

CHAPTER 934

H.B. No. 1445

AN ACT

relating to the continuation of the Texas Alcoholic Beverage Commission and to the regulation of alcoholic beverages; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.04, Alcoholic Beverage Code, is amended by amending Subdivisions (3) and (7) and adding Subdivision (24) to read as follows:

(3) "Distilled spirits" means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them, *and includes spirit coolers that may have an alcoholic content as low as four percent alcohol by volume and that contain plain, sparkling, or carbonated water and may also contain one or more natural or artificial blending or flavoring ingredients.*

(7) "Wine and vinous liquor" means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, *and includes wine coolers.*

(24) "Wine cooler" means an alcoholic beverage consisting of vinous liquor plus plain, sparkling, or carbonated water and which may also contain one or more natural or artificial blending or flavoring ingredients. A wine cooler may have an alcohol content as low as one-half of one percent by volume.

SECTION 2. Chapter 1, Alcoholic Beverage Code, is amended by adding Section 1.08 to read as follows:

Sec. 1.08. *CRIMINAL NEGLIGENCE STANDARD FOR ADMINISTRATIVE ACTION.* For the purposes of administrative actions under this code, a person acts with criminal negligence if the person acts with a mental state that would constitute criminal negligence under Chapter 6, Penal Code, if the act were an offense.

SECTION 3. Section 5.01(b), Alcoholic Beverage Code, is amended to read as follows:

(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, of this code expires September 1, 2005 [1993].

SECTION 4. Section 5.05, Alcoholic Beverage Code, is amended by amending Subsection (c) and by adding Subsections (d), (e), and (f) to read as follows:

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

(d) An officer, employee, or paid consultant of a Texas trade association in the field of alcoholic beverage manufacture, distribution, service, or sales may not be a member or employee of the commission.

(e) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of alcoholic beverage manufacture, distribution, or sales may not be a member or employee of the commission.

(f) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of businesses or persons designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 5. Sections 5.10(b), (c), and (d), Alcoholic Beverage Code, are amended to read as follows:

(b) The [~~commission or~~] administrator or the administrator's designee shall [~~determine the duties of all employees and shall~~] develop an intra-agency career ladder program. The program [~~, one part of which~~] shall require the intra-agency posting of all nonentry level positions concurrently with any public posting. The [~~commission or~~] administrator[,] or the administrator's designee [~~of either,~~] shall develop a system of annual performance evaluations [~~based on measurable job tasks~~]. 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 [~~commission or~~] administrator[,] or the administrator's designee [~~of either,~~] shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which [whereby] all personnel transactions are made without regard to race, color, disability [handicap], 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 [complete] analysis of the commission [agency's] work force that meets federal and state guidelines;

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

(4) reasonable methods to appropriately address *those* areas of significant *underuse* [~~underutilization, in the agency work force, of all persons of which federal or state guidelines encourage a more equitable balance.~~]

(d) A [The] policy statement *prepared under Subsection (c) of this section must* [~~shall be filed with the governor's office within 60 days of the effective date of the amendment of this section by the 69th Legislature, Regular Session, 1985,~~] cover an annual period, [~~and~~] be updated [~~at least~~] 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* [~~develop and make~~] 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.

SECTION 6. Subchapter A, Chapter 5, Alcoholic Beverage Code, is amended by adding Sections 5.101, 5.102, and 5.103 to read as follows:

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) *open all positions compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 21, of the position classification salary schedule to applicants both from within and outside the commission;*

(2) *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*

(3) *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.*

SECTION 7. Subchapter A, Chapter 5, Alcoholic Beverage Code, is amended by adding Section 5.20 to read as follows:

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.*

SECTION 8. Section 5.34, Alcoholic Beverage Code, is amended to read as follows:

Sec. 5.34. *DELEGATION OF AUTHORITY.* (a) *The commission may authorize its commissioned peace officers [agents], 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.*

SECTION 9. Subchapter B, Chapter 5, Alcoholic Beverage Code, is amended by adding Section 5.371 to read as follows:

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.

SECTION 10. Section 5.43, Alcoholic Beverage Code, is amended to read as follows:

Sec. 5.43. WHO MAY HOLD HEARING; RULES OF EVIDENCE. *Except 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 [The] commission designates the State Office of Administrative Hearings [or administrator may designate a member of the commission or other representative] to conduct and make a record of any hearing authorized by this code. 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 and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) 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.*

SECTION 11. Sections 5.50(b) and (d), Alcoholic Beverage Code, are amended to read as follows:

(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 and collect annual surcharges from all holders of a certificate, permit, or license issued by the commission in addition to any fee set by this code. The surcharges shall be set at a level so that the anticipated total of all fees collected by the commission for a fiscal year and all surcharges for a fiscal year are equal to the legislative appropriation to the commission for the regulation of alcoholic beverages. 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. In setting the surcharge for permittees subject to the mixed beverage tax, the commission shall also recover the reasonable and necessary cost of the administration of the mixed beverage tax by the comptroller.*

(d) ~~[A fee authorized by this section and set by rule of the commission may not exceed \$25.]~~ Revenues and surcharges from fees collected by the commission under this section shall be deposited in the general revenue fund.

SECTION 12. Subchapter B, Chapter 5, Alcoholic Beverage Code, is amended by adding Section 5.52 to read as follows:

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.*

SECTION 13. Subchapter B, Chapter 5, Alcoholic Beverage Code, is amended by adding Section 5.53 to read as follows:

Sec. 5.53. PUBLIC INTEREST INFORMATION. (a) *The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.*

(b) *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.*

SECTION 14. Subchapter B, Chapter 5, Alcoholic Beverage Code, is amended by adding Section 5.54 to read as follows:

Sec. 5.54. RESOLUTION OF COMPLAINTS. (a) *The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve.*

(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.

SECTION 15. Section 6.01(b), Alcoholic Beverage Code, is amended to read as follows:

(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.

SECTION 16. Chapter 6, Alcoholic Beverage Code, is amended by adding Sections 6.03 and 6.04 to read as follows:

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 ensnarl 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. For 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 10th day after the date of the expiration of the license or permit, the holder files a renewal application with the commission and pays a renewal fee of \$100 and the license or permit fee that is due.

(b) If an application is filed under Subsection (a) of this section, 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 commission shall adopt rules necessary to implement this section.

SECTION 17. Chapter 6, Alcoholic Beverage Code, is amended by adding Section 6.05 to read as follows:

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.

SECTION 18. Subchapter A, Chapter 11, Alcoholic Beverage Code, is amended by adding Section 11.015 to read as follows:

Sec. 11.015. HEARING LOCATION. Notwithstanding any other provision of this code, except for a hearing required to be conducted by a county judge, a hearing related to the issuance, renewal, cancellation, or suspension of a permit under this subtitle may be conducted only in the county in which the premises is located.

SECTION 19. Subchapter A, Chapter 11, Alcoholic Beverage Code, is amended by adding Section 11.11 to read as follows:

Sec. 11.11. CONDUCT SURETY BOND. (a) Except as provided in Subsection (e) of this section, an applicant for a permit or a holder of a permit issued under Chapter 25, 28, or 32 of this code shall file with the commission a surety bond in the amount of \$5,000 conditioned on the applicant's or holder's conformance with alcoholic beverage law.

(b) A surety bond required under this section shall contain the following statements on the face of the bond:

(1) that the holder of the permit will not violate a law of the state relating to alcoholic beverages or a rule of the commission; and

(2) that the holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked.

(c) The commission shall adopt rules relating to the:

(1) form of the surety bond;

(2) qualifications for a surety;

(3) method for filing and obtaining approval of the bond by the commission; and

(4) release or discharge of the bond.

(d) A holder of a permit required to file a surety bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or savings institution authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or savings institution authorized to do business in this state.

(e) A holder of a permit issued under this code who has held a permit for three years or more before the date the holder applied for renewal of the permit is not required to furnish a surety bond if the holder:

(1) has not had a license or permit issued under this code revoked in the five years before the date the holder applied for renewal of the permit;

(2) is not the subject of a pending permit or license revocation proceeding; and

(3) has continuously operated on the permitted premises for three years or more before the date the holder applied for renewal of the permit.

(f) If a holder of a permit is exempt from furnishing a conduct surety bond under Subsection (e) of this section, the holder shall be exempt from furnishing the bond at another location where the holder applies for or holds a permit.

(g) This section applies only in a county having a population of 2.4 million or more.

SECTION 20. Section 11.43, Alcoholic Beverage Code, is amended to read as follows:

Sec. 11.43. DISCRETION TO GRANT OR REFUSE PERMIT. (a) The commission and administrator have discretionary authority to grant or refuse to issue an original or renewal permit under the provisions of this subchapter or any other applicable provision of this code.

