

# 86<sup>th</sup> Legislature Legislative Update

August 2019

*This information is being presented to help the public and industry members understand the 86<sup>th</sup> Legislature's changes to the laws that TABC administers, and should not be construed as a legal authority. It is not intended to establish or change any new or existing definitions, interpretations, standards, or procedures regarding the referenced laws and regulations.*



# APPROPRIATIONS

## HB 1 by Zerwas

- ★ \$15,859,154 + 37 FTEs in exceptional item funding for FY2020-2021
  - ★ \$9.9M + 7 FTEs for technology projects (**TABC Transformation Initiative**)
    - ★ Program Management Oversight
    - ★ Alcohol Industry Management System (AIMS)
      - ★ Case Management; Excise Tax; Cash/Credit Law; Marketing Labels
    - ★ Enterprise Data Solution
    - ★ Mobile Self-Inspection
    - ★ POETCS
    - ★ Public Website Redesign
  - ★ \$5.6M + 29 FTEs to Enforcement for human trafficking
  - ★ \$300,270 to support Employee Retention Plan for Licensing and Audit personnel
  - ★ \$150,482 + 1 FTE for CAPPS



## TABC Sunset Bill: General Provisions

### HB 1545 by Paddie

- ★ Continues TABC for 12 years until September 1, 2031.
- ★ Expands the Alcoholic Beverage Commission from three to five members.
- ★ Modernizes TABC's conflict-of-interest provisions for commission members and employees by defining financial interest to mean a cumulative 5 percent or more in alcoholic beverage businesses.
- ★ Establishes prevention of human trafficking at licensed and permitted locations as a TABC duty and priority. (Effective 9/1/2021)
- ★ Restricts the release of personnel records of commissioned TABC officers involved in an open internal investigation.



**EFFECTIVE  
9/1/2019**

# TABC Sunset Bill: Licensing Streamline Part I

## HB 1545 by Paddie

- ★ Effective 9/1/2019, 14 licenses and permits will be eliminated. These include:
  - ★ Four agents licenses and permits (A, BK, DK, and T)
  - ★ Industrial permit (I) and Local Industrial Alcohol Manufacturer's Permit (LI)
  - ★ Local Class B Wholesaler Permit (LX)
  - ★ Wine Bottler's Permit (Z)
  - ★ Billboard Permit
  - ★ Local Distributor's License (BD)
  - ★ Manufacturer's Warehouse License (MW)
  - ★ Market Research Packager's Permit (MR)
  - ★ Storage License (SL)
  - ★ Wine and Beer Retailer's Permit for Railway Dining, Buffet or Club Cars (Y)



**EFFECTIVE**  
**9/1/2019**

## TABC Sunset Bill: Licensing Streamline Part II

### HB 1545 by Paddie

- ★ Effective 9/1/2021, various licenses and permits will be combined. These include:
  - ★ Combines ten subordinate licenses and permits with their associated primary license or permit. Examples:
    - ★ Local Cartage Permit (E) merged into Package Store Permit (P), Wine-Only Package Store Permit (Q), and Local Distributor's Permit (LP)
    - ★ Private Storage Permit (L) merged into Winery Permit (G), Wholesaler's Permit (W), and others
    - ★ Private Carrier's Permit (O) merged into Distiller's and Rectifiers Permit (D), Winery Permit (G), Wholesaler's Permit (W), and others
    - ★ Minibar Permit (MI) merged into Mixed Beverage (MB) and Mixed Beverage Restaurant Permit (RM)
  - ★ Combines and eliminates various temporary event permits and licenses.
  - ★ Combines four passenger transportation permits.
  - ★ Combines three late hours licenses and permits.



