

TITLE 2. ADMINISTRATION OF CODE

CHAPTER 2. CIVIL LIABILITIES FOR SERVING BEVERAGES

Sec. 2.01. DEFINITIONS. In this chapter:

(1) "Provider" means a person who sells or serves an alcoholic beverage under authority of a license or permit issued under the terms of this code or who otherwise sells an alcoholic beverage to an individual.

(2) "Provision" includes, but is not limited to, the sale or service of an alcoholic beverage.

Sec. 2.02. CAUSES OF ACTION. (a) This chapter does not affect the right of any person to bring a common law cause of action against any individual whose consumption of an alcoholic beverage allegedly resulted in causing the person bringing the suit to suffer personal injury or property damage.

(b) Providing, selling, or serving an alcoholic beverage may be made the basis of a statutory cause of action under this chapter and may be made the basis of a revocation proceeding under Section 6.01(b) of this code upon proof that:

(1) at the time the provision occurred it was apparent to the provider that the individual being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others; and

(2) the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered.

(c) An adult 21 years of age or older is liable for damages proximately caused by the intoxication of a minor under the age of 18 if:

(1) the adult is not:

(A) the minor's parent, guardian, or spouse; or

(B) an adult in whose custody the minor has been committed by a court;

and

(2) the adult knowingly:

(A) served or provided to the minor any of the alcoholic beverages that contributed to the minor's intoxication; or

(B) allowed the minor to be served or provided any of the alcoholic beverages that contributed to the minor's intoxication on the premises owned or leased by the adult.

Sec. 2.03. EXCLUSIVITY OF STATUTORY REMEDY. (a) The liability of providers under this chapter for the actions of their employees, customers, members, or guests who are or become intoxicated is in lieu of common law or other statutory law warranties and duties of providers of alcoholic beverages.

(b) This chapter does not impose obligations on a provider of alcoholic beverages other than those expressly stated in this chapter.

(c) This chapter provides the exclusive cause of action for providing an alcoholic beverage to a person 18 years of age or older.

CHAPTER 5. ALCOHOLIC BEVERAGE COMMISSION

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Sec. 5.01. TEXAS ALCOHOLIC BEVERAGE COMMISSION. (a) The Texas Alcoholic Beverage Commission is an agency of the state.

(b) The Texas Alcoholic Beverage Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and Subchapter A, Chapter 5, expires September 1, 2019.

Sec. 5.02. MEMBERS OF COMMISSION; APPOINTMENT. (a) The commission is composed of three members, who are appointed by the governor with the advice and consent of the senate.

(b) Each member must be a Texas resident, must have resided in the state for at least five years next preceding his appointment and qualification, and must be a qualified voter in the state at the time of his appointment and qualification.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) A person is not eligible for appointment if the person's spouse is disqualified for appointment under Section 5.05 of this code.

Sec. 5.022. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission and the commission's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the commission;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 5.03. TERMS OF OFFICE. The members of the commission hold office for staggered terms of six years, with the term of one member expiring every two years. Each member holds office until his successor is appointed and has qualified. A member may be appointed to succeed himself.

Sec. 5.04. PRESIDING OFFICER. The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Sec. 5.05. RELATIONSHIP WITH ALCOHOLIC BEVERAGE BUSINESS PROHIBITED. (a) No person may be appointed to or serve on the commission, or hold an office under the commission, or be employed by the commission, who:

(1) has any financial connection with a person engaged in an alcoholic beverage business;

(2) holds stocks or bonds in an alcoholic beverage business; or

(3) has a pecuniary interest in an alcoholic beverage business.

(b) No member of the commission, or anyone holding an office under the commission, or any employee of the commission, may receive a commission or profit from or have an interest in the sale or purchase of alcoholic beverages.

(c) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(d) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of alcoholic beverages; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of alcoholic beverages.

(e) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of businesses or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 5.051. GROUNDS FOR REMOVAL FROM COMMISSION. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 5.02;

(2) does not maintain during service on the commission the qualifications required by Section 5.02;

(3) is ineligible for membership under Section 5.05;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a commission member exists.

(c) If the administrator has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the administrator shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 5.06. COMMISSION OFFICE. The office of the commission shall be in the city of Austin.

Sec. 5.07. COMMISSION MEETINGS. (a) The commission may meet in the city of Austin at times it determines.

(b) A majority of the members constitutes a quorum for the transaction of business or for the exercise of any of the powers or duties of the commission.

(c) The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 5.08. PER DIEM, EXPENSES. Members of the commission receive per diem as provided by the General Appropriation Act [of \$10 a day,] for not more than 60 days a year, plus actual expenses, while attending commission meetings or otherwise engaged in the performance of their duties.

Sec. 5.09. ANNUAL REPORT. Once each year, the commission shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act. The commission shall also include in the report other matters concerning its administration of this code. Except as provided by this section, the commission shall determine

the format and contents of the report, and the commission may have copies of the report printed for distribution as it considers appropriate.

Sec. 5.10. EMPLOYEES; COMPENSATION; BONDS. (a) The commission or administrator may employ clerks, stenographers, inspectors, chemists, and other employees necessary to properly enforce this code.