(b) *Notwithstanding any other provision of this code that authorizes the commission or administrator to refuse to issue a permit without a hearing, the commission or administrator shall hold a hearing before granting or refusing to issue an original mixed beverage permit, private club registration permit, wine and beer retailer's permit, or retail dealer's on-premise license if a sexually oriented business is to be operated on the premises to be covered by the permit or license.*

(c) *A hearing shall be held on any renewal application of a mixed beverage permit, private club registration permit, wine and beer retailer's permit, or retail dealer's on-premise license if a sexually oriented business is to be operated on the premises to be covered by the permit or license and a petition is presented to the commission requesting a hearing which is signed by 50 percent of the residents who reside within 300 feet of any property line of the affected premises.*

(d) *A request for a hearing made under Subsection (b) or (c) of this section must include an allegation of grounds on which the original or renewal application, as applicable, should be denied.*

SECTION 21. Sections 11.46(a) and (c), Alcoholic Beverage Code, are amended to read as follows:

(a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of his application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

(3) within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission which involves moral turpitude, as distinguished from a technical violation of this code or of the rule;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or by rule of the commission;

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(7) the applicant is a minor;

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

(10) the applicant will sell liquor unlawfully in a dry area or in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so;

(11) the applicant is not a United States citizen or has not been a citizen of Texas for a period of *one year* [~~three years~~] immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

(12) the applicant does not *provide* [~~have~~] an adequate building available at the address for which the permit is sought *before conducting any activity authorized by the permit*;

(13) the applicant is residentially domiciled with a person whose permit or license has been cancelled for cause within the 12 months immediately preceding the date of his present application;

(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency.

(c) The commission or administrator shall refuse to issue for a period of one year after cancellation a mixed beverage permit or private club registration permit for a premises where a license or permit has ~~[two or more licenses and permits have]~~ been canceled during the preceding 12 months as a result of a shooting, stabbing, or other violent act, or as a result of an offense involving drugs.

SECTION 22. Subchapter B, Chapter 11, Alcoholic Beverage Code, is amended by adding Section 11.495 to read as follows:

Sec. 11.495. CONFORMANCE OF PREMISES WITH THE AMERICANS WITH DISABILITIES ACT. (a) A permittee or licensee shall certify that any area to be designated as the premises where alcoholic beverages may be sold or served has been reviewed for compliance with Title III of the Americans with Disabilities Act of 1990.

(b) Any permittee or licensee designating a premise for which this certification cannot be made shall be provided with information on compliance with the Americans with Disabilities Act by the commission. The commission shall utilize materials produced by the United States Department of Justice, United States Department of Justice grantees, grantees of other federal agencies such as the National Institute on Disability and Rehabilitation Research, any agency of the State of Texas, trade associations of permittees or licensees, and other sources of a similar nature.

SECTION 23. Subchapter B, Chapter 11, Alcoholic Beverage Code, is amended by adding Section 11.52 to read as follows:

Sec. 11.52. RESTRICTIONS ON LOCATION IN CERTAIN MUNICIPALITIES. (a) In a municipality with a population of 1,500,000 or more, on the assertion by any person of any justiciable grounds for a suspension, denial, cancellation, or refusal of a mixed beverage permit or a wine and beer retailer's permit, the commission or county judge, as applicable, shall hold a hearing if:

(1) any point of the property line of the premise is less than 300 feet from the nearest point on a property line of a residence, church, school, hospital, day-care facility, or social service facility, as measured in a straight line; and

(2) 75 percent or more of the permittee's or licensee's actual or anticipated gross revenue is from the sale of alcoholic beverages.

(b) An applicant for an original or renewal permit shall give notice to all tenants or property owners affected in Subsection (a) of this section that an application has been made within five days after the application is first filed for an original application and at least 30 days prior to the expiration date of a permit in the case of a renewal application.

SECTION 24. Section 11.61, Alcoholic Beverage Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

(1) the permittee has been finally convicted of a violation of this code;

(2) the permittee violated a provision of this code or a rule of the commission;

(3) the permittee was finally convicted of a felony while holding an original or renewal permit;

(4) the permittee made a false or misleading statement in connection with his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission, its officers, or employees;

(5) the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by this code or by a rule of the commission;

(6) the permittee is not of good moral character or his reputation for being a peaceable and law-abiding citizen in the community where he resides is bad;

(7) the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(8) the permittee is not maintaining an acceptable bond;

(9) the permittee maintains a noisy, lewd, disorderly, or unsanitary establishment or has supplied impure or otherwise deleterious beverages;

(10) the permittee is insolvent or mentally or physically unable to carry on the management of his establishment;

(11) the permittee is in the habit of using alcoholic beverages to excess;

(12) the permittee knowingly misrepresented to a customer or the public any liquor sold by him;

(13) the permittee was intoxicated on the licensed premises;

(14) the permittee sold or delivered an alcoholic beverage to an intoxicated person;

(15) the permittee possessed on the licensed premises an alcoholic beverage that he was not authorized by his permit to purchase and sell;

(16) a package store or wine only package store permittee transported or shipped liquor, or caused it to be transported or shipped, into a dry state or a dry area within this state;

(17) the permittee is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, except as authorized by Section 22.06, 24.05, or 102.05 of this code;

(18) the permittee is residentially domiciled with a person whose permit or license was cancelled for cause within the 12-month period preceding his own application;

(19) the permittee is not a citizen of the United States or has not been a citizen of Texas for a period of *one year* [~~three years~~] immediately preceding the filing of his application, unless he was issued an original or renewal permit on or before September 1, 1948, and has been a United States citizen at some time; or

(20) the permittee permitted a person to open a container of alcoholic beverage or possess an open container of alcoholic beverage on the licensed premises unless a mixed beverage permit has been issued for the premises.

(e) The commission or administrator shall cancel an original or renewal permit if it is found, after notice and hearing, that the permittee knowingly allowed a person to possess a firearm in a building on the licensed premises. This subsection does not apply to a person:

(1) who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) the person is engaged in the performance of the person's duties as a security officer;

(B) the person is wearing a distinctive uniform; and

(C) the weapon is in plain view; or

(2) who is a peace officer.

SECTION 25. Section 11.64(a), Alcoholic Beverage Code, is amended to read as follows:

(a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission or administrator shall determine the amount of the penalty and in doing so shall consider the economic impact a suspension would have on the permittee or licensee. The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended. If the licensee or permittee does not pay the penalty before the sixth day after the commission or administrator notifies him of the amount, he loses the opportunity to pay it and the commission or administrator shall impose the suspension.

SECTION 26. Chapter 12, Alcoholic Beverage Code, is amended by adding Section 12.05 to read as follows:

Sec. 12.05. SALES BY CERTAIN BREWERS. The holder of a brewer's permit whose annual production of ale in this state does not exceed, together with the annual production of beer by the holder of a manufacturer's license acting under the authority of Section 62.12 of this code at the same premises, a total of 75,000 barrels, may sell ale produced under the permit to those persons to whom the holder of a general class B wholesaler's permit may sell malt liquor under Section 20.01(3) of this code. With regard to such a sale, the brewer has the same authority and is subject to the same requirements that apply to a sale made by the holder of a general class B wholesaler's permit.

SECTION 27. Section 16.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 16.01. AUTHORIZED ACTIVITIES. (a) The holder of a winery permit may:

- (1) manufacture, bottle, label, and package wine containing not more than 24 percent alcohol by volume;
- (2) manufacture and import grape brandy for fortifying purposes only and to be used only on his licensed premises;
- (3) sell wine in this state to holders of wholesaler's permits, winery permits, and wine bottler's permits;
- (4) sell wine to ultimate consumers in unbroken packages for off-premises consumption in an amount not to exceed 25,000 gallons annually;
- (5) sell the wine outside this state to qualified persons;
- (6) blend wines; and
- (7) dispense free wine for consumption on the winery premises.

(b) The holder of a winery permit may manufacture and label wine for an adult in an amount not to exceed 50 gallons annually for the personal use of the adult. Any amount of wine produced under this subsection is included in the annual total amount that may be sold by the holder under Subsection (a)(4) of this section. An adult for whom wine is manufactured and labeled under this subsection is not required to hold a license or permit issued under this code.

(c) The holder of a winery permit may conduct wine samplings, including wine tastings at a retailer's premises. A winery employee may open, touch, or pour wine, make a presentation, or answer questions at a wine sampling. A wine sampling may not be held in a location where a wine sampling is otherwise prohibited by law.

(d) The holder of a winery permit may sell wine to ultimate consumers for consumption on or off winery premises and dispense free wine for consumption on or off the winery premises if the winery is located in a city that:

- (1) is located in three or more counties, at least one of which has a population of 500,000 or more; and*
- (2) has within its boundaries all or part of an international airport.*

SECTION 28. Sections 22.10 and 22.11, Alcoholic Beverage Code, are amended to read as follows:

Sec. 22.10. OPENING CONTAINERS PROHIBITED. *Except as authorized under Section 52.01 of this code, no [No] person may break or open a container containing liquor or beer or possess an opened container of liquor or beer on the premises of a package store.*

Sec. 22.11. CONSUMPTION ON PREMISES PROHIBITED. *Except as authorized under Section 52.01, no [No] person may sell, barter, exchange, deliver, or give away any drink or drinks of alcoholic beverages from a container that has been opened or broken on the premises of a package store.*

SECTION 29. Section 25.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 25.01. AUTHORIZED ACTIVITIES. The holder of a wine and beer retailer's permit may sell:

(1) for consumption on or off the premises where sold, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume and not more than 14 percent by volume; *and*

(2) for consumption on the premises traditional port or sherry containing alcohol in excess of one-half of one percent by volume and not more than 24 percent by volume.

