

Tyler Rudd
Central States Counsel

November 14, 2018

VIA EMAIL

Jennifer Jones
Acting Director
Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

Dear Director Jones:

Thank you and your team for producing the Sunset Advisory Commission Staff Report on the Texas Alcoholic Beverage Commission. It is a very thorough and excellent review of the Commission. Wine Institute welcomes the opportunity to comment on the report and appreciates the chance to do so.

Wine Institute is a public policy trade association comprised of about 1000 California wineries and affiliated businesses and is the only group representing the wine industry at the state, federal, and international levels. As the voice of California wines, Wine Institute's mission is to initiate and advocate policy that enhances the ability to produce, promote, and responsibly enjoy wine in each state and internationally.

While Wine Institute appreciates the opportunity to comment on all of the Sunset Staff recommendations, we believe for the sake of brevity that we need only comment on those issues and recommendations that directly affect our members' business. Most of the recommendations will not necessarily have a direct impact on Wine Institute members, and we feel that those that will have an indirect impact are – and will be – deftly handled by the Sunset Commission. That being said, we do want to start by supporting the recommendation to extend the TABC for another twelve years. While it has had its challenges over the many years of its existence, it is the best agency to administer and govern the alcoholic beverage industry.

Recommendation 1.4 – Advisory Committees

Wine Institute has a presence in every state in the United States. Some states' alcoholic beverage regulating agencies encourage and have involvement from stakeholders, while others do not. We applaud the Sunset staff's idea of advisory committees for the TABC, but with too many committees, it might become too cumbersome and bureaucratic for both the TABC and industry stakeholders. Wine Institute suggests one advisory committee that consists of all interested parties, similar to a roundtable, whereby all stakeholders interested in the topics can attend and contribute at the meeting. The Colorado Liquor Enforcement Division of the

Department of Revenue has several meetings throughout the year with all interested stakeholders attending to discuss any new or potentially revised rules. Having one committee similar to the Colorado LED would cut down on the number of different advisory committee meetings and also allow all stakeholders to be involved in an advisory capacity, depending on whether they are interested in a particular rule change or otherwise.

Recommendation 3.1(d) – Denying Labels

Wine Institute supports allowing the TABC to approve all labels, whether wine and spirits or malt liquors, based on the label having received a federal Certificate of Label Approval (COLA) from the Alcohol and Tobacco Tax and Trade Bureau (TTB). However, we do worry that allowing the TABC to deny labels may give them overly-subjective power to deny certain beverages from entering the Texas market.

The example given on the first full paragraph on page 38 is problematic. Sunset staff writes, “For example, TABC must accept and approve wine it considers to be a “private label” product – that produced exclusively for or under the control of a retailer – despite the agency’s position that private labels violate Texas’ tied-house provisions.” For years, the Texas alcoholic beverage market has included private label wine and spirits. The TABC has never declared those as illegal, and neither has the Texas Legislature. What is illegal are products that are distributed exclusively to one retailer, but this has never been the case in Texas. Private label products are – and should be – available from a distributor for any retailer that wishes to purchase those products. For example, Twin Liquors could purchase Kirkland (aka Costco) wine should they choose to. For the TABC to have the ability to deny a label based on something that is not explicitly outlawed in state law creates a problem for any organization wishing to have alcoholic products in the market. Wine Institute is neither for nor against private label wines, but we do want to adhere to laws that are clear and not arbitrarily imposed. For this reason, we ask the Sunset Commission to be very clear and specific about what reasons labels can be denied by the TABC.

New Suggested Recommendation – Easing Licensing/Permitting Process

In recommendation 1.3, the Sunset Staff recommends that the TABC “modernize [its] conflict-of-interest provisions by defining financial interest to mean 1 percent or more in an alcoholic beverage business.” Wine Institute supports this recommendation, but it brings to mind the “one-share rule” that makes applying for, or renewing, licenses and permits very time-consuming and costly, both for stakeholders and for the reviewing TABC.

