



Alcoholic Beverage Laws

This chart summarizes the changes to Alcoholic Beverage Code made during the 80th Legislative session. For the full-text of bills passed, visit the Texas Legislature Online at www.capitol.state.tx.us

BILL	EFF. DATE	SUMMARY
HB1248	9/1/2007	Allows passenger vessels of a certain size that are eligible for a beer and wine permit to obtain a mixed beverage permit. Clarifies that the permit for an excursion boat is inoperative in a dry area.
HB1365	6/15/2007	The holder of a promotional permit does not have to be a Texas resident. Renumbers this chapter in the Code.
HB1541	9/1/2007	Authorizes retailers, manufacturers and wholesalers to preannounce to the consumer a promotion taking place on the premises of a retailer, including the purchase of wine or distilled spirits for a consumer. Does not change the types of promotional activities that permittees are allowed to conduct.
HB1734	9/1/2007	Requires notice of cancellation or suspension of a license or permit be given to the licensee or permittee personally or by first-class mail, instead of by registered or certified mail. Cancellation or suspension is final and effective as provided by Section 2001.144, Government Code.
HB2348	6/15/2007	A person within the fourth degree by consanguinity or affinity of a licensee or permittee whose license or permit was canceled may not apply for a license or permit in connection with an establishment at the same location as the establishment whose license or permit was canceled for a period of <i>three</i> years instead of the current two-year requirement.
HB2350	9/1/2007	If an applicant had a prior permit/license or application that expired or was voluntarily surrendered before the hearing was held on a protest involving allegations of prostitution or a shooting, stabbing or other violent act or offense involving drugs, TABC shall refuse to issue a permit or license to that applicant for any location for a period of three years.
HB2605	6/15/2007	Applies to on-premises retailers who do not hold a food and beverage certificate. Allows TABC to deny an application if a common nuisance existed on the premises within the last 12 months, even if the applicant did not control the premises at the time. Allows TABC to cancel or suspend a license/permit if the permittee maintains, or allows others to maintain, a public nuisance on the licensed premises. In this case, TABC shall not allow the permit holder to pay a fine in lieu of suspension. Allows TABC, after notice and hearing, to impose additional conditions on licensees/permittees to abate a common nuisance on the premises. Violating these special conditions is grounds for cancellation or suspension of the license/permit. Authorizes TABC, the county judge or the hearings officer to impose similar orders while a contested case is pending before the administrative law judge, after notice and hearing.
HB2723	9/1/2007	Allows manufacturers and retailers who are authorized to produce or sell malt beverages to conduct tastings of these products on the premises of a retailer. Requires those manufacturers to purchase the products intended to be sampled from the retailer on whose premises the tasting would occur. Prohibits the manufacturer and/or retailer from collecting a fee from consumers for tastings conducted at off-premises retail accounts.
HB2724	6/15/2007	Changes the hour that a distributor may begin sales and delivery activity from 5 A.M. to 4 A.M. on any day except Sunday in a county with a population of 1.8 million or more people and in any county adjacent to such a county. (Harris, Liberty, Chambers, Galveston, Brazoria, Fort Bend, Waller, Montgomery, Dallas, Collin, Denton, Tarrant, Ellis, Kaufman, and Rockwall)
HB2727	9/1/2007	Creates a new manufacturer's agent's warehousing permit applicable for a malt beverage entity that meets certain criteria. Allows permit holder to receive malt beverages from holders of a nonresident brewer's permit or a nonresident manufacturer's license and store those malt beverages on their premises. Allows the permit holder to ship, sell or transfer malt beverages to permitted distributors or wholesalers as designated by the assigned territorial agreement issued by the actual manufacturer of the brands. Allows permit holder to return malt beverages to manufacturer/brewer from which it was received. Allows permit holder to store malt beverages that are not labeled and approved for sale in this state and ship them to qualified persons in other states or jurisdictions where its sale is legal. Monthly reports to TABC are required. Employees must hold agent's beer licenses or manufacturer's agent's permits.



