

TCBG TABC Sunset Testimony  
*Permit Consolidation/Cash Law*  
December 13, 2018

Thank you, Mr. Chairman and Commissioners. My name is Charles Vallhonrat and I'm the Executive Director of the Texas Craft Brewers Guild. I only want to quickly call attention to several issues that are well-detailed in our December 4 and October 3 letters to Sunset that are not included in the recommendations. We believe it's sensible to address all of these issues as the Commission works through consolidating permits and licenses. I only want to make brief mention of them today for your further consideration.

First, Texas brewpubs are not explicitly authorized to sell their products to qualified entities outside of the state of Texas because of a drafting error in 2013. We view this as a simple matter of cleanup that would eliminate Texas brewpubs' fear of liability if some future administration at TABC were to try their hand at governing lawful transactions occurring in other states.

The second issue arises from confusing guidance coming from the former administration at TABC. In late 2016, manufacturers with multiple license types were told that they couldn't sell two separate types of their own licensed products—beer and distilled spirits, for example—from a common tasting room. The new administration has taken a far more reasonable approach, but the earlier confusion still casts a shadow over this common business practice.

Bills have been filed to resolve both of these issues and died because of opposition from one or both of the wholesalers' groups. We hope that this forum is a good opportunity to ask them to clearly explain that opposition. What we actually understand of it, we believe to be nonsensical and likely motivated by some desire for leverage rather than the public's interest.

Third is the issue of inter-facility transfer of products between separately licensed brewpubs that are under the same ownership. We do understand and are sympathetic to some of the wholesalers' concerns relating to certain retailers like package stores transferring products between locations, as they pertain to quality and product tracking. But please don't throw the baby out with the bathwater because of that.

The current state of affairs for brewpubs with multiple locations is really just a nuisance in the marketplace—these product transfers are usually something like a keg or two, needed to quickly get on tap to meet consumer demand. There's no rational state's interest in prohibiting this and we think it's a simple matter to fix.

Last is cash law. We're open to reasonable compromise with the wholesalers to address this issue, but as detailed in our letters, the current state of affairs is untenable and requires an all-or-nothing approach in order to fix it.

In our view, all of these are simple matters of clarification or cleanup of the law that would create a better functioning marketplace and fewer headaches for manufactures and their regulators alike.

Thanks for your time and I'm happy to take any questions you might have.



Charles Vallhonrat  
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Austin, TX 78701

December 4, 2018

Jennifer Jones  
Acting Director  
Sunset Advisory Commission  
P.O. Box 13066  
Austin, Texas 78711

Dear Ms. Jones,

We appreciate Sunset staff's hard work on their review of TABC. We substantially agree with the recommendations made in your report and applaud the efforts to streamline and modernize a Texas Alcoholic Beverage Code that, for its own continued operability, requires a great deal of change. To be perfectly clear, Texas craft brewers believe that if the Code isn't substantially updated to reflect the obvious realities of the 21<sup>st</sup> Century marketplace, it will eventually die of its own weight and old age.

For purposes of brevity, this letter will only respond to the recommendations made in Sunset's report. For purposes of clarity and transparency, we have also attached our previous letter to Sunset staff that fully outlines our starting position on this process. If we have any criticism of Sunset's work, it is only that it still doesn't go far enough. Our October 3 letter will elucidate that.

**Issue 1: Texas has a continuing need for TABC, but a weak Commission limits its ability to effectively oversee and the regulate the alcoholic beverage industry.**

Texas craft brewers strongly support continuing TABC for 12 years and maintain that, since the new administration was seated in 2017, the main problem facing the beverage alcohol industry in Texas lies in a byzantine and outdated Code, not with the regulatory body charged with enforcing it.

We believe that updating the conflict-of-interest provisions is a sensible and harmless change that would likely broaden the field of qualified applicants and allow for more real-world perspective.

We do not take a position on the remaining recommendations and defer to the good judgment of the Sunset Commissioners.

**Issue 2. TABC cannot efficiently regulate the alcoholic beverage industry without modernizing the state's byzantine licensing system.**

We could not agree with the sentiment described above more fully. You'd be hard-pressed to design a system of licensing *and* permitting (a difference without a distinction; see also "synonyms") that is



a bigger bureaucratic time suck both to Texas's small manufacturers and their regulators than the one we are operating under today. It serves no public interest and begs to be fixed.

