

## Towards a Level Playing Field:

Many people have been asking the question, "Why all the marketing practices interest all of a sudden?" This is one of the areas of regulation that is part of the Alcoholic Beverage Code just like health, safety, and welfare regulations, albeit one that gets a lot less attention. Earlier this year, it was pointed out from a number of directions that with the concentration on other areas of the Code, the agency had reduced its efforts at regulating trade practices and that trade practice interpretations varied in different parts of the state. The

regulation of trade practices is important to insure a level playing field for the entire industry.

To try and correct some of these problems, a marketing practices committee was appointed with representatives from the enforcement and compliance ranks from each region of the state. The committee meets monthly with Director

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of Marketing Practices Allen Johnson, as well as Assistant Chief of Enforcement Sam Smelser, and Assistant Administrator Randy Yarbrough to discuss marketing questions and issues. Committee members look up statutory and rule sources for any decision made, and then inform all field offices of issues discussed at the meeting in an effort to provide uniform enforcement.

One of the things discovered early on was that many of the rules had



During the 70's the 5-man Electric Band sang of "signs, signs.. everywhere a sign.. blocking out the scenery.. breaking my mind..." Today, advertising, featuring more creative and elaborate signs and displays, is one of the trade practices drawing the commission's attention.

## Agency Targets Marketing Practices

been interpreted differently because they were not clearly worded. The committee is trying to clarify some of the marketing practices rules to make them clearer both for agency employees and the industry.

"There has been a great concern that the current rules will all be thrown out the door, but no changes will be made without first discussing them with industry members to get input and ideas before making recommendations to the

commissioners to adopt changes" says Yarbrough. Some agency employees may presume that rule changes are imminent, but history has shown that the rule making process is done with great care and discussion. The commission members respect all of the comments they receive and weigh them carefully before voting to make any changes.

Persons interested in posing questions may feel free to contact any of the above mentioned people or your local TABC office.

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# Interim Committees Issue Reports

The Senate Interim Committee on Juvenile Driving While Intoxicated Laws has issued its final report to Lieutenant Governor Bob Bullock. This committee was charged with studying and making recommendations regarding lower DWI blood alcohol thresholds for juveniles than for adults; whether changes in the penalties and procedures for dealing with related intoxication offenses could reduce the incidence of juvenile DWI; whether changes are needed in the laws prohibiting sales of alcoholic beverages to minors or in enforcement of such laws and prevention and intervention measures that hold promise for reducing the incidence of juvenile DWI.

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*Senator Royce West*

Prior to issuing its final report, the Committee held hearings throughout the state. It was noted in

the report that public interest in the issue of underage drinking and driving was very high. Senator Royce West, Committee Chairman, stated that "Support for a zero tolerance law in Texas is very strong and the need to increase sanctions against minors for alcohol-related violations.... received strong support. Holding alcohol retailers more accountable for age law violations is another area that was repeatedly stressed."

The recommendations, which will be considered during next year's legislative session are lengthy; however, the listing below represents some of those areas which affect the Alcoholic Beverage Code or its enforcement:

- ◆ Amend the Code by adding a new offense of Driving Under the Influence of Alcohol By a Minor (Zero Tolerance) and applying criminal penalties to violations.
- ◆ Implement graduated penalties for offenses committed under the Code

for purchase or attempt to purchase of alcoholic beverages by minors, consumption and possession of alcoholic beverages by minors, and mis-representation of age by a minor.

- ◆ Request TABC to develop guidelines for law enforcement agencies to follow when conducting minor sting operations.
- ◆ Request TABC to revise seller/server training curriculum to focus on off-premise as well as on-premise alcohol sales and expand the program to rural areas in order to increase accessibility.
- ◆ Encourage retailers to develop internal programs aimed at reducing the incidence of sale to a minor.
- ◆ Improve law enforcement training on alcoholic beverage law.
- ◆ Give the TABC administrator or administrative hearings judge the option of assessing a mandatory suspension of alcoholic beverage license or permit or a civil penalty for all health, safety, and welfare violations when settling an administrative case.

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## Administrator's Corner



Overall, the response to the first issue of *TABC TODAY* was positive. It was good to hear from some of our readers who approved of our new venture and we'll try our best to live up to our initial reviews.

However, there was one reader who apparently doesn't care much for the TABC or the newsletter. Yet, there is something to be learned from his/her comments, too. Quick to make me aware that our agency's nickname is the "Mafia of Texas," this anonymous citizen wrote of

"horror stories, harassment and unproductive employees." The writer wrote about control and hardship and the troubles of small business. And he asked: "What do you care?"

We do. That's why we started this newsletter. That's why we try to be responsive and attentive to our customers---all of our customers! That's why we strive for continuous improvement in the things we do and the manner in which we do them. Finding ways of improving our service delivery is, in part, a function of this newsletter. With your continued input we can work together in a cooperative and effective manner.