SECTION 30. The title of Chapter 27, Alcoholic Beverage Code, is amended to read as follows:

CHAPTER 27. TEMPORARY AND SPECIAL WINE
AND BEER RETAILER'S PERMITS [PERMIT]

SECTION 31. Sections 27.01–27.06, Alcoholic Beverage Code, are designated as Subchapter A, Chapter 27, of that code, as follows:

SUBCHAPTER A. TEMPORARY WINE AND BEER RETAILER'S PERMIT

SECTION 32. Section 27.04, Alcoholic Beverage Code, is amended to read as follows:

Sec. 27.04. **REQUIRED BASIC PERMIT.** A temporary wine and beer retailer's permit may be issued only to a holder of a wine and beer retailer's permit, a holder of a ~~or~~ mixed beverage permit, or a nonprofit historic preservation organization that has been in existence for at least 30 years.

SECTION 33. Chapter 27, Alcoholic Beverage Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. SPECIAL THREE-DAY WINE AND BEER PERMIT

Sec. 27.11. **AUTHORIZED ACTIVITIES.** *The holder of a special three-day wine and beer permit may sell for consumption on the premises for which the permit is issued, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume.*

Sec. 27.12. **FEE.** *The state fee for a special three-day wine and beer permit is \$30.*

Sec. 27.13. **ISSUANCE OF PERMIT.** (a) *The commission may issue a special three-day wine and beer permit directly to a nonprofit charitable, civic, or religious organization for the temporary serving of wine and beer at a picnic, celebration, or similar event sponsored by the organization.*

(b) *The commission by rule may limit the number of special three-day wine and beer permits issued in each calendar year to a single nonprofit charitable, civic, or religious organization for events sponsored by that organization.*

(c) *If a special three-day wine and beer permit is issued for a premises in an area in which the sale of beer for on-premise consumption has been authorized by a local option election, but the sale of wine for on-premise consumption has not been authorized, then the permittee is only authorized to sell beer.*

Sec. 27.14. **APPLICATION OF WINE AND BEER RETAILER'S PERMIT PROVISIONS.** *A provision of this code that applies to a wine and beer retailer permit applies to a special three-day wine and beer permit unless the provision conflicts with a provision of this subchapter.*

Sec. 27.15. **RULES.** *The commission may adopt rules as necessary to implement and administer this subchapter.*

SECTION 34. Section 28.04(d), Alcoholic Beverage Code, is amended to read as follows:

(d) This section does not apply to a change in corporate control:

(1) brought about by the death of a shareholder if his surviving spouse or descendants are his successors in interest; or

(2) brought about when legal or beneficial ownership of over 50 percent of the stock of the corporation has been transferred:

(A) to a person who possesses the qualifications required of other applicants for permits and is currently an officer of the corporation and has been an officer of the corporation ever since the date the original permit was issued; or

(B) if the permittee pays a fee of \$500 and notifies the commission, on completed forms and attachments prescribed by the commission, of the proposed transfer at least 10 days prior to the date the transfer is to become effective and the commission does not find that circumstances exist that would be grounds for the denial of a renewal of the permit under Section 11.46 of this code and provided the ownership of the corporation immediately after the transfer satisfies the requirements of this code. ~~[The commission may require the permittee to furnish a new bond as provided in Section 204.01(a)(3), and where a new bond is required, the permittee shall not be eligible for a bond exemption under Section 204.01(f) until 36 months after the date on which the transfer takes effect.]~~

SECTION 35. Sections 28.07(a) and (b), Alcoholic Beverage Code, are amended to read as follows:

(a) All distilled spirits sold by a holder of a mixed beverage permit must be purchased ~~[in this state]~~ from a holder of a local distributor's permit *in the county in which the premises of a mixed beverage permittee is located.*

(b) If a holder of a mixed beverage permit is in a county ~~[an area]~~ where there are no local distributors, he may purchase alcoholic beverages in *the nearest county [any area]* where local distributors are located and may transport them to his premises provided that he is also a holder of a beverage cartage permit. The transporter may acquire the alcoholic beverages only on the written order of the holder of the mixed beverage permit. The alcoholic beverages must be accompanied by a written statement furnished and signed by the local distributor showing the name and address of the consignee and consignor, the origin and destination of the shipment, and any other information required by the commission or administrator. The person in charge of the alcoholic beverages while they are being transported shall exhibit the written statement to any representative of the commission or any peace officer on demand, and the statement shall be accepted by the representative or officer as prima facie evidence of the lawful right to transport the alcoholic beverages.

SECTION 36. Chapter 28, Alcoholic Beverage Code, is amended by adding Section 28.081 to read as follows:

Sec. 28.081. SUBSTITUTION OF BRAND WITHOUT CONSENT OF CONSUMER PROHIBITED. (a) The holder, of a mixed beverage permit or a private club permit, or the agent, servant, or employee of a holder of a mixed beverage permit or private club permit commits an offense if the holder, agent, servant, or employee substitutes one brand of alcoholic beverage for a brand that has been specifically requested by a consumer, unless the consumer is notified and consents to the substitution.

(b) A holder of a permit who violates Subsection (a) of this section is liable in a civil suit to a consumer for damages resulting from the substitution. The court shall award the prevailing party in an action under this section attorney's fees and costs of action.

(c) The commission shall provide written notice of the provisions of this section to an applicant or permittee when issuing an original or renewal mixed beverage permit or private club permit on or after October 1, 1993.

SECTION 37. Chapter 28, Alcoholic Beverage Code, is amended by adding Sections 28.15, 28.16, and 28.17 to read as follows:

Sec. 28.15. STAMPS. (a) A mixed beverage permittee may not possess or permit a person to possess on the premises distilled spirits in any container that does not bear a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(b) A holder of a local distributor's permit may not knowingly sell, ship, or deliver distilled spirits in any container that does not bear a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(c) Identification stamps may be issued only to a holder of a local distributor's permit who shall affix the stamps as prescribed by the commission or administrator.

Sec. 28.16. PERMIT INELIGIBILITY. A mixed beverage permit may not be issued to:

- (1) a person whose permit was canceled for a violation of Section 28.06(c) of this code;
- (2) a person who held an interest in a permit that was canceled for a violation of Section 28.06(c) of this code;
- (3) a person who held 50 percent or more of the stock, directly or indirectly, of a corporation whose permit was canceled for a violation of Section 28.06(c) of this code;
- (4) a corporation, if a person holding 50 percent or more of the corporation's stock, directly or indirectly, is disqualified from obtaining a permit under Subdivision (3) of this section; or
- (5) a person who resides with a person who is barred from obtaining a permit because of a violation of Section 28.06(c) of this code.

Sec. 28.17. SUMMARY SUSPENSION. (a) *The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a return or make a tax payment. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to the commission in the enforcement and administration of this section.*

(b) *A suspension under this section takes effect on the third day after the date the notice of suspension is provided. Notice of suspension shall be sent by registered or certified mail to the permittee or the permittee's agent, servant, or employee if not given in person.*

(c) *The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments, including payment of penalties that are due.*

SECTION 38. Section 30.03(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The commission may, in its discretion, issue on a temporary basis a daily temporary mixed beverage permit. A daily temporary mixed beverage permit may be issued only to a holder of a mixed beverage permit for the temporary sale of authorized alcoholic beverages at picnics, celebrations, or similar events, or to a political party or political association supporting a candidate for public office or a proposed amendment to the Texas Constitution or other ballot measure, to an organization formed for a specific charitable or civic purpose, to a fraternal organization in existence for over five years with a regular membership, or to a religious organization. The commission shall not issue more than 10 [two] temporary mixed beverage permits in each calendar year to a person who does not also hold a mixed beverage permit.

SECTION 39. Section 31.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 31.01. AUTHORIZED ACTIVITIES. The holder of a caterer's permit may sell mixed beverages on a temporary basis at a place other than the premises for which the holder's mixed beverage permit is issued[, but] only in:

(1) an area where the sale of mixed beverages has been authorized by a local option election; or

(2) an area that:

(A) is adjacent to a county with a home-rule municipality with a population of more than 350,000:

(i) that has in its charter a provision allowing for limited purpose annexation for zoning;

(ii) that has previously disannexed territory annexed for limited purposes; and

(iii) that allows the sale of mixed beverages;

(B) does not comprise an entire county; and

(C) is not within the corporate limits of a municipality.

SECTION 40. Section 32.02(b), Alcoholic Beverage Code, is amended to read as follows:

(b) The annual state fee shall be computed at the election of the permittee by using one of the following methods:

(1) A fee based on the highest number of members in good standing during the year for which the permit fee is paid according to the following rates:

0 to 250 members - \$ 750

251 to 450 members - \$1,350

451 to 650 members - \$1,950

651 to 850 members - \$2,550

851 to 1,000 members - \$3,000

Over 1,000 members - \$3 per member [~~of \$3 for each member entitled to privileges of the club during the permit year with a minimum fee of \$750~~]; or

(2) A fee for an original private club registration permit of \$3,500, with a fee for the first renewal of a private club registration permit of \$2,750, and a fee for the second and each subsequent renewal of a private club registration permit of \$2,000.

