



RICHARD W. DONLEY
PRESIDENT
rickdonley@beeralliance.org

JP URRABAZO
VP, INDUSTRY AFFAIRS
jpurrazo@beeralliance.org

Sunset Advisory Commission TABC Staff Report The Beer Alliance of Texas Response

OVERVIEW:

The Beer Alliance of Texas would like to take this opportunity to congratulate the Sunset Commission Staff for its hard work in the production of the Staff Report on The Texas Alcoholic Beverage Commission (TABC). We recognize the difficulty in reviewing an agency whose mission is to regulate an industry that is not only one of the state's largest but because alcohol is a consumer commodity that if misused "can be a dangerous substance with serious public health and societal consequences" which was the case with the repeal of Prohibition but is equally true today.

The staff has gotten several issues correct in their analysis but also has missed the mark on several others. We believe the underlining tone in the analysis that the TABC and the Texas Alcoholic Beverage Code are both arcane and in need of modernization is misplaced. The inference that there has been little to no change in the State's regulatory structure since 1935 does not square with the substantial legislative history surrounding the everchanging Texas Alcoholic Beverage Code.

Additionally, we would guess that the many members of The Texas Legislature that have authored literally hundreds of bills changing the Alcoholic Beverage Code since that time would agree with us that the record is quite contrary.

The Texas 3-tier regulatory system has served the state well and is not unlike the regulatory system in place in the majority of other states in the U.S. The other states may have slight variances, but most are very similar and have also been successful in the regulation of alcohol.

The staff analysis is very thorough and some of the issues and recommendations we can be very supportive of and a few we respectfully must oppose.

Issue 1: Texas Has a Continuing Need for TABC, but a Weak Commission Limits Its Ability to Effectively Oversee and Regulate the Alcoholic Beverage Industry

We enthusiastically support the first recommendation, continuing the TABC for 12 years. We also support expansion of the Alcoholic Beverage Commission from three (3) to five (5) members. We oppose changing the TABC's conflict-of-interest provisions as recommended. While we recognize the need to allow for investments that are truly managed by a 3rd party (such as mutual funds and pension funds) to be an exception to this provision, a flat 1 percent exception has much greater implications. The 1 percent investment in Joe's Bar and Grill is probably de minimis but a 1 percent investment of many other alcohol businesses such as Walmart, Exxon, Costco to name a few would be anything but de minimis (see attachment). We therefore cannot support this recommendation and believe that this policy issue should be referred to the Legislature's committees of competent jurisdiction for a thorough vetting.

Issue 2: TABC Cannot Efficiently Regulate the Alcoholic Beverage Industry Without Modernizing the State's Byzantine Licensing System

The staff recommendation to streamline the state's alcoholic beverage licensing system by reducing the number of licenses and permits we generally can support but we also want to see this proposal with a great deal more specificity. This is an issue that needs to be crafted very carefully.

We feel the issuance of licenses and permits to our members is a great privilege as a prerequisite to engage in our business. The policy decision of what those fees are and who levees the fees is a matter for the legislature to decide.

Issue 3: Over-Regulation of Certain Business Practices Creates Burdens on TABC and the Alcoholic Beverage Industry with Little Public Benefit

First, we support allowing Federal label approval to comply with Texas label approval and agree that most of this process is duplicative. We do recommend, however, that the Agency retain its ability to investigate and remove any product that is found to violate other prohibitions contained in the Alcoholic Beverage Code.

We oppose the staff recommendation contained in 3.2, as it is probably the most perplexing of any in this report. First, the observation they made on page 39 of the report, that the cash law is “the industry’s bill collector” has no basis whatsoever and is merely rhetoric proffered by retail advocates. The cash law is not unique to Texas. There are 34 other states that require cash payments and these requirements are deep-rooted in tax collection and remittance policy. Section 102.31 of the Code does need a new title and we recommend removing the term “cash”. The truth is that very few of these transactions involve the exchange of currency anymore. Other forms of payment are the norm (checks and electronic funds transfer).

The TABC does not collect any outstanding debt from a retailer. They merely take administrative action against the licensee or permittee. The collection is left up to the distributor and proceeds in the same manner as any other business does to collect an outstanding debt. The tax policy is what the staff has not recognized in their analysis. Texas beer distributors collect hundreds of millions of dollars of excise taxes from retailers and remit those taxes on a timely basis. Those taxes are remitted without fail or delay. The payment by the retailer to the distributor assures a revenue stream for the timely payment to the state. If you observe the delinquent list involving sales of liquor (see attachment) you will notice at the close of every credit period that there are millions of dollars outstanding owed by retailers both large and small. If these businesses

default, then the state is in jeopardy of losing millions of dollars it is counting on to fund state governmental operations. Texas beer distributors take the responsibility of participating in this process seriously. We, therefore, **oppose** repeal of Section 102.31 (Cash Law) and note that we are not aware of any agency concerns about this longstanding policy.

In recommendation 3.3 the staff recommends the elimination of restrictive outdoor advertising requirements. We would be remiss if we did not remind the Commission of very emotional debate concerning proliferation of retail outlets in minority communities in our state. Many state and local officials from many communities worked tirelessly to craft provisions to address this issue. The issue also centered around the amount of excessive alcohol advertising in those communities, especially, of higher alcohol content beverages. To remove any restrictions on outdoor advertising at retail outlets would be a step in the wrong direction. We would also suggest that you think about the states that have few, if any, of these restrictions and how it looks in communities and decide if we want that look in Texas communities across Texas. We **oppose** recommendation 3.3.

Issue 4: TABC's Protest Process Needs A Complete Overhaul to Meet Basic Transparency, Accountability, and Fairness Standards

We have no comment on the staff recommendations contained in Issue 4.

Issue 5: Several TABC Enforcement Practices Do Not Follow Common Standards, Limiting Regulatory Efficiency and Effectiveness

In Issue 5 we will confine our comments to the staff recommendations 5.2 and 5.3. In recommendation 5.2 the staff proposes the removal of the requirement of giving licensees and permittees the option of penalty for most violations of the Alcoholic Beverage Code. We would recommend extreme caution in proceeding with this proposal, especially, if paired with recommendation 5.3 which allows evidence of a

business receiving economic gain from the violation. If you remove the option of paying a monetary fine in lieu of complete suspension of business operations for a specified period of time, the economic impact could be very discriminating based upon the size of the business in question. This recommendation might be more appropriate for a business with multiple violations of the same offense.

Issue 6: The High Cost of Collecting Alcohol Import Taxes at the Border Outweighs the Negligible Public Safety Benefit

Recommendation 6.1 proposes to eliminate the Ports of Entry program and repeal of the tax on imported alcohol for personal use. Yes, this program might be a little inefficient, but it serves a very useful deterrent that without it will have debilitating effect on the retail trade on our borders and potentially have public health consequences of having totally unregulated and illicit beverages coming unimpeded across our border. We oppose the elimination of the ports of entry programs.

Issue 7: TABC's Statute Does Not Reflect Standard Elements of Sunset Reviews

We have no comment on the recommendations contained in Issue 7.

Conclusion:

We appreciate the opportunity to comment on the Staff Report concerning the Texas Alcoholic Beverage Commission. We hope as stakeholders in this process we have given valuable input to the staff and the Commission. We would in conclusion recommend that the staff recognize the TABC needs to be given an adequate revenue stream to fulfill the mission the Legislature has given them. This is unquestionably true with their Information Technology needs.