We substantially agree with Sunset staff's recommendations as to how to accomplish this. But we would encourage taking this opportunity of consolidating rights and duties to also offer clarity on the issues of inter-facility transfer, common tasting rooms, and brewpub out-of-state shipping as addressed in our original letter (attached). These are all innocuous policy matters that will save small businesses a great deal of hassle and uncertainty while also mitigating Texas's—and its taxpayers'—potential liability to more needless court challenges.

We enthusiastically support the recommendation for eliminating the antiquated distinction between beer and ale. We look forward to working with Sunset commissioners, the Legislature and relevant *cooperating* stakeholders to sensibly implement this.

Finally, we are sympathetic to TABC's concerned response to this issue as outlined in their November 14 letter to Sunset. To that end, we are fully supportive of the appropriation of funds needed to bring their technology systems into the 21<sup>st</sup> Century.

### **Issue 3. Over-regulation of certain business practices creates burdens on TABC and the alcoholic beverage industry with little public benefit.**

This is same song, second verse of Issue 2, above. We could not state our general position any more clearly than Sunset staff already has in their description of the issue: current over-regulation is creating senseless burden to the end of virtually no public benefit.

Texas craft brewers applaud the recommendation of streamlining label approval. We would encourage an approach like the one outlined in our October 3 letter. Another specific recommendation not detailed in our original letter is removing the requirement of label approval of small-run beers that will only be served in breweries taprooms. It's absurd requiring label approval for products that don't actually have a label.

As always, we are open to reasonable compromise on our recommended approach but see no reason as to why beer—"the beverage of moderation"—ought to be treated more restrictively than its more intoxicating counterparts, wine and distilled spirits. On this recommendation, we'd also go a step further than Sunset staff to say that the status quo is actually worse than offering "little public benefit." The current delay-laden system actually slows conveyance of our product to our distribution and retail partners and, worst, frustrates consumer demand by depriving the market of timely product releases and fresh-as-possible beer.

We agree with Sunset staff's sentiment that cash law for beer only is problematic, but for different reasons. Current law creates a *de facto* tier issue, as explained fully in our attached letter. We believe the Sunset Commission should resolve this issue by creating cash law on both ends of the value chain or abolish it completely. We have argued vehemently before that government shouldn't be in the place of dictating contract terms between willing, private parties, so we can see this issue round



or flat. But if you see fit to try to maintain the law as is, at least fix it to the point of fairness, equality and uniformity to the orthodoxy of the Code.

On the issue of eliminating outdoor advertising requirements, we understand certain communities of interest concern on this issue. We have no position on this recommendation at this time and defer to the good judgement of the Sunset Commissioners. We will comment further if necessity dictates.

**Issue 4. TABC’s protest process needs a complete overhaul to meet basic transparency, accountability, and fairness standards.**

We support this recommendation. The new administration at TABC has made great strides toward creating a more transparent, even-handed agency. But a better formalized process would be helpful to continuing their success and would benefit the TABC of the future. We would note that the proposed flowchart on page 49 of the Sunset Report is substantially similar to that of many other state agencies. Craft brewers support reforms such as this one that bring the regulation of the marketplace more in-line with that of other major industries around the state.

**Issue 5. Several TABC enforcement practices do not follow common standards, limiting regulatory efficiency and effectiveness.**

The Texas Craft Brewers Guild, through its health, safety and regulatory compliance initiatives, has made great strides toward making the consideration of enforcement a moot point for the great share of its 293 members. Despite the large number of licenses and permits that our membership represents, we account for a remarkably small share of the time and taxpayer expense associated with enforcement actions. Dating back to 1994, TABC has only cited manufacturers for 86 violations. We believe this a remarkable success for our industry. We would also point out that this number is orders of magnitude smaller than the number of penalties levied during that same period against our friends in another tier—the same friends who are wont to portray craft brewers as some existential threat to a safe and orderly market. We are proud to have our own house well in order and are working every day to improve even further upon this current state of affairs.

The above is all to say that craft brewers support and depend upon a safe, effectively regulated marketplace and the enforcement actions required to maintain it. To that end, we are substantially supportive of Sunset staff’s recommendations.

