) A member of the distiller, manufacturing, distributor, or wholesaler tier who has entered into an advertising, promotional, or sponsorship agreement may provide sponsorship signs at a public entertainment facility property and as otherwise authorized in this code and commission rules.

(d) An independent concessionaire who has entered into a concessionaire agreement under this subchapter may place sponsorship signs at, in, or on public entertainment facility property.

(e) The owner or operator of a public entertainment facility who has entered into a concessionaire agreement and a sponsorship agreement under this subchapter shall not be precluded from placing and displaying sponsorship signs, as otherwise permitted by law, provided by sponsoring members of the distiller, manufacturing, distributor, or wholesaler tier, at, in, or on an independent concessionaire's venues at a public entertainment facility property, including the area where alcoholic beverages are displayed, served, or poured.

(f) Nothing in this subchapter shall limit the independent concessionaire's right to place and display sponsorship and other signs authorized under this code and commission rules.

(g) All advertising, promotional, sponsorship, and concession agreements authorized by this subchapter shall contain an affirmative provision disavowing the right of any party to engage in conduct prohibited by this subchapter.

Sec. 108.755. CERTAIN GOVERNMENTALLY OWNED FACILITIES. (a) Section 108.75 does not restrict or govern the promotion, sponsorship, or advertising of an entertainment event, or the promotion or advertising of an alcoholic beverage brand or product, at a facility owned by a municipality or county that is financed with public securities, the interest on which is exempt from federal income taxation under the Internal Revenue Code of 1986.

(b) Financial arrangements, including profit sharing, between a concessionaire operating at a facility described by Subsection (a) and a person operating the concession facilities under a contract with the license or permit holder or the municipality or county do not constitute and are not evidence of subterfuge ownership prohibited by Section 109.53.

Sec. 108.76. VIOLATION. The provision, placement, and use of sponsorship signs as authorized by and in compliance with this subchapter by members of the distiller, manufacturing, distributor, or

wholesaler tier, independent concessionaires, and public entertainment facility owners and operators does not constitute an illegal inducement, subterfuge, or a surrender of exclusive control.

Sec. 108.77. COST OF ADVERTISEMENT, SPONSORSHIP, OR PROMOTION. No part of the cost of an advertisement, sponsorship, or promotion authorized by this subchapter may be charged to or paid by a distributor or wholesaler, except as provided by Section 108.74, unless the distributor or wholesaler:

(1) contracts directly with the owner or operator of the public entertainment facility for the advertisement, sponsorship, or promotion; or

(2) is a party to the advertising, sponsorship, or promotion agreement between a member of the manufacturing tier and the owner or operator of the public entertainment facility.

Sec. 108.78. CONFIDENTIALITY. Any concessionaire, sponsorship, advertisement, or promotional agreement, or related agreement and exhibits to such an agreement, entered into, submitted, filed, or requested by the administrator or commission is deemed confidential under Section 5.48(b).

Sec. 108.79. OPTIONAL PREAPPROVAL PROCESS. (a) Subject to the terms of the relevant agreement, a permittee or licensee may by certified mail, return receipt requested, submit to the administrator in writing the permittee's or licensee's original or amended advertising, promotional, sponsorship, or concessionaire agreement relating to a public entertainment facility, requesting the administrator's approval.

(b) Not later than the 30th day after the date the administrator receives the request for preapproval under this section, the administrator shall notify the permittee or licensee in writing, by certified mail, return receipt requested, whether the administrator approves, conditionally approves, or disapproves the submission. If the administrator does not provide the notification in that time and the permittee or licensee does not agree to a timely and reasonable written request for an extension by the administrator giving the reason for the request, the agreement is considered approved as submitted.

(c) If the administrator conditionally approves or disapproves a submission under Subsection (b), the administrator shall specify in the notice provided under that subsection the basis for the administrator's determination, referencing any specific provisions of this code or other law involved in the determination and any necessary and reasonable actions the permittee or licensee may take to obtain approval of the submission.

(d) On receipt of the administrator's conditional approval or disapproval, the permittee or licensee may:

(1) revise and resubmit the agreement in compliance with the administrator's specific comments and instructions, including any discussions between the administrator and permittee or licensee to resolve the issues involved in the administrator's determination; or

(2) contest the commission's or administrator's determinations, acts, or omissions related to this subchapter and engage in informal mediation to resolve the dispute regarding the submission.

(e) A submission under Subsection (d)(1) is subject to the approval period prescribed by Subsection (b) unless the administrator and the permittee or licensee agree otherwise.

Sec. 108.80. JUDICIAL REVIEW. (a) If a permittee, licensee, or other party to an agreement under this subchapter alleges that the administrator is or has been, directly or indirectly, unfairly, arbitrarily, capriciously, or wrongly exercising or withholding the exercise of the administrator's authority under Section 108.79, desires a declaration of rights under this subchapter, or alleges threatened or actual damage or injury arising out of a violation of this subchapter or any other law relating to the process and rights provided by this subchapter, the aggrieved party may bring suit in a district court in Travis County:

(1) to require, contest, or suspend enforcement of any act or omission by the administrator or commission; or

(2) concerning any administrative, regulatory, legal, or judicial act or omission, including seeking mandatory and prohibitory injunctive and extraordinary relief or declaratory relief.

(b) The court in its discretion may allow the permittee, licensee, or other party to an agreement to recover court costs and reasonable attorney's fees incurred in the defense or prosecution of the action.

Sec. 108.81. SPONSOR LIABILITY. A beverage distiller, manufacturer, distributor, or wholesaler who sponsors an event at a public entertainment facility or on public entertainment facility property, or who advertises or displays sponsorship signs in connection with such an event or facility or property, shall not be liable solely because of such sponsorship, advertisement, or display of sponsorship signs for any personal injury, death, or property damage occurring at such a facility or property or as a result of the operation or condition of such facility or property or because of any tort committed by any other party at or in connection with such event, facility, or property.

Sec. 108.82. ALCOHOLIC BEVERAGE CONSUMPTION IN CERTAIN PUBLIC ENTERTAINMENT FACILITIES. (a) This section applies only with respect to a public entertainment facility:

(1) that is a stadium:

(A) located in a county with a population of more than 1.6 million;

(B) constructed not later than 1994; and

(C) with a seating capacity of at least 45,000; and

(2) for which all alcoholic beverage permits and licenses are held by a single independent concessionaire.

(b) Notwithstanding Section 28.10, the independent concessionaire for a public entertainment facility described by Subsection (a) may allow a patron who possesses an alcoholic beverage to enter or leave a licensed or permitted premises within the facility if the alcoholic beverage:

(1) is in an open container, as defined by Section 49.031, Penal Code;

(2) appears to be possessed for present consumption;

(3) remains within the confines of the facility, excluding a parking lot; and

(4) was purchased legally at a licensed or permitted premises within the facility.

CHAPTER 109. MISCELLANEOUS REGULATORY PROVISIONS

SUBCHAPTER A. SALVAGED AND INSURED LOSSES

Sec. 109.01. SALE OF SALVAGED OR INSURED LOSS. If a person who does not hold a permit or license to sell alcoholic beverages acquires possession of alcoholic beverages as an insurer or insurance salvor in the salvage or liquidation of an insured damage or loss sustained in this state by a qualified licensee or permittee, he may sell the beverages in one lot or parcel as provided in this subchapter without being required to obtain a license or permit.

Sec. 109.02. REGISTRATION OF BEVERAGES WITH COMMISSION. Immediately after taking possession of the alcoholic beverages, the insurer or insurance salvor shall register them with the commission, furnishing the commission a detailed inventory and the exact location of the beverages. At the time of registration, the registrant shall post with the commission a surety bond in an amount that the administrator finds adequate to protect the state against the taxes due on the beverages, if any are due. The registrant shall remit with the registration a fee of $10. The fee only permits the sale of the beverages listed in the registration.

Sec. 109.03. PREREQUISITE TO SALABILITY. An alcoholic beverage is salable under this subchapter only if it has not been adulterated, it is fit for human consumption, all tax stamps required by law have been affixed, and the labels are legible as to contents, brand, and manufacturer.

Sec. 109.04. SALE OF BEER: PROCEDURE. (a) When the commission is notified under this subchapter of the acquisition of beer or its containers or original packages, it shall immediately notify a holder of a general, local, or branch distributor's license who handles the brand of beer and who operates

in the county where it is located or, if it is located in a dry area or if no distributor operates in the county, the nearest distributor handling the brand or the manufacturer who brewed it.

(b) The insurer or insurance salvor, the commission, and the distributor or manufacturer shall jointly agree whether the beer is salable. If it is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, the manufacturer or distributor shall be given the opportunity to purchase it. A distributor may purchase beer at the cost price less any state taxes that have been paid, F.O.B. its place of business. A manufacturer may purchase beer at the cost price to the nearest distributor of the brand, less any state taxes that have been paid, F.O.B. that distributor's place of business. A manufacturer or distributor may purchase returnable bottles, containers, or packages at their deposit price.

(c) If the distributor or manufacturer does not exercise the right to purchase the merchandise within 10 days after being given the opportunity to purchase it, the insurer or insurance salvor may sell it to any qualified licensee or permittee as provided in Section 109.01 of this code.

Sec. 109.05. SALE OF LIQUOR: PROCEDURE. (a) When the commission is notified under this subchapter of the acquisition of liquor or its containers or original packages, it shall immediately notify the holder or holders of wholesaler's, class B wholesaler's, or local class B wholesaler's permits who handle and regularly sell the brand or brands of liquor involved and who operate in the area where the liquor is located, or who operate in the nearest wet area if the liquor is in a dry area. The commission shall also notify the nonresident seller's permittees who handle the brand or brands of liquor involved, or the manufacturer's agent's permittees who represent those nonresident seller's permittees.

(b) The commission, the permittees who are notified, and the insurer or insurance salvor shall jointly determine whether the liquor is salable. If the liquor is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, it shall first be offered for sale to the wholesaler and nonresident seller of the brand or brands at their cost price, less any state taxes that have been paid on the liquor.

(c) If the wholesaler does not exercise the right to purchase the liquor, container, or packages within 10 days after it is offered, the commission shall sell it at a public or private sale.

Sec. 109.06. PURCHASER'S RIGHT TO USE BEVERAGES. A permittee or licensee who purchases alcoholic beverages under this subchapter may treat them as other alcoholic beverages acquired by him as provided in this code.

Sec. 109.07. SALVOR MAY REJECT BID. A salvor may reject a bid made on only a part of a whole salvage.

Sec. 109.08. EXCLUSION. Notwithstanding any other provision of this code, no person engaged in business as a distiller, brewer, manufacturer, winery, or any other manufacturing level producer of liquor or beer, or their wholesalers, may directly or indirectly or through an affiliate require, by agreement or otherwise, that any retailer engaged in the sale of liquor or beer purchase any such products from such person to the exclusion in whole or in part of liquor or beer sold or offered for sale by other persons, or prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to any retailer.

SUBCHAPTER B. HOME PRODUCTION OF WINE, ALE, MALT LIQUOR, OR BEER

Sec. 109.21. HOME PRODUCTION OF WINE, ALE, MALT LIQUOR, OR BEER. (a) The head of a family or an unmarried adult may produce for the use of his family or himself not more than 200 gallons of wine, ale, malt liquor, or beer, per year. No license or permit is required.

(b) The commission may prohibit the use of any ingredient it finds detrimental to health or susceptible of use to evade this code. Only wine made from the normal alcoholic fermentation of the juices of dandelions or grapes, raisins, or other fruits may be produced under this section. Only ale, malt liquor, or beer made from the normal alcoholic fermentation of malted barley with hops, or their products, and with or without other malted or unmalted cereals, may be produced under this section. The possession

of wine, ale, malt liquor, or beer produced under this section is not an offense if the person making it complies with all provisions of this section and the wine, ale, malt liquor, or beer is not distilled, fortified, or otherwise altered to increase its alcohol content.

(c) There is no annual state fee for beverages produced in compliance with this section.

Sec. 109.22. DELIVERY OF HOME-PRODUCED WINE, ALE, MALT LIQUOR, OR BEER FOR CERTAIN PURPOSES. (a) This section applies only to a person who is authorized under Section 109.21(a) to produce wine, ale, malt liquor, or beer.

(b) For the purpose of participating in an organized tasting, evaluation, competition, or literary review, a person to whom this section applies may deliver wine, ale, malt liquor, or beer produced and manufactured by the person to locations that are not licensed under this code for the purpose of submitting those products to an evaluation at an organized tasting competition that is closed to the general public or by a reviewer whose reviews are published if:

(1) no charge of any kind is made for the wine, ale, malt liquor, or beer, for its delivery, or for attendance at the event; and

(2) the commission consents in writing to the delivery.

(c) Nothing in this section shall be construed to authorize an increase in the quantity of wine, ale, malt liquor, or beer authorized to be produced by a person under the authority of Section 109.21(a) of this code.

SUBCHAPTER C. LOCAL REGULATION OF ALCOHOLIC BEVERAGES

Sec. 109.31. MUNICIPAL REGULATION OF LIQUOR. A city by charter may prohibit the sale of liquor in all or part of the residential sections of the city.

Sec. 109.32. MUNICIPAL AND COUNTY REGULATION OF BEER. (a) An incorporated city or town by charter or ordinance may:

(1) prohibit the sale of beer in a residential area; and

(2) regulate the sale of beer and prescribe the hours when it may be sold, except the city or town may not permit the sale of beer when its sale is prohibited by this code.

(b) In a county that has only one incorporated city or town that has a majority of the population of the county, according to the most recent federal census, and where the city or town has shortened the hours of sale for beer on Sundays by a valid charter amendment or ordinance before January 1, 1957, the commissioners court may enter an order prohibiting the sale of beer on Sundays during the hours it is prohibited in the city or town. The order may apply to all or part of the area of the county located outside the city or town. The commissioners court may not adopt the order unless it first publishes notice for four consecutive weeks in a newspaper of general circulation in the county published in the county or a nearby county.

(c) In exercising the authority granted by this section, the city, town, or county may distinguish between retailers selling beer for on-premises consumption and retailers, manufacturers, or distributors who do not sell beer for on-premises consumption.

Sec. 109.33. SALES NEAR SCHOOL, CHURCH, OR HOSPITAL. (a) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within:

(1) 300 feet of a church, public or private school, or public hospital;

(2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007, Education Code; or

NOTE: Section 38.007, Education Code. Alcohol-free School Zones reads as follows:

(a) The board of trustees of a school district shall prohibit the use of alcoholic beverages at a school-related or school-sanctioned activity on or off school property.

(b) The board of trustees of a school district shall attempt to provide a safe alcohol-free environment to students coming to or going from school. The board of trustees may cooperate with local law enforcement officials and the Texas Alcoholic Beverage Commission in attempting to provide this environment and in enforcing Sections 101.75, 109.33, and 109.59, Alcoholic Beverage Code. Additionally, the board, if a majority of the area of a district is located in a municipality of a population of 900,000 or more, may petition the commissioners court of the county in which the district is located or the governing board of an incorporated city or town in which the district is located to adopt a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.

(3) 1,000 feet of a private school if the commissioners court or the governing body receives a request from the governing body of the private school.

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:

(1) in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or

(2) if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

(c) Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public or private school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public or private school before filing the application with the commission. A copy of the notice must be submitted to the commission with the application. This subsection does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under Section 109.53.

(d) As to any dealer who held a license or permit on September 1, 1983, in a location where a regulation under this section was in effect on that date, for purposes of Subsection (a), but not Subsection (c), of this section, the measurement of the distance between the place of business of the dealer and a public or private school shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

(e) The commissioners court of a county or the governing board of a city or town that has enacted a regulation under Subsection (a) of this section may also allow variances to the regulation if the commissioners court or governing body determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the court or governing board, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

(f) Subsections (a)(2) and (3) do not apply to the holder of:

(1) a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages;

(2) a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or

(3) a wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102.

(g) Subsection (a)(3) does not apply to the holder of:

(1) a license or permit issued under Chapter 27, 31, or 72 who is operating on the premises of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 1,000 feet of a private school.

(h) Subsection (a)(1) does not apply to the holder of:

(1) a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 300 feet of a private school.

(i) In this section, “private school” means a private school, including a parochial school, that:

(1) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and

(2) has more than 100 students enrolled and attending courses at a single location.

Sec. 109.331. SALES NEAR DAY-CARE CENTER OR CHILD-CARE FACILITY. (a) This section applies only to a permit or license holder under Chapter 25, 28, 32, 69, or 74 who does not hold a food and beverage certificate.

(b) Except as provided by this subsection, the provisions of Section 109.33 relating to a public school also apply to a day-care center and a child-care facility as those terms are defined by Section 42.002, Human Resources Code. Sections 109.33(a)(2) and (c) do not apply to a day-care center or child-care facility.

(c) This section does not apply to a permit or license holder who sells alcoholic beverages if:

(1) the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or

(2) the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.

(d) This section does not apply to a foster group home, foster family home, family home, agency group home, or agency home as those terms are defined by Section 42.002, Human Resources Code.

Sec. 109.35. ORDERS FOR PROHIBITION ON CONSUMPTION. (a) If the governing body of a municipality determines that the possession of an open container or the public consumption of alcoholic beverages in the central business district of the municipality is a risk to the health and safety of the citizens of the municipality, the governing body may petition for the adoption of an order by the commission that prohibits the possession of an open container or the public consumption of alcoholic beverages in that central business district.

(b) If a municipality submits a petition for an order of the commission to prohibit the possession of an open container or the public consumption of alcoholic beverages in the central business district of the city and attaches to the petition a map, plat, or diagram showing the central business district that is to be covered by the prohibition, the commission shall approve and issue the order without further consideration unless the commission finds that the map, plat, or diagram improperly identifies the central business district.

(c) The commission's order may not prohibit the possession of an open container or the consumption of alcoholic beverages in motor vehicles, buildings not owned or controlled by the municipality, residential structures, or licensed premises located in the area of prohibition.

(d) In this section, "central business district" means a compact and contiguous geographical area of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that is the area that has historically been the primary location in the municipality where business has been transacted.