SECTION 41. Section 32.17(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The commission or administrator may cancel or suspend for a period of time not exceeding 60 days, after notice and hearing, an original or renewal private club registration permit on finding that the permittee club has:

(1) sold, offered for sale, purchased, or held title to any liquor so as to constitute an open saloon;

(2) refused to allow an authorized agent or representative of the commission or a peace officer to come on the club premises for the purposes of inspecting alcoholic beverages stored on the premises or investigating compliance with the provisions of this code;

(3) refused to furnish the commission or its agent or representative when requested any information pertaining to the storage, possession, serving, or consumption of alcoholic beverages on club premises;

(4) permitted or allowed any alcoholic beverages stored on club premises to be served or consumed at any place other than on the club premises;

(5) failed to maintain an adequate building at the address for which the private club registration permit was issued;

(6) caused, permitted, or allowed any member of a club in a dry area to store any liquor on club premises except under the locker system;

(7) caused, permitted, or allowed any person to consume or be served any alcoholic beverage on the club premises:

(A) at any time on Sunday between the hours of 1:15 a.m. and 10 a.m. [~~12 noon~~] or on any other day at any time between the hours of 12:15 a.m. and 7 a.m., if the club does not have a private club late hours permit, *except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to the customer*; or

(B) at any time on Sunday between the hours of 2 a.m. and 10 a.m. [~~12 noon~~] or on any other day at any time between the hours of 2 a.m. and 7 a.m., if the club has a private club late hours permit, *except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to the customer*; or

(8) violated or assisted, aided or abetted the violation of any provision of this code.

SECTION 42. Chapter 32, Alcoholic Beverage Code, is amended by adding Sections 32.20, 32.21, and 32.22 to read as follows:

Sec. 32.20. STAMPS. (a) A private club registration permittee may not possess or permit a person to possess on the premises distilled spirits in any container that does not bear a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(b) A holder of a local distributor's permit may not knowingly sell, ship, or deliver distilled spirits in any container that does not bear a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(c) Identification stamps may be issued only to a holder of a local distributor's permit who shall affix the stamps as prescribed by the commission or administrator.

Sec. 32.21. PERMIT INELIGIBILITY. A private club registration permit may not be issued to:

- (1) a person whose permit was canceled for a violation of Section 28.06(c) of this code;
- (2) a person who held an interest in a permit that was canceled for a violation of Section 28.06(c) of this code;
- (3) a person who held 50 percent or more of the stock, directly or indirectly, of a corporation whose permit was canceled for a violation of Section 28.06(c) of this code;
- (4) a corporation, if a person holding 50 percent or more of the corporation's stock, directly or indirectly, is disqualified from obtaining a permit under Subdivision (3) of this section; or
- (5) a person who resides with a person who is barred from obtaining a permit because of a violation of Section 28.06(c) of this code.

Sec. 32.22. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a return or make a tax payment. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice of suspension shall be sent by registered or certified mail to the permittee, the permittee's agent, servant, or employee if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments, including payment of penalties that are due.

SECTION 43. Section 42.04, Alcoholic Beverage Code, is amended by adding Subsection (d) to read as follows:

(d) A holder of a winery permit is exempt from the requirements of this section for the transportation of its wine.

SECTION 44. Section 45.03(d), Alcoholic Beverage Code, is amended to read as follows:

(d) Except as provided by Section 45.04 of this code, no [N] storage permit may be issued for a location in a dry area.

SECTION 45. Chapter 45, Alcoholic Beverage Code, is amended by adding Section 45.04 to read as follows:

Sec. 45.04. WINERY STORAGE PERMIT. A holder of a winery permit whose winery is located in a county all or part of which is in a dry area may obtain a storage permit to store the winery's product in a dry area of that county if:

- (1) the holder of the winery permit obtains a permit for each place of storage; and
- (2) the product to be stored is owned by the holder of the winery permit and remains in the possession of the holder.

SECTION 46. Section 46.03, Alcoholic Beverage Code, is amended to read as follows:

Sec. 46.03. QUALIFICATIONS FOR PERMIT. *(a) A bonded warehouse permit may be issued to any public bonded warehouse that:*

- (1) ~~[not located in a dry area which]~~ derives at least 50 percent of its gross revenue in a bona fide manner during each three-month period from the storage of goods or merchandise other than liquor; and
- (2) is not located in a dry area.

(b) A bonded warehouse permit may be issued to a public bonded warehouse described by Subsection (a)(1) of this section that is located in a dry area only for the storage of the wine of the holder of a winery permit who holds a permit authorizing its storage in a public bonded warehouse.

SECTION 47. Section 51.04(b), Alcoholic Beverage Code, is amended to read as follows:

(b) A minibar may not be restocked or replenished during any hours that a mixed beverage permittee may not sell alcoholic beverages at the location as provided by Section

105.03 of this code [~~between the hours of 9 p.m. and 9 a.m. or on any Sunday,~~] and it may contain no more than 40 individual containers of alcoholic beverages at any one time.

SECTION 48. Subchapter A, Chapter 61, Alcoholic Beverage Code, is amended by adding Section 61.13 to read as follows:

Sec. 61.13. **CONDUCT SURETY BOND.** (a) *Except as provided in Subsection (e) of this section, an applicant for a license or a holder of a license issued under Chapter 69 of this code shall file with the commission a surety bond in the amount of \$5,000 conditioned on the applicant's or holder's conformance with alcoholic beverage law.*

(b) *A surety bond required under this section shall contain the following statements on the face of the bond:*

(1) *that the holder of the license will not violate a law of the state relating to alcoholic beverages or a rule of the commission; and*

(2) *that the holder of the license agrees that the amount of the bond shall be paid to the state if the license is revoked.*

(c) *The commission shall adopt rules relating to the:*

(1) *form of a surety bond;*

(2) *qualifications for a surety;*

(3) *method for filing and obtaining approval of the bond by the commission; and*

(4) *release or discharge of the bond.*

(d) *A holder of a license required to file a surety bond may furnish instead of all or part of the required bond amount:*

(1) *one or more certificates of deposit assigned to the state issued by a federally insured bank or savings institution authorized to do business in this state; or*

(2) *one or more letters of credit issued by a federally insured bank or savings institution authorized to do business in this state.*

(e) *A holder of a license issued under this code who has held a permit for three years or more before the date the holder applied for renewal of the license is not required to furnish a surety bond if the holder:*

(1) *has not had a license or permit issued under this code revoked in the five years before the date the holder applied for renewal of the license;*

(2) *is not the subject of a pending permit or license revocation proceeding; and*

(3) *has continuously operated on the licensed premises for three years or more before the date the holder applied for renewal of the license.*

(f) *If a holder of a license is exempt from furnishing a conduct surety bond under Subsection (e) of this section, the holder shall be exempt from furnishing the bond at another location where the holder applies for or holds a license.*

(g) *This section applies only in a county having a population of 2.4 million or more.*

SECTION 49. Subtitle A, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 52 to read as follows:

CHAPTER 52. PACKAGE STORE TASTING PERMIT

Sec. 52.01. **AUTHORIZED ACTIVITIES.** (a) *The holder of a package store tasting permit may conduct product tastings of distilled spirits, wine, beer, and malt-based or spirit-based coolers on the licensed premises of the holder's package store during regular business hours as provided by this section.*

(b) *Written notification of a product tasting must be made to the commission by mailing a letter to the commission not later than 72 hours before the tasting event. The notification shall clearly state:*

(1) *the type and brand of alcoholic beverage to be tasted;*

(2) *the date and hours the tasting is to take place; and*

(3) the address of the premises where the tasting is to occur.

(c) A copy of the notification shall be kept on file and available for inspection on the premises during all tasting hours.

(d) Sample portions at a product tasting shall be limited to no more than:

(1) one-half ounce for distilled spirits;

(2) one ounce for wine; and

(3) one ounce for beer and coolers.

(e) At any one time, not more than two of the following categories may be tasted:

(1) distilled spirits;

(2) wine; or

(3) beer and coolers.

(f) When distilled spirits are tasted, not more than one brand or type may be made available for tasting at one time. When wine is tasted, not more than three different wines may be made available for tasting at any one time. When beer or coolers are tasted, not more than two brands or types of beer or coolers may be made available at any one time.

(g) No charge of any sort may be made for a sample serving.

(h) A person may be served more than one sample. Samples may not be served to a minor or to an obviously intoxicated person. No samples may be removed from the licensed premises.

(i) During the tasting, not more than two containers of each brand or type of product being tasted may be open on the premises at one time.

(j) At the conclusion of the tasting, all empty or open containers of alcoholic beverages used in the tasting shall be removed from the premises.

(k) A tasting event authorized by this section may not be advertised except by on-site communications or by direct mail.

(l) A person other than the permittee or the permittee's agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this chapter.

Sec. 52.02. FEE. The annual state fee for a package store tasting permit is \$25. The fee is in addition to and subject to the same conditions as the fee paid for the holder's package store permit.

