

# Texas Alcoholic Beverage Commission

**Bill Number: H.B. 1545**

**Bill Author: Paddie (Birdwell)**

**Staff Contact: Emily Johnson**

## Continue

- Continue the Texas Alcoholic Beverage Commission (TABC) for 12 years.

## Governance

- Expand the Alcoholic Beverage Commission from three to five members.
- Modernize TABC's conflict-of-interest provisions by defining financial interest to mean a cumulative 5 percent or more in alcoholic beverage businesses. Prohibit a TABC employee or commission member from being employed by an alcoholic beverage business or having a financial interest in one or more alcoholic beverage businesses, and prohibit their spouse or dependent child from having a financial interest in one or more alcoholic beverage businesses.
- Authorize the commission to establish advisory committees by rule.
- Direct the commission to establish advisory committees to provide expertise for rulemaking and other issues, and to adopt rules regarding standard committee structure and operating criteria. (Management action – nonstatutory)
- Direct TABC to evaluate and address gaps in its rules. (Management action – nonstatutory)
- Direct TABC to update its rule describing the separation of duties between the commission and executive director. (Management action – nonstatutory)
- Establish the prevention of human trafficking at all permitted and licensed locations is a TABC duty and priority.
- Restrict the release of personnel records of commissioned TABC officers involved in an open internal investigation.
- Authorize TABC to receive market data from a licensee or permittee so the receipt does not result in a violation of the Alcoholic Beverage Code. The licensee or permittee may voluntarily provide the information, which may only be used for law enforcement purposes. Authorize TABC to review such information, but prohibit the agency from creating a database of information containing individually identifying information.
- Direct TABC to make meeting materials and recordings available online. (Management action – nonstatutory)
- Update the standard across-the-board requirement related to commission member training.
- Discontinue the requirement for TABC to prepare a limited report on after-hours violations.

- Update the agency's statute to reflect the requirements of the person-first respectful language initiative.

## Licensing and Permitting

- Streamline the state's alcoholic beverage licensing system by reducing the number of licenses and permits to provide regulatory clarity and administrative efficiency, as follows:
  - a. Combine primary and subordinate licenses and permits
  - b. Eliminate agent licenses and permits. As part of eliminating agent licenses and permits, ensure the statutory language does not change the current statutory liability of employers of agents
  - c. Combine temporary event permits and licenses
  - d. Combine passenger transportation permits
  - e. Combine late hours licenses and permits
  - f. Eliminate obsolete licenses and permits
- Modernize Texas' regulation of malt beverages by eliminating distinctions between beer and ale. The recommendation would include the key elements below and apply the Alcoholic Beverage Code's provisions for beer to all malt beverages in the event of inconsistencies in statutory provisions for beer and ale that are not explicitly addressed:
  - a. State excise taxes. Apply the lower beer excise tax rate to all malt beverages.
  - b. Application protests. Require the State Office of Administrative Hearings to conduct all hearings related to protests of malt beverages.
  - c. Marketing regulations. Apply the current more restrictive beer marketing laws and regulations to all malt beverages.
  - d. Retail payment oversight. Apply the existing requirement that retailers pay cash for beer to all malt beverages.
  - e. Storage. Apply the current authority for beer manufacturers to store beer anywhere in the state to all malt beverages. Prohibit manufacturers and distributors from serving malt beverages at a storage warehouse and require them to register warehouses with TABC.
  - f. Transportation. Apply the current authority for manufacturers and distributors to transport beer statewide to all malt beverages.
  - g. Hours of distribution and sale. Apply the current authorized hours for distribution and sales of beer to all malt beverages.
  - h. Alcohol content. Consistent with other kinds of alcoholic beverages, require all malt beverage product labels to display the alcohol content.
  - i. Package stores. Authorize package stores and wine only package stores to purchase and sell all malt beverages with one permit instead of two, and clearly authorize package stores with a local distributor's permit to purchase malt beverages from distributors and distribute them to bars, restaurants, and private clubs.