(b) The administrator or the administrator's designee shall develop an intra-agency career ladder program. The program shall require the intra-agency posting of all non-entry level positions concurrently with any public posting. The administrator or the administrator's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection. The employees shall be compensated as provided by legislative appropriation. The commission or administrator shall determine the duties of all employees of the commission.

(c) The administrator or the administrator's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes);

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(d) A policy statement prepared under Subsection (c) of this section must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with Subsection (c)(1) of this section, and be filed with the governor's office. The governor's office shall deliver a biennial report to the legislature based on the information submitted under this subsection. The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 5.101. HUMAN RESOURCES DIVISION. (a) A human resources division is established within the commission.

(b) The division is responsible for personnel, recruiting, hiring, and other human resource functions and shall provide recruiting and technical assistance to the divisions and regional offices of the commission.

(c) The division shall develop policies and procedures related to recruitment, hiring, and other human resource functions that are in compliance with state and federal law.

Sec. 5.102. RECRUITMENT. For the purpose of providing adequate personnel for all job positions in the commission, the commission shall:

(1) develop a recruiting program that identifies underrepresentation with the commission and focuses on recruiting different ethnic, racial, or gender groups for job categories in which underrepresentation occurs; and

(2) require that all applicants be reviewed by the human resources division to ensure consideration of underrepresented ethnic, racial, or gender groups.

Sec. 5.103. ANNUAL REPORT. The administrator shall report not later than February 1 of each year to the commission on the progress of the commission in the recruitment and hiring of personnel in compliance with the commission's recruitment and hiring policies.

Sec. 5.11. ADMINISTRATOR. The commission shall appoint an administrator to serve at its will and, subject to its supervision, administer this code. Unless the commission orders

otherwise, the administrator shall be manager, secretary, and custodian of all records. The administrator shall devote his entire time to the office and shall receive a salary as appropriated by the legislature.

Sec. 5.12. DUTIES OF ADMINISTRATOR. The commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes and shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the administrator and the staff of the commission. The commission or administrator may develop a procedure under which the commission or administrator, or the designee of either, may negotiate the repayment of debts owed the commission, including fees and delinquent taxes. When this code imposes concurrent powers or duties on the commission and the administrator, the commission shall designate those powers and duties which it delegates to the administrator. An order, decision, or judgment rendered and entered by the administrator in a matter in which the administrator has been authorized to act is not subject to change, review, or revision by the commission. A concurrent power or duty which has not been specifically delegated to the administrator by the commission's order is retained by the commission, and an order, decision, or judgment rendered and entered by the commission in a matter in which the commission has retained authority is not subject to change, review, or revision by the administrator.

NOTE: Not later than March 1, 2008, the Texas Alcoholic Beverage Commission shall adopt the rules and policies necessary to implement Sections 5.57, 5.58, 5.59, and 5.60, Alcoholic Beverage Code, as added by this Act, and Section 5.12, Alcoholic Beverage Code, as amended by this Act. (Acts of the 80th Legislature, Regular Session, 2007)

Sec. 5.13. ASSISTANT ADMINISTRATOR. The administrator shall appoint an assistant administrator. The assistant administrator must meet the same qualifications as the administrator. The assistant administrator shall take the constitutional oath of office. In the absence of the administrator, or in case of his inability to act, the assistant administrator shall perform the duties conferred on the administrator by law or delegated to the administrator by the commission. If there is a vacancy in the office of administrator, the assistant administrator shall perform the duties of the administrator until an administrator has been appointed by the commission. At other times he shall perform those duties and have those functions, powers, and authority as may be delegated to him by the administrator.

Sec. 5.14. INSPECTORS AND REPRESENTATIVES. The commission or administrator may commission as many inspectors and representatives as are necessary to enforce this code and other laws administered by the commission. Each inspector and representative shall take the constitutional oath of office, which shall be filed in the office of the commission. Each commissioned inspector and representative has all the powers of a peace officer coextensive with the boundaries of the state.

Sec. 5.141. PURCHASE OF FIREARM FROM COMMISSION BY INSPECTOR OR REPRESENTATIVE. (a) A commissioned inspector or representative of the commission may purchase for an amount set by the commission, not to exceed fair market value, a firearm issued to the inspector or representative by the commission if the firearm is not listed as a prohibited weapon under Section 46.05, Penal Code, and if the firearm is retired by the commission for replacement purposes.

(b) The commission may adopt rules for the sale of a retired firearm to an inspector or representative of the commission.

Sec. 5.142. SPECIAL INSPECTORS OR REPRESENTATIVES. (a) The commission or administrator may appoint as a special inspector or representative an honorably retired commissioned inspector or representative.

(b) A special inspector or representative is subject to the orders of the commission and is subject to the orders of the governor for special duty to the same extent as other law enforcement officers.

(d) A special inspector or representative is not entitled to compensation from the state for service as a special inspector or representative.

(e) A special inspector or representative commission expires January 1 of the first odd-numbered year after appointment. The commission may revoke a special inspector or representative commission at any time for cause.