Sec. 52.03. ELIGIBILITY FOR PERMIT. The commission or the administrator may only issue a package store tasting permit to a holder of a package store permit. For the purposes of this code and any other law of the state or political subdivision of the state, a package store tasting permit may not be considered a permit authorizing the sale of alcoholic beverages for on-premise consumption. Since no charge may be made for a sample tasted on the premises of a package store, none of a package store's revenue may be deemed to be revenue from the on-premise sale of alcoholic beverages.

SECTION 50. Section 61.42(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The county judge shall refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant is a minor;

(2) the applicant is indebted to the state for any taxes, fees, or penalties imposed by this code or by rule of the commission;

(3) the place or manner in which the applicant for a retail dealer's license may conduct his business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(4) the applicant is in the habit of using alcoholic beverages to excess or is mentally or physically incompetent;

(5) the applicant is not a United States citizen or has not been a citizen of Texas for a period of one year [~~three years~~] immediately preceding the filing of his application, unless he was issued an original or renewal license on or before September 1, 1948;

(6) the applicant was finally convicted of a felony during the two years immediately preceding the filing of his application;

(7) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; or

(8) as to a corporation, it is not incorporated under the laws of this state, or at least 51 percent of the corporate stock is not owned at all times by persons who individually are qualified to obtain a license, except that this subdivision does not apply to a holder of any renewal of a distributor's license which was in effect on January 1, 1953, or to an applicant for a beer retailer's on-premise license for a railway car.

SECTION 51. Section 61.42(c), Alcoholic Beverage Code, is amended to read as follows:

(c) The county judge, commission, or administrator shall refuse to approve or issue for a period of one year a retail dealer's on-premise license or a wine and beer retailer's permit for a premises where a license or permit has ~~[two licenses or permits have]~~ been canceled during the preceding 12 months as a result of a shooting, stabbing, or other violent act, or as a result of an action involving drugs.

SECTION 52. Section 61.43, Alcoholic Beverage Code, is amended to read as follows:

Sec. 61.43. DISCRETIONARY GROUNDS FOR REFUSAL: DISTRIBUTOR OR RETAILER. The county judge may refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant has been finally convicted in a court of competent jurisdiction for the violation of a provision of this code during the two years immediately preceding the filing of his application;

(2) two years has not elapsed since the termination, by pardon or otherwise, of a sentence imposed for conviction of a felony;

(3) the applicant has violated or caused to be violated a provision of this code or a rule or regulation of the commission, for which a suspension was not imposed, during the 12-month period immediately preceding the filing of his application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in his original or renewal application;

(5) the applicant for a retail dealer's license does not have an adequate building available at the address for which the license is sought *before conducting any activity authorized by the license*;

(6) the applicant or a person with whom he is residentially domiciled had an interest in a license or permit which was cancelled or revoked within the 12-month period immediately preceding the filing of his application;

(7) the applicant failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises sought to be licensed are located;

(8) the premises on which beer is to be sold for on-premises consumption does not have running water, if it is available, or does not have separate free toilets for males and females, properly identified, on the premises for which the license is sought;

(9) the applicant for a retail dealer's license will conduct his business in a manner contrary to law or in a place or manner conducive to a violation of the law; or

(10) the place, building, or premises for which the license is sought was used for selling alcoholic beverages in violation of the law at any time during the six months immediately preceding the filing of the application or was used, operated, or frequented during that time for a purpose or in a manner which was lewd, immoral, offensive to public decency, or contrary to this code.

SECTION 53. Section 61.71, Alcoholic Beverage Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) made a false statement or a misrepresentation in his original application or a renewal application;

(5) *with criminal negligence* [knowingly] sold, served, or delivered beer to a minor;

(6) sold, served, or delivered beer to an intoxicated person;

(7) sold, served, or delivered beer at a time when its sale is prohibited;

(8) entered or offered to enter an agreement, condition, or system which would constitute the sale or possession of alcoholic beverages on consignment;

(9) possessed on the licensed premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant, or employee to do so, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(10) does not have at his licensed premises running water, if it is available, and separate toilets for both sexes which are properly identified;

(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;

(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in doing so, in an establishment where beer is sold for on-premises consumption;

(13) conspired with a person to violate Section 101.41–101.43, 101.68, 102.11–102.15, 104.04, 108.01, or 108.04–108.06 of this code, or a rule promulgated under Section 5.40 of this code, or accepted a benefit from an act prohibited by any of these sections or rules;

(14) refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the commission or a peace officer;

(15) permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;

(16) maintained blinds or barriers at his place of business in violation of this code;

(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;

(19) purchased beer for the purpose of resale from a person other than the holder of a manufacturer's or distributor's license;

(20) acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages;

(21) owned an interest of any kind in the business or premises of the holder of a distributor's license;

(22) purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or permitted one to be consumed on the licensed premises while his license was under suspension;

(23) purchased, possessed, stored, sold, or offered for sale beer in or from an original package bearing a brand or trade name of a manufacturer other than the brand or trade name shown on the container;

(24) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(25) imported beer into this state except as authorized by Section 107.07 of this code;

(26) occupied premises in which the holder of a manufacturer's or distributor's license had an interest of any kind;

(27) knowingly permitted a person who had an interest in a permit or license which was cancelled for cause to sell, handle, or assist in selling or handling alcoholic beverages on the licensed premises within one year after the cancellation;

(28) was financially interested in a place of business engaged in the selling of distilled spirits or permitted a person having an interest in that type of business to have a financial interest in the business authorized by his license, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(29) is residentially domiciled with or related to a person engaged in selling distilled spirits, except as permitted by Section 22.06, 24.05, or 102.05 of this code, so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code; or

(30) is residentially domiciled with or related to a person whose license has been cancelled within the preceding 12 months so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code.

(f) The commission or administrator shall cancel an original or renewal dealer's on-premises or off-premises license if it is found, after notice and hearing, that the licensee knowingly allowed a person to possess a firearm in a building on the licensed premises. This subsection does not apply to a person:

(1) who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) the person is engaged in the performance of the person's duties as a security officer;

(B) the person is wearing a distinctive uniform; and

(C) the weapon is in plain view; or.

(2) who is a peace officer.

SECTION 54. Section 61.74(a), Alcoholic Beverage Code, is amended to read as follows:

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal general, local, or branch distributor's license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) violated Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule or regulation promulgated under Section 5.40 of this code;

(5) failed to comply with a requirement of the commission relating to the keeping of records or making of reports;

(6) failed to pay any tax due the state on any beer he sold, stored, or transported;

(7) refused to permit or interfered with an inspection of his licensed premises, vehicles, books, or records by an authorized representative of the commission;

(8) consummated a sale of beer outside the county or counties in which he was authorized to sell beer by his license;

(9) purchased, sold, offered for sale, distributed, or delivered beer while his license was under suspension;

(10) permitted the use of his license in the operation of a business conducted for the benefit of a person not authorized by law to have an interest in the business;

(11) made a false or misleading representation or statement in his original application or a renewal application;

(12) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physical-ly unable to manage his establishment;

(13) misrepresented any beer sold by him to a retailer or to the public;

(14) *with criminal negligence* [knowingly] sold or delivered beer to a minor; or

(15) purchased, possessed, stored, sold, or offered for sale beer in an original package bearing a brand or trade name of a manufacturer other than the brand or trade name of the manufacturer shown on the container.

SECTION 55. Chapter 62, Alcoholic Beverage Code, is amended by adding Section 62.13 to read as follows:

Sec. 62.13. LICENSED WAREHOUSE FOR IMPORTATION OF BEER. On applica-tion and payment of a fee to be set by the commission, the holder of a manufacturer's license may be issued a license for a warehouse located in an area where the sale of beer is lawful and may import beer from outside the state for delivery to the licensed warehouse for sale to beer distributors or for removal to other warehouses of the manufacturer. The manufacturer shall make and keep a record of the receipt, sale, and other movement of beer received at the licensed warehouse and any other records that the commission or administrator requires. This section applies only to a holder of a manufacturer's license who, on January 1, 1993, operated under Sections 62.12 and 203.08 of this code.

SECTION 56. Chapter 69, Alcoholic Beverage Code, is amended by adding Section 69.15 to read as follows:

Sec. 69.15. RESTRICTIONS ON LOCATION IN CERTAIN MUNICIPALITIES. (a) Section 11.52 of this code applies to the issuance of a retail dealer's on-premise license as if the license were a permit to which this section applies.

(b) Section 61.31(b) of this code does not apply to an application for a retail dealer's on-premise license.

SECTION 57. Section 73.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 73.01. AUTHORIZED ACTIVITIES. Subject to the limitations imposed in Section 73.011 of this code or elsewhere in this code, the [The] holder of an agent's beer license, acting as an employee or representative of a licensed manufacturer of beer located inside or outside the state or as an employee or representative of a licensed distributor, may:

(1) promote the sale of beer through methods such as solicitation, display, advertising, and personal contact with licensed retailers of beer and their agents, servants, and employees, and with consumers of beer; and

(2) sell beer and offer it for sale.

SECTION 58. Chapter 73, Alcoholic Beverage Code, is amended by adding Section 73.011 to read as follows:

Sec. 73.011. LIMITATIONS ON AUTHORITY OF AGENT'S BEER LICENSEE. (a) A holder of an agent's beer license who is an employee or agent of a manufacturer's licensee or a nonresident manufacturer's licensee may not represent that the holder is the agent of or is acting on behalf of a licensed distributor. An agent may not engage in conduct that is prohibited by Section 102.75 of this code or other provisions of this code.