- j. Grandfather beer-only local option areas. To avoid constitutional conflicts with local option election results, grandfather approximately 355 retail locations into the new system.
- Authorize small brewers and manufacturers to sell malt beverages for off-premise consumption, not to exceed 288 fluid ounces (approximately one case) per day per consumer, and exempt them from getting label approval from TABC for beverages they sell direct to consumers for on- and off-premise consumption.
  - Raise the cap on the number of package store permits a person may have an interest in from five to 250; eliminate the consanguinity exception that exempts family members who combine their permits from the five-permit limit; and prohibit transferring a package store permit to a different county. Prohibit TABC from issuing more than 15 new package store permits to a person in a calendar year, but exempt purchases or acquisitions of existing package store businesses from the annual limit.
  - Remove fees from statute to allow TABC to systematically review and adjust license and permit fees on an ongoing basis. Maintain the authority of cities and counties to levy a local fee for licenses and permits issued in their jurisdictions by specifying they can collect up to one-half of the fee that was in statute as of August 31, 2021, and require TABC to publish those fees on its website.
  - Require county and city officials to complete the local certification process for TABC license and permit applicants within 30 days of receiving the application.
  - Direct TABC to modify its applications to allow local jurisdictions to clearly indicate if they do not certify an area as wet for the license or permit being sought. (Management action – nonstatutory)
  - Direct TABC to implement a policy allowing license and permit applicants to submit only the name, address, and date of birth for individuals who are not the primary applicant or business owner, and requiring further personal information only if cross-tier or criminal background concerns arise. The policy only applies to holders of a federal basic permit and TABC may request a copy of the federal permit in lieu of further personal information. (Management action – nonstatutory)
  - Conform Senate Bill 928, passed by the 86th Legislature and related to the importation of malt beverages for manufacturing purposes, to the harmonization of beer and ale.

### **Business Practice Regulations**

- Streamline TABC's process for approving alcoholic beverages for sale in Texas by creating a single, consistent process for all alcohol product registration and label approval. In addition
  - require TABC to develop a process for registering malt beverage products if the federal government stops issuing certificate of label approvals due to a government shutdown;
  - authorize a licensee to request a hearing before the State Office of Administrative Hearings if TABC denies label and registration approval for a beverage that has a valid federal Certificate of Label Approval (COLA) or if TABC does not issue either approval or denial of registration within 30 days of receiving an application;
  - specify that although TABC may adopt a regular testing program under its general authority to test the content of alcoholic beverages, it may not require testing of a beverage as a condition for beverage registration;

- as a management action, direct TABC to adopt rules and penalty guidelines for licensees who manufacture alcoholic beverages who substantially mislead the public about a beverage’s alcohol content; and
- as a management action, direct TABC to adopt rules regarding the documentation manufacturers must maintain regarding their products’ alcohol content testing.
- Eliminate overly restrictive outdoor advertising requirements.
- Direct the commission to update its existing penalty guidelines to strengthen enforcement against licensees who violate the credit law. (Management action – nonstatutory)

### **Protest Process**

- Restructure TABC’s protest process to align with best practices, improving consistency and accountability for applicants and TABC.
- Direct TABC to clearly inform applicants of their due process rights. (Management action – nonstatutory)

### **Enforcement**

- Require TABC to establish a two-pronged approach for inspections of alcoholic beverage businesses that prioritizes public safety risks, as follows:
  - Require TABC to establish, by rule, a timeframe by which every regulated location must be inspected and whether each inspection will be through a virtual compliance reporting method or through a physical inspection
  - Require TABC to physically inspect every regulated location in the state within a reasonable period of time set by rule
- Authorize TABC to consider profits earned from violating the law when setting a disciplinary penalty, but only for repeat violations by a licensee.
- Authorize TABC to temporarily suspend licenses and permits if it finds a continuing threat to the public welfare.
- Make noncompliance with a commission order a statutory violation and authorize TABC to take disciplinary action or deny license or permit renewal for noncompliance.
- Remove the nonstandard requirement allowing the public to testify at TABC disciplinary hearings.
- Require the commission to take final enforcement and disciplinary action on all contested cases as well as agreed orders that meet a threshold established by rule. Authorize the commission to delegate to staff the authority to enter into final orders for agreed orders not meeting the threshold.

As a management action, direct TABC staff to report information about disciplinary actions to the commission at each regular commission meeting. These reports should include information such as a summary of any significant cases settled or dismissed by staff, trend data regarding case resolution and assessed penalties, and a summary of pending enforcement actions being pursued by agency staff.

- Direct TABC to complete its schedule of sanctions to account for all regulatory violations.  
(Management action – nonstatutory)

### **Ports of Entry**

- Retain TABC's Ports of Entry Program, but direct TABC to issue a report to the Legislature by March 1, 2019 with recommendations to make the program cost-neutral. The report should address the pros and cons of various options, including but not limited to
  - operating additional ports of entry locations,
  - expanding operating hours,
  - increasing the administrative fee or the tax, and
  - increasing the statutory limits on the amount of alcohol that can be imported for personal use.(Management action – nonstatutory)