(e) In this section, "open container" means a container that is no longer sealed.

Sec. 109.36. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR HOMELESS SHELTER OR SUBSTANCE ABUSE TREATMENT CENTER. (a) In this section:

(1) "Central business district" means a compact and contiguous geographical area of a municipality used for commercial purposes that has historically been the primary location in the municipality where business has been transacted.

(2) "Homeless shelter" means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals who lack a fixed regular and adequate residence.

(3) "Open container" has the meaning assigned by Section 109.35.

(b) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a homeless shelter that is not located in a central business district or a substance abuse treatment center that is not located in a central business district.

(c) If the commissioners court of a county or the governing board of an incorporated city or town enacts a prohibition under Subsection (b), the commissioners court or the governing board may enact regulations allowing special temporary events for which Subsection (b) may be suspended.

SUBCHAPTER D. OTHER MISCELLANEOUS PROVISIONS

Sec. 109.51. SACRAMENTAL WINE. Nothing in this code limits the right of a minister, priest, rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any lawful source inside or outside the state. No fee or tax may be directly or indirectly charged for the exercise of this right. The commission by rule and regulation may regulate the importation of sacramental wine and prevent unlawful use of the right granted by this section.

Sec. 109.52. WAREHOUSE RECEIPTS. A bank, trust company, or other financial institution that owns or possesses warehouse receipts for alcoholic beverages as security for a loan, after receiving permission from the commission or administrator, may sell the beverages to a licensee or permittee authorized to purchase them.

NOTE: TABC is enjoined from enforcing the Texas state residency and Texas state citizenship requirements in Section 109.53 below.

Sec. 109.53. CITIZENSHIP OF PERMITTEE; CONTROL OF PREMISES; SUBTERFUGE OWNERSHIP; ETC. No person who has not been a citizen of Texas for a period of one year immediately preceding the filing of his application therefore shall be eligible to receive a permit under this code. No permit except a brewer's permit, and such other licenses and permits as are necessary to the operation of a brewer's permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least 51 percent of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of one year and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corporations that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this code which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the attorney general, when any such violation is called to his attention, to file a suit for such cancellation in a district court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of

agent's, industrial, and carrier's permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. No applicant for a package store permit or a renewal thereof shall have authority to designate as "premise" and the commission or administrator shall not approve a lesser area than that specifically defined as "premise" in Section 11.49(a) of this code. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No minor, unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a package store permit. The prohibition against the presence of a minor on the premises of the holder of a package store permit does not apply to the presence on the premises of the holder or a person lawfully employed by the holder. Any package store permittee who shall be injured in his business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee. The provisions prohibiting the licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in this code.

Sec. 109.531. ADDITIONAL REQUIREMENTS FOR APPLICATION OR RENEWAL OF PERMIT OR LICENSE BY OUT-OF-STATE RESIDENTS. In addition to any other requirement for a license or permit under this code, a person who has not been a citizen of this state for a period of one year preceding the date the person filed an application for a permit or license under Chapters 25-34, 44, 48-51, 69-72, or Chapter 74 of this code shall:

(1) designate an agent, who is a citizen of this state, to represent the person in matters before the commission and to be responsible for the proper conduct of any activity of the licensee or permittee; and

(2) submit to a criminal history background check.

Sec. 109.532. CRIMINAL HISTORY BACKGROUND CHECKS. (a) The commission shall establish a uniform method of obtaining criminal history information. The uniform method must require:

(1) either a complete set of fingerprints or the complete name of the person being investigated to be submitted to the Department of Public Safety or to another law enforcement agency; and

(2) if fingerprints are submitted, the fingerprints must be submitted to the Federal Bureau of Investigation for further information if a relevant disqualifying record or other substantive information is not obtained from a state or local law enforcement agency.

(b) The commission may deny a license or permit or the renewal of a license or permit for an applicant if:

(1) the commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a license or permit; or

(2) the applicant fails to provide a complete set of fingerprints if the commission establishes that method of obtaining conviction information.

(c) All criminal history information received by the commission is privileged information and is for the exclusive use of the commission. The information may be released or otherwise disclosed to any other person or agency only:

(1) on court order; or

(2) with the consent of the person being investigated.

(d) The commission shall collect and destroy criminal history information relating to a person immediately after the commission makes a decision on the eligibility of the person for registration.

(e) A person commits an offense if the person releases or discloses in violation of this section criminal history information received by the commission. An offense under this subsection is a felony of the second degree.

(f) The commission may charge a fee to cover the cost of a criminal history background check.

Sec. 109.54. FESTIVALS AND CIVIC CELEBRATIONS. (a) Any licensee who has purchased beer for sale at the site of a festival or civic celebration which has been held annually for at least 15 years during a specified period not exceeding 10 days shall be authorized for 24 hours following the official close of the celebration to sell any beer remaining at the site to any licensee or permittee authorized to purchase beer for resale.

(b) Records of any such transactions shall be kept as may be required by the administrator.

Sec. 109.55. CERTIFICATE. If after June 1, 1987, the certificate is filed under Section 15, Chapter 285, or Section 16, Chapter 462, Acts of the 69th Legislature, Regular Session, 1985, the contingency described by Subsection (c) of each of those sections is effective on the first day of the month following the month in which the certificate is filed.

Sec. 109.56. CONVICTION OF OFFENSE RELATING TO DISCRIMINATION; POLICY OF NONDISCRIMINATION. The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing that:

(1) the permittee has been finally convicted of any offense under state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights or the discrimination against an individual on the basis of the individual's race, color, creed, sex, or religion; and

(2) the offense was committed on the licensed premises or in connection with the operation of the permittee's business.

Sec. 109.57. APPLICATION OF CODE; OTHER JURISDICTIONS. (a) Except as is expressly authorized by this code, a regulation, charter, or ordinance promulgated by a governmental entity of this state may not impose stricter standards on premises or businesses required to have a license or permit under this code than are imposed on similar premises or businesses that are not required to have such a license or permit.

(b) It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code, a governmental entity of this state may not discriminate against a business holding a license or permit under this code.

(c) Neither this section nor Section 1.06 of this code affects the validity or invalidity of a zoning regulation that was formally enacted before June 11, 1987, and that is otherwise valid, or any amendment to such a regulation enacted after June 11, 1987, if the amendment lessens the restrictions on the licensee or permittee or does not impose additional restrictions on the licensee or permittee. For purposes of this subsection, "zoning regulation" means any charter provision, rule, regulation, or other enactment governing the location and use of buildings, other structures, and land.

(d) This section does not affect the authority of a governmental entity to regulate, in a manner as otherwise permitted by law, the location of:

(1) a massage parlor, nude modeling studio, or other sexually oriented business; or

(2) an establishment that derives 75 percent or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages.

(e) A municipality located in a county that has a population of 2.2 million or more and that is adjacent to a county with a population of more than 600,000 or a municipality located in a county with a population of 600,000 or more and that is adjacent to a county with a population of 2.2 million or more may regulate, in a manner not otherwise prohibited by law, the location of an establishment issued a permit under Chapter 32 or 33 if:

(1) the establishment derives 35 percent or more of the establishment's gross revenue from the on-premises sale or service of alcoholic beverages and the premises of the establishment are located in a dry area; and

(2) the permit is not issued to a fraternal or veterans organization or the holder of a food and beverage certificate.

Sec. 109.58. RELAXATION OF RESTRICTIONS AS TO CHARITABLE EVENTS. (a) This code does not prohibit permit and license holders engaged in the alcoholic beverage industry at different levels from simultaneously or jointly sponsoring a civic, religious, or charitable event, including by providing or lending money, services, or other things of value directly to a civic, religious, or charitable entity in conjunction with the event, provided that:

(1) any license or permit to sell or serve alcoholic beverages at the event is held by a retailer who is independent of the sponsors; and

(2) none of the retailers who sponsor the event, if any, receive any direct benefit or service because of joint sponsorship by a wholesaler or manufacturer of alcoholic beverages.

(b) The commission by rule may set definite limitations consistent with the general provisions of this code that relax the restrictions of this code with respect to the sponsoring of a civic, religious, or charitable event or the making of a gift to civic, religious, or charitable organizations by permit and license holders engaged in the alcoholic beverage industry at different levels.

Sec. 109.59. APPLICATION OF DISTANCE REQUIREMENTS. (a) If at the time an original alcoholic beverage permit or license is granted for a premises the premises satisfies the requirements regarding distance from schools, churches, and other types of premises established in this code and any other law or ordinance of the state or a political subdivision of the state in effect at that time, the premises shall be deemed to satisfy the distance requirements for all subsequent renewals of the license or permit.

(b) On the sale or transfer of the premises or the business on the premises in which a new original license or permit is required for the premises, the premises shall be deemed to satisfy any distance requirements as if the issuance of the new original permit or license were a renewal of a previously held permit or license.

(c) Subsection (b) does not apply to the satisfaction of the distance requirement prescribed by Section 109.33(a)(2) for a public school, except that on the death of a permit or license holder or a person having an interest in a permit or license Subsection (b) does apply to the holder's surviving spouse or child of the holder or person if the spouse or child qualifies as a successor in interest to the permit or license.

(d) Subsection (a) does not apply to the satisfaction of the distance requirement prescribed by Section 109.33(a)(2) for a public school if the holder's permit or license has been suspended for a violation occurring after September 1, 1995, of any of the following provisions:

(1) Section 11.61(b)(1), (6)-(11), (13), (14), or (20); or

(2) Section 61.71(a)(5)-(8), (11), (12), (14), (17), (18), (22), or (24).

Sec. 109.60. PURCHASES BY CERTAIN PERMITTEES. For the convenience of the commission in performing its regulatory functions and the comptroller in examining tax accounts of mixed beverage permittees and private club permittees, each of these permittees is required to purchase separately and individually for each licensed premises any and all alcoholic beverages to be sold or served on the licensed premises.

Sec. 109.61. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION.

(a) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with this code or a rule of the commission, including for the purpose of preventing the person from committing an offense under this code.

(b) A person may not retain information accessed under this section unless the commission by rule requires the information to be retained. The person may not retain the information longer than the commission requires.

(b-1) Information retained may be printed to hard copy with a time and date confirmation from the transaction scan device or transferred to an electronic encrypted data storage or electronic record. After printing or transferring data, the transaction scan device may clear the scanned information from the device or any memory in the device. The commission by rule may set further requirements for the retention of information under this subsection.

(c) Information accessed under this section may not be marketed in any manner.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under this code, for an offense having as an element the age of a person, that:

(1) a transaction scan device identified the license or certificate of the purchaser as valid and that the person is over 21, and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which alcoholic beverages are sold at retail, the offense occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition;

(B) adequate training in the use of the transaction scan device; and

(C) the defendant did not directly or indirectly encourage the employee to violate the law.

(f) The defense offered in Subsection (e) does not apply in actions to cancel, deny, or suspend the license or permit, except as provided by rules adopted by the commission under Section 5.31.

(g) In this section, "transaction scan device" includes an electronic age verification system authorized by commission rule operated in conjunction with a point of sale terminal that scans the purchaser's driver's license or identification certificate upon enrollment, associates the purchaser's personal identifying information, as defined by Section 521.002(1)(C), Business & Commerce Code, with the purchaser's license or identification certificate information, and is capable of allowing a seller to verify a purchaser's age solely by accessing the data and information.

Sec. 109.62. TEMPORARY RELOCATION OF DISTRIBUTOR OR WHOLESALER DURING EMERGENCY. (a) In this section, "period of emergency" means a time during which weather, fire, earthquake, or other natural disaster, act of God, or catastrophe affects a distributor's or wholesaler's premises or an area of this state in a way that disrupts the distributor's or wholesaler's normal business operations to the extent that the business cannot receive deliveries at or make deliveries from the premises or perform necessary business operations at the premises.

(b) During a period of emergency, a distributor or wholesaler may temporarily operate all or part of the distributor's or wholesaler's business from an alternate location, including storing alcoholic beverages, maintaining required records, receiving alcoholic beverages from suppliers, dispatching orders intended for sale to authorized purchasers, and performing any other function the distributor or wholesaler is authorized by this code to perform at the licensed or permitted premises. The alternate location is considered the distributor's or wholesaler's licensed or permitted premises, as applicable, for the purposes of this code.

(c) A holder of a permit or license under Chapter 41, 42, or 68 may make deliveries to and pick up deliveries from the alternate location in the same manner as this code and commission rules provide for the distributor's or wholesaler's licensed or permitted premises.

(d) A distributor or wholesaler who temporarily operates all or part of the distributor's or wholesaler's business from an alternate location as provided by Subsection (b) shall immediately notify the administrator, in writing, of the alternate location. The notice must include a statement affirming that the alternate location satisfies the requirements of Subsection (e).

(e) The alternate location must be in an area where the sale of the applicable alcoholic beverages has been approved by a local option election or where the distributor or wholesaler had been operating under Section 251.77 or 251.78. If beer, ale, or malt liquor is handled at the alternate location,

the alternate location must be in the area assigned to the distributor or wholesaler under Subchapters C and D, Chapter 102.

(f) If the delivery vehicles operated by the affected distributor or wholesaler are wholly or partially disabled, the administrator may grant the distributor or wholesaler the authority to contract with another distributor or wholesaler for the temporary sharing of delivery vehicles. Authority granted under this subsection is in addition to authority granted under other provisions of this code to share delivery vehicles and warehouses.

(g) A distributor's or wholesaler's authority to operate from an alternate location under this section expires on the first anniversary of the date the distributor or wholesaler commences business operations at an alternate location. The administrator may grant the distributor or wholesaler a one-year extension of the authority to operate from an alternate location under this section, after which the distributor or wholesaler must apply for a license or permit for the alternate location in the usual manner.

Sec. 109.63. BULK TRANSFERS BETWEEN CERTAIN PERMITTEES AND LICENSEES. (a) This section applies to the holder of a brewer's permit, distiller's and rectifier's permit, winery permit, wine bottler's permit, or manufacturer's license.

(b) Notwithstanding any other provision of this code, a permittee or licensee described by Subsection (a) may transfer in bulk an alcoholic beverage produced by the permittee or licensee to any other permittee or licensee described by that subsection provided that:

(1) the alcoholic beverage transferred is used only for manufacturing purposes by the recipient; and

(2) the transfer is permitted by federal law.

Sec. 109.64. BULK PURCHASE BY HOLDER OF INDUSTRIAL PERMIT. Section 102.32 applies to the bulk purchase of liquor by the holder of an industrial permit from the holder of a wholesaler's permit.

CHAPTER 110. TEXAS WINE MARKETING ASSISTANCE PROGRAM IN DEPARTMENT OF AGRICULTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 110.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of agriculture.

(2) "Program" means the Texas Wine Marketing Assistance Program.

Sec. 110.002. PROGRAM ESTABLISHED. (a) The Texas Wine Marketing Assistance Program is established in the Department of Agriculture to assist the Texas wine industry in promoting and marketing Texas wines and educating the public about the Texas wine industry.

(b) The commissioner, in consultation with the advisory committee established under Section 50B.002, Agriculture Code, shall adopt rules as necessary to implement the program.

SUBCHAPTER B. TEXAS WINE MARKETING ASSISTANCE PROGRAM

Sec. 110.051. PROMOTION, MARKETING, AND EDUCATION. The program shall:

(1) organize a network of package stores to participate in a program promoting wines produced in this state and to deliver wine to consumers under Section 110.053;

(2) develop and maintain a data base of wineries in this state and package stores that sell wines produced in this state that allows the program's staff to identify the winery in this state that produces a particular wine;

(3) operate a toll-free telephone number to:

(A) receive inquiries from persons who wish to purchase a particular wine produced in this state;

(B) make information about the wineries in this state and the package stores participating in the program available to the public; and

(C) refer a person who wishes to purchase a Texas wine to the winery that produces the wine and inform the person of arrangements that the person can make under Section 110.053 to pick up the wine at a package store or have the wine delivered to the person's address;

(4) use market research to develop a wine industry marketing plan to increase the consumption of and access to Texas wine;

(5) educate the public about wines produced in the state by providing publicity about the information in the program's database to the public and making the information available to the public through the department's toll-free telephone number and electronically available through the Internet;

(6) promote wineries in this state and package stores that participate in the program; and

(7) promote and market, and educate consumers about, the wines produced in this state using any other method the commissioner determines is appropriate.

Sec. 110.052. PARTICIPATION OF PACKAGE STORES. (a) Participation in the program by a package store is voluntary.

(b) The commissioner by rule may establish standards that a package store that participates in the program must meet.

Sec. 110.053. SALE AND SHIPMENT OF WINE THROUGH PROGRAM. (a) A person who purchases wine from a winery in this state may ship the wine in accordance with:

(1) Section 16.09; or

(2) this section.

(b) If a person who purchases wine from a winery in this state is not physically present at the winery, the winery may ship the wine to a package store that participates in the program. On receipt of the wine, the package store shall notify the purchaser that the wine is available to be picked up by the purchaser at the package store or shipped to the purchaser by the package store.

(c) A package store that participates in the program may charge a purchaser a handling fee of not more than $3.50 for each order of wine that the purchaser picks up at the package store. The handling fee is not subject to state or local sales tax.

(d) If a purchaser elects to have the package store ship the wine to the purchaser, the package store and the purchaser must agree on the shipping arrangements.

(e) The package store may return a wine order to the winery if the purchaser does not pick up wine or make arrangements to have the wine shipped to the purchaser before the 30th day after the date the purchaser is notified under Subsection (b). The winery shall accept return of the wine from the package store.

(f) For the purposes of this code, a purchase of wine under this section is considered to have occurred on the premises of the winery.

(g) A package store that ships wine under this section is not liable for the actions of the carrier that delivers the wine.

Sec. 110.054. DELIVERY OF WINE IN A DRY AREA. A package store that participates in the program may ship wine under Section 110.053 to a person who resides in a dry area if:

(1) the delivery is made by the holder of a carrier permit; and

(2) the package is clearly labeled as requiring the signature of a person 21 years of age or older for delivery.