**EFFECTIVE  
9/1/2021**

## TABC Sunset Bill: Other Licensing Provisions

### HB 1545 by Paddie

- ★ Removes fees from statute and requires TABC to set them in rule. (9/1/2021)
- ★ Authorizes small breweries to sell beer to-go, up to one case per day, per consumer. (9/1/2019)
  - ★ **Implementation:**
    - ★ Amend Rule 34.3 to establish administrative penalty for violation of beer to-go privileges (September)
- ★ Raises the cap on number of package store permits a person may hold from 5 to 250, and limits the number of new permits to 15 annually. (9/1/2019)
- ★ Requires county and city officials to complete the local certification process for TABC license and permit applicants within 30 days. (9/1/2019)



# LICENSING

## HB 1443 by S. Thompson

- ★ Directs the county clerk and city secretary/clerk to
  - ★ take action within 30 days of receiving a request for certification from a prospective applicant
  - ★ certify the location/address is wet for sale of AB or prohibited by an order/charter/ordinance
- ★ If not in wet area or official refuses to issue certification, prospective applicant can request a hearing with county judge. Judge must comply within 30 days of receiving request.
- ★ FYI: The same language is in Section 28 and Section 177 of HB1545 (Sunset bill).



**EFFECTIVE**  
**9/1/2019**

*AMENDS AB Code: 11.37(a),(b),(d); 61.37(a),(b),(d)*

# LICENSING

## HB 3222 by K. King

- ★ Authorizes the agent of a Nonresident Brewer/Manufacturer to:
  - ★ Represent multiple nonresident brewers and manufacturers,
  - ★ Perform any activity the nonresident brewer/manufacturer the agent represents may perform in Texas, and
  - ★ Apply for a permit, license, or other TABC required authorization on behalf of the nonresident brewer/manufacturer the agent represents.
- ★ Example: MillerCoors has a contract with Pilsner Urquell (a foreign brewer aka nonresident brewer) to import and sell their products. Pilsner is required to file all paperwork with TABC. HB 3222 authorizes MillerCoors to file label approvals, permits, and tax reports on behalf of Pilsner Urquell.
- ★ **Implementation:**
  - ★ Create Rule 33.29 to associate a fee with the registration by a nonresident brewer's/manufacturer's agent to act on behalf of another nonresident brewer/manufacturer (September)



**EFFECTIVE**  
**9/1/2019**

*CREATES AB Code: 57.001-57.005*



# LICENSING

## HB 3754 by Burrows

- ★ Authorizes a city or county to contract with a third party to collect unpaid licensing fees more than 60 days past due.
  - ★ Third party may assess a collection charge to licensee/permittee.
- ★ Authorizes TABC to suspend (in addition to cancelling) a license/permit if licensing fees have not been paid within 180 days of being levied.
- ★ **Implementation:**
  - ★ Create a policy for the collection of unpaid licensing fees (January)
  - ★ Evaluate collection procedures (January)



**EFFECTIVE**  
**9/1/2019**

*AMENDS AB Code: 11.38; 61.36*

# TABC Sunset Bill: Beer and Ale Consolidation

## HB 1545 by Paddie

- ★ Eliminates distinctions between beer and ale. Combines beer and ale into a new “malt beverage” category. Key elements:
  - ★ Merges some permits based on beer/ale distinction. Examples:
    - ★ Manufacturer’s License and Brewer’s Permit merged into a single Brewer’s License.
    - ★ Brewer’s Self-Distribution License and Manufacturer’s Self-Distribution License merged into a single Brewer’s Self-Distribution License.
    - ★ Nonresident Manufacturer’s License and Nonresident Brewer’s Permit merged into a single Nonresident Brewer’s License.
  - ★ Applies lower beer excise tax rate to all malt beverages.
  - ★ Applies cash law to all malt beverages.
  - ★ Applies beer marketing laws and regulations to all malt beverages.
  - ★ Grandfathers beer-only local option areas.
- ★ Requires warehouse registration (effective 9/1/2019).
- ★ **Implementation of warehouse registration:**
  - ★ Create rule in Ch. 41 to require registration of warehouse (September)
  - ★ Create registration form (August)

**EFFECTIVE  
9/1/2021**



## TABC Sunset Bill: Label Approval

### HB 1545 by Paddie

- ★ Eliminates state label approval process for malt beverages and instead requires TABC accept a valid federal Certificate of Label Approval (COLA) for product registration.
- ★ Authorizes TABC to deny label approval and registration for any product with a COLA that violates Texas law.
- ★ Eliminates required content testing for malt beverages. Authorizes TABC to continue testing but prohibits TABC from requiring it as a condition of product registration.