We agree with TABC’s concern on 5.1 relating to the efficiency of requiring physical inspections of all licensed premises. As we’ve alluded to before, we support technology upgrades that save money and staff time while simultaneously keeping armed TABC agents from needless site visits. These routine visits aren’t the best use of TABC’s time or that of the businesses which they regulate and, while harmless, they’re still disruptive to regular business. There’s a better way of doing this through technology—as advocated for by TABC—and we applaud their modern-day idea of a “compliance reporting” model.



Regarding 5.3, we are sympathetic to Sunset staff's intentions on allowing consideration of profits when assessing penalties. However, in the past, and not under the current administration, certain of our members have been coerced into needless settlements simply because the cost of protest was greater than the cost of resolution. We'd encourage thoughtful consideration of the implication of right-sizing fines in order to force settlement in a false case. With that said, we are also hopeful that a properly run and overseen TABC will avoid this type of financial manipulation in the future and will only pursue enforcement actions that are well-warranted.

**Issue 6. The high cost of collecting alcohol import taxes at the border outweigh the negligible public safety benefit.**

We have no standing to comment on this issue.

**Issue 7. TABC's statute does not reflect standard elements of Sunset reviews.**

We support these recommendations and believe the new administration at TABC is already making good strides toward ensuring an open, responsive and effective government.

**Conclusion.**

Texas craft brewers commend Sunset staff for their hard work at streamlining and modernizing the Texas Alcoholic Beverage Code and the TABC.

We do hope that, in addition this letter, you'll also review our October 3 letter to Sunset staff in order to more fully understand our starting position. We continue to believe that more can be done through the Sunset process to modernize our embarrassingly outdated and byzantine Alcoholic Beverage Code. As always, we are open to compromise with relevant stakeholders to accomplish that and we look forward to accomplishing even more as we continue through this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Vallhonrat".

Charles Vallhonrat  
Executive Director

Enclosure

Cc: Sunset Commissioners



October 3, 2018

Texas Sunset Commission  
Ms. Emily Johnson  
Senior Policy Analyst  
1501 North Congress Avenue  
Austin, TX 78701

Dear Emily,

Thank you for the time and attention that Sunset has paid already to the Texas Alcoholic Beverage Commission (TABC) review. As you know from our other communications, the Texas Craft Brewers Guild (TCBG) is hopeful that this process can begin to modernize and streamline alcohol regulation to a place that is, at once, practically discernible and no longer a major impediment to the 21<sup>st</sup> century Texas marketplace. This is a very tall order, as you're already aware.

For purposes of clarity, this letter will begin by addressing certain of the "Major Issues" raised in TABC's Self-Evaluation Report. After that, we will delve into our own recommendations that we believe may fit inside the mission of the Sunset Process.

Issue 1: Definition of "engaged in business"

We agree with TABC's assessment that "[m]odern day investment strategies" have changed greatly since the inception of Texas's three-tier-system and its tied house provisions. Most of the discussion that has played out around *de minimis* has focused on major corporate concerns and investments in securities such as REITs and corporate equities, however. This discussion is germane to many investors in craft breweries and we welcome the opportunity to modernize a one-share rule that has been ambiguously construed at different times by different TABC administrations, and has ultimately proven to be demonstrably unenforceable. Whether or not the law is enforced, commonly understood, or agreed upon is irrelevant to the outcome that confusion surrounding it still discourages efficient capital investment and growth in all three tiers. This slower growth may benefit certain entrenched market participants, but it's bad for the marketplace and the Texas economy as a whole.

Now more than ever before, Texas's small breweries are dependent upon dollar raises from broad classes of small investors. HB 3287 (85R) has substantially harmed the marketplace for and valuation of Texas's craft breweries. Because of this, institutional investment, large cap investment, venture capital, and bank loans are all harder to come by when these small businesses look for capital to grow. When there still are takers in this arena, brewers are knee-capped by confusion as to the valuation of their taprooms; resultant lower valuations; and, finally, worse terms than they would have received in a more certain (better) marketplace. (We will re-address HB 3287 more fully later in this letter.)

So craft breweries are increasingly looking to mom-and-pop investors to get their businesses started and to fuel their growth. These mom-and-pops are often literally "Mom" and "Pop," family,



personal networks, and crowd-funding. This model isn't inherently bad; in fact, we could make the argument that large classes of small investors actually create much greater independence for a small business. But, under the current regulatory scheme, it also creates new dimensions of complication for these businesses and the TABC, not even to mention the exponential volumes of licensing paperwork and staff time.