Sec. 110.055. SHIPPING FORM. The commission by rule shall adopt a standard invoice for shipping wine under Section 110.053 from a winery to a package store and from a package store to a purchaser that allows the commission to monitor the sale and delivery of wine through the program, including the amount of wine sold through the program and the payment of taxes on that wine.

TITLE 5. TAXATION

CHAPTER 201. LIQUOR TAXES

SUBCHAPTER A. TAX ON LIQUOR OTHER THAN ALE AND MALT LIQUOR

Sec. 201.01. LIQUOR. In this subchapter, "liquor" does not include ale or malt liquor.

Sec. 201.011. TIMELY FILING: DILIGENCE. A person filing a report or making a tax payment complies with the filing requirements for timeliness for a report not filed or a payment not made on time if the person exercised reasonable diligence to comply with the filing requirements and the failure to file or the making of a late payment is not the fault of the person.

Sec. 201.02. "FIRST SALE" DEFINED. In this subchapter, "first sale":

(1) as applied to liquor imported into this state by the holder of a wholesaler's permit authorizing importation, means the first actual sale by the permittee to the holder of any other permit authorizing the retail sale of the beverage or to the holder of a local distributor's permit; and

(2) as applied to all other liquor, means the first sale, possession, distribution, or use in this state, except that the term does not include the first sale by:

(A) the holder of a winery permit to another holder of a winery permit or the holder of a wholesaler's permit; or

(B) the holder of a distiller's and rectifier's permit to the holder of a wholesaler's permit.

Sec. 201.03. TAX ON DISTILLED SPIRITS. (a) A tax is imposed on the first sale of distilled spirits at the rate of $2.40 per gallon.

(b) The minimum tax imposed on packages of distilled spirits containing two ounces or less is five cents per package.

(c) Should packages containing less than one-half pint but more than two ounces ever be legalized in this state, the minimum tax imposed on each of these packages is $0.122.

Sec. 201.04. TAX ON VINOUS LIQUOR. (a) A tax is imposed on the first sale of vinous liquor that does not contain over 14 percent of alcohol by volume at the rate of 20.4 cents per gallon.

(b) A tax is imposed on vinous liquor that contains more than 14 percent of alcohol by volume at the rate of 40.8 cents per gallon.

(c) A tax is imposed on artificially carbonated and natural sparkling vinous liquor at the rate of 51.6 cents per gallon.

Sec. 201.05. REPORTING SYSTEM. A person who holds a permit authorizing the importation of liquor into this state shall pay the liquor tax by the reporting system under bond.

Sec. 201.06. PAYMENT OF TAX; DISCOUNTS. (a) The tax on liquor, levied and computed under this subchapter, shall be paid by a remittance payable to the comptroller and forwarded together with any required sworn statement of taxes due to the commission in Austin on or before the date it is due.

(b) A discount of two percent of the amount due shall be withheld by the permittee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

Sec. 201.07. DUE DATE. The tax on liquor is due and payable on the 15th of the month following the first sale. together with a report on the tax due.

~~(b) In August 2013, each permittee who is liable for the taxes imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (a). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The~~

~~permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.~~

~~(c) A permittee who remits the additional payment as required by Subsection (b) may take a credit in the amount of the additional payment against the next payment due under Subsection (a).~~

~~(d) Subsections (b) and (c) and this subsection expire September 1, 2015.~~

NOTE: Subsections (b), (c), (d), Section 201.07 repealed by Senate Bill 559, 83rd Legislature, Regular Session, 2013, effective June 14, 2013.

Sec. 201.075. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a report or return or to make a tax payment required by this subchapter. Chapter 2001, Government Code does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the permittee or the permittee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments that are due.

Sec. 201.08. EXEMPTION FROM TAX. (a) No tax may be collected on liquor:

(1) shipped out of state for consumption outside the state; or

(2) sold aboard a ship for ship's supplies.

(b) The commission shall provide forms for claiming the exemption prescribed by this section.

(c) A tax credit shall be allowed for payment of any unintended or excess tax.

Sec. 201.09. REFUND DUE ON DISPOSITION OUTSIDE OF STATE. The holder of any permit authorizing the transportation of liquor out of this state may apply to the commission for a refund of the excise tax on liquor on which the state tax has been paid on proper proof that the liquor was sold or disposed of outside of this state.

Sec. 201.10. EXCESS TAX. A permittee is entitled to a refund or tax credit on future tax payment for any excess tax on liquor paid through oversight, mistake, error, or miscalculation.

Sec. 201.11. TAX CREDITS AND REFUNDS. The commission shall provide by rule for the equitable and final disposition of tax refunds or credits when liquor tax is overpaid or paid by mistake. It shall prescribe the time and manner for filing claims for credits and refunds and provide appropriate forms.

Sec. 201.12. APPROPRIATIONS FOR REFUNDS. Necessary funds from the collection of the tax on imported liquor before the revenue from that tax has been allocated may be appropriated for the payment of refunds of tax on imported liquor.

Sec. 201.13. SALE OF UNTAXED LIQUOR PROHIBITED. No person may sell, offer for sale, or store for the purpose of sale in this state any liquor on which the state or federal tax, if due, has not been paid.

Sec. 201.14. INVOICES OF TRANSPORTED LIQUOR. A holder of a permit authorizing the wholesaling of liquor and the transporting of liquor outside of this state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported outside of this state within 24 hours after the liquor has been removed from the permittee's place of business.

Sec. 201.15. EVIDENCE IN SUIT. In any suit brought to enforce the collection of tax owed by the holder of a permit authorizing the importation of liquor into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

Sec. 201.16. PENALTY. A person who violates any section of this subchapter except Section 201.09 or 201.13 of this code commits a misdemeanor which on conviction is punishable by a fine of not less than $100 nor more than $1,000 or by imprisonment in the county jail for not less than 30 days nor more than one year. Violations of Sections 201.09 and 201.13 are punishable in accordance with Section 1.05 of this code.

Sec. 201.17. LIQUOR IN METRIC CONTAINERS. For the purpose of the taxes imposed on liquor by this subchapter and on ale and malt liquor by Subchapter B of this chapter, if the liquor is in metric containers the amount of tax due is determined by converting the metric amount into the equivalent amount in gallons and applying the appropriate tax rate. The commission shall prepare tables showing the amount of tax due on various types of liquor, including ale and malt liquor, in metric containers.

SUBCHAPTER B. TAX ON ALE AND MALT LIQUOR

Sec. 201.41. FIRST SALE. In this subchapter, "first sale" means:

(1) the first actual sale of ale or malt liquor by:

(A) the holder of a wholesaler's, general class B wholesaler's, or local class B wholesaler's permit to:

(i) [~~(A)~~] a permittee authorized to sell to ultimate consumers;

(ii) [~~(B)~~] a local distributor permittee; or

(iii) [~~(C)~~] a private club registration permittee; or

(B) a brewpub licensee to a consumer or a permittee or licensee authorized to sell ale or malt liquor to ultimate consumers; or

(2) the importation of ale or malt liquor under Section 107.07 [~~of this code~~].

Sec. 201.42. TAX ON ALE AND MALT LIQUOR. A tax is imposed on the first sale of ale and malt liquor at the rate of $0.198 per gallon.

Sec. 201.43. DUTY TO PAY TAX; DUE DATE. (a) The permittee making the taxable first sale shall pay the tax on ale and malt liquor imposed under Section 201.42 of this code.

(b) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs, together with a report on the tax due.

~~(c) In August 2013, each permittee who is liable for the tax imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (b). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.~~

~~(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (b).~~

~~(e) Subsections (c) and (d) and this subsection expire September 1, 2015.~~

NOTE: Subsections (c), (d), and (e), Section 201.43 repealed by Senate Bill 559, 83rd Legislature, Regular Session, 2013, effective June 14, 2013.

Sec. 201.44. TAX EXEMPTIONS. No tax may be collected on ale or malt liquor:

(1) shipped out of the state for consumption outside the state; or

(2) sold aboard a ship for ship's supplies.

Sec. 201.45. PROHIBITION OF SALE OF UNTAXED ALE OR MALT LIQUOR. No person may sell, offer for sale, or store for the purpose of sale in this state any ale or malt liquor on which the state or federal tax, if due, has not been paid.

Sec. 201.46. TAX LIABILITY. A person possessing ale or malt liquor on which the tax is delinquent is liable for the delinquent tax in addition to the criminal penalties.

Sec. 201.47. TAX REFUNDS AND CREDITS. (a) The holder of a permit authorizing the transportation of ale or malt liquor out of the state may apply to the commission for a refund of the excise tax on ale or malt liquor that has been paid on proper proof that the ale or malt liquor was sold or disposed of outside the state.

(b) Tax credits shall be allowed for overpayment or mistaken payment of the tax on ale or malt liquor, and the commission shall provide by rule for the equitable and final disposition of the tax credits.

Sec. 201.48. PAYMENT. The tax on ale and malt liquor shall be paid by a remittance payable to the comptroller and forwarded, together with any required sworn statements of taxes due, to the commission in Austin on or before the date it is due. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

Sec. 201.49. MAY REQUIRE INFORMATION. (a) The commission may require all brewers, nonresident brewers, importers, wholesalers, and class B wholesalers of ale and malt liquor to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of the tax due. No brewer, nonresident brewer, importer, wholesaler, or class B wholesaler may fail or refuse to furnish the required information.

(b) The commission may seize or withhold from sale the brewer's, nonresident brewer's, importer's, wholesaler's, or class B wholesaler's ale or malt liquor for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records, whether the records are inside or outside of this state.

Sec. 201.50. INVOICES OF TRANSPORTED LIQUOR. The holder of a permit authorizing the wholesaling of liquor and the transportation of it out of the state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported out of the state within 24 hours after the liquor has been removed from the permittee's place of business. Violation of this section is punishable by the penalty prescribed in Section 201.16 of this code.

Sec. 201.51. EVIDENCE IN SUIT. In any suit brought to enforce the collection of tax due on ale or malt liquor brewed in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

Sec. 201.52. ALE AND MALT LIQUOR IN METRIC CONTAINERS. Section 201.17 of this code applies to the taxation of ale and malt liquor in metric containers.

Sec. 201.53. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a report or return or to make a tax payment required by this subchapter. Chapter 2001, Government Code does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the permittee or the permittee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments that are due.

SUBCHAPTER C. STAMPS

Sec. 201.71. STAMPS. Unless the liquor is exempt from tax or payment has been or is to be made by a permittee in accordance with the provisions of Subchapter A or B of this chapter, the tax levied under Subchapter A or B shall be paid by affixing a stamp or stamps on each bottle or container of liquor. The stamp shall be affixed in strict accordance with the commission's rules and regulations.

Sec. 201.72. DUTY TO PRINT. The commission and the board of control shall have engraved or printed the liquor and beer tax stamps required by this code. The board of control shall let the contracts for the stamps required by this code as provided by law. The commission shall expend funds necessary to keep an ample supply of stamps on hand.

Sec. 201.73. DESIGN. The commission shall prescribe the design and denomination of the tax stamps. Each stamp must show the amount of tax for which it evidences payment and shall contain the words "Texas State Tax Paid."

Sec. 201.74. OPERATION OF TAX STAMP PROGRAM. (a) The commission is responsible for the custody and sale of tax stamps and for the proceeds of the sales.

(b) The commission may sell tax stamps only to a person designated by the commission.

(c) The commission may designate any state or national bank in this state as its agent to deliver and collect for any tax stamps and to remit the sale proceeds to it.

(d) Invoices for tax stamps shall be issued by the commission in duplicate and numbered consecutively. The original of the invoice shall be forwarded to the purchaser or to the person in whose care it may be sent for the benefit of a qualified purchaser. The second copy shall be kept by the commission.

(e) The commission shall keep a permanent record of all tax stamps received and sold. This record shall provide a perpetual inventory of all tax stamps and their disposition.

Sec. 201.75. DELIVERY OF STAMPS. The commission shall prescribe the manner in which tax stamps are delivered to its inspectors in charge of ports of entry.

Sec. 201.76. REFUNDS. (a) The commission may make refunds for tax stamps in all cases where:

(1) stamped liquor is returned to the distillery or manufacturer, on certification by a duly authorized representative of the commission who inspected the shipment;

(2) stamped liquor has been destroyed, on certification by a duly authorized representative of the commission that the liquor has been destroyed;

(3) a person who has been authorized to purchase tax stamps and is in possession of unused tax stamps on discontinuation of business; and

(4) tax stamps of improper value have been erroneously affixed to a bottle or container of liquor and those tax stamps have been destroyed in a manner prescribed by the commission.

(b) To obtain a refund under this section, it must be shown that the tax stamps for which a refund is asked were purchased from the commission and that the refund is made to a person authorized to purchase tax stamps from the commission. No other refunds for tax stamps are allowed.

(c) Sufficient funds to pay refunds for tax stamps may be appropriated from the revenue derived from the sale of the tax stamps before that revenue has been allocated.

Sec. 201.77. WHO MAY PURCHASE STAMPS. The commission shall designate those permittees or other persons entitled to purchase state tax stamps.

Sec. 201.78. STAMPS FOR WINE. Tax stamps for wine shall be issued in multiples of the rate assessed for each pint and for each one-tenth of a gallon.

Sec. 201.79. ALTERNATIVE METHOD OF COLLECTING TAX ON WINE. The commission may provide by rule an alternative method of collecting the tax on wine. That method may dispense with the use of tax stamps.

Sec. 201.80. EXEMPTION. The commission may prescribe by order special rules for the payment of the tax imposed by Subchapter A or B of this chapter in any circumstance that in the judgment of the commission creates an emergency or makes it impractical to require the affixing of tax stamps.

Sec. 201.81. STAMPS FOR DISTILLED SPIRITS. Tax stamps for distilled spirits may be issued only in multiples of the rate assessed each half-pint, except that when distilled spirits are contained in containers of one-tenth of a gallon, tax stamps shall be issued at the assessed rate for each type of distilled spirit.

Sec. 201.82. IMPORTED DISTILLED SPIRITS; FEDERAL STAMP. A container of distilled spirits that has a federal liquor strip stamp attached or that has been imported from a foreign country is subject to taxation and must have the appropriate state tax stamp for distilled spirits affixed to it, unless it is taxed under the reporting system.

CHAPTER 203. BEER TAX

Sec. 203.01. TAX ON BEER. A tax is imposed on the first sale of beer manufactured in this state or imported into this state at the rate of six dollars per barrel.

Sec. 203.02. "FIRST SALE". In this chapter, "first sale" means:

(1) the first actual sale of beer:

(A) by the holder of a distributor's license or by the holder of a manufacturer's license acting under the authority of Section 62.12 [~~of this code~~], to:

(i) [~~(A)~~] a permittee or licensee authorized to sell to ultimate consumers;

(ii) [~~(B)~~] a local distributor permittee; or

(iii) [~~(C)~~] a private club registration permittee; or

(B) by a brewpub licensee to a consumer or a permittee or licensee authorized to sell beer to ultimate consumers; or

(2) the importation of beer under Section 107.07 [~~of this code~~].

Sec. 203.03. DUTY TO PAY TAX; DUE DATE. (a) The licensee making the taxable first sale shall pay the tax on beer imposed under Section 203.01 of this code.

(b) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs, together with a report on the tax due.

~~(c) Each licensee who is liable for the tax imposed by this chapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the licensee is otherwise required to remit during August 2013 under Subsection (b). The prepayment is in addition to the amount the licensee is otherwise required to remit during August. The licensee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.~~

~~(d) A licensee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (b).~~

~~(e) Subsections (c) and (d) and this subsection expire September 1, 2015.~~

NOTE: Subsections (c), (d), and (e), Section 203.03 repealed by Senate Bill 559, 83rd Legislature, Regular Session, 2013, effective June 14, 2013.

Sec. 203.04. TAX ON UNSALABLE BEER. No tax imposed under Section 203.01 of this code may be imposed or collected on beer that for any reason has been found and declared to be unsalable by the commission or administrator. A manufacturer or distributor is entitled to a refund of any tax he has paid on unsalable beer.

Sec. 203.05. EXEMPTION FROM TAX. (a) No tax may be collected on beer:

(1) shipped out of this state for consumption outside of this state;

(2) sold aboard ships for ship's supplies; or

(3) shipped to any installation of the national military establishment under federal jurisdiction for consumption by military personnel on that installation.

(b) The commission shall provide forms on which distributors and manufacturers may claim these exemptions from the tax on beer.

Sec. 203.06. EXCESS TAX. A manufacturer or distributor is entitled to a refund or credit on future tax payment for any excess tax on beer paid through oversight, mistake, error, or miscalculation.

Sec. 203.07. CLAIMS FOR REFUNDS. (a) The commission or administrator shall prescribe by rule for the claiming of tax refunds and credits authorized under this chapter, including provisions as to the time and manner for claiming the refunds and credits.

(b) Necessary funds from the collection of beer tax before it is allocated may be appropriated for the payment of beer tax refunds.

NOTE: Sec. 203.08 repealed by House Bill 2582, 82nd Legislature, Regular Session, 2011, effective September 1, 2011.

Sec. 203.09. STATEMENTS. (a) The commission may require manufacturers of beer manufactured in this state or imported into this state, importers, and distributors to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of beer tax due. No manufacturer, importer, or distributor may fail or refuse to furnish the information.

(b) The commission may seize or withhold from sale the manufacturer's, importer's, or distributor's beer for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records whether inside or outside this state.

Sec. 203.10. PAYMENT OF TAXES; DISCOUNT. The tax on beer shall be paid by a remittance payable to the comptroller and forwarded with any required sworn statements of taxes due to the commission in Austin on or before the due date. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

Sec. 203.11. EVIDENCE IN SUIT. In a suit brought to enforce the collection of tax due on beer manufactured in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code in relation to the computation and levy of the tax.

Sec. 203.12. TAX LIABILITY. A person possessing beer on which the tax is delinquent is liable for the delinquent taxes in addition to the criminal penalties.

Sec. 203.13. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the license of a licensee who fails to file a report or return or to make a tax payment required by this subchapter. Chapter 2001, Government Code does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the licensee or the licensee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the licensee files all required returns and makes all required tax payments that are due.

