



# TEXAS ALCOHOLIC BEVERAGE COMMISSION

*Texans Helping Businesses & Protecting Communities*

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September 14, 2021

## MARKETING PRACTICES ADVISORY – MPA065

### **Cash and Credit Law Requirements**

To: Members of the Manufacturer, Wholesale and Retail Tier

#### **Scope of the Advisory**

This advisory is intended to streamline the agency's prior cash and credit law advisories and incorporate amendments to TABC's Administrative Rules 45.130 (Credit Law and Delinquent List) and 45.131 (Cash Law). The following information is provided to assist license and permit holders to comply with the aforementioned amended rules. Additional details on changes and updates to TABC's Administrative Rules can be found at [tabc.texas.gov/texas-alcohol-laws-regulations/](http://tabc.texas.gov/texas-alcohol-laws-regulations/).

#### **Credit Law**

Texas Alcoholic Beverage Code § 102.32 and Rule 45.130 address the payment requirements for sales of *liquor*<sup>1</sup> by a wholesale dealer<sup>2</sup> to a retailer.<sup>3</sup> When a retailer purchases liquor from a wholesaler the retailer is not required to immediately pay for their order. Wholesalers may extend credit to a retailer and provide a limited amount of time before the retailer must remit payment to the wholesaler. The length of time this credit may be extended to a retailer is set by statute and depends on the date the wholesaler delivers the alcoholic beverages to the retailer.

Wholesale dealers are required to report to TABC any retailer who submits an insufficient or untimely payment. Retailers who have not paid for liquor they purchased on credit are deemed to be in default and will be listed on TABC's publicly available Delinquent List. Wholesale dealers are required to report both default and payment electronically to TABC on the web-based reporting system.<sup>4</sup> Sellers who cannot access the web-based reporting

<sup>1</sup> Code § 1.04 defines liquor as "any alcoholic beverage, other than a malt beverage, containing alcohol in excess of five percent by volume, unless otherwise indicated," including but not limited to "spirits of wine, whiskey, liquor, wine, brandy, gin, rum, tequila, mescal, habanero, or barreteago."

<sup>2</sup> Pursuant to Code § 102.32(a)(1), a wholesale dealer means the holder of a Wholesaler's, Class B Wholesaler's, Winery, or Local Distributor's Permit.

<sup>3</sup> A winery is considered a retailer when it purchases wine from a wholesaler for resale to consumers and the credit law provisions apply to those transactions,

<sup>4</sup> Located at: <https://apps.tabc.texas.gov/tabcinternetlogin/login.aspx>

system must submit an exemption request<sup>5</sup> to their TABC regional office before extending credit to the purchaser. If the request is approved the seller will manually report<sup>6</sup> all notices of default via e-mail or mail within two business days from discovering the retailer's delinquency/default. Otherwise, the seller must contract with another seller or a service provider to submit reports on their behalf.

Wholesale dealers may not sell any liquor to a retailer who is delinquent until the account is paid in full and cleared from the Delinquent List.<sup>7</sup> Delinquent retailers are obligated to pay the amount due to the wholesale dealer, but once the account becomes delinquent the wholesale dealer may accept payment only in cash or in a transaction or instrument equivalent to cash.<sup>8</sup>

### **Credit Law Payment Requirements**

Section 102.32(c) of the Code provides two deadlines for submitting payment for liquor purchased on credit. Payment for purchases made from the 1st through the 15th day of a month is due by the 25th day of that same month, and for purchases made from the 16th day through the last day of a month, payment is due by the 10th day of the following month. Any form of monetary payment is allowed by the purchaser if made on or before the due date under Code section 102.32(c).

When calculating a payment due date, the date of purchase is the date the product is delivered to the retailer. All deliveries of purchased liquor must be accompanied by an invoice (which may be in an electronic format) that details: (1) the name and permit number of the Seller and the Retailer; (2) a full description of the alcoholic beverages; (3) the price and terms of sale; and (4) the place and date of delivery.<sup>9</sup> As evidence of the actual delivery date, the invoice must be signed by the retailer.

A payment is late if it is not received by the Seller on or before the date that payment is due under § 102.32(c) of the Code. If the Seller receives payment by mail within four days of the date that payment is due under §102.32(c) of the Code, the payment is not late. It is a violation of the credit law requirements if a seller accepts a payment other than cash or cash equivalent after the statutory due date.