We do understand certain stakeholders' paranoia surrounding the discussion of this issue. In our view, the haphazard current scheme imperils businesses in every tier which makes opening the issue to discussion frightening. But creating a sensible working understanding of "tied houses" is fundamental to the proper functioning of a three-tier system.

Texas craft brewers commend a deliberate approach to addressing these issues that values small business and big business equally. We will urge an approach that acknowledges the reality of market power. Only for example: does a 25% investment from a passive investor in a business with regional market share that is less than, say, 1% even create the credible potential for market manipulation? We would argue probably not. Bearing this in mind, we believe that TABC and the Legislature should wrestle with creating a system that is substantially similar to that of other regulated industries. But the *status quo* whistling-past-the-graveyard regulatory scheme isn't ideal.

#### Issue 2: Non-licensed, direct-to-consumer delivery services

We've said before and we'll say again: It's illegal to do that which is already illegal. Stipulating that, the presentation of this issue concerning "non-licensed" services seems to simply beg for enforcement rather than clarification.

That understood, we do understand the value of direct-to-consumer delivery services, and we believe that they're a big part of the future of the industry. As such, we'd like to see them sensibly regulated and enabled to grow. There's obvious potential for tied house and market power abuse where this is concerned. We believe that this concern is probably a symptom of the larger disease described under Issue 1, however. If the TABC had a coherent body of law to start from, the regulation of market innovators would be a lot smoother and more adaptive.

#### Issue 3: Case management system

Texas's craft brewers support the modernization and, in some especially sad cases, the digitization of TABC's record-keeping and case management systems. This is a simple matter of cyber-security risk management and the basics of how a state agency can enable the businesses it licenses and regulates to function and grow.

We support a Sunset recommendation that gives further profile to this issue. Past that, it's likely a matter to be settled by appropriators.

#### Issue 4: Volume discounting and excessive discounting

This is a major market trend that our members have observed firsthand. You don't have to be a very savvy beer-consumer, at this point, to look at certain tap walls and see how, to quote TABC's self-



evaluation report, “discount practices are inappropriately being used to control the pricing and distribution of certain alcoholic beverage products.”

Again, we believe this is only a discussion of a symptom of a larger disease. But if the Texas three-tier system actually exists to have anything to do with “ensuring fair competition,” (which is a big open question unto itself, in our view) then that requires clear understanding of the law and regular enforcement of it.

Further, if the Legislature sees fit to shore up TABC’s ability to deal with coercive market practices, we might suggest looking at allowing them to punish them as a form of “market manipulation” or as “abuse of market power.” Basically, we feel that it’s appropriate, if the state is serious about treating the alcoholic beverage industry as other more commonly understood regulated industries, then we ought to look into appropriating commonly understood nomenclatures and regulatory schemes. Again, there are examples of how these practices are regulated throughout other Texas statutes and the Texas Administrative Code.

#### Issue 5: Cross-tier violations

We understand the genesis of this issue as detailed in TABC’s report, and that this recommendation not directed at breweries and brewpubs. That said, again, this issue points back to a poorly constructed and commonly misunderstood Code. As always, we’d encourage an approach that cures the disease rather than individually triages its symptoms.

We’re hopeful also that technology upgrades might create a better record-keeping system that would enable enforcement actions. We are supremely confident, however, that the current “complaint-driven” protocol is substantially adequate to policing the real bad actors in the marketplace.

#### Issue 6: Private/Control labels-prohibition or authorization

Again, this recommendation isn’t directed at breweries. But we commend an approach that preserves the current rights enjoyed by Texas manufacturers.

#### Issue 7: Outdoor Advertising (disparate treatment of liquor and beer)

We are fully supportive of our retail partners enjoying clear, across-the-board direction as to how they may help market our products. As always, we’re also sympathetic to TABC’s argument that this would allow their personnel more time to focus on more substantive issues.

#### Issue 8: Destruction of disallowed or illicit alcoholic beverages [at ports]

We have no position on this issue.

#### Issue 9: Common tasting area for manufacturing tier

The confusion as to whether the holder of separate types of manufacturer-tier permits may market those products, which they may already legally sell on (and in certain cases, from) their premise,





from the same tasting room is a textbook example of what's wrong with the regulation of alcoholic beverages in Texas and wastes of TABC's time.

