

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 [H] 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;
 - (B) one hour before the scheduled completion of the last spectator event on a day other than the feature race day.

and

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 or 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-ter-time 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.

(1) 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.

(d) 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.