CHAPTER 204. BONDS

Sec. 204.01. BOND REQUIRED. (a) Except as otherwise provided in this section, the following licensees and permittees shall furnish a bond:

(1) those authorized to import alcoholic beverages into the state;

(2) manufacturers of beer and brewers of ale or malt liquor in the state; and

(3) all other permittees.

(b) No bond is required of a holder of a mixed beverage, private club registration, carriers, local cartage, wine and beer retailers, nonresident seller's, manufacturer's agent's, or agent's permit.

(c) No bond is required of a retail licensee or permittee who is not responsible for the primary payment of an alcoholic beverage excise tax to this state.

(d) The holder of a wholesaler's or class B wholesaler's permit, or the holder of a distributor's license may furnish, in lieu of all or part of the amount of the bond required:

(1) one or more certificates of deposit or savings assigned to the state, issued by one or more banks or savings institutions authorized to do business in this state; or

(2) one or more letters of credit issued by one or more banks or savings institutions authorized to do business in this state.

(e) If certificates of deposit or savings or letters of credit are furnished under Subsection (d) of this section, the administrator shall keep them in his possession. Interest earned on a certificate of deposit or savings is not subject to the assignment and remains the property of the owner of the certificate.

(f) The holder of a wholesaler's or class B wholesaler's permit, the holder of a winery or wine bottler’s permit, or the holder of a distributor's license is not required to furnish a bond if for the preceding 36 months the permittee or licensee has paid all taxes and fees required by this code on or before the due date.

(g) An exemption under Subsection (f) of this section terminates and the permittee or licensee must furnish a bond or tax security if the permittee or licensee fails to pay a tax or fee imposed by this code on or before the due date.

(h) A permittee or licensee required to furnish a bond or tax security under Subsection (g) of this section is again entitled to exemption from the surety requirement if the permittee or licensee:

(1) pays all delinquent taxes and fees and any applicable penalties; and

(2) pays all taxes and fees required by this code on or before the due date for 18 consecutive months after the month in which the delinquent taxes and fees and the penalties are paid.

(i) A permittee or licensee who qualifies for an exemption under Subsection (f) of this section is also exempt from the bonding requirement for any other wholesaler's permit, class B wholesaler's permit, winery permit, wine bottler’s permit, or distributor's license currently held by or subsequently issued to the same permittee or licensee for use at licensed premises different from and additional to those covered by the permit or license under which the permittee or licensee qualified for exemption. However, if a permittee or licensee fails to pay a tax or fee imposed by this code on or before the due date and the permittee or licensee holds multiple permits or licenses, the requirements for a bond or tax security shall be imposed or reimposed under Subsection (g) of this section only on the permit or license covering the licensed premises for which the tax or fee and any applicable penalty were not timely paid.

Sec. 204.02. FORM AND CONDITIONS. (a) A bond required under this chapter must be executed with the permittee or licensee as principal, a qualified surety company doing business in this state as surety, and the state as payee. All bonds of permittees must be payable in Travis County.

(b) The bond must be conditioned as required by the commission. Bonds required of permittees must be conditioned that as long as the applicant holds the permit he will not violate any law of this state relating to the traffic in or transportation, sale, or delivery of liquor or any valid rule of the commission. The bonds of permittees who are required to account for taxes and fees must also be conditioned that the permittee will account for and pay all permit fees and taxes levied by this code.

(c) The form of all bonds must be approved by the attorney general.

Sec. 204.03. AMOUNT OF BOND. (a) The commission or administrator shall set the amount of all bonds required under this chapter.

(c) Bonds of other permittees, except those permittees covered by Subsection (d) of this section, may not be set at an amount less than $1,000 or more than $25,000.

(d) Bonds, letters of credit, or certificates of deposit to insure the payment of the tax on distilled spirits imposed by Section 201.03 of this code, the tax on vinous liquor imposed by Section 201.04 of this code, the tax on ale and malt liquor imposed by Section 201.42 of this code, or the tax on

beer imposed by Section 203.01 of this code, shall be set at an amount that will protect the state against the anticipated tax liability of the principal for any six-week period.

Sec. 204.04. MULTIPLE PERMITS, ONE BOND. If another permit is required, incidental to the operation of a business for which a basic permit is procured, the commission may accept one bond to support all of the permits. The commission shall determine the amount of the bond.

Sec. 204.05. CANCELLATION OF BOND. The commission may not cancel a surety bond until the surety company has paid and discharged in full all of its liabilities on the bond to the state as of the date of cancellation.

Sec. 204.06. COMPREHENSIVE WINERY BOND. A person who holds both a winery permit and a wine bottler's permit may execute a single bond in an amount determined by the commission instead of multiple bonds to secure the performance of different activities by the holder.

Sec. 204.07. WAIVER OF BOND REQUIREMENT. The commission may waive the requirement that a licensee or permittee furnish a bond under this chapter if the commission by rule determines the submission of the bond is no longer necessary.

CHAPTER 205. REVENUE ALLOCATION

Sec. 205.02. DISPOSITION OF RECEIPTS. (a) After allocation of funds to defray administrative expenses as provided in the current departmental appropriations act, receipts from the sale of tax stamps and funds derived from taxes on distilled spirits, wine, beer, and ale and malt liquor shall be deposited in the general revenue fund. An amount equal to 5/24th of the net revenue shall be transferred to the available school fund, an amount equal to 1/24th of the net revenue shall be transferred to the foundation school fund, and an amount equal to three-fourths of the net revenue shall be credited to the general revenue fund.

(b) All revenues derived from the collection of permit or license fees provided for in this code, except fees for temporary licenses, shall be deposited to the credit of the general revenue fund.

Sec. 205.03. EXCEPTION FOR CERTAIN WINE-RELATED REVENUE. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) Notwithstanding Section 205.02, the following revenue may be appropriated for each state fiscal year only as specified by this section:

(1) the lesser of:

(A) the amount, if any, by which the amount of revenue derived from excise taxes on wine produced in a state other than Texas and any sales taxes collected from holders of out-of-state winery direct shipper's permits as a result of the passage of Senate Bill No. 877 by the 79th Legislature, Regular Session, 2005, according to the most recent projection, as of the beginning of the fiscal year, by the comptroller for the fiscal year exceeds the amount of revenue from those sources for fiscal year 2004, compounded annually for fiscal years 2005-2015 by the average percentage by which revenue from those sources increased from one fiscal year to the next between September 1, 1999, and August 31, 2003; or

(B) $1 million; and

(2) the lesser of:

(A) the amount, if any, by which revenue derived from excise taxes on wine produced in this state and sales taxes remitted by holders of winery permits in this state, according to the most recent projection, as of the beginning of the fiscal year, by the comptroller for the fiscal year exceeds the amount of revenue from those sources for fiscal year 2004, compounded annually for fiscal years 2005-2015 by the average percentage by which revenue from those sources increased from one fiscal year to the next between September 1, 1999, and August 31, 2003; or

(B) $1 million.

(c) Out of the amounts available under Subsections (b)(1) and (2) for a fiscal year, the lesser of $50,000 or the total amount available under those subdivisions may be appropriated only to the Texas Cooperative Extension for extension viticulture operations.

(d) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds $50,000, the lesser of $50,000 or the total amount available under those subdivisions may be appropriated only to the Texas Agricultural Experiment Station for viticulture research.

(e) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds $100,000, the lesser of the amount remaining under Subsection (b)(2) or $65,000 may be appropriated only to the Texas Wine Marketing Research Institute at Texas Tech University.

(f) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amounts that may be appropriated under Subsections (c), (d), and (e), the lesser of the amount remaining under Subsections (b)(1) and (2) or $280,000 may be appropriated only to the Department of Agriculture for distribution as provided by Subsections (g), (h), and (i).

(g) Except as provided by Subsections (h) and (i), money appropriated to the Department of Agriculture under Subsection (f) may be distributed only as follows:

(1) the lesser of the total amount appropriated to the department under Subsection (f) or $50,000 shall be distributed to an appropriate institution of higher education to fund a new part-time extension faculty position in enology;

(2) if the amount appropriated under Subsection (f) exceeds $50,000, the lesser of the remaining amount or $50,000 shall be distributed to an appropriate institution of higher education for extension enology operations;

(3) if the amount appropriated under Subsection (f) exceeds $100,000, the lesser of the remaining amount or $50,000 shall be distributed to the institution of higher education designated under Subdivision (1) to fund a new part-time faculty position in enology research;

(4) if the amount appropriated under Subsection (f) exceeds $150,000, the lesser of the remaining amount or $50,000 shall be distributed to an appropriate institution of higher education to fund enology research program operations;

(5) if the amount appropriated under Subsection (f) exceeds $200,000, the lesser of the remaining amount or $30,000 shall be distributed to an appropriate institution of higher education for technical support personnel for enology research; and

(6) if the amount appropriated under Subsection (f) exceeds $230,000, the lesser of the remaining amount or $50,000 shall be distributed to an appropriate institution of higher education to fund two graduate internships in enology.

(h) If the maximum amount that may be distributed for a purpose provided by Subsection (g) is not available and the commissioner of agriculture determines that the amount available for that purpose is insufficient to achieve that purpose, the commissioner of agriculture may deposit the lesser amount into the wine industry development fund to be used for a purpose described by Subsection (l).

(i) Money appropriated under Subsection (f) derived from Subsection (b)(1) may be used only for a purpose described by Subsection (m).

(j) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amount that may be appropriated under Subsections (c)-(g), the lesser of the amount remaining under Subsections (b)(1) and (2) or $50,000 may be appropriated only for distribution to the T. V. Munson Viticulture and Enology Center at Grayson Community College to fund the associate degree program at the center.

(k) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amount that may be appropriated under Subsections (c)-(j):

(1) the lesser of the amount remaining under Subsection (b)(2) or $250,000 may be appropriated only to the commission; and

(2) the commission shall reduce the amount of the surcharge imposed during the following fiscal year under Section 5.55, as added by Chapter 101, Acts of the 78th Legislature, Regular Session, 2003, on permit and license holders who are not authorized to sell wine by an amount that will

reduce the total amount collected under that section by the amount appropriated to the commission under Subdivision (1).

(l) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amounts that may be appropriated under Subsections (c)-(k), the remaining amount shall be deposited in the general revenue fund to the credit of the wine industry development fund and may be appropriated only to the Department of Agriculture. Money appropriated under this subsection may be used only for the purpose of providing funding to public or private entities to conduct surveys, research, and other projects related to a purpose described by Subsection (m) or (n).

(m) Revenue derived under Subsection (b)(1) and not otherwise appropriated under Subsections (c)-(k) may be appropriated only for the purpose of:

(1) developing viticulture-related and enology-related education programs;

(2) eliminating and eradicating Pierce's disease, the glassy-winged sharpshooter, and other diseases and pests that negatively impact the production of grapes and wine in the United States; or

(3) developing technologies, strategies, or practices that could benefit the production of grapes and wine in the United States.

(n) Revenue derived under Subsection (b)(2) and not otherwise appropriated under Subsections (c)-(k) may be appropriated only for the purposes of increasing the economic impact of the Texas wine producing industry on the state.

(o) The comptroller shall provide the Department of Agriculture information necessary to allow the department to identify the amount of revenue appropriated to the department that is derived under Subsection (b)(1) and the amount of that revenue that is derived under Subsection (b)(2) so that the department may distribute the revenue in accordance with this section.

(p) This section expires September 1, 2015.

CHAPTER 206. PROVISIONS GENERALLY APPLICABLE TO TAXATION

Sec. 206.01. RECORDS. (a) A permittee who distills, rectifies, manufacturers, or receives any liquor shall make and keep a record of each day's production or receipt of liquor and the amount of tax stamps purchased by the permittee. A permittee other than a retailer shall make and keep a record of each sale of liquor and to whom the sale is made. Each transaction shall be entered on the day it occurs. Permittees shall make and keep any other records required by the commission. All required records shall be kept available for inspection by the commission or its authorized representatives for at least four years. All required records may be retained in electronic or microfiche formats and may be retained on or off the premises of the permittee, consistent with the requirements of this section.

(b) No person may fail or refuse to make and retain for at least four years any record required by this section.

(c) No person may fail or refuse to keep any record required by this section open for inspection by the commission or its duly authorized representatives during reasonable office hours.

(d) No person may knowingly, with intent to defraud, make or cause to be made any false entry in any record required by this section or with like intent, alter or cause to be altered any item in one of those records.

Sec. 206.02. PROOF OF TAXES DUE. In a suit or claim by the attorney general for taxes due, he may attach or file as an exhibit a report or audit of a permittee or licensee with an affidavit made by the administrator or his representative stating that the taxes shown to be due by the report or audit are past due and unpaid and that all payments and credits have been allowed. Unless the opposing party files an answer in the same form and manner as required by Rule 185, Texas Rules of Civil Procedure, the audit or report constitutes prima facie evidence of the taxes due. The provisions of Rule 185 are applicable to a suit to collect taxes under this section.

Sec. 206.03. IMPORTATION WITHOUT TAX STAMP. A person commits an offense if he imports or transports liquor into this state without the proper state tax stamps affixed to the containers if the liquor is consigned to, intended for delivery to, or being transported to a person or place inside this state unless the liquor is consigned to a holder of a permit authorizing the importation of liquor.

Sec. 206.04. JURISDICTION CEDED TO FEDERAL GOVERNMENT. (a) No person may transport or ship or cause to be transported or shipped any alcoholic beverage into any area in this state in which the state has ceded police jurisdiction to the federal government or any of its agencies unless the containers or packages holding those alcoholic beverages have a Texas tax stamp affixed if required by this code.

(b) Common carriers are not required to see that tax stamps are affixed.

Sec. 206.05. UNMUTILATED STAMPS. No person may possess, buy, sell, or offer to buy or sell any empty carton, case, package, keg, barrel, bottle, or any other kind of alcoholic beverage container on which the state tax stamps have not been mutilated or defaced.

Sec. 206.06. FORGERY OR COUNTERFEITING. (a) In this section, "counterfeit" or "forged" means printed, manufactured or made by, or under the direction of, or issued, sold, or circulated by a person not authorized to do so under the provisions of this code.

(b) No person may forge or counterfeit a stamp provided for in this code or print, engrave, make, issue, sell, circulate, or possess with intent to use, sell, circulate, or pass a forged or counterfeit stamp or place or cause to be placed any forged or counterfeit stamp on any container of alcoholic beverage.

(c) No person may print, engrave, make, issue, sell, or circulate with intent to defraud or knowingly possess a forged or counterfeit permit, license, official signature, certificate, evidence of tax payment, or other instrument.

(d) No person may possess a stamp or a part of a stamp, die, plate, device, machine, or other instrument used or designed for use for forging or counterfeiting any instrument named in Subsection (b) or (c) of this section.

(e) Conviction for an offense defined in this section may be had on the uncorroborated evidence of an accomplice. A court, officer, or tribunal having jurisdiction of an offense defined in this section or any district or county attorney may subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this section. Any person so summoned and examined is immune from prosecution for the violation of any provision of this section about which he may testify.

(f) A person who violates any provision of this section commits a felony punishable by imprisonment in the Texas Department of Criminal Justice for not less than 2 nor more than 20 years.

Sec. 206.07. PAYMENT OF TAX BY MAIL. (a) The payment of any tax imposed by this code is timely made if not later than the date on which payment is due the tax is mailed to the commission in an envelope with the proper address and postage and is received by the commission not later than the 10th day after the date on which it was due.

(b) A legible postmark made by the United States Postal Service is prima facie evidence of the date of mailing.

Sec. 206.08. COORDINATION OF AUDITS. (a) Before the commission makes a demand to a licensee or permittee for any taxes due, as established by an audit, the commission shall:

(1) hold an informal conference with the licensee or permittee to discuss the audit and the rights of the permittee or licensee to both an informal and formal appeal of the taxes due;

(2) review the audit in the commission headquarters with the office of quality control to ensure that the uniform application of audit standards has been applied in all aspects to the audit; and

(3) send a certified letter stating the amount of taxes owed by the licensee or permittee, the amount of the delinquency, and the proper procedure to appeal the decision.

(b) The commission shall annually update and review all audit manuals to ensure compliance with national audit standards and impartiality and provide audit training to auditors responsible for

auditing tax accounts. The commission may expend funds necessary to ensure adequate training of commission auditors or trainers to provide the standardization of audits throughout the state.

Sec. 206.09. CONTESTS OF TAXABLE AMOUNTS OWED. (a) A licensee or permittee contesting the amount of taxes owed, after receiving a demand for payment of taxes due from the commission, is entitled to a hearing under Chapter 2001, Government Code.

(b) An appeal from a final order issued by the commission must be filed in Travis County.

TITLE 6. LOCAL OPTION ELECTIONS

CHAPTER 251. LOCAL OPTION STATUS

SUBCHAPTER D. MISCELLANEOUS LOCAL OPTION PROVISIONS

Sec. 251.71. WET AND DRY AREAS. (a) An area is a "dry area" as to an alcoholic beverage of a particular type and alcohol content if the sale of that beverage is unlawful in the area. An area is a "wet area" as to an alcoholic beverage of a particular type and alcoholic content if the sale of that beverage is lawful in the area.

(b) Those areas that are wet or dry when this code takes effect retain that status until the status of the area is changed as provided in this code.

(c) All trial courts of this state shall take judicial notice of the wet or dry status of an area in a criminal prosecution.

(d) In an information, complaint, or indictment, an allegation that an area is a dry area as to a particular type of alcoholic beverage is sufficient, but a different status of the area may be urged and proved as a defense.

(e) For purposes of this code:

(1) a reference to a local option election means an election held under Chapter 501, Election Code; and

(2) a local option election held under Chapter 501, Election Code, is considered to have been held under this code.

Sec. 251.72. CHANGE OF STATUS. Except as provided in Sections [~~Section~~] 251.73 and 251.80 [~~of this code~~], an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 501.035, Election Code, until that status is changed by a subsequent local option election in the same authorized voting unit.