To our knowledge, this had never even been considered until—in late-2016—the past regime at TABC began indicating to manufacturers in some parts of Texas—though not others—that this was, in fact, illegal. Representative Morrison filed HB 3089 last session to clarify that these businesses don't need to go to the absurd length of building a separate facility for the marketing of their own products on their own premises. As alluded to in TABC's report, distributors' groups signaled their opposition to this bill by dropping cards in opposition to the bill in House Licensing, but without offering actual testimony to elucidate their position.

Fast forward to the current leadership at TABC, and the indicated confusion as to whether these small businesses should be forced to endure this type of bureaucratic nit-picking has ceased. Whether that's because they decided to prioritize real enforcement activities or because they chose to read the law in a way that's not naturally assumed to be harmful to businesses is irrelevant to the fear and ambiguity that continues to exist due to the actions of the prior administration.

Being that this has become a defined issue, for whatever reason, we urge simple clarification of the law along the lines of Representative Morrison's proposal.

#### Issue 10: Authority of auditors to seize illicit alcohol beverages

There is division amongst our membership on this issue. We commend ideas that create a more efficient TABC and a safer marketplace. However, it is a common complaint (not just from craft brewers) that the optics of armed TABC auditors visiting licensed premises is not good for business. We understand that many of TABC's technology upgrades will save staff time and negate the need for certain site visits. That will go a long way toward addressing law-abiding licensees' business concerns. Otherwise, we'd encourage continued dialogue with the Commission on how, when and whether visits from armed agents are actually necessary and appropriate.

We do understand the specific issue raised by TABC's self-evaluation recommendation and we're sympathetic to it. The issue is that it bleeds into this other concern that arises from time to time. We do believe that the new leadership at TABC is already mindful of that and we only hope to continue building upon that awareness.

#### Issue 11: Repeal of blue sign

We support TABC's recommendation as it eliminates redundancy and streamlines the law.

#### Issue 12: Cybersecurity

The current state of affairs at TABC on cybersecurity is untenable. They are being asked to protect the personal information of their licensees and personnel with, in some cases, decades old technologies.

This is a matter to be settled by appropriators, but we urge Sunset to call attention to the issue.



### Issue 13: Modernization of legacy regulatory licensing system

The same as with cybersecurity, TABC is being asked to regulate a 21<sup>st</sup> Century marketplace with a piecemeal array of 20<sup>th</sup> Century tools (and laws, we will add).

We urge Sunset to call attention to this issue as well.

### Issue 14: Criminal history checks

This is another matter dealing with inconsistencies across the Code. We encourage Sunset to make recommendations that clarify the law and eliminate pointless confusion for industry stakeholders and TABC staff alike.

### Issue 15: Number of licenses and permits

The number of needless and duplicative licenses and permits is another obvious example of what's wrong with our Alcoholic Beverage Code—and eliminating a lot of them would be a good starting place as we work toward creating a 21<sup>st</sup> Century regulatory model. Consolidation would also eliminate a huge amount of needless confusion, bureaucracy and paper-pushing at TABC. That same relief would be enjoyed by Texas businesses that could, in turn, focus more hours on improving their bottom-lines and less time worrying over, often, needless or redundant regulatory compliances.

Certain Texas craft breweries hold as many as 14 separate licenses and permits due to local, state and federal requirements. The state of Texas could do its part to make the lives of its small businesses a little easier by consolidating Manufacturers Licenses and Brewers Permits into one permit. We can imagine no reason why the State of Texas has a real governmental interest in perpetuating a regulatory scheme that creates its very own (false) dichotomy between two products that are effectively the same, except one is greater than 4% alcohol-by-weight (ABW), ale, and the other is less than 4% ABW, beer.

We are working with our membership to create suggested language that addresses this consolidation in the cleanest, most permissive ways possible. We will provide that language to you as soon as possible.

In the meantime, we strongly urge you to profile this issue in your staff recommendations.

### Texas Craft Brewers Guild Sunset “Wish List”

Below, we will outline several issues that the Texas Craft Brewers Guild believes could be addressed through the Sunset process. We understand and are sympathetic to the Sunset Commissioners' hope that the process will deal with the “form and function” of the TABC. All of these recommendations would streamline the law; reduce needless burden on TABC staff; encourage responsible growth of the Texas alcoholic beverage industry; and could avert the threat of even more unnecessary litigation and its real cost to Texas taxpayers.