"You have," concluded the writer, "an honest opinion of the way most people in this business think about

your agency." We will continue to work so that most people in the alcoholic beverage industry see us as a state agency striving to deliver efficient and effective regulatory and enforcement services in a professional and fair manner. We will continue to work hard to earn the public trust and confidence that is so critical to public service. And, when we fall short, I trust you'll let us know.

To the anonymous writer, I welcome the opportunity to discuss your concerns in an open and honest manner. Call me at your convenience.

*Doyle Bailey*

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- ◆ Increase penalty of Making Available to a Minor to a Class B Misdemeanor in Chapter 106 of the Code.
- ◆ Provide additional TABC enforcement agents.
- ◆ Increase TABC minor sting operations and provide additional equipment.
- ◆ Direct TABC to study the effectiveness of seller/server training provisions and, further, to study ways to encourage alcoholic beverage retailers to avail themselves to seller/server training including rule changes.



Photo Credit: Senate Media Services

Other recommendations affect the Transportation Code, Driver's Education and includes issues of administrative license revocation, intoxilizer processing of juveniles, juvenile breath or blood test failure, blood alcohol level of juveniles, education programs, false ID's and zero tolerance laws in compliance with the United States Code.



The Senate Health & Human Services Committee, chaired by Laredo Senator Judith Zaffirini, was charged

with making recommendations on restricting children's access to tobacco and alcohol. This committee also received extensive testimony throughout Texas.

To protect the health and safety of minors from the dangers of alcohol, the committee recommended:

- ◆ legislation be developed banning minors from certain places selling alcohol;
- ◆ studying the effectiveness of seller/server training courses;

- ◆ directing various agencies, including the TABC, to coordinate the development of alcohol awareness education efforts throughout the state.

Administrator Doyne Bailey offered testimony before the Senate Health and Human Services Committee on agency programs and activities directed at underage drinking.

Copies of these reports are available for public use through the Texas State Publications Depository Program at the Texas State Library.

## Credit Law Delinquent List

### -Notice of Default Reminder-

**T**A.B.C. Rule §45.121(c) requires wholesalers, wineries, and local distributors to report all delinquencies that are unpaid on the 10th or 25th to the TABC within two (2) days after such delinquencies occur. These days normally fall on the 12th and the 27th of each month. The Commission does not consider weekends and national holidays in the computation of the two (2) days. The first violation of this rule will result in a warning ticket being issued. Subsequent violations will result in administrative action being recommended against the wholesaler, winery, or local distributor's permit.

The most common errors that we find on Notices of Defaults are incorrect permit numbers and trade names. Please be aware of new permits issued after the expiration or cancellation of the previous permit. The correct trade name to indicate is the name printed on the account's TABC permit. Prompt and accurate notification will benefit everybody.



# Stemming The Flow of Alcohol To Minors: The TABC Approach

With almost a quarter of all Texas seventh graders and approximately one-half of all Texas high school students openly bragging that they have illegally consumed alcoholic beverages during the past month (TCADA, 1996 *Survey of Substance Abuse Among Youth*), no one can argue that there is not an underage drinking problem in Texas. TABC agrees with those retailers who say that young people who break the law and who obtain or use alcoholic beverages illegally ought to be made accountable for their own acts. That's why most of the agency's age-law enforcement efforts (Cops In Shops, Co-operative On-Premises Stings, and Project SAVE ) target the underage drinkers themselves. That's also why the Commission supports tougher punishments in those portions of the Alcoholic Beverage Code that make

it illegal for young people to possess, consume, purchase, attempt to purchase, or to misrepresent their age when attempting to purchase alcoholic beverages.

At the same time, however, the agency also recognizes that

there is a second side to the underage drinking problem - the supply side - and that at least part of the source of supply, the portion that the TABC can most easily identify and influence, consists of retailers and their employees who fail to exercise the proper caution and due diligence necessary to avoid making illegal sales.

Minor stings are one of the agency's responses to this aspect of the problem. Minor stings, especially if they are publicized, are a fair and incredibly cost effective method of reminding all area retailers and their employees that they have a legal obligation not to sell or serve alcoholic beverages to underage persons and that the TABC will take active steps to ensure that retailers fulfill their obligation. The TABC uses only teenagers who look obviously underage and who dress and act appropriately for their true age. The minors are instructed to present their own actual driver's license when asked for ID, and to answer any questions about age honestly. An agent posing as another customer is usually posted inside the business in a position to

hear and observe the transaction. Audio/video recordings are often made as well.