Sec. 251.73. PREVAILING STATUS: RESOLUTION OF CONFLICTS. To insure that each voter has the maximum possible control over the status of the sale of alcoholic beverages in the area where he resides:

(1) the status that resulted from or is the result of a duly called election for an incorporated city or town prevails against the status that resulted from or is the result of a duly called election in a justice precinct or county in which the incorporated city or town, or any part of it is contained; and

(2) the status that resulted or is the result of a duly called election for a justice precinct prevails against the status that resulted from or is the result of a duly called election in an incorporated city or town in which the justice precinct is wholly contained or in a county in which the justice precinct is located.

Sec. 251.74. AIRPORT AND STADIUM AS WET AREAS. (a) This section applies to any county:

(1) that has a population of more than 240,000, according to the most recent federal census;

(2) in which the sale of all alcoholic beverages has been legalized in all or any part of the county; and

(3) where, at the general election on November 3, 1970, the voters approved the constitutional amendment authorizing the sale of mixed beverages on a local option basis.

(b) In a county covered by this section, the commissioners court may designate as an area wet for the sale of mixed beverages only:

(1) the area encompassed by the building structure of a professional sports stadium, used wholly or partly for professional sporting events and having a seating capacity of at least 40,000, and not more than 125 acres of adjacent land used for the benefit of the stadium, regardless of ownership of the land, if no registered voters reside there; and

(2) the area encompassed by a regional airport.

(c) The order of the commissioners court authorizes the issuance of a mixed beverage permit.

Sec. 251.741. CERTAIN AIRPORTS AS WET AREAS. In addition to those areas declared wet by order of the commissioners court under the authority of Section 251.74 of this code, in a county with a population of more than 175,000 according to the most recent federal census where the sale of mixed beverages only is legalized in the most populous city in the county by a local option election held after May 18, 1971, the area actually encompassed by any municipal airport under the jurisdiction of that city is wet for the sale of mixed beverages only. Subsequent local option elections held by that city do not affect the local option status of the airport unless the result of the election prohibits the sale of mixed beverages, in which case the provisions of this section do not apply.

Sec. 251.75. CONTINUANCE OF OPERATION AS MANUFACTURER OR BREWER. Notwithstanding any other provision of this code, if the sale of beer or ale is prohibited in an area by a local option election, a holder of a manufacturer's license or brewer's permit that was issued prior to the election may not be denied an original or renewal manufacturer's license or brewer's permit for the same location on the ground that the local option status of the area prohibits the sale of beer or ale. Except for the right to sell beer or ale contrary to the local option status of the area, the licensee or permittee may engage in all activities authorized by the license or permit, including the manufacturing, brewing, possessing, storing, and packaging of beer or ale, and transporting it to an area where its sale is legal. The licensee or permittee may deliver beer or ale at his licensed premises to a purchaser from outside the state, an authorized carrier, distributor, or class B wholesaler. The purchaser, carrier, distributor, or class B wholesaler may not receive the beer or ale for transportation unless there has first been an order, acceptance, and payment or legal satisfaction of payment in an area where the sale of beer or ale is legal.

Sec. 251.76. CONTINUANCE OF OPERATION AS DISTILLER AND RECTIFIER. Notwithstanding any other provision of this code, a person who has been issued a distiller's and rectifier's permit may not subsequently be denied an original or renewal distiller's and rectifier's permit for the same location on the ground that the sale of distilled spirits has been prohibited in the area by a local option election. A person holding a permit at the time of the election or issued a permit under this section may exercise all privileges granted by this code to the holder of a distiller's and rectifier's permit, including the manufacturing, possessing, storing, packaging, and bottling of distilled spirits and the transportation of them to areas in which their sale is legal.

Sec. 251.77. CONTINUANCE OF OPERATION AS DISTRIBUTOR. (a) Notwithstanding any other provision of this code, if the sale of beer is prohibited by local option election, a licensed distributor of beer whose warehouse or other facilities used in connection with the distributorship are located in the area affected, has the right to continue to operate as a distributor in that area and maintain the necessary premises and facilities for distribution. The distributor continues to enjoy all the rights and privileges incident to distributorship, including the right to possess, store, warehouse, and sell beer in that area, and deliver beer into and out of that area.

(b) A distributor in the area affected may sell or deliver beer only to licensed outlets located where the sale of beer is legal.

Sec. 251.78. CONTINUANCE OF OPERATION AS WHOLESALER. (a) Notwithstanding any other provision of this code, if the sale of the type or types of liquor authorized to be sold by the holder of a wholesaler's permit whose warehouse or other facility used in connection with the wholesale operation is prohibited in an area by local option election, the holder of the wholesaler's permit shall have the right to continue to operate as a wholesaler in that area and maintain the necessary premises and facilities for the wholesale operation. The wholesaler shall enjoy all the rights and privileges incident to the permit, including the right to possess, store, warehouse, sell, deliver, and receive liquor.

(b) A wholesaler in the area affected may only sell or deliver liquor to permittees located where the sale of liquor is legal.

Sec. 251.79. AREAS IN WHICH CERTAIN PERMITS AND LICENSES MAY BE ISSUED. Notwithstanding any other provision of this code, a wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, or general, local or branch distributor's license may be issued and licensed premises maintained in any area where the sale of any alcoholic beverage is legal. A person issued a permit or license under this section may exercise all rights and privileges of other permittees and licensees of the same class.

Sec. 251.80. CHANGE IN PRECINCT BOUNDARIES. a) A local option election held in a justice precinct shall be held in the territory comprising the justice precinct at the time the election is held. If a justice precinct has established [~~Whenever~~] a local option status as a result of a previous local option election [~~is once legally put into effect as the result of the vote~~] in the [~~a~~] justice precinct, such status shall remain in effect until the status is changed as the result of a subsequent local option election [~~vote~~] in the [~~same territory that comprised the~~] precinct [~~when such status was established~~]. If the boundaries of the justice precinct have changed since such status was established, [~~the commissioners court shall, for purposes of~~] a subsequent local option election will only change the local option status in the territory that is part of the justice [~~, define the boundaries of the original~~] precinct on the date of the subsequent local option election[~~. A local option election may be held within the territory defined by the commissioners court as constituting such original precinct~~].

(a-1) For purposes of a local option election, a newly created justice precinct shall be considered to have not held a local option election on the sale of alcoholic beverages. Any local option status established in the territory comprising the new justice precinct that resulted from a local option election held in the territory when the territory was part of another justice precinct remains in effect until that status is changed by a local option election held in the new justice precinct.

(b) Nothing in this section is intended to affect the operation of Section 251.73 of this code.

~~(c) The provisions of Section 501.107, Election Code, relating to the payment of local option election expenses shall apply to elections held in a territory that is defined in accordance with Subsection (a) of this section.~~

NOTE: Section 251.80, subsection (c) repealed by House Bill 2818, 83rd Legislature, Regular Session, 2013, effective September 1, 2013.

Sec. 251.81. SALE OF WINE. (a) If the sale of wine was approved in an area by a local option election, other than a local option election that approved the sale of all alcoholic beverages, before September 1, 1999, an alcoholic beverage license or permit holder may not sell in that area wine containing more than 14 percent alcohol by volume unless a subsequent local option election approves the sale of wine or wine and other alcoholic beverages.

(b) The commission shall, on the face of each alcoholic beverage license or permit indicate whether the holder may sell wine and, if the license or permit holder may sell wine, whether the holder may sell wine up to 14 percent alcohol or 17 percent alcohol by volume.

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the purposes of an election conducted under Section 501.109, Election Code, a reference in this code:

(1) to the county is considered to refer to the city or town;

(2) to the commissioners court is considered to refer to the governing body of the city or town;

(3) to the county clerk or registrar of voters is considered to refer to the secretary of the city or town or, if the city or town does not have a secretary, to the person performing the functions of a secretary of the city or town; and

(4) to the county judge is considered to refer to the mayor of the city or town or, if the city or town does not have a mayor, to the presiding officer of the governing body of the city or town.

APPENDIXIES

APPENDIX A

AGRICULTURE CODE

Sec. 12.039. CERTAIN WINE PRODUCED OR BOTTLED IN THIS STATE. (a) The Texas Wine Marketing Research Institute or other qualified entity shall, as funding is available, conduct an annual study relating to the quantities and varieties of grapes and other fruit grown in this state that are used for wine making.

(b) Not later than October 15 of the study year, the Texas Wine Marketing Research Institute or other qualified entity shall submit a report to the commissioner. The report must:

(1) include:

(A) the quantities and varieties of grapes and other fruit grown in this state that are available on September 30 of the study year for use in wine making;

(B) the needs of wineries in this state for those grapes and other fruit to meet the wineries' projected production estimates for the following calendar year; and

(C) recommendations regarding the varieties of grapes and other fruit grown in this state for which a reduction in the percentage by volume of Texas grapes used should be granted under Subsection (d); or

(2) state that funding was not available to complete the study required by this section.

(c) If a statement is provided in accordance with Subsection (b)(2), the reporting entity shall include in the report:

(1) any information that has been routinely collected or developed by the reporting entity and that might be useful in determining the quantities and varieties of grapes and other fruit grown in this state that are available for use in wine making the following calendar year; and

(2) recommendations regarding the varieties of grapes and other fruit grown in this state for which a reduction in the percentage by volume of Texas grapes used should be granted under Subsection (d).

(d) The commissioner shall review the report and, if the commissioner determines that the quantity of a variety of grapes or other fruit grown in this state is insufficient for the wineries in this state to produce their projected production estimates during the following calendar year, the commissioner may reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under Section 16.011, Alcoholic Beverage Code. The percentage established under this subsection must ensure that the use of that variety of grape or other fruit grown in this state is maximized while allowing for the acquisition of grapes or other fruit grown outside of this state in a quantity sufficient to meet the needs of wineries in this state.

(e) The commissioner shall submit the commissioner's determination to the Texas Alcoholic Beverage Commission in writing and publish the commissioner's determination in the Texas Register and on the department's Internet website not later than December 31 of the study year.

(f) A percentage requirement established under Subsection (d) applies to wine bottled under Section 16.011, Alcoholic Beverage Code, during the calendar year following the study year.

(g) If a winery in this state finds that the determination made by the commissioner under Subsection (d) does not reduce the percentage requirement with respect to a particular variety of grape or other fruit to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may submit documentation or other information to the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs. If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that

winery, the commissioner may reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of fruit.

(h) The commissioner may:

(1) establish a voluntary registry for vineyards and other fruit growers in this state to assist in the determination of the availability of grapes and other fruit grown in this state and facilitate communication between the wineries and fruit growers in this state regarding the availability of and need for grapes and other fruit for wine making; and

(2) assess a fee to cover the cost of administering the registry.

(i) Information gathered through a registry established under Subsection (h) shall be posted on the department's Internet website and may be made available in any other format agreed on by the commissioner and a requestor who pays the appropriate fee for reproducing the record.

(j) The vineyard and fruit growers registry fund is an account in the general revenue fund. Fees collected under Subsection (h) shall be deposited to the credit of that account. Money in the account may be appropriated only to the department and may be used only to cover administrative and personnel costs of the department associated with administering a registry established under Subsection (h).

APPENDIX B

EDUCATION CODE

Sec. 38.007. ALCOHOL-FREE SCHOOL ZONES. (a) The board of trustees of a school district shall prohibit the use of alcoholic beverages at a school-related or school-sanctioned activity on or off school property.

(b)The board of trustees of a school district shall attempt to provide a safe alcohol-free environment to students coming to or going from school. The board of trustees may cooperate with local law enforcement officials and the Texas Alcoholic Beverage Commission in attempting to provide this environment and in enforcing Sections 101.75, 109.33, and 109.59, Alcoholic Beverage Code. Additionally, the board, if a majority of the area of a district is located in a municipality with a population of 900,000 or more, may petition the commissioners court of the county in which the district is located or the governing board of an incorporated city or town in which the district is located to adopt a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.

APPENDIX C

ELECTION CODE

CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:
(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.
(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.
(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.
(4) "Political subdivision" includes a justice precinct.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of a provision of that code, including Chapter 101, Alcoholic Beverage Code, apply to a violation of a provision of this chapter.

[Sections 501.004-501.020 reserved for expansion]

SUBCHAPTER B. MANNER OF CALLING ELECTION

Sec. 501.021. ELECTION TO BE HELD BY PETITION. On proper petition by the required number of voters of a county, justice precinct, or municipality in the county, the commissioners court shall order a local option election in the political subdivision to determine whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

Sec. 501.0211. ELECTION CALLED BY GOVERNING BODY OF MUNICIPALITY. (a) This section applies only to a municipality:

(1) with a population of at least 114,000 and not more than 123,000;

(2) in which the sale of one or more types or classifications of alcoholic beverage is legal in the municipality as a result of a local option election held in the municipality; and

(3) that, after the election is held, annexes territory in which the sale of one or more of those types or classifications of alcoholic beverage is not legal.

(b) After holding a public hearing, the governing body of a municipality described by Subsection (a) may, by resolution, order a local option election to be held in the municipality on the ballot issue the passage of which would legalize the sale of the same types and classifications of alcoholic beverages the sale of which was legalized by the results of the local option election described by Subsection (a).

(c) The resolution ordering the election must state in its heading and text that the local option election to be held is for the purpose of legalizing the sale of the alcoholic beverages and set out the ballot issue to be voted on in the election.

(d) An election ordered by the governing body of a municipality under this section shall be conducted by the municipality instead of the county. For the purposes of an election conducted under this section, a reference in this code:

(1) to the county is considered to refer to the municipality;

(2) to the commissioners court is considered to refer to the governing body of the municipality;

(3) to the county clerk or registrar of voters is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) to the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(e) The municipality shall pay the expense of the election.

(f) This section expires September 1, 2015.

Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION TO HOLD ELECTION. (a) A political subdivision must have been in existence for at least 18 months before a local option election to legalize or prohibit the sale of liquor in the political subdivision may be held.

(b) The political subdivision must include substantially all the area encompassed by the political subdivision at the time of its creation and may include any other area subsequently annexed by or added to the political subdivision.

(c) This section does not apply to a municipality incorporated before December 1, 1971.

Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more qualified voters of any county, justice precinct, or municipality file a written application and provide proof of publication of notice in a newspaper of general circulation in that political subdivision, the county clerk of the county shall issue to the applicants a petition to be circulated among the qualified voters of the political subdivision for the signatures of those qualified voters who desire that a local option election be called for the purpose of determining whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision. The notice must include:

(1) the individual or entity that is applying for the petition to gather signatures for a local option liquor election;

(2) the type of local option liquor election;

(3) the name of the political subdivision in which the petition will be circulated; and

(4) the name and title of the person with whom the application will be filed.

(b) Not later than the fifth day after the date the petition is issued, the county clerk shall notify the commission and the secretary of state that the petition has been issued.

Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO PROHIBIT. (a) An application for a petition seeking an election to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed: "Application for Local Option Election Petition to Prohibit."

(b) The application must contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the application; and

(2) one of the issues listed in Section 501.035.

Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO LEGALIZE. (a) An application for a petition seeking an election to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed: "Application for Local Option Election Petition to Legalize."

(b) The application must contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the application; and

(2) one of the issues listed in Section 501.035.

Sec. 501.026. PETITION REQUIREMENTS. A petition must show the date the petition is issued by the county clerk and be serially numbered. Each page of a petition must bear the same date and serial number and the actual seal of the county clerk rather than a facsimile of that seal.

Sec. 501.027. HEADING AND STATEMENT ON PETITION TO PROHIBIT. (a) Each page of the petition for a local option election seeking to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed "Petition for Local Option Election to Prohibit."

(b) The petition must contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the petition; and

(2) one of the issues listed in Section 501.035.

Sec. 501.028. HEADING AND STATEMENT ON PETITION TO LEGALIZE. (a) Each page of the petition for a local option election seeking to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed "Petition for Local Option Election to Legalize."

(b) The petition must contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the petition; and

(2) one of the issues listed in Section 501.035.

Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a) A person commits an offense if the person misrepresents the purpose or effect of a petition issued under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Sec. 501.030. COPIES OF PETITION. (a) The county clerk shall supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or municipality. Each copy must bear the date, number, and seal on each page as required on the original petition.

(b) The county clerk shall keep a copy of each petition and a record of the applicants for the petition.

Sec. 501.031. VERIFICATION OF PETITION. (a) The voter registrar of the county shall check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county, justice precinct, or municipality at the time the petition was issued. The political subdivision may use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision shall verify each signature on the petition. The citizen making the request shall pay the reasonable cost of the verification. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.

(b) A petition signature may not be counted unless the signature is the actual signature of the purported signer and the petition:

(1) contains in addition to the signature:

(A) the signer's printed name;

(B) the signer's date of birth;

(C) if the territory from which signatures must be obtained is situated in more than one county, the county of registration;

(D) the signer's residence address; and

(E) the date of signing; and

(2) complies with any other applicable requirements prescribed by law.

(c) The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. The omission of the zip code from the address does not invalidate a signature.

(e) The signature is the only entry on the petition that is required to be in the signer's handwriting.

(f) A signer may withdraw the signer's signature by deleting the signature from the petition or by filing with the voter registrar an affidavit requesting that the signature be withdrawn from the petition. A signer may not withdraw the signature from a petition on or after the date the petition is received by the registrar. A withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the registrar. The withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The commissioners court, at its next regular session on or after the 30th day after the date the petition is filed, shall order a local option election to be held on the issue set out in the petition if the petition is filed with the voter registrar not later than the 60th day after the date the petition is issued and bears the actual signatures of a number of qualified voters of the political subdivision equal to at least:

(1) 35 percent of the registered voters in the subdivision who voted in the most recent gubernatorial election for a ballot issue that permits voting for or against:

(A) "The legal sale of all alcoholic beverages for off-premise consumption only.";

(B) "The legal sale of all alcoholic beverages except mixed beverages.";

(C) "The legal sale of all alcoholic beverages including mixed beverages."; or

(D) "The legal sale of mixed beverages.";

(2) 25 percent of the registered voters in the political subdivision who voted in the most recent general election for a ballot issue that permits voting for or against "The legal sale of wine on the premises of a holder of a winery permit."; or

(3) 35 percent of the registered voters in the political subdivision who voted in the most recent gubernatorial election for an election on any other ballot issue.