(b) A holder of an agent's beer license may not make a representation, solicitation, or offer that this code or the rules of the commission prohibits the agent's employer from offering, making, or fulfilling.

SECTION 59. Subtitle B, Title 3, Alcoholic Beverage Code, is amended by adding Chapter 74 to read as follows:

CHAPTER 74. BREWPUB LICENSE

Sec. 74.01. AUTHORIZED ACTIVITIES. (a) A holder of a brewpub license for a brewpub located in a wet area, as that term is described by Section 251.71 of this code, may:

(1) manufacture, brew, bottle, can, package, and label malt liquor, ale, and beer;

(2) sell or offer without charge, on the premises of the brewpub, to ultimate consumers for consumption on or off those premises, malt liquor, ale, or beer produced by the holder,

in or from a lawful container, to the extent the sales or offers are allowed under the holder's other permits or licenses; and

(3) sell food on the premises of the holder's breweries.

(b) The holder of a brewpub license may establish, operate, or maintain one or more licensed brewpubs in this state under the same general management or ownership. The holder shall pay the fee assessed by the commission for each establishment. For the purposes of this subsection, two or more establishments are under the same general management or ownership if:

(1) the establishments bottle the same brand of malt liquor, beer, or ale or bottle malt liquor, beer, or ale brewed by the same manufacturer; or

(2) the person, regardless of domicile, who establishes, operates, or maintains the establishments is controlled or directed by one management or by an association of ultimate management.

(c) A holder of a brewpub license must also hold a wine and beer retailer's permit, a mixed beverage permit, or a retail dealer's on-premise license.

(d) The holder of a brewpub license may not hold or have an interest either directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or other person, in a manufacturer's or distributor's license or any other license or permit in the manufacturing or wholesaling levels of the alcoholic beverage industry regardless of the specific names given to permits or licenses in Title 3 of this code. The holder shall be considered a "retailer" for purposes of Section 102.01 of this code.

(e) A holder of a retail dealer's on-premise license who obtains a brewpub license may not manufacture, brew, bottle, can, package, label, sell, or offer without charge malt liquor or ale.

(f) A holder of a brewpub license may not sell an alcoholic beverage for resale.

Sec. 74.02. **FEE.** The annual state fee for a brewpub license is \$500.

Sec. 74.03. **PRODUCTION LIMIT.** The total annual production of malt liquor, ale, and beer by a holder of a brewpub license may not exceed 5,000 barrels for each licensed brewpub established, operated, or maintained by the holder in this state.

Sec. 74.04. **LICENSE APPLICATION, RENEWAL, AND MAINTENANCE; RECORDS; LICENSE ISSUANCE.** All provisions of this code that apply to a brewpub licensee's wine and beer retailer's permit, mixed beverage permit, or retail dealer's on-premise license also apply to the brewpub license.

Sec. 74.05. **STATEMENT OF INTENT.** An applicant for a brewpub license shall file with the application a sworn statement that the applicant shall be engaged in the business of brewing and packaging malt liquor, ale, or beer in this state in quantities sufficient to operate a brewpub not later than six months after the date of issuance of the original license. If the applicant is a corporation, the statement must be signed by a principal corporate officer. A county judge may not issue a brewpub license to an applicant who does not submit the required sworn statement with the application for a license.

Sec. 74.06. **QUALITY STANDARDS.** Manufacturing or brewing equipment used by a holder of a brewpub license, and process, labeling, and packaging conducted by a holder of a brewpub license, shall conform to standards and tax requirements imposed by this code and the commission's rules for the manufacture of beer and the brewing of ale and malt liquor and shall conform to any standards that may be applied by the agency of the United States charged with supervising and inspecting the manufacture and brewing of alcoholic beverages.

Sec. 74.07. **CONTAINER SIZE.** In addition to any other container for beer, ale, or malt liquor authorized elsewhere in this code, a holder of a brewpub license may store or serve to consumers beer, ale, or malt liquor manufactured by the holder of the license at the premises of the brewpub license from any container having the capacity of one barrel or whole multiples of one barrel.

SECTION 60. Section 101.66, Alcoholic Beverage Code, is amended to read as follows:

Sec. 101.66. **BEVERAGES OF CERTAIN ALCOHOL CONTENT PROHIBITED.** No person may manufacture, sell, barter, or exchange a beverage that contains alcohol in excess

of one-half of one percent by volume and not more than four percent of alcohol by weight, except beer, *wine coolers*, and *spirit coolers*.

SECTION 61. Section 101.41, Alcoholic Beverage Code, is amended to read as follows:

Sec. 101.41. CONTAINERS, PACKAGING, AND DISPENSING EQUIPMENT OF BEER: LABELS. (a) No manufacturer or distributor, directly or indirectly or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may manufacture, sell, or otherwise introduce into commerce any container, packaging, or dispensing equipment of beer that does not meet the requirements of this section.

(b) Every container of beer must have a label or imprint in legible type showing the full name and address of the manufacturer and, if it contains a special brand brewed for a distributor, of the distributor. Any box, crate, carton, or similar device in which containers of beer are sold or transported must have a label meeting the same requirements.

(c) The label of a container of beer must state the net contents in terms of United States liquor measure.

(d) No container, packaging material, or dispensing equipment may bear a label or imprint that:

(1) by wording, lettering, numbering, or illustration, or in any other manner refers or alludes to or suggests [~~the alcoholic strength of the product,~~] a manufacturing process, aging, analysis, or a scientific fact;

(2) refers or alludes to the "proof," "balling," or "extract" of the product;

(3) is untrue in any respect; or

(4) by ambiguity, omission, or inference tends to create a misleading impression, or causes or is calculated to cause deception of the consumer with respect to the product.

SECTION 62. Section 101.46, Alcoholic Beverage Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsections (b), [and] (c), and (d) of this section, no person may import, sell, or possess with intent to sell any liquor in a container with a capacity of less than six fluid ounces.

(d) *Spirit coolers, as described by the definition of "distilled spirits" in Section 1.04 of this code, may be sold in containers with a capacity of 355 milliliters as well as in containers with any other capacity authorized by this code for distilled spirits.*

SECTION 63. Chapter 101, Alcoholic Beverage Code, is amended by adding Section 101.75 to read as follows:

Sec. 101.75. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR SCHOOLS. (a) *A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, or public sidewalk within 600 feet of the property line of a facility that the person knows is a public or private school that provides all or any part of kindergarten through twelfth grade.*

(b) *This section does not apply to the possession of an open container or the consumption at an event duly authorized by appropriate authorities and held in compliance with all other applicable provisions of this code.*

(c) *An offense under this section is a Class C misdemeanor.*

(d) *In this section, "open container" has the meaning assigned in Section 109.35.*

SECTION 64. Subchapter A, Chapter 102, Alcoholic Beverage Code, is amended by adding Section 102.02 to read as follows:

Sec. 102.02. PROVIDING SAMPLES. *Notwithstanding any other provision of this code, the holder of a wholesaler's permit or the holder's agent, representative, or employee may furnish or give a sample of liquor to a holder of a permit authorizing the sale of that category of alcoholic beverage at retail if the retail permittee has not previously purchased that brand from that wholesaler permittee. The wholesaler may give the retail permittee not more than 750 milliliters of any brand of distilled spirits, not more than three liters of any brand of wine in that package, and not more than one six-pack of any other alcoholic beverage so packaged. The retail permittee or the permittee's agent, servant, or employee*

may sample the product on the licensed premises only if the wholesaler or the wholesaler's agent, servant, or employee is present.

SECTION 65. Section 102.07, Alcoholic Beverage Code, is amended by amending Subsections (a), (b), and (d) and by adding Subsections (e) and (f) to read as follows:

(a) Except as provided in Subsections [Subsection] (b) and (d) of this section, no person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, nor the agent, servant, or employee of such a person, may:

(1) own or have a direct or indirect interest in the business, premises, equipment, or fixtures of a retailer;

(2) furnish, give, or lend any money, service, or thing of value to a retailer;

(3) guarantee a financial obligation of a retailer;

(4) make or offer to enter an agreement, condition, or system which will in effect amount to the shipment and delivery of alcoholic beverages on consignment;

(5) furnish, give, rent, lend, or sell to a retail dealer any equipment, fixtures, or supplies to be used in selling or dispensing alcoholic beverages, *except that alcoholic beverages may be packaged in combination with other items if the package is designed to be delivered intact to the ultimate consumer and the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales;*

(6) pay or make an allowance to a retailer for a special advertising or distribution service;

(7) allow an excessive discount to a retailer;

(8) offer a prize, premium, gift, or similar inducement to a retailer [~~or consumer~~] or to the agent, servant, or employee of a retailer [~~either~~].

