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The Honorable Brian Birdwell
Texas Senate
Chairman, Texas Sunset Commission
P.O. Box 12068
Austin, Texas 78711

Dear Chairman Birdwell:

We submit for your review the following analysis of the Sunset Report on the Texas Alcoholic Beverage Commission.

While some parts of the report are fair, balanced, and relevant to agency efficiency, we respectfully disagree with a number of points made in the report.

According to the Texas Sunset Commissions website, "Sunset answers a basic question for the Texas Legislature: Are an agency's functions needed, and if so, how can the agency work better and save money for Texans?" In short, the Sunset Commission is tasked with looking at agency efficiency and was never meant to be a method for any industry to use it as a tool to pass policy changes. This extremely important task should be left to the Legislature.

The three-tiered system was established after the repeal of prohibition 85 years ago. The establishment of this system is as relevant today as it was when written. The Texas Package Stores Association cautions against the erosion of the three-tier system in any form. Every word in the Texas Alcoholic Beverage Code was put there by consensus of the industry through the legislative process.

The First amendment to the US Constitution is 227 years old and has never been more relevant. Similarly, simply because the three-tier system has existed for more than eight decades, doesn't mean it is no longer necessary or relevant.

Recommendation

Remove fees from statute to allow TABC to systematically review and adjust license and permit fees on an ongoing basis.

There is no agency efficiency or business reason to adopt this recommendation. Establishment and review of fees, taxes, or fines should be the job of legislators. The Texas Alcoholic Beverage Commission is one of few state agencies that operates in the black every year on the backs of a very healthy and well-established alcoholic beverage industry. Keeping fees in statute creates a

transparent and consistent business environments and prevents the agency from choosing winners and losers. The current fee process ensures a level play field for all involved.

Removing fees from the statute would have little to no impact on agency efficiency.

Recommendation

Streamline TABC's process for approving alcoholic beverages for sale in Texas.

The alcoholic beverage code does not address "private labels" nor does it have anything to do with agency efficiency. The market has dictated the current growth in this segment of the industry and consumers have more choices than they've ever had with beverage alcohol. Label approval should be consistent and easy to understand. Redundancy in label approval from the federal level down to the state level is inefficient. Federal label approval continues to improve and processing times continue to drop.

Recommendation

Make cash payments optional by applying the existing credit law restrictions to beer transactions between retailers and distributors.

This recommendation impacts private business operations rather than agency efficiency. The industry has been working under cash and credit law for years. Changing that now would only serve to disrupt an established business practice that only affects the market – not agency operations.

One of the challenges retailers and wholesalers face are constant changes in the system. Retailers often invest heavily in their billing operations, so any tweaks or changes can cause undo financial hardship.

Compromises in cash and credit law were agreed to between the wholesale and retail tiers. This system in the market is not broken and does not need to be fixed.

Recommendation

Repeal the state's inefficient tax on alcohol imported for personal use and eliminate TABC's ports of entry tax collection program.

Keeping alcohol out of the hands of minors should be the highest priority for our regulatory body and anyone associated with the beverage alcohol industry. Retailers fight this battle every day. Opening our borders for the importation of alcohol is a dangerous suggestion.

With several recent reports of deaths in Mexico from tainted or fake liquor, now is not the time to open our borders for a health threat such as this.

The commission staff recommendation on this issue was based largely on a revenue loss by the State. And while revenue generation is a large part of what the Sunset staff are tasked with doing, there is a larger public safety issue at stake.

Management Action 3.4

Direct the commission to update its existing penalty guidelines to strengthen enforcement against licensees who violate the credit law.


No change to law is needed. Current law already prohibits purchasing the product. The current system continues to provide stability in the market place and should not be complicated by readjusting the penalty schedule.

In Conclusion

We applaud the commission for attempting to reduce and combine a number of licenses. Requiring retailers to obtain and maintain multiple permits under one roof is cumbersome and inefficient.

We look forward to meaningful discussions surrounding the beverage alcohol industry. Thank you for your service to the Great State of Texas.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lance Lively", is written over a horizontal line.

Lance Lively
Executive Director
Texas Package Stores Association