(b) Voters whose names appear on the list of registered voters with the notation "S," or a similar notation, shall be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a) The election order must state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the issue recited in the application and petition.

(b) The order must state the issue to be voted on in the election.

Sec. 501.035. ISSUES. (a) In the ballot issues prescribed by this section, "wine" is limited to vinous beverages that do not contain more than 17 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. For local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) In an area where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or

classifications, the ballot shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(9) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(10) "The legal sale of wine on the premises of a holder of a winery permit."

(c) In an area where the sale of any type or classification of alcoholic beverages has been legalized, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(9) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(10) "The legal sale of wine on the premises of a holder of a winery permit."

(g) In an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premise consumption, no alcoholic beverage may be consumed on any licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

(h) Subject to Section 251.81, Alcoholic Beverage Code, a wine only package store permit may be issued for premises in an area in which the sale of wine has been legalized by a local option election under Subsection (b)(3) or (4).

Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option election does not affect the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) In any local option election in which any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized before the election remains legal without regard to the outcome of that election on the question of mixed beverages. If the sale of mixed beverages by food and beverage certificate holders was legalized before a local option election on the general sale of mixed beverages, the sale of mixed beverages in an establishment that holds a food and beverage certificate remains legal without regard to the outcome of the election on the general sale of mixed beverages.

Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners court election order is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make the order valid.

Sec. 501.038. FREQUENCY OF ELECTIONS. A local option election on a particular issue may not be held in a political subdivision until after the first anniversary of the most recent local option election in that political subdivision on that issue.

[Sections 501.039-501.100 reserved for expansion]

SUBCHAPTER C. HOLDING OF ELECTION

Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as provided by this chapter, the officers holding a local option election shall hold the election in the manner provided by the other provisions of this code.

Sec. 501.102. ELECTION PRECINCTS. (a) County election precincts shall be used for a local option election to be held in an entire county or in a justice precinct.

(b) Election precincts established by the governing body of the municipality for its municipal elections shall be used for a local option election to be held in a municipality. If the governing body has not established precincts for its municipal elections, the commissioners court shall prescribe the election precincts for the local option election under the law governing establishment of precincts for municipal elections.

Sec. 501.103. POLLING PLACES; NOTICE. (a) The election shall be held at the customary polling place in each election precinct. If the customary polling place is not available, the commissioners court shall designate another polling place.

(b) The notice for the election shall state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for a municipality.

Sec. 501.1035. ELECTION IN TERRITORY ANNEXED BY MUNICIPALITY. A municipality that includes an area annexed to the municipality on or after the date on which a petition requesting a local option election in the municipality is filed may hold the election in the municipality only if the petition contains a sufficient number of signatures to meet the requirements of Section 501.032, based on the number of qualified voters in the municipality, including the annexed area. The qualified voters of the annexed area must be allowed to vote in the local option election. The results of the election shall determine the local option status of the municipality, including the annexed area.

Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election is conducted using printed ballots, the county clerk shall furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of registered voters in the precinct plus 10 percent of that number of voters.

Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to appear on the ballot for an election ordered by the commissioners court must be the same as the issue applied for and set out in the petition.

(b) The issue appropriate to the election shall be printed on the ballot in the exact language stated in Section 501.035.

Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local option election shall be counted and the report of the election submitted to the commissioners court within 24 hours after the time the polls close.

Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The county shall pay the expense of holding a local option election authorized by this chapter in the county, justice precinct, or municipality in that county except that:

(1) if an election is to be held only within the corporate limits of a municipality located wholly within the county, the county may require the municipality to reimburse the county for all or part of the expenses of holding the local option election;

(2) county payment of the expense of an election to legalize the sale of alcoholic beverages is limited to the holding of one election in a political subdivision during a one-year period; and

(3) county payment of the expense of an election to prohibit the sale of alcoholic beverages is limited to the holding of one election in a political subdivision during a one-year period.

Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a) If a county is not required to pay the initial expense, regardless of any authority to receive reimbursement, of a local option election under Section 501.107, the county clerk shall require the applicants for a petition for a local option election to make a deposit before the issuance of the petition.

(b) The deposit must be in the form of a cashier's check in an amount equal to 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or municipality where the election is to be held.

(c) The money received shall be deposited in the county's general fund. A refund may not be made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) The county clerk may not issue a petition to the applicants unless a deposit required by this chapter is made.

(e) A person who violates Subsection (d) commits an offense. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than $200 nor more than $500;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a) This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality.

(b) An election to which this section applies shall be conducted by the municipality instead of a county. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

(d) An action to contest the election under Section 501.155 may be brought in the district court of any county in which the municipality is located.

[Sections 501.110-501.150 reserved for expansion]

SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

Sec. 501.151. DECLARATION OF RESULT. (a) On completing the canvass of the election returns, the commissioners court shall make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law.

(b) In a prohibitory election, if a majority of the votes cast do not favor the issue "The legal sale . . .," the court's order must state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective on the 30th day after the date the order is entered. The prohibition remains in effect until changed by a subsequent local option election held under this chapter.

(c) In a legalization election, if a majority of the votes cast favor the issue "The legal sale . . .," the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. The legalization remains in effect until changed by a subsequent local option election held under this code.

(d) The local option status of a political subdivision does not change as a result of the election if:

(1) in an election described by Subsection (b), less than a majority of the votes cast do not favor the issue; and

(2) in an election described by Subsection (c), less than a majority of the votes cast favor the issue.

Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

Sec. 501.153. CERTIFICATION OF RESULT. Not later than the third day after the date the result of a local option election has been declared, the county clerk shall certify the result to the secretary of state and the commission. The clerk may not charge a fee for this service.

Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A commissioners court order declaring the result of a local option election and prohibiting the sale of any or all types of alcoholic beverages must be published by posting the order at three public places in the county or other political subdivision in which the election was held.

(b) The posting of the order shall be recorded in the minutes of the commissioners court by the county judge. The entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of the posting.

Sec. 501.155. ELECTION CONTEST. (a) The enforcement of local option laws in the political subdivision in which an election is being contested is not suspended during an election contest.

(b) The result of an election contest finally settles all questions relating to the validity of that election. A person may not call the legality of that election into question again in any other suit or proceeding.

(c) If an election contest is not timely instituted, it is conclusively presumed that the election is valid and binding in all respects on all courts.

APPENDIX D

GOVERNMENT CODE

Sec. 411.204. NOTICE REQUIRED ON CERTAIN PREMISES. (a) A business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, and that derives 51 percent or more of its income from the sale of alcoholic beverages for on-premises consumption as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code, shall prominently display at each entrance to the business premises a sign that complies with the requirements of Subsection (c).

(b) A hospital licensed under Chapter 241, Health and Safety Code, or a nursing home licensed under Chapter 242, Health and Safety Code, shall prominently display at each entrance to the hospital or nursing home, as appropriate, a sign that complies with the requirements of Subsection (c) other than the requirement that the sign include on its face the number "51".

(c) The sign required under Subsections (a) and (b) must give notice in both English and Spanish that it is unlawful for a person licensed under this subchapter to carry a handgun on the premises. The sign must appear in contrasting colors with block letters at least one inch in height and must include on its face the number "51" printed in solid red at least five inches in height. The sign shall be displayed in a conspicuous manner clearly visible to the public.

(d) A business that has a permit or license issued under the Alcoholic Beverage Code and that is not required to display a sign under this section may be required to display a sign under Section 11.041 or 61.11, Alcoholic Beverage Code.

(e) This section does not apply to a business that has a food and beverage certificate issued under the Alcoholic Beverage Code.

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Sec. 573.021. METHOD OF COMPUTING DEGREE OF RELATIONSHIP. The degree of a relationship is computed by the civil law method.

Sec. 573.022. DETERMINATION OF CONSANGUINITY. (a) Two individuals are related to each other by consanguinity if:

(1) one is a descendant of the other; or

(2) they share a common ancestor.

(b) An adopted child is considered to be a child of the adoptive parent for this purpose.

Sec. 573.023. COMPUTATION OF DEGREE OF CONSANGUINITY. (a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.

(b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

(1) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and

(2) the number of generations between the relative and the nearest common ancestor.

(c) An individual's relatives within the third degree by consanguinity are the individual's:

(1) parent or child (relatives in the first degree);

(2) brother, sister, grandparent, or grandchild (relatives in the second degree); and

(3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or

sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

Sec. 573.024. DETERMINATION OF AFFINITY. (a) Two individuals are related to each other by affinity if:

(1) they are married to each other; or

(2) the spouse of one of the individuals is related by consanguinity to the other individual.

(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(c) Subsection (b) applies to a member of the board of trustees of or an officer of a school district only until the youngest child of the marriage reaches the age of 21 years.

APPENDIX E

HEALTH & SAFETY CODE

Sec. 161.081. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Permit holder" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes or tobacco products.

(4) "Retailer" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(6) "Wholesaler" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Sec. 161.082. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:

(1) sells, gives, or causes to be sold or given a cigarette or tobacco product to someone who is younger than 18 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

Sec. 161.0825. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION.

(a) In this section, "transaction scan device" means a device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or identification certificate.

(b) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with Section 161.082.

(c) Information accessed under this section may not be sold or otherwise disseminated to a third party for any purpose, including any marketing, advertising, or promotional activities. The information may be obtained by court order or on proper request by the comptroller, a law enforcement officer, or a law enforcement agency.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

Sec. 161.083. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE. (a) Pursuant to federal regulation under 21 C.F.R. Section 897.14(b), a person may not sell, give, or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid proof of identification.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection (a).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a).

(d) Notwithstanding any other provision of law, a violation of this section is not a violation of this subchapter for purposes of Section 154.1142 or 155.0592, Tax Code.

Sec. 161.084. WARNING NOTICE. (a) Each person who sells cigarettes or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes or tobacco products may be purchased.

(b) The sign must include the statement: PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO $500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number).

(c) The comptroller by rule shall determine the design and size of the sign.

(d) The comptroller on request shall provide the sign without charge to any person who sells cigarettes or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes or tobacco products or wholesale dealers of cigarettes or tobacco products in this state for distribution to persons who sell cigarettes or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

(e) A person commits an offense if the person fails to display a sign as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS. (a) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes or tobacco products to any person who is younger than 18 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

(2) requires each person who sells cigarettes or tobacco products at retail or by vending machine to post a warning notice as provided by Section 161.084, requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties, and provides that a violation of Section 161.084 is a Class C misdemeanor.

(b) The notice required by Subsection (a) must be provided within 72 hours of the date an individual begins to engage in retail sales of tobacco products. The individual shall signify that the individual has received the notice required by Subsection (a) by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form

signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the forms required by Subsections (b) and (c). Proof must be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of a demand under Subsection (d).

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer cigarettes or tobacco products for sale in a manner that permits a customer direct access to the cigarettes or tobacco products; or

(2) install or maintain a vending machine containing cigarettes or tobacco products.

(b) Subsection (a) does not apply to:

(1) a facility or business that is not open to persons younger than 18 years of age at any time;

(2) that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment; or

(3) a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation of this section. Property seized under this subsection must be seized in accordance with, and is subject to forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

(d) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Sec. 161.087. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS. (a) A person may not distribute to persons younger than 18 years of age:

(1) a free sample of a cigarette or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product.

(b) Except as provided by Subsection (c), a permit holder may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product if the recipient is younger than 18 years of age. A coupon or other item that such a recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product may not be redeemable through mail or courier delivery.

(c) Subsections (a)(2) and (b) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

Sec. 161.088. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a) The comptroller shall enforce this subchapter in partnership with local law enforcement agencies and with their cooperation and shall ensure the state's compliance with Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26) and any implementing regulations adopted by the United States Department of Health and Human Services. Except as expressly authorized by law, the comptroller may not adopt any rules governing the subject matter of this subchapter or Subchapter K, N, or O.

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter in a manner that can reasonably be expected to reduce the extent to which cigarettes and tobacco products are sold or distributed to persons who are younger

than 18 years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes and tobacco products are sold or distributed to ensure compliance with this subchapter. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller or a local law enforcement agency to act as a minor decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter;

(2) at the time of the inspection, the minor decoy is younger than 17 years of age;

(3) the minor decoy has an appearance that would cause a reasonably prudent seller of cigarettes or tobacco products to request identification and proof of age;

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of cigarettes or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age.

(e) The comptroller shall annually prepare for submission by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26).

Sec. 161.089. PREEMPTION OF LOCAL LAW. This subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

Sec. 161.090. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

Sec. 161.0901. REPORT OF OFFICE OF SMOKING AND HEALTH. (a) Not later than January 5th of each odd-numbered year the Office of Smoking and Health of the department shall report to the governor, lieutenant governor, and the speaker of the house of representatives on the status of smoking and the use of tobacco and tobacco products in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter, Subchapter K, and Chapters 154 and 155, Tax Code;

(2) a baseline of statistics and analysis regarding illegal tobacco sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) tobacco controls and initiatives by the Office of Smoking and Health of the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the Office of Smoking and Health of the department to decrease the use of tobacco and tobacco products;

(5) the educational programs of the Office of Smoking and Health of the department and the effectiveness of those programs; and

(6) the incidence of use of tobacco and tobacco products by regions in this state, including use of cigarettes and tobacco products by ethnicity.

SUBCHAPTER N. TOBACCO USE BY MINORS

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 18 years of age commits an offense if the individual:

(1) possesses, purchases, consumes, or accepts a cigarette or tobacco product; or

(2) falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette or tobacco product in the presence of:

(1) an adult parent, a guardian, or a spouse of the individual; or

(2) an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(d) An offense under this section is punishable by a fine not to exceed $250.

APPENDIX F

HUMAN RESOURCES CODE

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Child" means a person under 18 years of age.

(2) "Division" means the division designated by the department to carry out the provisions of this chapter.

(3) "Child-care facility" means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(4) "Child-care institution" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(5) "Foster group home" means a child-care facility that provides care for 7 to 12 children for 24 hours a day.

(6) "Foster home" means a child-care facility that provides care for not more than six children for 24 hours a day.

(7) "Day-care center" means a child-care facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(8) "Group day-care home" means a child-care facility that provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.

(9) "Family home" means a home that provides regular care in the caretaker's own residence for not more than six children under 14 years of age, excluding children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker, does not exceed 12 at any given time. The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.

(10) "Agency foster group home" means a facility that provides care for seven to 12 children for 24 hours a day, is used only by a licensed child-placing agency, and meets department standards.

(11) "Agency foster home" means a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency, and meets department standards.

(12) "Child-placing agency" means a person, including an organization, other than the natural parents or guardian of a child who plans for the placement of or places a child in a child-care facility, agency foster home, agency foster group home, or adoptive home.

(13) "Facilities" includes child-care facilities and child-placing agencies.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

(15) "Religious organization" means a church, synagogue, or other religious institution whose purpose is to support and serve the propagation of truly held religious beliefs.

(16) "Children who are related to the caretaker" means children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caretaker, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(17) "Regular care" means care that is provided at least four hours a day, three or more days a week, for more than nine consecutive weeks.

(18) "Controlling person" means a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies of a facility or family home.

(19) "Residential child-care facility" means a facility licensed or certified by the department that operates for all of the 24-hour day. The term includes general residential operations, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes.

(20) "Children's product" means a product that is designed or intended to be used by a child under 13 years of age or used by a caregiver during the care of a child under 13 years of age. The term does not include:

(A) an item that is not designed or intended to be used solely or primarily by a child under 13 years of age or in the care of a child under 13 years of age;

(B) a medication, a drug, food, or another item that is intended to be ingested; or

(C) clothing.

(20) "Before-school or after-school program" means a child-care facility that provides care before or after, or before and after, the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend prekindergarten through grade six.

(21) "School-age program" means a child-care facility that provides supervision, along with recreation or skills instruction or training, and may provide transportation, before or after the customary school day, for at least two hours a day, three days a week, to children attending prekindergarten through grade six. A school-age program may also operate during school holidays, the summer period, or any other time when school is not in session.

(23) "Other maltreatment" means:

(A) abuse, as defined by Section 261.001 or 261.401, Family Code; or

(B) neglect, as defined by Section 261.001 or 261.401, Family Code.

APPENDIX G

PENAL CODE

Sec. 1.06. COMPUTATION OF AGE. A person attains a specified age on the day of the anniversary of his birthdate.

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Sec. 1.07. DEFINITIONS. (a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "suspect" is used in this code, it means "actor."

(3) "Agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office.

(4) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

(5) "Another" means a person other than the actor.

(6) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(7) "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(8) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(9) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense;

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(10) "Conduct" means an act or omission and its accompanying mental state.

(11) "Consent" means assent in fact, whether express or apparent.

(12) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(13) "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

(14) "Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

(15) "Criminal negligence" is defined in Section 6.03 (Culpable Mental States).

(16) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

(17) "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(18) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(19) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(20) "Electric generating plant" means a facility that generates electric energy for distribution to the public.

(21) "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.

(22) "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(23) "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(24) "Government" means:

(A) the state;

(B) a county, municipality, or political subdivision of the state; or

(C) any branch or agency of the state, a county, municipality, or political subdivision.

(25) "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(26) "Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

(27) Repealed by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 25.144, eff. September 1, 2009.

(28) "Intentional" is defined in Section 6.03 (Culpable Mental States).

(29) "Knowing" is defined in Section 6.03 (Culpable Mental States).

(30) "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(31) "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(32) "Oath" includes affirmation.

(33) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(34) "Omission" means failure to act.

(35) "Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; or

(B) is a holder in due course of a negotiable instrument.

(36) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

(37) "Penal institution" means a public designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(38) "Person" means an individual, corporation, or association.

(39) "Possession" means actual care, custody, control, or management.

(40) “Public place” means any public to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(41) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(42) "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(43) "Reckless" is defined in Section 6.03 (Culpable Mental States).

(44) "Rule" includes regulation.

(45) "Secure correctional facility" means:

(A) a municipal or county jail; or

(B) a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice.