(b) A permittee covered by Subsection (a) of this section may furnish to a retailer without cost advertising specialties showing the name of the product advertised. The total value of all advertising specialties for any one brand furnished to a retailer in any one calendar year may not exceed \$78. Not more than once a year, the administrator on the administrator's own motion or on the motion of the permittee may increase or decrease the total amount of advertising specialties permitted under this subsection by not more than six percent based on the consumer price index and previous adjustments, if any. For the purposes of this subsection, "consumer price index" means the annual average over a calendar year of the consumer price index (all items, United States city average) published monthly by the Bureau of Labor Statistics, United States Department of Labor, or its successor in function. Permittees covered by Subsection (a) of this section may not pool or combine their dollar limitations to provide a retailer with advertising specialties valued in excess of the maximum permitted under this subsection [~~recipes, recipe books, book matches, cocktail napkins, or other advertising items showing the name of the permittee furnishing the items or the brand name of the product advertised if the individual cost of the items does not exceed 25 cents~~].

(d) A permittee covered under Subsection (a) of this section may offer prizes, premiums, or gifts to a consumer if the offer is national in scope and legally offered and conducted in 30 states or more. The use of rebates or coupons redeemable by the public for the purchase of alcoholic beverages is prohibited. The holder of a winery permit may furnish to a retailer without cost recipes, recipe books, book matches, cocktail napkins, or other advertising items showing the name of the winery furnishing the items or the brand name of the product advertised if the individual cost of the items does not exceed \$1.

(e) A permittee covered under Subsection (a) of this section may conduct a sweepstakes promotion if the promotion is part of a nationally conducted promotional activity legally offered and conducted at the same time in 30 or more states. A purchase or entry fee may not be required of any person to enter a sweepstakes event authorized under this subsection. A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

(f) Notwithstanding Subsection (a) of this section, Section 108.05 of this code, or any other provision of this code, a holder of a brewer's permit, nonresident brewer's permit, distiller's and rectifier's permit, winery permit, nonresident seller's permit, manufacturer's license, or nonresident manufacturer's license may, in order to promote the brand name of the permittee's or licensee's products, contract with a person licensed under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) for on-site advertising signs, for advertising in programs, and to supplement purses for races even though the licensees under that Act or the owners or operators of the racing facilities also hold a mixed beverage permit or other permit or license under this code. In addition, a permittee or licensee described by this subsection may contract for off-site advertising promoting specific races. A part of the cost of an advertisement or promotion authorized by this section may not be charged to or paid, directly or indirectly, by the holder of a wholesale permit, general class B wholesaler's permit, local class B wholesaler's permit, local distributor's permit, general distributor's license, or local distributor's license, except through the price paid by that holder for products purchased from the holder's supplier.

SECTION 66. Subchapter A, Chapter 102, Alcoholic Beverage Code, is amended by adding Section 102.19 to read as follows:

Sec. 102.19. RESTOCKING AND ROTATION OF ALCOHOLIC BEVERAGES AUTHORIZED. Restocking of a display and rotation of alcoholic beverage stock in a retail establishment from the retailer's storeroom, salesroom, display counter, or cooler by a representative of a wholesaler or distributor is lawful. The commission or administrator may publish guidelines regarding this activity as the commission or administrator determines to be necessary.

SECTION 67. Section 102.52, Alcoholic Beverage Code, is amended to read as follows:

Sec. 102.52. RIGHTS OF DISTRIBUTORS. ~~[(a)]~~ Nothing in Section 102.51 of this code limits or alters the right of a holder of a general, local, or branch distributor's license to sell beer to any other holder of a general, local, or branch distributor's license, except that a distributor who has purchased beer from another distributor may distribute and sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by the general, local, or branch distributor making the purchase ~~[a distributor].~~

~~[(b) A holder of general, local, or branch distributor's license may not purchase, possess, transport, or sell any brand of beer outside of the county in which the distributor's licensed premises are located unless the distributor has a written assigned territory from the holder of a manufacturer's or nonresident manufacturer's license covering that brand of beer.]~~

SECTION 68. Chapter 104, Alcoholic Beverage Code, is amended by adding Section 104.05 to read as follows:

Sec. 104.05. SALE IN ORIGINAL PACKAGING. (a) This section applies to a permittee or licensee who is authorized to sell beer, malt liquor, or ale to an ultimate consumer for consumption off the permitted or licensed premises.

(b) The holder of a permit or license described in Subsection (a) of this section may resell beer, malt liquor, or ale only in the packaging in which the holder received the beer, malt liquor, or ale or may resell the contents of the packages as individual containers.

(c) Except for purposes of resale as individual containers, a licensee or permittee may not:

(1) mutilate, tear apart, or cut apart original packaging in which beer, malt liquor, or ale was received; or

(2) repack beer, malt liquor, or ale in a manner misleading to the consumer or that results in required labeling being omitted or obscured.

(d) Nothing in this code prevents a retailer from making a claim for the replacement of alcoholic beverages delivered to the retailer by a wholesaler or distributor in a damaged condition. A wholesaler or distributor may not give a refund for or replace alcoholic beverages that were damaged while in the possession of the retailer.

(e) To assure and control product quality, the holder of a distributor's license, wholesaler's permit, or class B wholesaler's permit, at the time of a regular delivery, may withdraw, with

the permission of the retailer, a quantity of beer, ale, or malt liquor in its undamaged original packaging from the retailer's stock, if:

(1) the distributor, wholesaler, or class B wholesaler replaces the stock with beer, ale, or malt liquor of identical brands, quantities, and packages as the beer, ale, or malt liquor withdrawn;

(2) the stock is withdrawn before the date considered by the manufacturer of the product to be the date the product becomes inappropriate for sale to a consumer; and

(3) the quantity of stock withdrawn does not exceed the equivalent of 15 cases of 24 12-ounce containers.

(f) A consignment sale of an alcoholic beverage is not authorized under Subsection (e) of this section.

SECTION 69. Section 105.02(a), Alcoholic Beverage Code, is amended to read as follows:

(a) Except as provided by Subsection (b) of this section, a wholesaler or a local distributor's permittee may sell, offer for sale, or deliver liquor to a retailer between 5 a. m. [7 a. m.] and 9 p. m. on any day except Sunday and Christmas Day.

SECTION 70. Section 105.03(b), Alcoholic Beverage Code, is amended to read as follows:

(b) A mixed beverage permittee may sell and offer for sale mixed beverages, between 7 a.m. and midnight on any day except Sunday. On Sunday he may sell mixed beverages between midnight and 1:00 a.m. and between 10 a.m. [noon] and midnight, *except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to the customer.*

SECTION 71. Section 105.04, Alcoholic Beverage Code, is amended to read as follows:

Sec. 105.04. HOURS OF SALE: WINE AND BEER RETAILER. The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's permit or a wine and beer retailer's off-premise permit are the same as those prescribed for the sale of beer under Section 105.05 of this code, *except that no sale shall be allowed between 2 a.m. and noon on Sunday.*

SECTION 72. Section 105.05(b), Alcoholic Beverage Code, is amended to read as follows:

(b) A person may sell, offer for sale, or deliver beer between 7 a.m. and midnight on any day except Sunday. On Sunday he may sell beer between midnight and 1:00 a.m. and between noon and midnight, *except that permittees or licensees authorized to sell for on-premise consumption may sell beer between 10:00 a.m. and noon if the beer is served to a customer during the service of food to the customer.*

SECTION 73. Section 105.05(d), Alcoholic Beverage Code, is amended to read as follows:

(d) In a county having a population of less than 300,000, according to the last preceding federal census, the extended hours prescribed in Subsection (c) of this section or any part of the extended hours prescribed in Subsection (c) of this section are effective for the sale, offer to sell, and delivery of beer by a holder of a retail dealer's on-premise late hours license:

(1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and

(2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

SECTION 74. Chapter 105, Alcoholic Beverage Code, is amended by adding Section 105.051 to read as follows:

Sec. 105.051. SALE OF BEER BY DISTRIBUTOR'S LICENSEE. *In addition to the hours specified for the sale of beer in Section 105.05(b) of this code, the holder of a general, local, or branch distributor's license may sell, offer for sale, or deliver beer beginning at 5 a. m. on any day except Sunday.*

SECTION 75. Section 106.02(c), Alcoholic Beverage Code, is amended to read as follows:

(c) If a person has been previously convicted of a violation of this section, or of Section 106.04 or 106.05 of this code, a violation is a misdemeanor punishable by a fine of not less than \$250 [\$100] nor more than \$1,000 [\$500].

SECTION 76. Chapter 106, Alcoholic Beverage Code, is amended by adding Section 106.025 to read as follows:

Sec. 106.025. ATTEMPT TO PURCHASE ALCOHOL BY A MINOR. (a) *A minor commits an offense if, with specific intent to commit an offense under Section 106.02 of this code, the minor does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.*

(b) *Except as provided by Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$25 nor more than \$200.*

(c) *If a person has previously been convicted of a violation of this section, a violation is a misdemeanor punishable by a fine of not less than \$250 nor more than \$1,000.*

SECTION 77. Section 106.04(d), Alcoholic Beverage Code, is amended to read as follows:

(d) If a person has been previously convicted of a violation of this section, or of Section 106.02 or 106.05 of this code, a violation is a misdemeanor punishable by a fine of not less than \$500 [\$100] nor more than \$1,000 [\$500].