Sec. 5.15. ASSISTANT ATTORNEYS GENERAL. The attorney general shall appoint as many as six assistant attorneys general, as the commission determines necessary, to enable the commission to more efficiently enforce this code. The attorney general and the assistant attorneys general shall prosecute all suits requested by the commission and defend all suits against the commission. The commission shall provide the assistant attorneys general with necessary stenographers and office space. The assistant attorneys general shall be paid by the commission out of funds appropriated to it for the administration of this code. Their compensation shall be on the same basis as assistant attorneys general devoting their time to general state business.

Sec. 5.16. REPRESENTATION IN APPEAL TO COMMISSION. No member of the legislature or other person may appear for compensation in a representational capacity in an appeal to the commission unless he first files an affidavit supplied by the commission and makes a full disclosure of whom he represents and of the fact that he is being compensated for doing so. The commission shall provide appropriate forms, and these records are a public record of the commission.

Sec. 5.17. SUITS AGAINST THE COMMISSION: VENUE. In all suits against the commission, except appeals governed by Section 11.67 or 32.18 of this code, venue is in Travis County.

Sec. 5.18. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 5.20. STANDARDS OF CONDUCT INFORMATION. The commission shall provide to its members and employees, as often as necessary, information regarding their qualification for office or employment under this code and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 5.31. GENERAL POWERS AND DUTIES. (a) The commission may exercise all powers, duties, and functions conferred by this code, and all powers incidental, necessary, or convenient to the administration of this code. It shall inspect, supervise, and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distributing alcoholic beverages, and the possession of alcoholic beverages for the purpose of sale or otherwise. It may prescribe and publish rules necessary to carry out the provisions of this code.

(b) The commission shall:

- (1) protect the public safety by deterring and detecting violations of this code;
- (2) promote legal and responsible alcohol consumption;
- (3) ensure fair competition within the alcoholic beverage industry;
- (4) ensure consistent, predictable, and timely enforcement of this code;
- (5) ensure a consistent, predictable, and timely licensing and permitting process;
- (6) promote and foster voluntary compliance with this code; and

(7) communicate the requirements of this code clearly and consistently.

Sec. 5.32. MAY REQUIRE REPORTS. The commission may require the filing of reports and other data by persons engaged in the alcoholic beverage business which the commission finds necessary to accomplish the purposes of this code.

Sec. 5.33. REGULATE LICENSEES AND PERMITTEES. The commission shall supervise and regulate licensees and permittees and their places of business in matters affecting the public. This authority is not limited to matters specifically mentioned in this code.

Sec. 5.331. PUBLIC DISTURBANCE REPORTS. Local law enforcement agencies in each county with a population of 3.3 million or more shall send to the commission reports and other data concerning shootings, stabbings, and other public disturbances that occur on the premises of a permittee or licensee. The reports and data shall be incorporated into the record of the permittee or licensee. The administrator of the Texas Alcoholic Beverage Commission shall prescribe the form and content of such reports.

Sec. 5.34. DELEGATION OF AUTHORITY. (a) The commission may authorize its commissioned peace officers, servants, and employees to carry out, under its direction, the provisions of this code.

(b) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

Sec. 5.35. ISSUANCE OF PERMITS AND LICENSES. The commission may grant, refuse, suspend, or cancel alcoholic beverage permits and licenses as provided in this code.

Sec. 5.36. INVESTIGATION OF VIOLATIONS. (a) The commission shall investigate violations of this code and of other laws relating to alcoholic beverages, and shall cooperate in the prosecution of offenders before any court of competent jurisdiction. The commission may seize alcoholic beverages manufactured, sold, kept, imported, or transported in violation of this code and apply for the confiscation of the beverages if required to do so by this code.

Sec. 5.361. ENFORCEMENT. (a) The commission shall develop a risk-based approach to conducting its enforcement activities that focuses on:

(1) detecting serious violations that impact public safety;

(2) monitoring entities that have a history of complaints and violations of this code; and

(3) any other factors the commission considers important.

(b) The commission shall develop benchmarks and goals to track key enforcement activities and the results of those activities. For each type of enforcement activity, the commission shall track the number of violations detected by the enforcement activity, the amount of time spent on the enforcement activity, and any other information the commission considers necessary. The commission shall use the information collected under this subsection and other information to compare the enforcement performance of each region and to determine the most effective enforcement activities.

(c) The commission shall track, on a statewide and regional basis, the type of violations detected, the disposition of the violations, and the entities that committed the most serious violations.

(d) The commission shall compile detailed statistics and analyze trends related to its enforcement activities. The commission shall:

(1) summarize the statistics and trends for executive management on a monthly basis and for the members of the commission on a quarterly basis; and

(2) make summary information available to the public, including by posting the information on the commission's Internet website.

Sec. 5.362. SCHEDULE OF SANCTIONS. (a) The commission by rule shall adopt a schedule of sanctions that may be imposed on a license or permit holder for violations of this code or rules adopted under this code. In adopting the schedule of sanctions, the commission

shall ensure that the severity of the sanction imposed is appropriate to the type of violation that is the basis for disciplinary action.

(b) For each violation for which a license or permit may be suspended, the schedule of sanctions must include the number of days a permit or license would be suspended and the corresponding civil penalty under Section 11.64.

(c) In determining the appropriate sanction for a violation under the schedule, the commission or administrator shall consider:

(1) the type of license or permit held by the person who committed the violation;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation;

and

(4) the license or permit holder's previous violations of this code.

