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

Dear Ms. Jones:

My name is Howard Wolf, and I served as the Senate Public Member of the Sunset Advisory Commission for the 79th Legislature in 2005, and for the 80th Legislature in 2007. During my service on the Commission, one of the more controversial items that was addressed was a review of the Texas Alcoholic Beverage Commission (TABC). In that connection, I testified before the Commission as a member of the public and recommended important, significant changes to the Alcohol Beverage Code, which were ignored. As a result of my service in 2005 and 2007, I authored and submitted a paper informally entitled "Lions of the Serengeti", in which I detail my firsthand experience of the resistance to reform of the Alcoholic Beverage Code, and the TABC. Attached. Since that time, I have followed, at a distance, further attempts to reform the alcoholic beverage regulatory regime. While some attempts have been successful, others have failed, and sometimes additional burdens have been placed on the industry.

I am submitting these written comments to once again urge the Sunset Advisory Commission to take this opportunity to modernize the alcoholic beverage regulatory system in a way that benefits both the industry and the consumer. At the hearing of the Commission held on December the 13th, the TABC was once again the subject of Sunset review. In connection with this review, several things were addressed that I believe should be given further consideration. The purpose of this communication is to point these out to the appropriate people. Two issues were discussed, and one was not:

1. Repeal of HB 3287 (2017)

When I learned of this bill in 2017, I came to the Capitol to testify against it at a public hearing, only to find that public testimony on the bill was closed. Whether public testimony should not be received at public hearing is a subject for another day, but this bill was nothing more than a punitive action against the craft beer industry. I am not a

beer drinker, craft or otherwise, but I do not believe one sector of *any* industry should be penalized just because it is small. If I was the proprietor of a small business, I would want the government to stay out of my way so I could have the best opportunity to grow it and take qualified investment from whomever I chose or sell it to the highest bidder without government interference. When it comes to the alcoholic beverage industry, it appears to the casual observer that Texas is only open for incumbent businesses, not small, start-up businesses. I understand this original intent of this bill was in response to two craft breweries being purchased by "big beer", yet I do not recall any such response by liquor wholesalers, or the Legislature, when locally-owned Deep Eddy Vodka was purchased by an out of state liquor company a few years ago.

2. Cash Law

In 2007, I proposed the abolition of cash law, along with the other public member at the time, as a New Issue (detailed in the attached Position Paper). Requiring retailers to pay distributors at the time of delivery, whether in cash, by check, or electronically serves only one purpose: to benefit beer distributors. As the Sunset Staff appropriately points out, cash law only applies to beer, not ale, not wine, or not spirits. And yet the wholesalers of ale, wine, and spirits somehow manage to survive, and thrive. I did not see this as a beneficial public policy in 2007, and I still fail to see how this provision of the law benefits the public or the State of Texas. Further, "cash" payment is only required on one side of the transaction—upon the sale of beer from a distributor to a retailer, but not when a distributor picks up beer from a brewery. Whether distributors pay cash to breweries or not, again should not be any of the state's business, but if a distributor's contract with a brewery has a 30-day payment period, the distributor can take delivery of beer and sell it the next day for immediate payment while the brewery has to wait for 30 days, or whatever contractual term specifies. Whether it's a cash transaction, or a credit transaction, the state should not be in the business of dictating such detailed terms of transactions between private parties, and if the Legislature continues to believe it should dictate the terms, it should not be one-sided.

3. Franchise/Fair Dealing Law

Franchise law is not addressed in the Sunset Staff Report, nor was it discussed at the hearing last week. At least not to my knowledge. However, as franchise law relates to beer, I find this to be one of the most offensive portions of the Alcoholic Beverage Code for the simple reason that the statute basically creates a marriage with very little possibility of divorce, whether for cause or through no-fault. The "Beer Industry Fair Dealing Law" is likely the greatest misnomer in statute today. This bill was passed in 1981 (SB 720/HB 1469), after similar legislation was proposed in Congress, but was opposed by the Federal Trade Commission and the Antitrust Division of the Department of Justice. Again, no such "Fair Dealing Law" exists for wine or liquor, and yet wholesalers of wine and liquor manage to survive. Perhaps liquor wholesalers are properly incentivized by market forces and competition to serve their customers by the fact that distillers and

wineries can more easily change wholesalers if their needs are not being met. The same is not true for breweries; those business relationships are strictly governed by statute for no other reason than many others in the Code: economic protectionism.

Finally, there was much discussion at last week's hearing, as there was in 2006 and 2007, of what is, and what is not, the purpose of a Sunset Review. The Sunset Review Act was passed in 1977 to require the Legislature to undertake a periodic and wholesale review of almost every state agency in order to better serve the citizens of the state of Texas. The Commission should, in my opinion, take this opportunity to recommend ways to make the Code, and therefore, the TABC, more efficient and responsive to the industry as well as the responsible consuming public.

In 2007, the Advisory Commission would not even adopt a recommendation to establish a joint interim committee to review and rewrite the Code. That recommendation is not included in the current Sunset Staff Report, but a shorter Sunset review period was discussed on December 13th. I agree with the Chairman's proposal, but I also agree with former TABC Commissioner and Chairman Allan Shivers's recommendation from the 2004/2005 TABC Sunset Review that there should be a sunset provision that applies to the Alcoholic Beverage Code itself, so that it can be rewritten in its entirety in a way that is "clear and understandable and simple".

Thank you for your consideration of these matters. Feel free to contact me if you have questions or would like additional information.

Sincerely,

A handwritten signature in cursive script that reads "Howard Wolf". The letters are fluid and connected, with a prominent loop on the 'H' and a long tail on the 'f'.

Howard Wolf

Attachment