**EFFECTIVE**  
**12/31/2020**

## LABEL APPROVAL

### HB 2016 by Guillen

- ★ Wine and beer retailers can sell wine up to 17% ABV **except** port and sherry can be up to 24% ABV provided they are only sold for on-premise consumption.
- ★ HB 2016 expands exception to additional types of wine to include dessert-flavored wine and rice wine.
- ★ Under TTB's classifications, dessert wine is wine having an alcoholic content in excess of 14% ABV, but not in excess of 24% ABV. (27 CFR § 4.21)
- ★ Mixed Beverage permittees are restricted to purchasing wine, beer, ale and malt liquor containing no more than 24% ABV. By increasing the threshold from 21% ABV, mixed beverage permittees are able to sell a wider variety of beverages and producers can reach more consumers.



**EFFECTIVE**  
**9/1/2019**

*AMENDS AB Code: 25.01; 28.01(c)*

## TABC Sunset Bill: Outdoor Ads

### HB 1545 by Paddie

- ★ Eliminates various outdoor advertising requirements, such as font size.
- ★ Requires TABC to adopt rules aligning all retailers under the same requirements.
- ★ **Implementation:**
  - ★ Amend Rule 45.105 to align outdoor advertising privileges for all retailers (September)
  - ★ Evaluate and edit/repeal applicable advisories (January)
  - ★ Evaluate and edit REAP training (January)



**EFFECTIVE  
12/31/2019**

# MARKETING PRACTICES

## HB 1997 by Geren

- ★ Authorizes a distiller or nonresident seller to conduct a tasting or provide samples of distilled spirits to a retailer (the employees) of product(s) not yet purchased by the retailer.
  - ★ Exception for previously purchased distilled spirits if they were used only for educational or training purposes.
  - ★ This change does not address consumer tastings.
- ★ For the sampling/tasting session, the distiller or nonresident seller must be present at the retailer's location, is responsible for the cost of the product, and cannot negotiate price or establish agreements with the retailer.
- ★ Product(s) should be obtained from another package store or wholesaler.
- ★ Each brand sampled/tasted is limited to 750 ml of product produced by the distiller or nonresident seller and must meet all TABC labeling requirements.
- ★ **Implementation:**
  - ★ Create a rule to establish where product originates (November)

**EFFECTIVE**  
**9/1/2019**

*CREATES AB Code: 14.07; 37.01(d)*  
*AMENDS AB Code: 15.01; 22.10 - 22.11; 28.06(a),(c); 28.15(a);*  
*32.15; 32.20(a); 36.01; 37.01(c)*



# COMPLIANCE

## HB 3768 by Burrows

- ★ Allows a licensed/permitted producer of alcohol to conduct tastings without obtaining additional licenses/permits from TABC if the tastings are part of the Go Texan Program within the Texas Department of Agriculture (TDA) at a festival or civic celebration that lasts at least 21 days and has been held on a near-annual basis for 100 or more years.
  - ★ Example of qualifying festival: The State Fair of Texas
- ★ **Implementation:**
  - ★ TDA will modify the form required of alcohol producers participating in the program at events.
  - ★ TDA will provide this information to TABC, specifically Audit and Law Enforcement, in advance of a qualifying event.



**EFFECTIVE**  
**9/1/2019**

*CREATES AB Code: 109.541*

# COMPLIANCE

## SB 928 by Hancock

- ★ Authorizes brewer's permit holders to import ale/malt liquor from nonresident brewer's, and manufacturer's permit holders to import beer from nonresident manufacturers and ale/malt liquor from nonresident brewers.
- ★ Imported product is to be used for *manufacturing purposes* (i.e., as an ingredient in the process of producing the licensee's/permittee's final marketable product).
  - ★ Manufacturing includes mixing and blending the imported product and bottling and selling the resultant product.
  - ★ Product imported for manufacturing purposes does not meet the definition of "first sale" for purposes of assessing excise taxes. Those taxes are due only on the resultant product and in the same manner as other alcoholic beverages produced by the brewer or manufacturer under Code §§ 201.41 and 203.02.
- ★ Expands the types of containers authorized to transport beer and allows importation of product in bulk.