(d) The schedule must:

(1) allow deviations from the schedule for clearly established mitigating circumstances, including circumstances listed in Section 11.64(c), or aggravating circumstances; and

(2) include a list of the most common violations by members of the manufacturing, wholesaling, and retailing tiers of the alcoholic beverage industry and the sanctions assessed for those violations.

(e) The commission shall develop policies to guide commission staff in determining the circumstances when it is appropriate to deviate from the schedule of sanctions. The policies must identify the circumstances when approval is required in order to deviate from the schedule.

(f) The commission shall make the schedule of sanctions available to the public, including by posting the schedule on the commission's Internet website.

Sec. 5.37. COLLECTION OF TAXES AT SOURCE. (a) If the federal government provides a method of collecting liquor taxes at the source, the commission may enter contracts and comply with regulations, even to the extent of abrogating provisions of this code which are inconsistent with federal law or regulations, in order to receive the portion of the taxes allocated to the state. The taxes received shall be distributed as provided in this code.

(b) The commission may acquire by gift, grant, or purchase, port of entry or other facilities for the administration of the Alcoholic Beverage Code, including the collection of taxes and confiscation of unlawful containers and illicit beverages. The commission may enter into agreements with agencies of the United States or other persons, if in the judgment of the commission, it will benefit the state to place facilities under its control through lease or sale from the United States or other persons. The commission may expend funds for the purpose of rehabilitating, renewing, restoring, extending, enlarging, improving, or performing routine maintenance on facilities under its control.

(c) For the purpose of complying with Chapter 455, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 678f, Vernon's Texas Civil Statutes), the commission is considered

to be a public authority and unless the commission requests facilities to be obtained in accordance with Chapter 258, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 666b, Vernon's Texas Civil Statutes), the provisions of that Act do not apply to the acquisition of facilities under this Act.

(d) The commission is authorized to receive in the form of a gift, grant, or donation, any funds consistent with the purposes and goals of the commission and the designation of the grantor. However, no gift, grant, or donation may be offered or accepted from any party to any contested case before the agency, or from any party licensed or regulated by the commission.

Sec. 5.371. PROCEEDS FROM CONTRABAND. Property, money, and the proceeds from forfeited contraband provided to the commission by a federal agency or under state or

federal law shall be deposited in the commission's account in the state treasury and may be appropriated only to the commission for law enforcement purposes. Funds under this section that are not expended at the close of a fiscal year shall be reappropriated for the same purpose the following fiscal year.

Sec. 5.38. QUALITY AND PURITY OF BEVERAGES. (a) The commission shall require by rule that any alcoholic beverage sold in this state conform in all respects to its advertised quality.

(b) The commission shall promulgate and enforce rules governing the labeling and advertising of all alcoholic beverages sold in the state, and shall adopt and enforce a standard of quality, purity, and identity of all alcoholic beverages. The commission shall promulgate and enforce necessary rules to safeguard the public health and to insure sanitary conditions in the manufacturing, refining, blending, mixing, purifying, bottling, rebottling, and sale of alcoholic beverages.

(c) The commission may test the contents of any alcoholic beverage manufactured or sold in the state to protect the public health and safety and to ensure that the product:

- (1) is accurately represented to the public; and
- (2) complies with state law and commission rules.

Sec. 5.39. REGULATION OF LIQUOR CONTAINERS. The commission shall adopt rules to standardize the size of containers in which liquor may be sold in the state and relating to representations required or allowed to be displayed on or in the containers. To accommodate the alcoholic beverage industry's conversion to the metric system, the commission shall adopt rules permitting the importation and sale of liquor in metric-sized containers as well as in containers sized according to the United States standard gallon system.

Sec. 5.40. REGULATION OF BEER CONTAINER DEPOSITS. If the commission finds it necessary to effectuate the purposes of this code, it may adopt rules to provide a schedule of deposits required to be obtained on beer containers delivered by a licensee.

Sec. 5.41. ALCOHOL USED FOR SCIENTIFIC PURPOSES, ETC. The commission shall license and regulate the use of alcohol and liquor for scientific, pharmaceutical, and industrial purposes. The commission shall provide by rule for the withdrawal of alcohol or liquor for those purposes from warehouses or denaturing plants, and shall prescribe the manner in which alcohol or liquor may be used, tax free, for scientific research, in hospitals or sanatoriums, in industrial plants, or for other manufacturing purposes.

Sec. 5.42. PENALTY FOR VIOLATION OF RULE. A person who violates a valid rule of the commission is guilty of a misdemeanor and on conviction is punishable by the penalty prescribed in Section 1.05 of this code.

Sec. 5.43. WHO MAY HOLD HEARING; RULES OF EVIDENCE. (a) Except as provided by Subsection (b) for a hearing held under Section 61.32 of this code, a hearing on the adoption of commission rules, or a hearing on an employment matter, the commission designates the State Office of Administrative Hearings to conduct and make a record of any hearing authorized by this code. If the commission or administrator declares a hearing to be an emergency, the State Office of Administrative Hearings shall assign an administrative law judge or may contract with a qualified individual within five days and set a hearing as soon as possible.