The care and attention to fairness that the TABC exercises in its stings makes the test created by a TABC

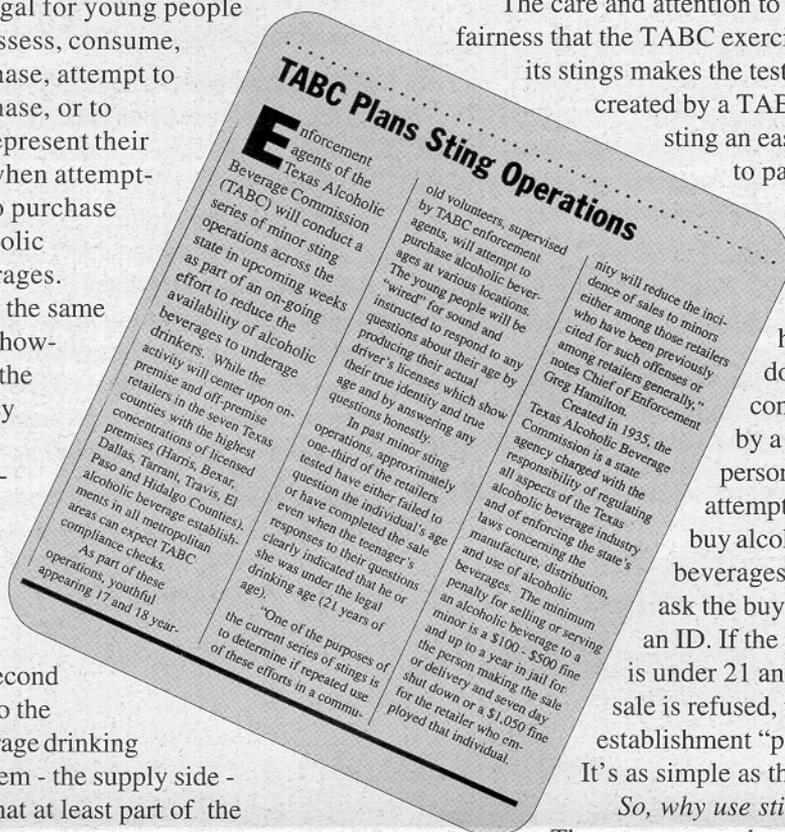
sting an easy one to pass: all the seller or server has to do, when confronted by a young person attempting to buy alcoholic beverages, is to ask the buyer for an ID. If the person is under 21 and the sale is refused, the establishment "passes." It's as simple as that. So, why use stings?

The agency uses them to get

the attention of area retailers and to focus that attention on the underage drinking problems. The intent is to show retailers that their businesses are targets, often easy targets, for underage drinkers and that it is in their best interest, and in the best interest of the public they serve, to make sure that their businesses have adequate safeguards in place to prevent illegal sales.

Even after five years of repeated minor stings, at least one out of three sellers or servers still sell to minors. At times, the rate is even higher.

The TABC knows that the majority of retailers have good controls and don't sell to minors. We also know that most of the retailers want to do the right thing and to obey the law. The agency calls upon alcoholic beverage retailers to join and support its efforts to stem the flow of alcoholic beverages to underage Texans. Together, we can Stop Alcohol Violations Early. We must do it now, not later.



## Retailers Speak Out!

The TABC has begun a series of retailer forums across the state. The forums are intended to provide retailers with the opportunity to learn more about TABC policies, practices, and programs and to discuss regulatory issues. The first of this series of forums was held in San Antonio in October and was attended by 30 - 40 area retailers. During November forums were held in Lubbock, Dallas, Fort Worth and Austin with additional gatherings set for Houston and Galveston in early December.

The Commission plans to hold retailer forums in each of its remaining districts in early 1997 and then throughout the state on a regular basis. "These public sessions are part of our Project SAVE initiative targeting retailers with ongoing dialogue and information that can enhance our mutual roles and responsibilities," notes Chief of Enforcement Greg Hamilton.

## Did You Know?

There are 118 seller/server training schools in operation today. A total of 194,000 seller/servers have current certificates indicating successful completion of the seller/server training course.



### Licensee/Permittee Exemption from Administrative Action §50.9 (TABC Rules)

Section §50.9 of the Texas Alcoholic Beverage Commission Rules was amended last year to read as follows:

- a) The commission shall require each licensee/permittee who claims exemption from administrative action under the Texas Alcoholic Beverage Code, §106.14, to produce evidence by affidavit indicating that the licensee/ permittee met the three criteria outlines in §106.14(a).
- b) The licensee/permittee shall not be deemed to require its employees to attend a commission approved seller/server training program unless employees are required to attend such program within thirty days of their initial employment. The administrator or his designee may relax the requirements of this paragraph in individual cases for good cause shown by the licensee/ permittee claiming exemption.
- c) Proof by the commission that an employee or agent of a licensee/

permittee sold, delivered or served alcoholic beverages to a minor or intoxicated person, or allowed consumption of same by a minor or intoxicated person, more than twice within a twelve month period, shall constitute prima facie evidence that the licensee/permittee has directly or indirectly encouraged violation of the relevant laws.