- For delivery periods of the first to 15th, the delinquent list will be published and effective on the fifth business day of the following month.
- For delivery periods of the 16th to the last day of the month, the delinquent list will be published and effective on the 20th day of the following month.

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<sup>5</sup> Form C-815, Cash Credit Law Exception Request

<sup>6</sup> Form C-801M, Notice of Default

<sup>7</sup> Code § 102.32(d); Rule 45.130(f)(1)

<sup>8</sup> Rule 45.130(d)(3)

<sup>9</sup> Rule 45.130(c)(1).

Retailers may view pending notices of default starting on the publication date on the Commission's public website. **Note:** See the last page of this advisory for a rubric to help license and permit holders determine the correct payment date.

The Delinquent List is published as a means to provide notice of payment delinquencies. The length of the credit period is provided by the Code and the Delinquent List publication date is not a substitute for those statutory payment deadlines. For example, for a purchase from the 1st to the 15th day of a month, the credit period ends on the 25th and not on the date the Delinquent List is published. If a retailer does not make/initiate the payment on the 25th, the Code has already been violated. The retailer's subsequent appearance on the Delinquent List is not itself an offense. It is the means by which we know if an offense has been committed.

## Cash Law

Code § 102.31 and Rule 45.131 address the sale of *malt beverages* by a seller to a retailer. The seller shall submit notices of dishonored checks or drafts through TABC's web-based reporting system.<sup>10</sup> Sellers who cannot access the web-based system must submit an exemption request<sup>11</sup> to their TABC regional office before delivery of product. If an exception is granted, reporting of cash law violations will be submitted via affidavit<sup>12</sup> of insufficient payment using copies of the dishonored check(s). The form may be submitted via email and mail within two business days from the date the violation is discovered by the seller.

### Cash Law Payment Requirements

Dishonored checks or drafts must be reported to the agency through the Commission's web-based system within two business days of the retailer's notice of insufficient funds. Code § 102.31 requires that malt beverages be paid for in cash either on or before delivery. The following are authorized forms of payment:

- Money order, cashier's check, firm check, or demand deposit as payment for malt beverages.
- Electronic Funds Transfer (EFT), checks, and bank drafts payable on demand qualify as a form of cash payment.
- Central Payment System:
  - If a retailer has multiple deliveries being made from the same distributor to more than one location owned by the retailer on the same day, the retailer may designate a central store to remit a single payment for all deliveries made on that day.
  - A retailer may also use a third party to hold funds in an account on the permittee's behalf before deliveries are made to the retailer. The retailer

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<sup>10</sup> Located at: <https://apps.tabc.texas.gov/tabcinternetlogin/login.aspx>

<sup>11</sup> Form C-815, Cash Credit Law Exception Request

<sup>12</sup> Form C-809M, Manual Reporting - Affidavit (Cash Law-Malt Beverages)

may subsequently direct the third party to disburse funds to a distributor upon product delivery to cover the amount owed for the individual purchase. The retailer is responsible for maintaining a positive balance in the permit's account to cover deliveries of products.

### General Invoice Requirements

Invoices must be signed by the seller and retailer to verify the receipt of beverages, accuracy of the invoice, and the seller's acknowledgment of a timely payment received on or before the delivery date for malt beverages or by the statutory due date for liquor. Failure to do so is a violation of cash and credit law requirements. Invoices shall be maintained in the following manner:

- Invoices must be retained by the seller and retailer for **two** years from the date of delivery for audit purposes.
- Invoices may be signed electronically and retained on an internet-based system.
- Invoices may be stored electronically or away from the licensed premises only if the invoices are made available to the Commission when requested.

### Payment Calendar

DELIVERY DATE: MARCH 1-15						
MARCH						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
APRIL						
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	

- Payments may be made by check, cash or other forms.
- Due Date
- Payments must be made by cash or cash equivalent.
- Publication Date

  

DELIVERY DATE: MARCH 16-31						
MARCH						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
APRIL						
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	

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- Payments must be made by cash or cash equivalent.
- Publication Date

## **Statement From TABC**

This Advisory is issued pursuant to Alcoholic Beverage Code §5.57. It represents the opinion of the staff of the Commission. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this Advisory, you may contact me in writing at P.O. Box 13127, Austin, TX 78711; by email to [advisories@tabc.texas.gov](mailto:advisories@tabc.texas.gov); or by phone at 512-206-3411.

Sincerely,



Thomas Graham  
Director of Excise Tax & Marketing Practices