(b) The commission or administrator may render a decision on the basis of the record or the proposal for decision if one is required under the administrative procedure law, Chapter 2001, Government Code, as if the administrator or entire commission had conducted the hearing. The commission may prescribe its rules of procedure for cases not heard by the State Office of Administrative Hearings.

Sec. 5.435. PUBLIC PARTICIPATION IN LICENSING OR PERMITTING HEARINGS. (a) The commission or the party conducting a hearing under this code that relates to an application for an alcoholic beverage license or permit, the renewal, suspension, or revocation of an alcoholic beverage license or permit, or other disciplinary action against the

holder of an alcoholic beverage license or permit shall adopt rules or policies that provide the public with a reasonable opportunity to appear before the commission or the party conducting the hearing and to speak on any issue related to the hearing.

(b) The commission or the party conducting the hearing shall consider the public testimony in making a decision on the hearing.

(c) This section does not prohibit the commission or the party conducting the hearing from adopting rules relating to:

(1) the conduct of the hearing, the order of witnesses, or rules of conduct for participants, including witnesses, at the hearing; and

(2) the reliability, relevance, or authenticity of evidence presented at a hearing, except that a rule adopted under this subsection may not prevent a party from presenting testimony or evidence at a hearing or prevent the commission or the party conducting the hearing from considering the testimony or evidence under Subsection (b).

Sec. 5.44. SUBPOENA OF WITNESSES; WITNESS FEES; CONTEMPT. (a) The commission or administrator, or an inspector or representative of the commission under the direction of the commission, for the purposes of this code, may:

(1) issue subpoenas;

(2) compel the attendance of witnesses;

(3) administer oaths;

(4) certify to official acts;

(5) take depositions inside or outside the state, as provided by law;

(6) compel the production of pertinent books, accounts, records, documents, and testimony; and

(7) certify to copies of documents as being true copies on file in the official records of the commission.

(b) If a witness in attendance before the commission or before an authorized representative refuses without reasonable cause to be examined or answer a legal or pertinent question, or to produce a book, record, or paper when ordered by the commission to do so, the commission may apply to the district court for a rule or order returnable in not less than two nor more than five days, directing the witness to show cause before the judge why he should not be punished for contempt. The commission may apply to the district court of any county where the witness is in attendance, on proof by affidavit of the fact, unless the order of contempt is sought under Chapter 2001, Government Code, in which case the commission shall apply to a district court of Travis County in conformity with that Act. On return of the order, the judge hearing the matter shall examine the witness under oath, and the witness shall be given an opportunity to be heard. If the judge determines that the witness has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

(c) Subpoenas are served and witness fees and mileage paid as in civil cases in the district court in the county to which the witness is called, unless the proceeding for which the service or payment is made is pursuant to Chapter 2001, Government Code, in which case the service or payment shall be made as provided in that Act. Witnesses subpoenaed at the instance of the commission shall be paid their fees and mileage by the commission out of funds appropriated for that purpose.

Sec. 5.441. FEES AND EXPENSES PAID MEMBERS OR EMPLOYEES OF COMMISSION. (a) If a member of the commission, the administrator, or an employee of the commission is called to attend a federal or state judicial proceeding inside or outside the state and the attendance relates to the individual's duties with the commission, the individual shall pay to the comptroller any witness fees he receives. The comptroller shall deposit the fees in the state

treasury to the credit of an appropriation made to the commission for payment of fees and mileage of witnesses called by the commission.

(b) An employee of the commission who travels inside or outside the state on official business as the designated representative of the administrator is entitled to reimbursement for meals, lodging, and travel at the same rate as is applicable to members of the commission.

Sec. 5.45. PROOF OF DOCUMENT. (a) In a suit by the state or the commission or in which either is a party, a transcript from the papers, books, records, or proceedings of the commission purporting to contain a true statement of accounts between the commission or the state and any person, or a copy of a rule, order, audit, bond, contract, or other instrument relating to a transaction between the commission and a person, when certified by the administrator or chairman of the commission to be a true copy of the original on file with the commission and authenticated under the seal of the commission, is admissible as prima facie evidence of the existence and validity of the original document and entitled to the same creditability as the original document. If a suit is brought on a bond or other written instrument, and the person alleged to have executed the instrument denies by a sworn pleading to have executed the instrument, the court shall require the production and proof of the instrument.

(b) A member of the commission or the administrator may execute a certificate under the seal of the commission setting forth the terms of an order, rule, bond, or other instrument referred to in this section. In the case of an order or rule, the certificate may state that the order or rule was adopted, promulgated, and published and filed with the commission and was in force at any date or during any period of time. In the case of a bond or other instrument, the certificate may state that it was executed and filed with the commission and was in force at any date or during any period of time. The certificate is prima facie evidence of the facts stated in it and is admissible as evidence in any action, civil or criminal, involving the facts contained in the certificate without further proof of those facts.

Sec. 5.46. SECURITY FOR COSTS. No security for costs may be required of a representative of the commission in a matter in which the representative protests the issuance of a license or permit in a hearing conducted by the county judge.

Sec. 5.47. RECORDS OF VIOLATIONS. Records of all violations of this code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations shall be kept on file at the office of the commission in the city of Austin. The records are open to the public.