(46) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(46-a) "Sight order" means a written or electronic instruction to pay money that is authorized by the person giving the instruction and that is payable on demand or at a definite time by the person being instructed to pay. The term includes a check, an electronic debit, or an automatic bank draft.

(46-b) "Federal special investigator" means a person described by Article 2.122, Code of Criminal Procedure.

(47) "Swear" includes affirm.

(48) "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

(49) "Death" includes, for an individual who is an unborn child, the failure to be born alive.

(b) The definition of a term in this code applies to each grammatical variation of the term.

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Sec. 6.03. DEFINITIONS OF CULPABLE MENTAL STATES. (a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the

circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

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TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.01. PUNISHMENT IN ACCORDANCE WITH CODE. (a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure.

(b) Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter.

(c) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other civil penalty. The civil penalty may be included in the sentence.

Sec. 12.02. CLASSIFICATION OF OFFENSES. Offenses are designated as felonies or misdemeanors.

Sec. 12.03. CLASSIFICATION OF MISDEMEANORS. (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

(1) Class A misdemeanors;
(2) Class B misdemeanors;
(3) Class C misdemeanors.

(b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.

(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

Sec. 12.04. CLASSIFICATION OF FELONIES. (a) Felonies are classified according to the relative seriousness of the offense into five categories:

(1) capital felonies;
(2) felonies of the first degree;
(3) felonies of the second degree;
(4) felonies of the third degree; and
(5) state jail felonies.

(b) An offense designated a felony in this code without specification as to category is a state jail felony.

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

Sec. 12.21. CLASS A MISDEMEANOR. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(1) a fine not to exceed $4,000;

(2) confinement in jail for a term not to exceed one year; or

(3) both such fine and confinement.

Sec. 12.22. CLASS B MISDEMEANOR. An individual adjudged guilty of a Class B misdemeanor shall be punished by:

(1) a fine not to exceed $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and confinement.

Sec. 12.23. CLASS C MISDEMEANOR. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed $500.

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for:

(1) life, if the individual's case was transferred to the court under Section 54.02, Family Code; or

(2) life without parole.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment without parole or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that:

(1) a sentence of life imprisonment is mandatory on conviction of the capital felony, if the case was transferred to the court under Section 54.02, Family Code; or

(2) a sentence of life imprisonment without parole is mandatory on conviction of the capital felony.

Sec. 12.32. FIRST DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed $10,000.

Sec. 12.33. SECOND DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed $10,000.

Sec. 12.34. THIRD DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed $10,000.

Sec. 12.35. STATE JAIL FELONY PUNISHMENT. (a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days.

(b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed $10,000.

(c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:

(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or

(2) the individual has previously been finally convicted of any felony:

(A) under Section 21.02 or listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

SUBCHAPTER D. EXCEPTIONAL SENTENCES

Sec. 12.41. CLASSIFICATION OF OFFENSES OUTSIDE THIS CODE. For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

(1) "felony of the third degree" if imprisonment in the Texas Department of Criminal Justice or another penitentiary is affixed to the offense as a possible punishment;

(2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;

(3) "Class C misdemeanor" if the offense is punishable by fine only.

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Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER. (a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally fails to conceal the handgun.

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, on or about the license holder's person:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

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CHAPTER 49. INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES

Sec. 49.01. DEFINITIONS. In this chapter:

(1) "Alcohol concentration" means the number of grams of alcohol per:

(A) 210 liters of breath;

(B) 100 milliliters of blood; or

(C) 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.08 or more.

(3) "Motor vehicle" has the meaning assigned by Section 32.34(a).

(4) "Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.

(5) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

(6) "Mobile amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

Sec. 49.02. PUBLIC INTOXICATION. (a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.

(a-1) For the purposes of this section, a premises licensed or permitted under the Alcoholic Beverage Code is a public place.

(b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

(c) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(d) An offense under this section is not a lesser included offense under Section 49.04.

(e) An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, Alcoholic Beverage Code, applies.

Sec. 49.031. POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE. (a) In this section:

(1) "Open container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed.

(2) "Passenger area of a motor vehicle" means the area of a motor vehicle designed for the seating of the operator and passengers of the vehicle. The term does not include:

(A) a glove compartment or similar storage container that is locked;

(B) the trunk of a vehicle; or

(C) the area behind the last upright seat of the vehicle, if the vehicle does not have a trunk.

(3) "Public highway" means the entire width between and immediately adjacent to the boundary lines of any public road, street, highway, interstate, or other publicly maintained way if any part is open for public use for the purpose of motor vehicle travel. The term includes the right-of-way of a public highway.

(b) A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession by a person of one or more open containers in a single criminal episode is a single offense.

(c) It is an exception to the application of Subsection (b) that at the time of the offense the defendant was a passenger in:

(1) the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, including a bus, taxicab, or limousine; or

(2) the living quarters of a motorized house coach or motorized house trailer, including a self-contained camper, a motor home, or a recreational vehicle.

(d) An offense under this section is a Class C misdemeanor.

(e) A peace officer charging a person with an offense under this section, instead of taking the person before a magistrate, shall issue to the person a written citation and notice to appear that contains the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. If the person makes a written promise to appear before the magistrate by signing in duplicate the citation and notice to appear issued by the officer, the officer shall release the person.

Sec. 49.04. DRIVING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.

(b) Except as provided by Subsections (c) and (d) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.

(d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.

Sec. 49.045. DRIVING WHILE INTOXICATED WITH CHILD PASSENGER. (a) A person commits an offense if:

(1) the person is intoxicated while operating a motor vehicle in a public place; and

(2) the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age.

(b) An offense under this section is a state jail felony.

Sec. 49.05. FLYING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating an aircraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Sec. 49.06. BOATING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating a watercraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Sec. 49.065. ASSEMBLING OR OPERATING AN AMUSEMENT RIDE WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating an amusement ride or while assembling a mobile amusement ride.

(b) Except as provided by Subsection (c) and Section 49.09, an offense under this section is a Class B misdemeanor with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the amusement ride or assembling the mobile amusement ride had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor with a minimum term of confinement of six days.

Sec. 49.07. INTOXICATION ASSAULT. (a) A person commits an offense if the person, by accident or mistake:

(1) while operating an aircraft, watercraft, or amusement ride while intoxicated, or while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another; or

(2) as a result of assembling a mobile amusement ride while intoxicated causes serious bodily injury to another.

(b) In this section, "serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) Except as provided by Section 49.09, an offense under this section is a felony of the third degree.

Sec. 49.08. INTOXICATION MANSLAUGHTER. (a) A person commits an offense if the person:

(1) operates a motor vehicle in a public place, operates an aircraft, a watercraft, or an amusement ride, or assembles a mobile amusement ride; and

(2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

(b) Except as provided by Section 49.09, an offense under this section is a felony of the second degree.

Sec. 49.09. ENHANCED OFFENSES AND PENALTIES. (a) Except as provided by Subsection (b), an offense under Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has previously been convicted one time of an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, an offense of operating a watercraft while intoxicated, or an offense of operating or assembling an amusement ride while intoxicated.

(b) An offense under Section 49.04, 49.05, 49.06, or 49.065 is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted:

(1) one time of an offense under Section 49.08 or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense under Section 49.08; or

(2) two times of any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.

(b-1) An offense under Section 49.07 is a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to a peace officer, a firefighter, or emergency medical services personnel while in the actual discharge of an official duty.

(b-2) An offense under Section 49.08 is a felony of the first degree if it is shown on the trial of the offense that the person caused the death of a person described by Subsection (b-1).

(b-3) For the purposes of Subsection (b-1):

(1) "Emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code.

(2) "Firefighter" means:

(A) an individual employed by this state or by a political or legal subdivision of this state who is subject to certification by the Texas Commission on Fire Protection; or

(B) a member of an organized volunteer fire-fighting unit that:

(i) renders fire-fighting services without remuneration; and

(ii) conducts a minimum of two drills each month, each at least two hours long.

(c) For the purposes of this section:

(1) "Offense relating to the operating of a motor vehicle while intoxicated" means:

(A) an offense under Section 49.04 or 49.045;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was a motor vehicle;

(C) an offense under Article 6701l-1, Revised Statutes, as that law existed before September 1, 1994;

(D) an offense under Article 6701l-2, Revised Statutes, as that law existed before January 1, 1984;

(E) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a motor vehicle; or

(F) an offense under the laws of another state that prohibit the operation of a motor vehicle while intoxicated.

(2) "Offense of operating an aircraft while intoxicated" means:

(A) an offense under Section 49.05;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was an aircraft;

(C) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994;

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was an aircraft; or

(E) an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

(A) an offense under Section 49.06;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was a watercraft;

(C) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994;

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a watercraft; or

(E) an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

(4) "Offense of operating or assembling an amusement ride while intoxicated" means:

(A) an offense under Section 49.065;

(B) an offense under Section 49.07 or 49.08, if the offense involved the operation or assembly of an amusement ride; or

(C) an offense under the law of another state that prohibits the operation of an amusement ride while intoxicated or the assembly of a mobile amusement ride while intoxicated.

(d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

(e) Repealed by Acts 2005, 79th Leg., ch. 996, Sec. 3.

(f) Repealed by Acts 2005, 79th Leg., ch. 996, Sec. 3.

(g) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D.

(h) This subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed. The court shall enter an order that requires the defendant to have a device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator, and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with that device. The court shall require the defendant to obtain the device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date that the device has been installed on each appropriate vehicle, and order the device to remain installed on each vehicle until the first anniversary of that ending date. If the court determines the offender is unable to pay for the device, the

court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Failure to comply with an order entered under this subsection is punishable by contempt. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. To the extent of a conflict between this subsection and Section 13(i), Article 42.12, Code of Criminal Procedure, this subsection controls.

Sec. 49.10. NO DEFENSE. In a prosecution under Section 49.03, 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.

Sec. 49.11. PROOF OF MENTAL STATE UNNECESSARY. (a) Notwithstanding Section 6.02(b), proof of a culpable mental state is not required for conviction of an offense under this chapter.

(b) Subsection (a) does not apply to an offense under Section 49.031.

Sec. 49.12. APPLICABILITY TO CERTAIN CONDUCT. Sections 49.07 and 49.08 do not apply to injury to or the death of an unborn child if the conduct charged is conduct committed by the mother of the unborn child.

APPENDIX H

TAX CODE

CHAPTER 111. COLLECTION PROCEDURES

SUBCHAPTER A. COLLECTION DUTIES AND POWERS

Sec. 111.006. CONFIDENTIALITY OF INFORMATION.

(h) The comptroller shall disclose information to a person regarding net sales by quantity, brand, and size that is submitted in a report required under Section 151.462 if:

(1) the person requesting the information holds a permit or license under Chapter 19, 20, 21, 37, 64, 65, or 66, Alcoholic Beverage Code; and

(2) the request relates only to information regarding the sale of a product distributed by the person making the request.

(i) A disclosure made under Subsection (h) is not considered a disclosure of competitively sensitive, proprietary, or confidential information.

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CHAPTER 151 LIMITED SALES, EXCISE, AND USE TAX

Sec. 151.308. ITEMS TAXED BY OTHER LAW. (a) The following are exempted from the taxes imposed by this chapter:

(1) oil as taxed by Chapter 202;

(2) sulphur as taxed by Chapter 203;

(3) motor fuels and special fuels as defined, taxed, or exempted by Chapter 162;

(4) cement as taxed by Chapter 181;

(5) motor vehicles, trailers, and semitrailers as defined, taxed, or exempted by Chapter 152, other than a mobile office or an oilfield portable unit, as those terms are defined by Section 152.001;

(6) mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items if the receipts are taxable by Subchapter B, Chapter 183, or the items are taxable by Subchapter B-1, Chapter 183;

(7) alcoholic beverages when sold to the holder of a private club registration permit or to the agent or employee of the holder of a private club registration permit if the holder or agent or employee is acting as the agent of the members of the club and if the beverages are to be served on the premises of the club;

(8) oil well service as taxed by Subchapter E, Chapter 191; and

(9) insurance premiums subject to gross premiums taxes.

(b) Natural gas is exempted under Subsection (a)(3) only to the extent that the gas is taxed as a motor fuel under Chapter 162.

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CHAPTER 151 LIMITED SALES, EXCISE, AND USE TAX

SUBCHAPTER I-1. REPORTS BY PERSONS INVOLVED IN THE MANUFACTURE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES

Sec. 151.461. DEFINITIONS. In this subchapter:

(1) "Brewer" means a person required to hold a brewer's permit under Chapter 12, Alcoholic Beverage Code.

(2) "Distributor" means a person required to hold:

(A) a general distributor's license under Chapter 64, Alcoholic Beverage Code;

(B) a local distributor's license under Chapter 65, Alcoholic Beverage Code; or

(C) a branch distributor's license under Chapter 66, Alcoholic Beverage Code.

(3) "Manufacturer" means a person required to hold a manufacturer's license under Chapter 62, Alcoholic Beverage Code.

(4) "Package store local distributor" means a person required to hold:

(A) a package store permit under Chapter 22, Alcoholic Beverage Code; and

(B) a local distributor's permit under Chapter 23, Alcoholic Beverage Code.

(5) "Retailer" means a person required to hold:

(A) a wine and beer retailer's permit under Chapter 25, Alcoholic Beverage Code;

(B) a wine and beer retailer's off-premise permit under Chapter 26, Alcoholic Beverage Code;

(C) a temporary wine and beer retailer's permit or special three-day wine and beer permit under Chapter 27, Alcoholic Beverage Code;

(D) a mixed beverage permit under Chapter 28, Alcoholic Beverage Code;

(E) a daily temporary mixed beverage permit under Chapter 30, Alcoholic Beverage Code;

(F) a private club registration permit under Chapter 32, Alcoholic Beverage Code;

(G) a certificate issued to a fraternal or veterans organization under Section 32.11, Alcoholic Beverage Code;

(H) a daily temporary private club permit under Subchapter B, Chapter 33, Alcoholic Beverage Code;

(I) a temporary charitable auction permit under Chapter 53, Alcoholic Beverage Code;

(J) a retail dealer's on-premise license under Chapter 69, Alcoholic Beverage Code;

(K) a temporary license under Chapter 72, Alcoholic Beverage Code; or

(L) a retail dealer's off-premise license under Chapter 71, Alcoholic Beverage Code, except for a dealer who also holds a package store permit under Chapter 22, Alcoholic Beverage Code.

(6) "Wholesaler" means a person required to hold:

(A) a winery permit under Chapter 16, Alcoholic Beverage Code;

(B) a wholesaler's permit under Chapter 19, Alcoholic Beverage Code;

(C) a general Class B wholesaler's permit under Chapter 20, Alcoholic Beverage Code; or

(D) a local Class B wholesaler's permit under Chapter 21, Alcoholic Beverage Code.

Sec. 151.462. REPORTS BY BREWERS, MANUFACTURERS, WHOLESALERS, AND DISTRIBUTORS. (a) The comptroller shall require each brewer, manufacturer, wholesaler, distributor, or package store local distributor to file with the comptroller a report each month of alcoholic beverage sales to retailers in this state.

(b) Each brewer, manufacturer, wholesaler, distributor, or package store local distributor shall file a separate report for each permit or license held on or before the 25th day of each month. The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(1) the brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's name, address, taxpayer number and outlet number assigned by the comptroller, and alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission;

(2) the retailer's:

(A) name and address, including street name and number, city, and zip code;

(B) taxpayer number assigned by the comptroller; and

(C) alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission for each separate retail location or outlet to which the brewer, manufacturer, wholesaler, distributor, or package store local distributor sold the alcoholic beverages that are listed on the report; and

(3) the monthly net sales made by the brewer, manufacturer, wholesaler, distributor, or package store local distributor to the retailer for each outlet or location covered by a separate retail permit or license issued by the Texas Alcoholic Beverage Commission, including separate line items for:

(A) the number of units of alcoholic beverages;

(B) the individual container size and pack of each unit;

(C) the brand name;

(D) the type of beverage, such as distilled spirits, wine, or malt beverage;

(E) the universal product code of the alcoholic beverage; and

(F) the net selling price of the alcoholic beverage.

(c) Except as provided by this subsection, the brewer, manufacturer, wholesaler, distributor, or package store local distributor shall file the report with the comptroller electronically. The comptroller may establish procedures to temporarily postpone the electronic reporting requirement for a brewer, manufacturer, wholesaler, distributor, or package store local distributor who demonstrates to the comptroller an inability to comply because undue hardship would result if it were required to file the return electronically. If the comptroller determines that another technological method of filing the report is more efficient than electronic filing, the comptroller may establish procedures requiring its use by brewers, manufacturers, wholesalers, distributors, and package store local distributors.

Sec. 151.463. RULES. The comptroller may adopt rules to implement this subchapter.

Sec. 151.464. CONFIDENTIALITY. Except as provided by Section 111.006, information contained in a report required to be filed by this subchapter is confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. This subchapter applies only to a brewer permitted under Chapter 12A [~~whose annual production of malt liquor in this state, together with the annual production of beer at the same premises by the holder of a manufacturer's license under Section 62.12~~], Alcoholic Beverage Code[~~, does not exceed 75,000 barrels~~].

Sec. 151.466. APPLICABILITY TO CERTAIN MANUFACTURERS. This subchapter applies only to a manufacturer licensed under Chapter 62A, Alcoholic Beverage Code [~~whose annual production of beer in this state does not exceed 75,000 barrels~~].

Sec. 151.468. CIVIL PENALTY; CRIMINAL PENALTY. (a) If a person fails to file a report required by this subchapter or fails to file a complete report, the comptroller may impose a civil or criminal penalty, or both, under Section 151.703(d) or 151.709.

(b) In addition to the penalties imposed under Subsection (a), a brewer, manufacturer, wholesaler, distributor, or package store local distributor shall pay the state a civil penalty of not less than $25 or more than $2,000 for each day a violation continues if the brewer, manufacturer, wholesaler, distributor, or package store local distributor:

(1) violates this subchapter; or

(2) violates a rule adopted to administer or enforce this subchapter.