### Brewpub Out-of-State Shipping



(See also, SB 1642 by Watson (85 R), SB 1652 by Eltife (84R)— Under current law, brewpubs may produce 10,000 barrels of malt liquor, ale, and beer per year and then sell their product directly from their premises to consumers. They may also sell their product to Texas distributors, and Texas retailers in certain situations. The current statute, however, does not explicitly allow (or, for that matter, prohibit) Texas brewpubs to sell their product to qualified out-of-state entities. This omission creates a potential conflict with the commerce clause of the United States Constitution because out-of-state brewpubs can sell to Texas distributors. In other words, current law does not explicitly allow Texas brewpubs to do in other states what out-of-state brewpubs may do in Texas.

There has been no enforcement related to this issue with the law. We're also unaware as to how that would be practicable if TABC chose, for some reason, to try. TABC can't govern lawful transactions in other states. This needless confusion as to the law, at worst, creates a chilling of the marketplace where Texas businesses might choose not to grow to new markets out of fear borne of ambiguity in the law. At best, those that have chosen to export their Texas-made products to legal out-of-state partners, are operating in a needless gray area of the law, and, in turn, under needless potential risk and paranoia.

#### Inter-Facility Transfer

Again, this is a matter of ambiguity in the law. We simply do not clearly understand whether the holder of a brewpub license may transfer their own product to another of their own separately licensed premises. Current TABC guidance tells us that brewpubs likely can't engage in this activity. The law certainly doesn't explicitly permit it. But, again, this confusion chills the marketplace for no discernible reason and creates an unreasonable burden to commerce.

We are hopeful that the Sunset process might create an opportunity to eliminate another ambiguity as to when brewpubs are treated as "manufacturers" as opposed to "Retailers," as they're actually defined in the Code. We will also note here that we maintain some hope that this is an issue that might be simply resolved at the Commission level by rulemaking or Marketing Practices Bulletin.

As a separate matter, while manufacturing breweries may lawfully *transfer* products from one licensed premise to another for purposes of abetting distribution, there is ambiguity as to whether they may *serve* that same product in their taprooms. Explicitly allowing licensed breweries to serve their own products in their own taprooms strikes us as another sensible clarification to the law that could be accomplished under the Sunset process.

#### Label Approval Streamlining

In Texas, wine and distilled spirits don't require state label approval. Beer and ale, however, somehow have warranted their own discrete label approval process. This standalone requirement necessitates a lab, a chemist and additional staff at TABC. Over just the past few years, the growth of participants and the overall number of brands in the marketplace and the ensuing number of label approval requests has swamped the TABC. They've made many starts at addressing label approval wait times that, at times, have stretched out for as long as seven weeks. None of those efforts have amounted to long-term relief or a reliable regulatory partnership.



Ultimately, this is a needless process requiring a lot of human and financial resources that could be simply eliminated by conforming it to the same label approval process that is required for wine and distilled spirits. Did you know that you can get a permit-by-rule from TCEQ to transport yellow cake uranium in Texas? Let's try something like that out for beers, too, if they already have a Federal Certificate of Label Approval (COLA), which typically take less than a week to acquire from TTB. For beers that haven't received a Federal COLA, a file-and-use state label approval system would be a sensible alternative to the current one. Finally, the practice of requiring individual label approvals for different sized containers is redundant and another place where staff time could be saved at TABC and red tape could be eliminated for brewers, large and small.

Amend ABC Sec. 11.01(c)(3).

Under past administrations at TABC, we have experienced confusing, if not selectively convenient, use of the provision: "An act done by a person which is not permitted by this code is unlawful." We believe the Commission should have reasonable latitude when it comes to enforcing provisions of the code. This particular provision has been invoked both as a shield and a sword when it comes to questions of interpretation of some of the more confusing, if not contradictory, provisions of the law.

Read in its most direct form, this language supersedes TABC rulemakings and advisories: if it's not *in* the code, it's unlawful. Even as the law has been actually read over the years (that is to say "only sometimes"), members of all three tiers still should regard it as a potential liability to their businesses.

The change below would cleanly resolve this issue:

(c) A right or privilege granted by this section as an exception to manner provided. ~~An act done by a person which is not permitted by this code is unlawful.~~

Repeal HB 3287 (85R)

We urge you to read or re-read HB 3287 and try to make sense of it for yourself. (See attachment.)

