

TEXAS ALCOHOLIC BEVERAGE COMMISSION

Issue 1

Texas Has a Continuing Need for TABC, but a Weak Commission Limits Its Ability to Effectively Oversee and Regulate the Alcoholic Beverage Industry.

Change in Statute

Rec. 1.1, Adopted

Continue TABC for 12 years.

Rec. 1.2, Adopted

Expand the Alcoholic Beverage Commission from three to five members.

Rec. 1.3, Adopted as Modified

Modernize TABC's conflict-of-interest provisions by defining financial interest to mean a cumulative 5 percent or more in the alcoholic beverage industry. Prohibit a TABC employee or commission member from being employed by an alcoholic beverage business or having a financial interest in the alcoholic beverage industry, and prohibit their spouse or dependent child from having a financial interest in the alcoholic beverage industry.

Rec. 1.4, Adopted

Authorize the commission to establish advisory committees by rule.

Management Action

Rec. 1.5, Adopted

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.

Rec. 1.6, Adopted

Direct TABC to evaluate and address gaps in its rules.

Rec. 1.7, Adopted

Direct TABC to update its rule describing the separation of duties between the commission and executive director.

Rec. 1.8, Adopted

Direct TABC to make meeting materials and recordings available online.

Issue 2

TABC Cannot Efficiently Regulate the Alcoholic Beverage Industry Without Modernizing the State's Byzantine Licensing System.

Change in Statute

Rec. 2.1a–f, Adopted as Modified

Streamline the state's alcoholic beverage licensing system by reducing the number of licenses and permits to provide regulatory clarity and administrative efficiency. As part of eliminating agent licenses and permits, ensure the statutory language does not change the current statutory liability of employers of agents.

Rec. 2.2a–j, Adopted as Modified

Modernize Texas' regulation of malt beverages by eliminating distinctions between beer and ale. 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 were not explicitly addressed in the recommendation.

Rec. 2.3, Adopted

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

Issue 3

Over-Regulation of Certain Business Practices Creates Burdens on TABC and the Alcoholic Beverage Industry With Little Public Benefit.

Change in Statute

Rec. 3.1, Adopted as Modified

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

- 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 or if TABC does not issue either approval or denial of registration within 45 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.

Rec. 3.2, Not Adopted

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

Rec. 3.3, Adopted

Eliminate overly restrictive outdoor advertising requirements.

Management Action

Rec. 3.4, Adopted

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

Issue 4

TABC's Protest Process Needs A Complete Overhaul to Meet Basic Transparency, Accountability, and Fairness Standards.

Change in Statute

Rec. 4.1, Adopted as Modified

Restructure TABC's protest process to align with best practices, improving consistency and accountability for applicants and TABC. Clarify that applicants who wish to seek judicial review of a TABC decision on a protested application must first exhaust all administrative remedies available within TABC, pursuant to the Administrative Procedure Act.

Management Action

Rec. 4.2, Adopted

Direct TABC to clearly inform applicants of their due process rights.

Issue 5

Several TABC Enforcement Practices Do Not Follow Common Standards, Limiting Regulatory Efficiency and Effectiveness.

Change in Statute

Rec. 5.1, Adopted as Modified

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

Rec. 5.2, Not Adopted

Remove the requirement that TABC offer licensees a choice between a suspension or fine and, instead, authorize TABC to determine the appropriate penalty for each violation.

Rec. 5.3, Adopted as Modified

Authorize TABC to consider profits earned from violating the law when setting a disciplinary penalty, but only for repeat violations by a licensee.

Rec. 5.4, Adopted

Authorize TABC to temporarily suspend licenses and permits if it finds a continuing threat to the public welfare.

Rec. 5.5, Adopted

Make noncompliance with a commission order a statutory violation and authorize TABC to take disciplinary action or deny license or permit renewal for noncompliance.

Rec. 5.6, Adopted

Remove the nonstandard requirement allowing the public to testify at TABC disciplinary hearings.

Rec. 5.7, Adopted as Modified

Require the commission to take final action on enforcement cases for 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.

Management Action

Rec. 5.8, Adopted

Direct TABC to complete its schedule of sanctions to account for all regulatory violations.

Issue 6

The High Cost of Collecting Alcohol Import Taxes at the Border Outweighs the Negligible Public Safety Benefit.

Management Action

Rec. 6.1, Adopted as Modified

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.

Issue 7

TABC's Statute Does Not Reflect Standard Elements of Sunset Reviews.

Change in Statute

Rec. 7.1, Adopted as Modified

Update the standard across-the-board requirement related to commission member training, and require each board member to attest to both receiving and reviewing the training manual annually.

Rec. 7.2, Adopted

Discontinue the requirement for TABC to prepare a limited report on after-hours violations.

Rec. 7.3, Adopted

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

Adopted New Recommendations

Agency Administration

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.

Repeal the language in Alcoholic Beverage Code Section 11.01(c) that specifies that acts not permitted by the code are unlawful.

Licensing and Permitting

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 that are not the primary applicant or business owner, and requiring further personal information only if cross-tier or criminal background concerns arise. The policy would only apply to holders of a federal basic permit and TABC could request a copy of the federal permit in lieu of further personal information. (Management action – nonstatutory)

Alcoholic Beverage Code Modernization

Require the Sunset Commission staff and the Texas Legislative Council (TLC), with assistance from TABC, to analyze and make recommendations for a modernization and non-substantive revision of the Texas Alcoholic Beverage Code. Sunset staff and TLC would not consider changes to the overall three-tier regulatory system, but would evaluate

- inconsistencies in authorities and treatment of different alcoholic beverages and regulated businesses;
- use of the terms “license” for beer and “permit” for all other alcoholic beverages;
- technical changes needed, including but not limited to removing unconstitutional provisions and outdated language, updating the code’s structure to comply with modern drafting standards, and correcting legal citations; and
- other changes needed to modernize the code within the three-tier system.

TLC would identify statutory inconsistencies and other issues that may impede modernizing the code. Sunset staff would work directly with TLC and TABC to determine whether and how to address the identified issues. Sunset staff would be authorized to engage interested stakeholders in this process. TLC would prepare a non-substantive revision bill to address any technical changes needed, which the Sunset Commission would consider for a vote by September 1, 2022. Separately, Sunset staff would make recommendations to the Sunset Commission by September 1, 2022, to address other, more substantive issues needed to modernize the Texas Alcoholic Beverage Code.