Alcoholic Beverage Laws (cont'd)

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BILL	EFF. DATE	SUMMARY
HB 3123	9/1/2007	Authorizes license and permit holders at different levels of the industry to simultaneously or jointly sponsor a civic, religious, or charitable event, including providing or lending money, services or other things of value directly to a civic, religious, or charitable entity in conjunction with the event. Any license or permit to sell or serve alcoholic beverage at the event must be held by a retailer who is independent of the sponsors. Retail sponsors of the event may not receive any direct benefit or service because of joint sponsorship by a wholesaler or manufacturer of alcoholic beverages.
SB904	9/1/2007	Sunset Bill passes, see page 3.
SB952	6/15/2007	Authorizes mixed beverage permit holders who hold a food and beverage certificate to designate as part of the permit holder's premises, a secured noncontiguous area located on a public sidewalk adjoining the premises if the designation is authorized by city ordinance. The ordinance may specify and limit the areas of the municipality in which this subsection is applicable. Alcoholic beverages may be delivered by an employee of the permit holder to patrons for consumption in the designated sidewalk area.
SB1215	9/1/2007	Increases the number of cases a holder of a distributor's license, wholesaler's permit, or class B wholesaler's permit is authorized to withdraw from the equivalent of 15 cases to the equivalent of 25 cases of 24 twelve-ounce containers of beer, ale, or malt liquor to assure and control product quality. The malt beverage must be prior to the expiration date, and the retailer must give permission.
SB1217	9/1/2007	Provides that TABC will issue a license or permit for a period of two years, except that TABC may issue permits for less than two years due to the permit holder's violation history, or to maintain a reasonable annual distribution of work. Also, removes the \$500 fee and 10-day prior notice required for substantial changes of ownership of a mixed beverage permit (MB) held by a corporation. Substantial changes for an MB will still be required to be reported before the change is to occur. The county judge's waiver on permit application will no longer be required.
SB1229	9/1/2007	Allows package stores and wine-only package stores that are in or within two miles of a city's limits to deliver or ship alcoholic beverages within the county or city or within two miles out of the city limits. Allows them to ship to persons outside the state who are authorized to receive such products.
SB1238	9/1/2007	Allows cities or counties to prohibit the possession of an open container, or public consumption of alcoholic beverages, on a public street/alley/sidewalk within 1,000 feet of the property line of a homeless shelter or substance abuse treatment center that is not located in a central business district. Authorizes these governing entities to enact regulations allowing suspensions of the regulations for special temporary events.
SB1257	9/1/2007	Modifies the definition of a hotel to include facilities with at least five guest lodging rooms, provided that facility has been designated as an "historic structure."
SB1287	9/1/2007	Requires posting of national human trafficking hotline number in English and Spanish in certain licensed premises if they don't hold a food and beverage certificate: beer on- or off-premises, beer and wine on- or off-premises, mixed beverage, private club, excursion boats and railroad cars.
SB1426	9/1/2007	Allows TABC to exempt permittees who are concessionaires in public entertainment venues, such as sports stadiums and convention centers, from the requirement that food service be the primary business on the premises in order to obtain a food and beverage certificate.
SB1828	6/15/2007	Current law says that a person may access electronically readable information on a driver's license for the purpose of preventing a sale to minor. SB1828 says that if the information accessed is required to be retained by TABC Administrative Rule, it may be printed with a time and date stamp or transferred to an electronic record and then scanned information may be cleared from the device or any memory in the device. It is a defense to prosecution for criminal violation of sale to minor if the scan device identified the purchaser's license as valid and over 21 and the defendant relied on the information in good faith.



Sunset Bill Passes

In May, Gov. Rick Perry signed into law Senate Bill 904, TABC's Sunset Bill, ensuring the agency's existence at least for another 12 years when it will undergo another Sunset review.