Sec. 5.48. PRIVATE RECORDS. (a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

Sec. 5.49. PRINTED COPIES OF CODE AND RULES. The commission from time to time may have as many copies of this code and any commission rule governing the collection or refund of the gross receipts tax printed in pamphlet form for distribution as it finds necessary.

Sec. 5.50. ESTABLISHMENT OF CERTAIN FEES. (a) The commission by rule may establish reasonable fees for tasks and services performed by the commission in carrying out the provisions of this code, including fees incidental to the issuance of licenses and permits under Title 3 of this code.

(b) The commission may not increase or decrease a fee set by this code, but if a statute is enacted creating a certificate, permit, or license and there is no fee established, the commission by rule may set a fee. The commission by rule shall assess surcharges on all

applicants for an original or renewal certificate, permit, or license issued by the commission in addition to any fee set by this code and collect the surcharges at the time of application. In assessing a surcharge, the commission may not overly penalize any segment of the alcoholic beverage industry or impose an undue hardship on small businesses.

(c) Insofar as they relate to the levying and collection of a local fee, Sections 11.38 and 61.36 of this code do not apply to fees set by rule of the commission.

(d) Revenues and surcharges from fees collected by the commission under this section shall be deposited in the general revenue fund.

Sec. 5.51. BOOKKEEPING RECORDS. A permittee who holds a permit issued under Chapters 28 through 33 of this code may elect to keep all records required under this code on a machine bookkeeping system. A permittee who desires to use such a system must submit a written application for commission approval of the system before implementing the system. The commission may authorize a permittee to centralize the permittee's records.

Sec. 5.52. PROGRAM ACCESSIBILITY PLAN. The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

Sec. 5.53. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall adopt rules that clearly define the agency's complaint process from the time the complaint is received until it is resolved.

(b) The commission shall make information describing its procedures for complaint investigation and resolution available to the public and appropriate state agencies, including by posting the information on the commission's Internet website.

(c) The commission, by rule, shall adopt a standardized form for filing complaints against a licensed or permitted entity. The commission shall make the complaint form available to the public, including by posting the complaint form on the commission's Internet website.

(d) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing a complaint to the commission. The commission may require that the notification be provided on a sign prominently displayed in the place of business of each individual or entity regulated under this code.

Sec. 5.54. RESOLUTION OF COMPLAINTS. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall assign priorities to complaint investigations based on risk so that the commission handles the most serious complaints first.

(a-1) The commission shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The commission shall:

- (1) compile:
 - (A) detailed statistics and analyze trends on complaint information, including:
 - (i) the nature of the complaints;
 - (ii) their disposition; and
 - (iii) the length of time to resolve complaints; and
 - (B) complaint information on a statewide and a regional basis;

(2) report the information on a monthly basis to executive management and on a quarterly basis to members of the commission; and

(3) make general information about the nature and disposition of complaints available to the public, including by posting the information on the commission's Internet website.

Sec. 5.55. FUNDING OF TEXAS WINE MARKETING ASSISTANCE PROGRAM. (a) Notwithstanding any other law, on or before October 1 of each fiscal year, the commission shall transfer from funds appropriated to the commission \$250,000 to the Department of Agriculture to be used by the department to implement the Texas Wine Marketing Assistance Program established by Chapter 110.

(b) The commission in accordance with this subsection may recover the amount transferred under Subsection (a) by imposing a surcharge on licenses and permits, other than an agent's permit or an agent's beer license, issued or renewed by the commission each fiscal year. The surcharge shall be an amount equal to the amount transferred under Subsection (a) divided by the number of licenses and permits the commission anticipates issuing during that year, rounded down to the next lowest whole dollar.

(c) The governing body of an incorporated city or town or the commissioners court of a county may not levy and collect a fee under Section 11.38 or 61.36 based on a surcharge imposed under this section.

Sec. 5.55. ELECTRONIC PROCESSING OF LICENSES OR PERMITS. (a) The commission shall expedite the processing of original and renewal applications for licenses and permits by using electronic means, including the Internet.

(b) The commission or administrator may enter into an agreement with another agency of this state to provide for the issuance of original or renewal licenses or permits through the use of electronic means, including use of the Internet, to facilitate the licensing process.

(c) A reasonable service fee may be charged to applicants who choose to use electronic or Internet service to apply for original licenses or permits or to renew licenses or permits, subject to other laws limiting or defining those fees; provided, that no service fee may be charged by the commission or by another agency to those applicants who choose not to utilize the electronic or Internet method to apply for an original or a renewal license or permit.

Sec. 5.57. MARKETING PRACTICES REGULATORY DECISIONS. (a) The commission shall 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.

(b) The commission shall gather input from a diverse group of representatives of the alcoholic beverage industry regarding regulatory issues and interpretations of this code and commission rules.

(c) The commission shall make a reasonable attempt to meet with alcoholic beverage industry representatives from:

- (1) the manufacturing, distribution, and retail tiers of the industry; and
- (2) the liquor, beer, and wine segments of the industry.

(d) In making policy decisions regarding marketing practices regulations, the commission shall:

- (1) take into consideration recommendations of the industry representatives consulted under this section;
- (2) document its policy decisions by:
 - (A) using a precedents manual; or
 - (B) drafting formal advisories; and
- (3) make those documents available to regional staff and industry members through its Internet website, electronic mail, or commission publications.