**EFFECTIVE**  
**9/1/2019**

CREATES AB Code: 12.015 ; 62.015  
AMENDS AB Code: 62.07



# COMPLIANCE

## SB 1210 by Hancock

- ★ Due to certain circumstances, beer or ale may be considered unfit for public consumption and therefore should not be sold to a consumer due to public health concerns.
- ★ If the producer and distributor of an **uninsured** malt beverage product determines a product to be unfit for consumption as a result of a natural disaster as determined by the Governor's office, the product may be removed from a retailer's inventory.
- ★ Each tier is responsible for costs:
  - ★ Replacement product (producer)
  - ★ Delivery of replacement product (distributor)
  - ★ Removal, destruction, and disposal of product (retailer)
- ★ **Implementation:**
  - ★ Create rule regarding removal, destruction, and disposal by retailer (November)



**EFFECTIVE**  
**9/1/2019**

*CREATES AB Code: 109.09*

# COMPLIANCE

## SB 1232 by Creighton

- ★ Authorizes on-premise wine and beer retailers (BG) to obtain a Local Cartage Permit, thus allowing delivery of beer, ale, and wine directly to consumers.
  - ★ BGs already have authority to deliver beer, but this expands that authority to ale and wine.
- ★ The BG permit holder must abide by Sec. 22.03's requirements for retail deliveries to consumers, including the restrictions dictating which locations within the city or county product may be delivered.
- ★ **Implementation:**
  - ★ Revise advisory for delivery services (October)



**EFFECTIVE**  
**9/1/2019**

*CREATES AB Code: 25.15; 43.01(c); 74.01(h)*  
*AMENDS AB Code: 43.04*

# COMPLIANCE

## SB 1450 by Hancock (Part 1)

- ★ Creates a Consumer Delivery Permit (CD) authorizing CD permittees to hire delivery drivers to pick up an alcoholic beverage from an authorized retailer and deliver it to a consumer located in an area wet for the sale of the beverage.
- ★ Authorized retailers: package store, wine only package store, wine & beer on-premise, wine & beer off-premise, beer on-premise, beer off-premise, and mixed beverage with a food & beverage certificate.
- ★ Public safety protections for CD permittees:
  - ★ Delivery drivers must be at least 21 with a valid driver's license.
  - ★ Delivered only to a person at least 21 and who has presented proof of ID and age.
- ★ No liability to retailer once possession of alcohol is transferred to CD permittee.
- ★ Safe harbor for CD permittee applies IF driver is certified through (new) TABC alcohol delivery training program OR delivery app meets requirements.

**EFFECTIVE**  
**9/1/2019**



# COMPLIANCE

## SB 1450 by Hancock (Part 2)

- ★ Authorizes a Mixed Beverage (MB) permittee to deliver to consumers for off-premise consumption OR utilize a CD permittee if these criteria are met:
  - ★ MB must have a Food & Beverage certificate.
  - ★ The alcohol must accompany food prepared on the MB's premises.
  - ★ Delivery is to an area where the sale of the beverage is legal.
- ★ Requirements for delivery from an authorized MB (by the MB or CD permittee):
  - ★ Beer, ale or wine must be in original container sealed by the manufacturer.
  - ★ A distilled spirit must be delivered in an original, single-serving container sealed by manufacturer and not larger than 375 ml.
  - ★ Delivery must be acknowledged either by recipient signing a receipt, which may be electronic, or the delivery driver uses a software application.
- ★ The bill does not authorize alcohol sales to go for MBs.