Subsection (b) defines "require" as it is used in Section 106.14 (a)(1)TABC Code, "the employer requires its employees to attend a commission-approved seller training program". Subsection (c) provides one definition for "encouraged" as it is used in Section 106.14 (a) (3) TABC Code, "the employer has not directly or indirectly encouraged the employee to violate such law."

### Commission Adopts New or Amended Rules

In case you missed it, the following rules have been adopted recently by the Commission.



Effective October 1, 1996: Section 33.23 has been amended to reflect adjusted surcharges which are added to your permit/license fees for your total annual renewal fee. Review your pre-printed renewal form for the correct amount.



Effective August 26, 1996: Section 33.41 has been enacted to define financial interest as used only in Section 102.06 of the Alcoholic Beverage Code. Section 102.06 states "no holder of an agent's or manufacturer agent's permit may directly or indirectly have an interest in a package store or wine only package store permit or be residentially domiciled with a person who has a financial interest in a package store or wine only package store permit." In this instance only, financial interest as underscored above, is now defined as an ownership interest in the business or assets.



Effective August 26, 1996: Section 35.5 was adopted as the Private Carrier's Permit Safety Program. Each holder of a private carrier's permit must carry at least \$500,000 of liability insurance for each vehicle. Proof of such insurance is required to be on file with the TABC. The private carrier permit may be cancelled or suspended if an unsatisfactory safety rating occurs under the Code of Federal Regulations or for multiple violations of Texas Civil Statutes, Article 6675d, it's related rules or the Uniform Act Regulating Traffic on Highways. This insurance requirement is currently indicated under rules of the Texas Department of Transportation (TxDOT). The TABC adoption of the rule will streamline governmental regulations and allow holders of private carrier's permits to operate under one permit issued by the TABC rather than two permits - one by TABC and one issued by TxDOT.

Each holder of the private carrier's permit will be notified by the licensing department in Austin of the required forms and deadlines for submission.

## Server Training Seminar

### Sellers/Servers Convene in Austin

The TABC held a seminar for seller training providers on November 14th and 15th in Austin. Agent Kirk Dalchau provided information on the inspection of driver's licenses, minor sting operations, and Project SAVE. Sergeant Mickey Whitley discussed the C.O.P.S. and Cops in Shops program. Participants had the opportunity to ask questions of staff and received information that clarified various issues.

The group was treated to a challenging presentation by Dr. Jim Bell and Dr. Steve Beebe from Southwest Texas State University. They offered a session on "Improving Your Training" that highlighted methods for effective trainers and ways to evaluate teaching skills.

Finally, a new video program commissioned by the agency for use in the seller training program was unveiled. The ten minute video introduces the seller training students to the TABC and explains various programs, services and activities conducted by the agency.

## You Asked...questions about alcoholic beverage regulations.

♦ *Why should alcoholic beverage retailers accept only valid Texas ID's as proof of identification?*

Section 106.03(b) of the Alcoholic Beverage Code states: "A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 years old or older by displaying an apparently valid Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with this appearance for the purpose of inducing the person to sell him an alcoholic beverage."

A retailer may accept any form of identification as proof of age, but they lose any protection offered under this section of the Code, and run the risk of criminal and administrative action being taken, if they sell to a minor based on another form of identification. As you can see, it's to the establishment's advantage to accept only "apparently valid Texas driver's license or an ID card issued by the Texas Department of Public Safety."

♦ *Does the TABC have incentives or quotas for the number of tickets that agents write?*

No. We report our service accomplishments as performance measures to the Texas Legislature. However, we do not have a performance measure for the number of tickets we write. We also do not have any internal policies requiring quotas for tickets.

♦ ♦ ♦ ♦

♦ *Can a license or permit holder have a store policy to refuse to serve alcoholic beverages to a minor even if their parent, guardian or spouse is present?*

Yes. Although state law allows a minor to possess and consume alcoholic beverages in the presence of a parent, guardian or legal age spouse, the TABC does not prohibit the holder of a license or permit from setting a store policy refusing service to minors.

**NOTE: We'll be taking a look at frequently asked questions from retailers in future issues of this newsletter. So, if you have a question please send it in to us.**

Allan Shivers, Jr., Chairman  
Roy Orr, Commissioner  
Martha Dickie, Commissioner  
Doyle Bailey, Administrator

The TABC Today is an external publication of the Texas Alcoholic Beverage Commission. We welcome comments, suggestions and/or questions from our readers. To report a possible violation of the Alcoholic Beverage Code, call toll-free 1-888-THE-TABC (Voice/TDD).

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