

From: [Sunset Advisory Commission](#)
To: [Brittany Calame](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Wednesday, December 12, 2018 3:38:25 PM

-----Original Message-----

From: sunset@sunset.texas.gov <sunset@sunset.texas.gov> On Behalf Of Texas Sunset Commission
Sent: Wednesday, December 12, 2018 3:35 PM
To: Sunset Advisory Commission <Sunset@sunset.texas.gov>
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS ALCOHOLIC BEVERAGE COMMISSION TABC

First Name: Priscilla

Last Name: Hermes

Title: CEO

Organization you are affiliated with: Talent Tree LLC

Email:

City: Irving

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

Talent Tree, LLC. by and through its founder and Chief Executive Officer, Priscilla Hermes, respectfully submits these comments regarding the Texas Sunset Advisory Commission Staff Report on the Texas Alcoholic beverage Commission ("TABC").

Talent Tree, LLC. ("Talent Tree") utilizes product demonstrators of alcoholic beverages to advertise and promote purchases of wines, beers, and liquors throughout the state of Texas. These promotional efforts support Texas individuals and companies in the provision of a valuable service whose future seems uncertain due to conflicting requirements of the Texas Alcoholic Beverage Code and the Texas Labor Code.

I would request of the Commission take up the issue identified in the Staff Report with respect to the over-regulation of business practices that create undue burden on the TABC and the alcoholic beverage industry as a whole, and which engender little or no benefit to the public.

Section 201.070 of the Texas Labor Code was enacted to exclude product demonstrators from coverage under the Texas Unemployment Compensation Act.

However, the purpose of section 201.070 to eliminate the requirement of an employment relationship between product demonstrator and companies such as Talent Tree, has been defeated by additional requirements placed on product demonstration companies who serve the alcoholic beverage industry. Because TABC § 1.06 provides for exclusive governance by the TABC of activities involving the manufacture, sale, distribution, transportation and possession of alcoholic beverages, any conflict with the provisions of section 201.070 as applied by the Texas Workforce Commission ("TWC") should be resolved by the TABC. The TWC has denied product demonstration companies these relevant protections and prompted this appeal to the TABC to enact a change or comment to the Texas Alcoholic Beverage Code necessary to resolve this inherent statutory contradiction.

The TWC has taken the position that alcoholic product demonstrators are not independent contractors due to extent that the product demonstrator is not sufficiently free from control by the company as to the location in which the work is to be performed. This position is based, in large part, on the requirements imposed by the TABC and not product demonstration companies such as Talent Tree.

Product demonstrators have exclusive control over their choice of location in any event in which they wish to participate. However, to the extent the location is determined by the retailer's location, such control has been found to remove alcoholic product demonstrators from the protection of section 201.070 of the Texas Labor Code. TABC § 11.06 dictates that the permitting process is generally determinative of the location of the demonstration, specifically TABC § 52.01 is determinative of demonstrations conducted in retail stores in Texas, and Chapter 105 similarly controls hours of operation for any such facility that sells alcoholic beverages to the public.

The result, is that businesses such as Talent Tree cannot comply with both § 201.070 of the Texas Labor Code, while also adhering to the rules and standards set by the TABC. This is most apparent in the interrelation of § 201.070(i)(B)(ix), which requires the demonstrator pay all expenses and operating costs associated with demonstration. The TABC requires that demonstrators be reimbursed for the costs of the demonstrated product and also mandates that the alcoholic beverage products must be purchased from the retailer the same day of the demonstration. Clearly, these conflicting statutes result in an impossible scenario for companies in this industry where these product demonstrators cannot qualify as independent contractors under the TWC's current interpretation.

The ongoing ability to market these alcoholic beverages is critical to the growth of this industry in Texas, and I can only assume that this patchwork of conflicting statutory requirements was not those envisioned by the Texas legislature. Simple changes to the regulation of this practice would prevent the elimination of this valuable marketing tool and allow for the continuation of this well-established marketing segment. Such efforts would address the overregulation considered within the Staff Report and allow product demonstration companies to continue to serve their customers and independent contractors throughout the State of Texas.

TALENT TREE, LLC.

By: ___/s/ Priscilla Hermes _____
Priscilla Hermes, CEO

Any Alternative or New Recommendations on This Agency: NA

My Comment Will Be Made Public: I agree

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMENTS TO SUNSET ADVISORY COMMISSION STAFF REPORT

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TALENT TREE, LLC.

By: _____



Priscilla Hermes, CEO