Sec. 5.58. INTERNAL AFFAIRS. (a) The administrator shall establish an office of internal affairs to ensure fair and impartial investigations of alleged employee misconduct.

(b) The administrator shall appoint and directly oversee the head of the office of internal affairs.

(c) The office of internal affairs has original departmental jurisdiction over complaints involving commission personnel.

(d) The office of internal affairs staff shall coordinate and be the central reporting point for all employee investigations. The staff may initiate investigations of complaints; however, the staff must obtain the approval of the appropriate division director or higher-level executive management to investigate an employee when no complaint has been made.

(e) At least once each month, the head of the office of internal affairs shall report to the administrator information about the nature and status of each complaint investigated by the office of internal affairs.

(f) The head of the office of internal affairs shall submit a quarterly report to the members of the commission. The report must contain a summary of information relating to investigations conducted under this section, including an analysis of the number, type, and outcome of investigations, trends in the investigations, and recommendations to avoid future complaints.

(g) The commission shall inform the public about how to file a complaint against an employee of the commission and the steps the agency takes to address complaints against employees.

Sec. 5.59. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Sec. 5.60. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Sec. 5.61. REPORT TO LEGISLATURE ON CERTAIN ENFORCEMENT EFFORTS. (a) Not later than October 31 of each even-numbered year, the commission shall report to the legislature on the commission's enforcement efforts concerning alcohol sales and consumption during prohibited hours.

(b) The report must specify the number of individuals or establishments found to be:

(1) engaging in an activity for which a permit or license is required by this code without the required permit or license;

(2) selling, serving, or offering for sale an alcoholic beverage during prohibited hours in violation of Chapter 105 or Section 11.61(b)(23), 32.17(a)(7), or 61.71(a)(7);

(3) consuming or permitting consumption of an alcoholic beverage on a permitted or licensed premises during prohibited hours in violation of Chapter 105 or Section 11.61(b)(22), 32.17(a)(7), or 61.71(a)(18); or

(4) violating Section 11.61(b)(2), 32.17(a)(2), 32.17(a)(3), 61.71(a)(14), or 101.04 by:

(A) refusing to allow entry to a permitted or licensed premises by an inspector, investigator, or law enforcement official;

(B) refusing to furnish information to an inspector, investigator, or law enforcement official; or

(C) interfering with or refusing to permit an inspection or investigation being conducted by an inspector, investigator, or law enforcement official.

(c) The commission shall report the information required by Subsection (b) on a statewide basis and for each region and major metropolitan area.

CHAPTER 6. ACTIVITIES SUBJECT TO REGULATION

Sec. 6.01. RIGHTS AND PRIVILEGES; REVOCATION. (a) A person may manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages, if the right or privilege of doing so is granted by this code and the person has first obtained a license or permit of the proper type as required by this code.

(b) A license or permit issued under this code is a purely personal privilege and is subject to revocation or suspension if the holder is found to have violated a provision of this code or a rule of the commission.

Sec. 6.02. COORDINATION OF EXPIRATION DATES. (a) The commission may authorize a licensee or permittee to change the expiration date of a license or permit held by the licensee or permittee to any date that is agreeable to the commission, consistent with a reasonable annual distribution of renewal application review work of the commission, and to the licensee or permittee.

(b) The fee for an application for a change in expiration date is \$25 per license or permit affected.

(c) The commission may not abate or refund a license or permit fee because of a change in the expiration date made under this section but may authorize a license or permit period of less than one year for the period during which the expiration date is changed. The commission may not authorize a license or permit period of greater than two years.

Sec. 6.03. CITIZENSHIP REQUIREMENTS. (a) It is the public policy of this state and a purpose of this section to require that, except as provided in Subsection (k) of this section or otherwise in this code, a permit or license may not be issued to a person who was not a citizen of this state for a one-year period preceding the date of the filing of the person's application for a license or permit. In that regard, the legislature makes the findings in Subsections (b) through (j) of this section.

(b) Between 1920 and 1933, the distribution and consumption of alcoholic beverages was prohibited in the United States. While the idealistic motives behind Prohibition were noble, a law enforcement nightmare ensued. Otherwise law-abiding citizens routinely violated the law by buying and consuming alcoholic beverages. The demand for the illegal products created an opportunity for criminal elements to develop a national network for the supply and distribution of alcoholic beverages to the populace. Massive criminal empires were built on illicit profits from

these unlawful activities and organized crime openly flourished in Chicago, New York, New Orleans, and other cities.

(c) During Prohibition, the illegal enterprises used their national wholesale distribution networks to exert control over their customers. A common operating procedure was to sell alcoholic beverages to a speakeasy on liberal terms to ensnare the owner in a web of debt and control with the aim of forcing the owner to engage in other illegal business enterprises on the premises including gambling, prostitution, and the distribution of illegal drugs.