In an effort to ensure that no licensee has any cross-tier ownership interest (that is, interests between manufacturers, wholesalers and retailers), no matter how remote or attenuated, TABC has begun requiring license applicants to provide it onerous and invasive personal information of people who are – at most – tangentially involved with the applicant. Specifically, applicants must provide TABC the social security numbers, dates of birth, and driver’s license numbers of all officers, directors, and shareholders of any entity throughout the applicant’s entire chain of ownership as a condition to TABC issuing or renewing the applicant’s license.

Collecting the personal information is unnecessary for TABC to determine that no cross-tier ownership exists and possibly dangerous for them in that it puts the agency and the applicant at great risk in the event of a data breach. TABC can easily avoid this risk and fairly ensure that no material cross-tier interest exists without the personal information throughout the applicant's ownership chain—as it had for many years prior. The full name of each relevant person should be enough; and if any doubt about any particular individual develops (*i.e.*, is it the same John Smith), TABC could ask for more specific information at that point and on a case-by-case basis. In short, the personal information TABC collects should be no greater than necessary to achieve its purpose. To our knowledge no other state requires this level of invasive personal information up-and-down the chain of ownership.

Moreover, identifying each and every last person affiliated with complex organizations like publicly-traded companies with countless small shareholders or those with elaborate private equity holdings or family trust arrangements and beneficiaries is an overly-burdensome task for the applicant that far outweighs any conceivable public policy interest the state may have in avoiding vanishingly small and immaterial cross-tier ownership or involvement that cannot fairly be considered unfair competition. Some reasonable threshold of the scope of inquiry should be instituted.

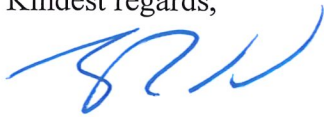
As the Sunset staff recommendation suggests in recommendation 1.3, defining what is “financial interest” will open up the pool for potential appointees to the TABC. If the definition for “financial interest” opens up that pool, then along the same lines slightly broadening the policy of cross-tier ownership would make the licensing and permitting process easier for stakeholders and the TABC. For the sole purpose of easing this process, we ask the Sunset Commission to take into consideration all stakeholders, not just TABC employees and commissioners, when defining “financial interest.” Particularly, we ask Sunset Commission to consider revising the “one-share rule” and instead prohibit “controlling interests” in different tiers. In other words, if a licensee applicant has an owner with a “controlling interest” in that applicant and also a controlling interest in another tier, that applicant would not receive a license (or permit). Stated slightly differently, the TABC could examine the organization to figure out, 1) who has a controlling interest in a licensee, and 2) if any of the persons that have a controlling interest in a licensee in one tier also have a controlling interest in a licensee in another tier. Of course, the TABC would need a clear definition of what a “controlling interest” is, which the Sunset Commission and Texas Legislature could define in statute. Having this flexibility in ownership, but without destroying the prohibition on tied houses, will make licensing less cumbersome for both stakeholders and the TABC. Stakeholders will not have to provide overly-inclusive and personal information, and the TABC will not have to spend as many costly man-hours reviewing all of the data to determine if an applicant has one share in an organization in another tier. For some guidance on “financial interest” and “controlling interest,” Wine Institute suggests the Sunset Commission inquire with the National Conference of State Liquor Administrators (NCSLA) as they have very helpful information on this topic.

Finally, in our technologically advancing world of business, Wine Institute believes there could be an easier way for stakeholders to apply for licenses and the TABC to review the applications, ownership, etc., by means of cloud-based technology. For example, similar to Dropbox, the TABC could have secure files set up for each applicant in which the applicant can upload the

information necessary for the TABC to review the file and application. As changes are made to the ownership of an organization, those changes can be made to the cloud-based file, which will alert the TABC of the changes, who can then investigate the change as necessary. There would be no need for a new application every time the ownership of a licensee or permittee changes, even slightly. We believe technology such as this (or otherwise) can expedite licensing and permitting at the TABC.

Thank you again for the opportunity to comment on the Sunset Commission Staff Recommendations. Wine Institute believes the recommendations and corresponding Sunset Commission review of the TABC will make for a more efficient and effective state agency.

Kindest regards,

A handwritten signature in blue ink, appearing to read 'TRU', is positioned below the text 'Kindest regards,'.

Tyler Rudd
Central States Counsel