Sec. 151.469. ACTION BY TEXAS ALCOHOLIC BEVERAGE COMMISSION. If a person fails to file a report required by this subchapter or fails to file a complete report, the comptroller

may notify the Texas Alcoholic Beverage Commission of the failure and the commission may take administrative action against the person for the failure under the Alcoholic Beverage Code.

Sec. 151.470. AUDIT; INSPECTION. The comptroller may audit, inspect, or otherwise verify a brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's compliance with this subchapter.

Sec. 151.471. ACTION BY ATTORNEY GENERAL; VENUE; ATTORNEY'S FEES. (a) The comptroller may bring an action to enforce this subchapter and obtain any civil remedy authorized by this subchapter or any other law for the violation of this subchapter. The attorney general shall prosecute the action on the comptroller's behalf.

(b) Venue for and jurisdiction of an action under this section is exclusively conferred on the district courts in Travis County.

(c) If the comptroller prevails in an action under this section, the comptroller and attorney general are entitled to recover court costs and reasonable attorney's fees incurred in bringing the action.

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SUBTITLE G. GROSS RECEIPTS AND MIXED BEVERAGE TAXES

CHAPTER 183. MIXED BEVERAGE TAXES [~~TAX~~]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 183.001. DEFINITIONS. (a) The definitions in Section 1.04, Alcoholic Beverage Code, apply to this chapter.

(b) In this chapter:

(1) "Permittee" means a mixed beverage permittee, a private club registration permittee, a private club exemption certificate permittee, a private club late hours permittee, a daily temporary private club permittee, a private club registration permittee holding a food and beverage certificate, a daily temporary mixed beverage permittee, a mixed beverage late hours permittee, a mixed beverage permittee holding a food and beverage certificate, [~~or~~] a caterer permittee, or a distiller's and rectifier's permittee.

(2) "Business day" means the period beginning at 3 a.m. one day and ending at 3 a.m. the next day.

(3) "Sales price" has the meaning assigned by Section 151.007, as applicable.

SUBCHAPTER B. MIXED BEVERAGE GROSS RECEIPTS TAX

Sec. 183.021. TAX IMPOSED ON GROSS RECEIPTS OF PERMITTEE FROM MIXED BEVERAGES. A tax at the rate of 6.7 [~~14~~] percent is imposed on the gross receipts of a permittee received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

Sec. 183.0212. SEPARATE DISCLOSURE OF TAX ALLOWED. (a) For informational purposes only, a permittee may provide that each sales invoice, billing, service check, ticket, or other receipt to a customer for the purchase of an item subject to taxation under this subchapter [~~chapter~~] include:

(1) a separate statement disclosing the amount of tax to be paid by the permittee under this subchapter [~~chapter~~] in relation to that item; or

(2) a statement of the mixed beverage taxes, consisting of the combined amount of the tax to be paid by the permittee under this subchapter in relation to that item and the amount of tax imposed under Subchapter B-1 on that item.

(b) A [~~The separate~~] statement under Subsection (a)(1) must clearly disclose the amount of tax payable by the permittee.

(c) The tax may not be separately charged to or paid by the customer.

Sec. 183.022. TAX RETURN DUE DATE. (a) A permittee shall file a tax return with the comptroller not later than the 20th day of each month.

(b) The return under this section shall be in a form prescribed by the comptroller and shall include a statement of the total gross taxable receipts during the preceding month and any other information required by the comptroller.

(c) A tax due for a business day that falls in two different months is allocated to the month in which the business day begins.

For expiration of Subsections (c), (d), and (e), see Subsection (e).

Sec. 183.023. PAYMENT. (a) The tax due for the preceding month shall accompany the return and shall be payable to the state.

(b) The comptroller shall deposit the revenue received under this section in the general revenue fund.

~~(c) In August 2013, each permittee who is liable for the tax imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (a). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the return and payment otherwise required during that month.~~

~~(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (a).~~

~~(e) Subsections (c) and (d) and this subsection expire September 1, 2015.~~

NOTE: Section 183.023 subsections (c), (d), and (e) repealed by Senate Bill 559, 83rd Legislature, Regular Session, 2013, effective June 14, 2013.

Sec. 183.024. FAILURE TO PAY TAX OR FILE REPORT. (a) A permittee who fails to file a report as required by this subchapter [~~chapter~~] or who fails to pay a tax imposed by this subchapter [~~chapter~~] when due shall pay five percent of the amount due as a penalty, and if the permittee fails to file the report or pay the tax within 30 days after the day the tax or report is due, the permittee shall pay an additional five percent of the amount due as an additional penalty.

(b) The minimum penalty under Subsection (a) is $1.

(c) A delinquent tax draws interest beginning 60 days from the due date.

(d) In addition to any other penalty authorized by this section, a permittee who fails to file a report as required by this subchapter [~~chapter~~] shall pay a penalty of $50. The penalty provided by this subsection is assessed without regard to whether the permittee subsequently files the report or whether any taxes were due from the permittee for the reporting period under the required report.

Sec. 183.025 [~~183.053~~]. SECURITY REQUIREMENT. (a) A permittee subject to the tax imposed by this subchapter [~~chapter~~] must comply with the security requirements imposed by Chapter 151 except that a permittee is not required to comply with Section 151.253(b).

(b) The total of bonds, certificates of deposit, letters of credit, or other security determined to be sufficient by the comptroller of a permittee subject to the tax imposed by this subchapter [~~chapter~~] shall be in an amount that the comptroller determines to be sufficient to protect the fiscal interests of the state. The comptroller may not set the amount of security at less than $1,000 or more than the greater of $100,000 or four times the amount of the permittee's average monthly tax liability.

Sec. 183.026 [~~183.054~~]. AUDIT FREQUENCY. The comptroller shall have the discretion to determine the frequency of mixed beverage tax audits under this subchapter. In determining the frequency of the audit the comptroller may consider the following factors:

(1) reasonable and prudent accounting standards;

(2) the audit history of the permittee;

(3) the effect on state revenues; and

(4) other factors the comptroller deems appropriate.

Sec. 183.027 [~~183.055~~]. CREDITS AND REFUNDS FOR BAD DEBTS. (a) A permittee may withhold the payment of the tax under this subchapter on a portion of the gross receipts that remains unpaid by a purchaser if:

(1) during the reporting period in which the mixed beverage is sold, the permittee determines that the unpaid portion will remain unpaid;

(2) the permittee enters the unpaid portion of the sales gross receipts in the permittee's books as a bad debt; and

(3) the bad debt is claimed as a deduction for federal tax purposes during the same or a subsequent reporting period.

(b) If the portion of a debt determined to be bad under Subsection (a) is paid, the permittee shall report and pay the tax on the portion during the reporting period in which payment is made.

(c) A permittee is entitled to credit or reimbursement for taxes paid on the portion of the gross receipts determined to be worthless and actually charged off for federal income tax purposes.

SUBCHAPTER B-1. MIXED BEVERAGE SALES TAX

Sec. 183.041. TAX IMPOSED ON SALES OF MIXED BEVERAGES AND RELATED ITEMS. (a) A tax is imposed on each mixed beverage sold, prepared, or served by a permittee in this state and on ice and each nonalcoholic beverage sold, prepared, or served by a permittee in this state for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

(b) The rate of the tax is 8.25 percent of the sales price of the item sold, prepared, or served.

Sec. 183.042. DISCLOSURE OF TAX. A permittee may provide that a sales invoice, billing, service check, ticket, or other receipt to a customer for the purchase of an item subject to taxation under this subchapter include:

(1) a statement that mixed beverage sales tax is included in the sales price;

(2) a separate statement of the amount of tax imposed under this subchapter on that item;

(3) a statement of the mixed beverage taxes, consisting of the combined amount of the tax to be paid by the permittee under Subchapter B in relation to that item and the amount of tax imposed under this subchapter on that item; or

(4) a statement of the combined amount of taxes imposed under this subchapter and Chapter 151 on all items listed on the invoice, billing, service check, ticket, or other receipt.

Sec. 183.043. APPLICABILITY OF OTHER LAW. (a) Except as otherwise provided by this section:

(1) the tax imposed by this subchapter is administered, collected, and enforced in the same manner as the tax under Chapter 151 is administered, collected, and enforced; and

(2) Chapter 151 applies to the tax imposed by this subchapter in the same manner as Chapter 151 applies to the tax imposed under Section 151.051.

(b) Sections 151.423 and 151.424 do not apply to the tax imposed by this subchapter.

(c) A sale to a permittee of an item described by Section 183.021 is not a sale for resale for purposes of Section 151.302 if the item is mixed with or becomes a component part of a mixed beverage subject to taxation under this subchapter that is served without any consideration paid to the permittee.

(d) An item subject to tax under this subchapter is exempt from the taxes imposed under Subtitle C, Title 3.

SUBCHAPTER C. MIXED BEVERAGE TAX CLEARANCE

Sec. 183.051. MIXED BEVERAGE TAX CLEARANCE FUND. (a) Not later than the last day of the month following a calendar quarter, the comptroller shall calculate the total amount of taxes received under Subchapters B and B-1 during the quarter from permittees outside an incorporated municipality within each county and the total amount received from permittees within each incorporated municipality in each county.

(b) The comptroller shall issue to each county described in Subsection (a) a warrant drawn on the general revenue fund in an amount appropriated by the legislature that may not be less than 10.7143 percent of the taxes received [~~receipts~~] from permittees within the county during the quarter and shall issue to each incorporated municipality described in Subsection (a) a warrant drawn on that fund in an amount appropriated by the legislature that may not be less than 10.7143 percent of the taxes received [~~receipts~~] from permittees within the incorporated municipality during the quarter.

NOTE: The changes made to Section 183.051, Tax Code, by House Bill 3572, 83rd Legislature, Regular Session, 2013, are effective September 1, 2013.

Sec. 183.052. CONFLICT OF RULES. If a rule or policy adopted by the Texas Alcoholic Beverage Commission [~~commission~~] conflicts with a rule adopted by the comptroller for the application, enforcement, or collection of a [~~the~~] tax imposed by this chapter, the comptroller's rule prevails. A conflicting rule or policy adopted by the commission is invalid to the extent of the inconsistency. If the comptroller determines that a rule or policy adopted by the commission conflicts with one adopted by the comptroller relating to the application, enforcement, or collection of a [~~the~~] tax imposed by this chapter, the comptroller shall notify the commission in writing of the determination. After receipt of the notification, the commission must amend or repeal the conflicting rule or policy not later than the 90th day after the date of notification.

NOTE: Unless otherwise noted, the changes to Chapter 183, Tax Code, made by House Bill 3572, 83rd Legislature, Regular Session, 2013, do not affect tax liability accruing before the effective date of January 1, 2014. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

APPENDIX I

TRANSPORTATION CODE

CHAPTER 521 DRIVER'S LICENSES AND CERTIFICATES

Sec. 521.351. PURCHASE OF ALCOHOL FOR MINOR OR FURNISHING ALCOHOL TO MINOR: AUTOMATIC SUSPENSION; LICENSE DENIAL. (a) A person's driver's license is automatically suspended on final conviction of an offense under Section 106.06, Alcoholic Beverage Code.

(b) The department may not issue a driver's license to a person convicted of an offense under Section 106.06, Alcoholic Beverage Code, who, on the date of the conviction, did not hold a driver's license.

(c) The period of suspension under this section is the 180 days after the date of a final conviction, and the period of license denial is the 180 days after the date the person applies to the department for reinstatement or issuance of a driver's license, unless the person has previously been denied a license under this section or had a license suspended, in which event the period of suspension is one year after the date of a final conviction, and the period of license denial is one year after the date the person applies to the department for reinstatement or issuance of a driver's license.

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Sec. 521.451. GENERAL VIOLATION. (a) Except as provided by Section 521.452, a person may not:

(1) display, cause or permit to be displayed, or have in the person's possession a driver's license or certificate that the person knows is fictitious or has been altered;

(2) lend the person's driver's license or certificate to another person or knowingly permit another person to use the person's driver's license or certificate;

(3) display or represent as the person's own a driver's license or certificate not issued to the person;

(4) possess more than one currently valid driver's license or more than one currently valid certificate; or

(5) in an application for an original, renewal, or duplicate driver's license or certificate:

(A) provide a false name, false address, or a counterfeit document; or

(B) knowingly make a false statement, conceal a material fact, or otherwise commit fraud.

(b) An offense under this section is a Class A misdemeanor.

(c) If conduct that constitutes an offense under Subsection (a) also constitutes an offense under Section 106.07, Alcoholic Beverage Code, the actor may be prosecuted only under Section 106.07, Alcoholic Beverage Code.

Sec. 521.452. ALIAS DRIVER'S LICENSE FOR LAW ENFORCEMENT PURPOSES. (a) After written approval by the director, the department may issue to a law enforcement officer an alias driver's license to be used in supervised activities involving a criminal investigation.

(b) An application for, or possession or use of, an alias driver's license for a purpose described by this section by the officer to whom the license is issued is not a violation of this subchapter unless the department has canceled, suspended, or revoked the license.

Sec. 521.453. FICTITIOUS LICENSE OR CERTIFICATE. (a) Except as provided by Subsection (f), a person under the age of 21 years commits an offense if the person possesses, with the intent to represent that the person is 21 years of age or older, a document that is deceptively similar to a driver's license or a personal identification certificate unless the document displays the statement "NOT A

GOVERNMENT DOCUMENT" diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height.

(b) For purposes of this section, a document is deceptively similar to a driver's license or personal identification certificate if a reasonable person would assume that it was issued by the department, another agency of this state, another state, or the United States.

(c) A peace officer listed in Article 2.12, Code of Criminal Procedure, may confiscate a document that:

(1) is deceptively similar to a driver's license or personal identification certificate; and

(2) does not display the statement required under Subsection (a).

(d) For purposes of this section, an offense under Subsection (a) is a Class C misdemeanor.

(e) The attorney general, district attorney, or prosecuting attorney performing the duties of the district attorney may bring an action to enjoin a violation or threatened violation of this section. The action must be brought in a court in the county in which the violation or threatened violation occurs.

(f) Subsection (a) does not apply to:

(1) a government agency, office, or political subdivision that is authorized to produce or sell personal identification certificates; or

(2) a person that provides a document similar to a personal identification certificate to an employee of the person for a business purpose.

(g) In this section:

(1) "Driver's license" includes a driver's license issued by another state or by the United States.

(2) "Personal identification certificate" means a personal identification certificate issued by the department, by another agency of this state, by another state, or by the United States.

(h) In addition to the punishment provided by Subsection (d), a court, if the court is located in a municipality or county that has established a community service program, may order a person younger than 21 years of age who commits an offense under this section to perform eight hours of community service unless the person is shown to have previously committed an offense under this section, in which case the court may order the person to perform 12 hours of community service.

(i) If the person ordered to perform community service under Subsection (h) is younger than 17 years of age, the community service shall be performed as if ordered by a juvenile court under Section 54.044(a), Family Code, as a condition of probation under Section 54.04(d), Family Code.

Sec. 521.454. FALSE APPLICATION. (a) A person commits an offense if the person knowingly swears to or affirms falsely before a person authorized to take statements under oath any matter, information, or statement required by the department in an application for an original, renewal, or duplicate driver's license or certificate issued under this chapter.

(b) An information or indictment for a violation of Subsection (a) that alleges that the declarant has made inconsistent statements under oath, both of which cannot be true, need not allege which statement is false and the prosecution is not required to prove which statement is false.

(c) An offense under this section is a Class A misdemeanor.

(d) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Sec. 521.455. USE OF ILLEGAL LICENSE OR CERTIFICATE. (a) A person commits an offense if the person intentionally or knowingly uses a driver's license or certificate obtained in violation of Section 521.451 or 521.454 to harm or defraud another.

(b) An offense under this section is a Class A misdemeanor.

(c) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Sec. 521.456. DELIVERY OR MANUFACTURE OF COUNTERFEIT INSTRUMENT. (a) A person commits an offense if the person possesses with the intent to sell, distribute, or deliver a forged or counterfeit instrument that is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so

under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a Class A misdemeanor.

(b) A person commits an offense if the person manufactures or produces with the intent to sell, distribute, or deliver a forged or counterfeit instrument that the person knows is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a felony of the third degree.

(c) A person commits an offense if the person possesses with the intent to use, circulate, or pass a forged or counterfeit instrument that is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a Class C misdemeanor.

(d) For purposes of this section, "instrument" means a driver's license, driver's license form, personal identification certificate, stamp, permit, license, official signature, certificate, evidence of fee payment, or any other instrument.

(e) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Sec. 521.4565. CONSPIRING TO MANUFACTURE COUNTERFEIT LICENSE OR CERTIFICATE. (a) In this section:

(1) "Combination," "conspires to commit," "profits," and "criminal street gang" have the meanings assigned by Section 71.01, Penal Code.

(2) "Conspires to manufacture or produce" means that:

(A) a person agrees with one or more other persons to engage in the manufacture or production of a forged or counterfeit instrument; and

(B) the person and one or more of the other persons perform an overt act in pursuance of the agreement.

(3) "Instrument" means a driver's license, commercial driver's license, or personal identification certificate.

(4) "Public servant" has the meaning assigned by Section 1.07, Penal Code.

(b) A person commits an offense if the person establishes, maintains, or participates in or conspires to establish, maintain, or participate in a combination or criminal street gang, or participates in the profits of a combination or criminal street gang, with the intent to manufacture or produce a forged or counterfeit instrument for the purpose of selling, distributing, or delivering such instrument. An agreement constituting conspiring to manufacture or produce may be inferred from the acts of the parties.

(c) An offense under this section is a state jail felony, except that an offense committed by a public servant is a felony of the third degree.

APPENDIX J

VERNON'S CIVIL STATUTES

TITLE 6. AMUSEMENTS –PUBLIC HOUSES OF

Art. 179e. Texas Racing Act

Sec. 6.06. (j) Notwithstanding any other law, a person who owns an interest in two or more racetracks licensed under this Act and who also owns an interest in a license issued under Subtitle B, Title 3, Alcoholic Beverage Code, may own an interest in the premises of another holder of a license or permit under Title 3, Alcoholic Beverage Code, if the premises of that other license or permit holder are part of the premises of a racetrack licensed under this Act.

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