At its best, it's badly confusing law that devalues Texas breweries by creating extreme legal confusion for potential lenders, purchasers, or investors, while, in the end, accomplishing nothing else in practice except for subjecting Oskar Blues to the dock bump tax.

At its worst, it's badly confusing law that devalues Texas breweries by disallowing the on-going operation of their taproom in the event of certain transactions (unless those breweries were grandfathered from the bill). If this is the case, the State of Texas will in all likelihood be sued, as usual, as a proxy defense for members of its middle-tier. This cost, as usual, will be paid in taxpayers' dollars and staff time at the OAG and TABC.



Now, set aside the issue of the Texas government devaluing its own breweries, attempting to govern out-of-state businesses (which it can't), and the general chilling of the marketplace. We can accept those as policy determinations made, largely due to confusion, on the part of the last Legislature. The fact still remains that this law is almost objectively indecipherable and the reading of it could change tomorrow as fast as the name plate outside of the TABC General Counsel's door. If the function of Sunset is to limit unnecessary costs and Commission staff time constraints owing to poor construction of the law and foreseeable legal problems, urging the outright repeal of HB 3287 would be an easy first place to start.

### Reform Cash Law

We are aware of the disparate treatments of cash law in the code. We generally believe that the imposition of cash law has done a great deal to eliminate coercive business practices that are observable in other parts of the Texas market where it does not exist. Insofar as this is the purpose of the three-tier system, cash law works.

However, there is one major flaw in beer cash law as we see it. The existence of law requiring net-zero payment terms on one end of the value chain (wholesaler to retailer) but not on the other (brewer to wholesaler), potentially creates a *de facto* tier issue. If the manufacturer is extending payment terms to their wholesale partner and those terms extend beyond the period of conveyance to retail, with cash on the barrelhead, then the manufacturer is providing credit, a thing of value, to their wholesale partner. Payment terms (*e.g.*, net 30) are relatively common between smaller brewers and wholesalers by contract. Subsections (a), (b), (f), (g), (h), (i), and (j) of ABC 102.01 could all potentially be read in conflict with this current circumstance. Conversely, ABC 11.01(c)(3) dictates that, elsewhere in the code, it should be explicitly authorized for a manufacturer to extend payment terms to a wholesaler and for a wholesaler to accept them in order for that practice to be lawful.

Cash law should require an all-or-nothing approach. In practice, craft brewers want it maintained, but we urge an approach that resolves the existing problems with the law.

### Beer To-Go

TCBG's position on the prohibition on the sale of beer for off-premise consumption ("beer-to-go") is well-known. Whether this issue falls under the umbrella of Sunset is at your discretion. We would only point out that insofar as Sunset is concerned with eliminating ambiguities between separate classes of manufacturers, the disparate treatment of Texas breweries is a screaming outlier in the Texas marketplace (brewpubs, distilleries and wineries may all sell to-go) and in the rest of the United States, with Texas being the only state not to allow its breweries this simple right.

### Conclusion

One theme to TCBC's "Wish List," if it is not already obvious, is that the Alcoholic Beverage Code is so poorly drafted and cobbled together, that too often the TABC is forced to selectively ignore the law in order to allow the marketplace to even function. And when the laws are challenged in court, regardless of who prevails, the courts either shrug their shoulders and admit the law doesn't make any sense, or twist themselves into pretzels to find a holding that allows the law to be enforced as written. Continuous court challenges needlessly use up limited state and private resources when a



more clearly written and equitable Code could solve many of these problems before they wind up in court. We urge Sunset to take this opportunity to put a stop to the whistling-past-the-graveyard approach of abdicating the role of the Legislature to the Courts—while passing the bill off to Texas taxpayers.

Above all, this confusion is all due to decades of (mostly) benign neglect and the Legislature's (understandable) aversion to wading into the political mess of creating a workable, coherent, 21st Century regulatory structure. Texas's craft brewers urge you to take bold action to fix the laws in a way that allows all participants in the Texas beverage alcohol marketplace to grow, innovate and operate in good and simple faith. The status quo is a sad outlying example of one area of Texas law that needlessly hampers and over-regulates Texas businesses and stifles the state's economy.

Thanks for your time and hard work on this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Vallhonrat". The signature is stylized and cursive.

Charles Vallhonrat  
Executive Director

Enclosure