**EFFECTIVE  
9/1/2019**

# COMPLIANCE

## SB 1450 by Hancock (Implementation)

### ★ Stakeholder meetings:

- ★ Discuss timeline for implementation of components, solicit input on effectiveness of other states' rules and requirements, review draft rule to set fee (August)
- ★ Review drafts of rules for alcohol delivery training program and software compliance application (October, December)

### ★ Rules/Advisories:

- ★ New rule to establish an annual fee for CD permit (September)
- ★ Consider an advisory regarding container size and other aspects of service (November)
- ★ New rule to administer an alcohol delivery training program for CD drivers (mandatory by 9/1/2020) (January)
- ★ New rule to establish minimum requirements for alcohol delivery compliance software applications (mandatory by 9/1/2020) (January)

### ★ Establish online curriculum for deliveries and include tracking capabilities

- ★ Submit SOW and request to expedite to DIR (August); select vendor (September if expedited); develop curriculum (December); build database (May)



*CREATES AB Code: 28.1001; 57.01-57.09; 101.63(a-1)  
AMENDS AB Code: 28.10(a)*

## COMPLIANCE

### **SB 2410 by Menendez**

- ★ Amends the definition of a Public Entertainment Facility (PEF) to include the parking areas adjacent to the facility.
- ★ This bill clarifies that a PEF sponsor is allowed to include sponsorship advertising in the parking lot surrounding the PEF facility regardless of whether the parking lot is diagrammed for alcohol sales.
- ★ *Reminder: a PEF designation is not the licensed premise, it is simply a designation that allows upper tier sponsorship and must have an independent concessionaire that contracts with the owner of the facility or a party that has control by lease or contract.*



**EFFECTIVE**  
**6/10/2019**

AMENDS AB Code: 108.73(2)

## TABC Sunset Bill: Application Review and Protests

### HB 1545 by Paddie

- ★ Restructures TABC's application review and protest processes:
  - ★ Improves overall consistency and aligns the protest process with the Administrative Procedure Act.
    - ★ For example, all contested protests will go to SOAH for hearing instead of some going to county judges.
  - ★ Requires TABC staff to make an initial determination to approve or deny an application. TABC will no longer protest applications and will utilize its authority under the Code to grant or deny an application without a hearing. Applicants may then appeal TABC's determination.



**EFFECTIVE**  
**12/31/2020**

## TABC Sunset Bill: Law Enforcement and Compliance

### HB 1545 by Paddie

- ★ Requires TABC adopt in rule a plan for inspecting regulated locations using a risk-based approach that prioritizes public safety, whether virtual or physical inspection, and a timeframe for physically inspecting every location. (November)
- ★ Requires TABC to work with LBB to reduce the current performance target to inspect 80 percent of regulated businesses each year. (1/31/2020)
- ★ Makes noncompliance with a TABC order a statutory violation and authorizes additional disciplinary action. (9/1/2019)
- ★ Authorizes TABC to consider profits earned from violating the law when determining penalties, but only for repeat violations. (9/1/2019)
- ★ Authorizes TABC to temporarily suspend licenses and permits if it finds a continuing threat to public welfare. (9/1/2019)





## LAW ENFORCEMENT

### HB 2790 by Goldman

- ★ Repeals section of Code intended to tighten the laws on bootleggers i.e., if you are in a dry area and have more than one case of beer or the equivalent, it is prima facie evidence that you plan to sell it.
- ★ Protects the public from being charged criminally for possessing alcohol in a dry area; however, no citations have been issued for this in many years.



**EFFECTIVE**  
**9/1/19**

*REPEALS AB Code: 101.32*

## LAW ENFORCEMENT

### HB 2791 by Goldman

- ★ Adds “personally” to sentence with intent to clarify that a person who purchases alcohol for their own consumption may legally transport the alcohol without holding a permit.
- ★ This also makes it clear that a person could personally transport their own alcohol without a permit but could not hire another person unless that person has a permit to transport alcohol. This is important considering new laws regarding delivery of alcohol to consumers.