(d) In 1935, when the sale of alcoholic beverages was legalized in this state following the adoption of the Twenty-first Amendment to the United States Constitution, the state was faced with building an entire framework for the distribution of alcoholic beverage products. An important concern was that since criminals owned and controlled the existing illegal alcoholic beverage distribution system, criminals would attempt to own and control the newly legalized industry. In an effort to prevent this situation, comprehensive laws were adopted to ensure that an alcoholic beverage permit or license could be issued only to citizens of the state who had lived in this state for at least three years, thus, long enough to be known by their community and neighbors.

(e) Under the newly designed regulatory scheme, permits and licenses issued by the state did not grant the holder a right. Rather, the holder was granted a privilege that could be challenged at both the county and the state level if the character or qualifications of the applicant were suspect. Finally, strict cash and credit laws were adopted to prevent parties in the wholesale distribution system from controlling their retail customers through the leveraging of debt to accomplish other illicit gain.

(f) The alcoholic beverage laws adopted by the legislature in the 1930s to free the industry from the influence of organized crime have been successful in this state. The alcoholic beverage industry in this state is not dominated by organized crime. However, the legislature does find that organized crime continues to be a threat that should never be allowed to establish itself in the alcoholic beverage industry in this state.

(g) To accommodate the interests of the consuming public, the expansion of popular nationwide businesses, and the increasing state interest in tourism, and at the same time to guard against the threats of organized crime, unfair competition, and decreased opportunities for small businesses, the legislature finds that there is no longer need for the three-year residency requirements with regard to those segments of the industry that sell alcoholic beverages to the ultimate consumer only. The legislature finds that it is desirable to retain a one-year residency requirement for businesses that sell to the consumer packaged liquor and fortified wine capable of being used to supply legal or illegal bars and clubs. The legislature also finds it reasonable, desirable, and in the best interests of the state to provide a one-year residency requirement for businesses engaged in the wholesale distribution of beer, malt liquor, or wine or in the manufacture and distribution of distilled spirits and fortified wines at both the wholesale and the retail levels where those beverages, in unopened containers, are sold to mixed beverage permittees and private club registration permittees as well as to the general public. Adequate protection is deemed to be provided by controlling those sources of supply for distilled spirits and fortified wines.

(h) It is also the public policy of this state and a purpose of this section to enforce strict cash and credit laws as a means of preventing those engaged in the distribution of alcoholic beverages from exerting undue influence over any level of the industry selling or serving alcoholic beverages to the ultimate consumer.

(i) It is also the public policy of this state and a purpose of this section to maintain and enforce the three-tier system (strict separation between the manufacturing, wholesaling, and retailing levels of the industry) and thereby to prevent the creation or maintenance of a "tied house" as described and prohibited in Section 102.01 of this code.

(j) The above-stated public policies, purposes of this section, and legislative findings are provided as guidelines for the construction of the following subsections of this section.

(k) A requirement under this code that 51 percent or more of the stock of a corporation be owned by a person or persons who were citizens of this state for a one-year period preceding the date of the filing of an application for a license or permit does not apply to a corporation organized under the laws of this state that applies for a license or permit under Chapters 25-34, Chapter 44, Chapters 48-51, Chapters 69-72, or Chapter 74 of this code if:

(1) all of the officers and a majority of directors of the applicant corporation have resided within the state for a one-year period preceding the date of the application and each officer or director possesses the qualifications required of other applicants for permits and licenses;

(2) the applicant corporation and the applicant's shareholders have no direct or indirect ownership or other prohibited relationship with others engaged in the alcoholic beverage industry at different levels as provided by Chapter 102 of this code and other provisions of this code;

(3) the applicant corporation is not precluded by law, rule, charter, or corporate bylaw from disclosing the applicant's shareholders to the commission; and

(4) the applicant corporation maintains its books and records relating to its alcoholic beverage operations in the state at its registered office or at a location in the state approved in writing by the commission.

(l) Corporations subject to Subsection (k) of this section that have substantially similar ownership may merge or consolidate. A fee of \$100 shall be paid to the commission for each licensed or permitted premises that is merged or consolidated into the surviving corporation. The surviving corporation succeeds to all privileges of the prior corporation that held the permits or licenses if the surviving corporation is qualified to hold the permits or licenses under this code. The purposes of this subsection, corporations have substantially similar ownership if 90 percent or more of the corporations is owned by the same person or persons or by the same corporation or corporations or if the surviving corporation has maintained an ownership interest in the merged or consolidated corporations since the date the original permit or license was issued.

Sec. 6.04. GRACE PERIOD ON RENEWAL OF LICENSES AND PERMITS. (a) Notwithstanding any other provision of this code, the holder of a license or permit issued under this code may renew the license or permit rather than reapply for an original license or permit if, not later than the 30th day after the date of the expiration of the license or permit, the holder files a renewal application and the required license or permit fee with the commission and pays a late fee as provided by rules of the commission.

(b) If an application is filed under Subsection (a), a violation of the law that occurs before the filing of a renewal application may be the basis for an administrative action against the holder of the license or permit.

(c) The holder of a license or permit who does not renew the license or permit before its expiration date may not operate until the holder files an application under Subsection (a).

(d) The commission shall adopt rules necessary to implement this section.

Sec. 6.05. CORPORATE LIABILITY. A corporation with an ownership interest in a corporation holding a permit under Section 6.03(k) of this code and which shares space, employees, business facilities, or services is subject to liability under Chapter 2 of this code.