During a review, the Sunset Advisory Commission evaluates whether a state agency's functions are still needed. The process is guided by 12 legislators and citizens appointed by the lieutenant governor and speaker of the House of Representatives. Based on input from TABC, other state agencies, the public and special interest groups, the Sunset Commission makes determinations and presents them as legislation.

New/Amended Legislation Impacts Public/Industry

The Sunset Bill included many changes to the Alcoholic Beverage Code. Those that directly impact the alcoholic beverage industry are summarized below.

HEALTH RISKS WARNING SIGN

A new law requires the holder of an on-premises license or permit to display a warning sign on the door to each restroom on the permitted premises that informs the public of the risks of drinking alcohol during pregnancy. TABC will provide these signs in English and Spanish to help license and permit holders meet this new requirement. Rules will be adopted by March 1, 2008, to outline the requirements. For additional signs, contact TABC Education and Prevention Division at 512-206-3290.

PRODUCT TESTING AND LABEL APPROVAL

Malt Beverages. As part of the label approval process, in lieu of having TABC test malt beverages to verify the alcohol content, TABC will accept analysis by an independent laboratory.

Wine or Distilled Spirits. In lieu of the current label approval process, TABC will accept a certificate of label approval (COLA) issued by the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) as constituting full compliance with applicable standards regarding quality, purity, and identity of distilled spirits or wine. In lieu of requiring the submission of a product sample for testing, TABC will accept the results from the TTB.

Enforcement. TABC will conduct market sampling to test the contents of alcoholic beverages to ensure compliance with state law.

MARKETING PRACTICES REGULATORY DECISIONS

TABC is now required to develop a formal process for making policy decisions regarding marketing practices regulations and for communicating those decisions to agency staff and the alcoholic beverage industry. TABC will gather input from a diverse group of representatives of the alcoholic beverage industry regarding regulatory issues and interpretations of this code and commission rules.

DELINQUENT LIST

Beginning Sept. 1, 2007, wholesalers may attach *Notice of Default (C-801)* or *Notice of Payment of Default (C-803)* forms to an e-mail and send them to credit@tabc.state.tx.us. Wholesalers may continue to fax these forms to 512-206-3349.

SCHEDULE OF SANCTIONS

TABC will revise and update the Standard Penalty Chart, a schedule of sanctions that may be imposed on a license or permit holder for violations of the Alcoholic Beverage Code or Rules. During the revision process, TABC will continue to ensure that the severity of the sanction imposed is appropriate to the type of violation that occurred.

The revised Standard Penalty Chart will include the number of days a permit or license would be suspended and the corresponding civil penalty for each violation for which a license or permit may be suspended.

In determining the appropriate sanction for a violation, TABC will consider:

- type of license or permit held;
- type of violation;
- aggravating or ameliorating circumstances; and
- license/permit holder's previous violations.

TABC will develop policies to help staff determine when it is appropriate to deviate from the schedule of sanctions.

SALES AND CONSUMPTION DURING PROHIBITED HOURS

TABC is required to report to the Legislature on the Commission's enforcement efforts concerning alcohol sales and consumption during prohibited hours, no later than October 31 of each even-numbered year, on a statewide basis, and for each region and major metropolitan area.

The report must specify the number of individuals or establishments that:

- engage in an activity without the permit or license required by code;
- sell, serve, or offer for sale an alcoholic beverage during prohibited hours;
- consume or permit consumption of an alcoholic beverage on a permitted or licensed premises during prohibited hours;
- refuse to allow entry to a permitted or licensed premises by an inspector, investigator, or law enforcement official;
- refuse to furnish information to an inspector, investigator, or law enforcement official; or
- interfere with or refuse to permit an inspection or investigation being conducted by an inspector, investigator, or law enforcement official.

With regard to the sale or consumption of alcoholic beverages during prohibited hours, or interfering with an inspection of the licensed premises, a permit or license holder will not be allowed to pay a civil penalty in lieu of having their permit or license suspended.

Finally, Senate Bill 904 specifies that for the purposes of legal hours of public consumption and/or the offense of public intoxication, a licensed or permitted premises is a public place.