**EFFECTIVE**  
**9/1/19**

AMENDS AB Code: 107.08

## LAW ENFORCEMENT

### HB 2792 by Goldman

- ★ Adds "knowingly" regarding making a false statement on a license/permit application, report, etc. filed with TABC.
- ★ Ensures a mistake or accident could not be considered a criminal offense.
- ★ This change has a slight impact as the agency has traditionally depended on and provided evidence of a culpable mental state in order to support criminal violations against a license/permit or an individual person. Without the stated mental state, we could prove the violation by showing the person recklessly made the false statement.
- ★ This makes it more difficult to prove the criminal violation because the violation would now require a prosecutor to show that the statement was false, and that the person knew or should have known it was false, which is a higher burden for TABC to meet than proving the person was reckless.



**EFFECTIVE**  
**9/1/19**

AMENDS AB Code: 101.69

## LAW ENFORCEMENT

### HB 2793 by Goldman

- ★ Repeals statute relating to wholesaler or retailer selling certain quantities of alcohol in a single transaction as prima facie evidence of the intent to make an illegal sale.



**EFFECTIVE**  
**9/1/19**

*REPEALS AB Code: 101.10*

## MISCELLANEOUS

### HB 2196 by Harris

- ★ Expands the definition of a Public Entertainment Facility (PEF) to include facilities owned or leased by the Texas State Railroad Authority used as a station for passenger rail services.
  - ★ A license/permit may be issued on property in a dry area if it was annexed by a city that is wet for alcohol sales. Currently, this only applies to an area near Palestine.
  - ★ The concessionaire of the PEF may be a member of the manufacturing tier.
- ★ Open containers of alcoholic beverages purchased on the train may be removed from the train and carried onto the PEF property for further consumption on the property.
- ★ Open containers of alcoholic beverages purchased within the PEF may be removed from the PEF and carried onto the train for further consumption.
- ★ The purchased alcoholic beverages may be consumed throughout the entire facility's property, except for the parking lot(s).



**EFFECTIVE**  
**9/1/2019**

AMENDS AB Code: 48.01; 108.73(2); 108.82

## MISCELLANEOUS

### **HB 2633 by Morrison**

- ★ Applicable only to the Victoria ISD's performing arts facility.
- ★ Makes an exception to distance requirements for public and private schools in the Code for a performing arts facility leased to a nonprofit organization per a (new) policy in the Education Code (Sec. 11.179).
- ★ Authorizes the school district to allow alcohol at the district's performing arts center if the facility is leased to a non-profit organization for an event not affiliated with the district e.g., Victoria symphony.
- ★ The lease must require the event is held outside normal school hours and alcoholic beverages are sold by a person with an appropriate TABC permit for the facility.



**EFFECTIVE**  
**9/1/2019**

*CREATES AB Code: 109.33(f-1)*

## MISCELLANEOUS

### **HB 4456 by Geren**

- ★ Applicable only to newly annexed city limits of Fort Worth outside of Tarrant County (specifically in Parker County).
- ★ Changes wet/dry status of an area (meeting certain geographical restrictions and other criteria) by applying the wet/dry status of the city that annexed it or because the area was contiguous to, and owned by, the city.



**EFFECTIVE**  
**9/1/2019**

*AMENDS AB Code: 251.726(a)*

## MISCELLANEOUS

### FYI

- ★ SB 1939 by Hancock amends Agriculture Code to allow grape growers to retain title over their grape product at the grower's discretion.
- ★ HB 4542 by Guillen amends the Tax Code to require certain brewpubs to report sales tax and other information to the Retailer Inventory Tracking System (RITS).
  - ★ Only impacts brewpubs with a wine & beer retailer's permit AND whose sale of beer and ale consists only of beer and ale made on the premises.
- ★ HB 1325 by Tracy King redefines marihuana to exclude the hemp plant, its seeds, and its derivatives providing that there is not a THC concentration that exceeds 0.3% on a dry weight basis.
- ★ Implementation of HB 1325:
  - ★ Publish a statement regarding CBD products in licensed/permitted locations (October)
  - ★ Update label application to include query on THC content

**EFFECTIVE**  
**9/1/2019**

*Agriculture Code, Tax Code*