SECTION 78. Section 106.05(d), Alcoholic Beverage Code, is amended to read as follows:

(d) If a person has been previously convicted of a violation of this section, or of Section 106.02 or 106.04 of this code, a violation is a misdemeanor punishable by a fine of not less than \$500 [\$100] nor more than \$1,000 [\$500].

SECTION 79. Section 106.06(a), Alcoholic Beverage Code, is amended to read as follows:

(a) Except as provided in Subsection (b) of this section, a person commits an offense if he purchases an alcoholic beverage for or gives or *with criminal negligence* [~~knowingly~~] makes available an alcoholic beverage to a minor.

SECTION 80. Section 106.115, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.115. ATTENDANCE AT ALCOHOL AWARENESS COURSE; LICENSE SUSPENSION. (a) On the first conviction of a minor of an offense under Section 106.02, 106.04, or 106.05 of this code, the court, *in addition to* [~~instead of~~] assessing a fine as provided by those sections, may require the defendant to attend an alcohol awareness course approved by the Texas Commission on Alcohol and Drug Abuse or a similar alcohol awareness course approved by the court. If the defendant is younger than 18 years of age, the parent or guardian of the defendant may attend the course with the defendant. The court shall require the defendant to present evidence to the court, in the manner prescribed by the court, of satisfactory participation in and completion of the course.

(b) If the conviction under Section 106.02, 106.04, or 106.05 of this code is for a second or subsequent offense, the court shall require the defendant to participate in an alcohol awareness course in addition to paying the fine assessed under that section. If the defendant is younger than 18 years of age, the parent or guardian of the defendant may attend the course with the defendant.

(c) If the defendant resides in a rural or other area in which access to an alcohol awareness course is not readily available, the court may require the defendant to perform eight to 12 hours of community service instead of participating in an alcohol awareness course.

(d) When requested, an alcohol awareness course may be taught in languages other than English.

(e) *If the court orders a defendant to attend an alcohol awareness course or to perform community service, the court shall require the defendant to present to the court, within 90 days of the date of final conviction, evidence in the form prescribed by the court that the defendant, as ordered by the court, has satisfactorily completed an alcohol awareness course or performed the required hours of community service.*

SECTION 81. Section 106.13(a), Alcoholic Beverage Code, is amended to read as follows:

(a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 60 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that the licensee or permittee *with criminal negligence* [~~knowingly~~] sold, served, dispensed, or delivered an alcoholic beverage to a minor in violation of this code or *with criminal negligence* [~~knowingly~~] permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises.

SECTION 82. Section 106.14, Alcoholic Beverage Code, is amended by adding Subsection (d) to read as follows:

(d) The commission may approve under this section a seller training program conducted by a hotel management company or a hotel operating company for the employees of five or more hotels operated or managed by the company if:

(1) the seller training program is administered through the corporate offices of the company; and

(2) the hotels employ a total of at least 200 persons at one time during the license or permit year who sell, serve, or prepare alcoholic beverages.

SECTION 83. Chapter 107, Alcoholic Beverage Code, is amended by adding Sections 107.09, 107.10, and 107.11 to read as follows:

Sec. 107.09. SINGLE INVOICE AUTHORIZED. If the holder of a general, local, or branch distributor's license also holds a wholesaler's, general class B wholesaler's, or local class B wholesaler's permit, a written statement or invoice required as evidence of the sale of beer or liquor may be on the same business form that is designed to reflect the sale of both liquor and beer, if all information required by this code to be shown on a statement or invoice is reflected on the form and all other records required by this code are maintained.

Sec. 107.10. TRANSPORTATION OF WINE COOLERS OR SPIRIT COOLERS. (a) A holder of a wholesaler's, general class B wholesaler's, or local class B wholesaler's permit may transport and sell wine coolers without a prior order if the holder complies with the provisions of this code and rules of the commission applicable to the transportation and sale of beer by a holder of a distributor's license.

(b) A holder of a wholesaler's permit may transport and sell spirit coolers without a prior order if the holder complies with the provisions of this code and rules of the commission applicable to the transportation and sale of beer by a holder of a distributor's license.

Sec. 107.11. IMPORTATION OF PERSONAL WINE COLLECTION. (a) A person who is relocating a household may import, or contract with a motor carrier or another person to import, a personal wine collection as a part of that person's household goods.

(b) Section 107.07 of this code does not apply to a person who is importing a personal wine collection under Subsection (a) of this section.

SECTION 84. Section 108.03, Alcoholic Beverage Code, is amended to read as follows:

Sec. 108.03. REGULATION OF PROMOTIONAL ACTIVITIES. The commission shall adopt rules permitting and regulating the use of business cards, menu cards, stationery, service vehicles and equipment, and delivery vehicles and equipment that bear alcoholic beverage advertising. The commission shall also adopt rules permitting and regulating the use of insignia advertising beer, distilled spirits, or wine by brand name on caps, regalia, or uniforms worn by employees of manufacturers, [ex] distributors, distillers, or wineries or by participants in a game, sport, athletic contest, or revue if the participants are sponsored by a manufacturer, [ex] distributor, distiller, or winery.

SECTION 85. Subchapter A, Chapter 108, Alcoholic Beverage Code, is amended by adding Section 108.061 to read as follows:

Sec. 108.061. NATIONALLY CONDUCTED SWEEPSTAKES PROMOTIONS AUTHORIZED. Notwithstanding the prohibition against prizes given to a consumer in Section 108.06 of this code and subject to the rules of the commission, a manufacturer or nonresident manufacturer may offer a prize to a consumer if the offer is a part of a nationally conducted promotional sweepstakes activity legally offered and conducted at the same time period in 30 or more states. A purchase or entry fee may not be required of any person to enter in a sweepstakes authorized under this section. A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

SECTION 86. Subchapter A, Chapter 108, Alcoholic Beverage Code, is amended by adding Section 108.08 to read as follows:

Sec. 108.08. ADVERTISING IN CERTAIN ECONOMIC DEVELOPMENT FACILITIES. (a) Notwithstanding any other provision of this code or any rule adopted under the authority of this code, the provisions of this code relating to the regulation of or limitations

on outdoor advertising signage, advertising revenue, or advertising signage in or on a licensed premises do not apply to an entity which owns a professional sports franchise which plays a majority of its home games in a municipally owned or leased regional economic development facility that is in a station or terminal complex of a rapid transit authority and to which Subsection (e), Section 6C, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), applies or to such a facility.

(b) A part of the cost of advertising revenue paid by a manufacturer to an entity under this section may not be charged to or paid, directly or indirectly, by the holder of a wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, local distributor's permit, general distributor's license, or local distributor's license, except through the price paid by that holder for products purchased from the holders' supplier.

SECTION 87. Section 108.51(1), Alcoholic Beverage Code, is amended to read as follows:

(1) "Outdoor advertising" means any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells, or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building but within five feet of an exterior wall facing a street or highway so that it is visible by a person of ordinary vision from outside the building. "Outdoor advertising" does not include advertising appearing on radio or television, in a public vehicular conveyance for hire, on a race car while participating at a professional racing event or at a permanent motorized racetrack facility, on a boat participating in a racing event or a boat show, on an aircraft participating in an air show, *on a bicycle or on the clothing of a member of a bicycle team participating in an organized bicycle race*, or in a newspaper, magazine, or other literary publication published periodically. For the purpose of this definition the word "sign," with respect to a retailer, does not include an identifying label affixed to a container as authorized by law or to a card or certificate of membership in an association or organization if the card or certificate is not larger than 80 square inches.

SECTION 88. Subchapter A, Chapter 109, Alcoholic Beverage Code, is amended by adding Section 109.08 to read as follows:

Sec. 109.08. EXCLUSION. Notwithstanding any other provision of this code, no person engaged in business as a distiller, brewer, manufacturer, winery, or any other manufacturing level producer of liquor or beer, or their wholesalers, may directly or indirectly or through an affiliate require, by agreement or otherwise, that any retailer engaged in the sale of liquor or beer purchase any such products from such person to the exclusion in whole or in part of liquor or beer sold or offered for sale by other persons, or prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to any retailer.

SECTION 89. Subchapter C, Chapter 109, Alcoholic Beverage Code, is amended by adding Section 109.35 to read as follows:

Sec. 109.35. ORDERS FOR PROHIBITION ON CONSUMPTION. (a) If the governing body of a municipality determines that the possession of an open container or the public consumption of alcoholic beverages in the central business district of the municipality is a risk to the health and safety of the citizens of the municipality, the governing body may petition for the adoption of an order by the commission that prohibits the possession of an open container or the public consumption of alcoholic beverages in that central business district.

(b) If a municipality submits a petition for an order of the commission to prohibit the possession of an open container or the public consumption of alcoholic beverages in the central business district of the city and attaches to the petition a map, plat, or diagram showing the central business district that is to be covered by the prohibition, the commission shall approve and issue the order without further consideration unless the commission finds that the map, plat, or diagram improperly identifies the central business district.

(c) The commission's order may not prohibit the possession of an open container or the consumption of alcoholic beverages in motor vehicles, buildings not owned or controlled by the municipality, residential structures, or licensed premises located in the area of prohibition.

(d) In this section, "central business district" means a compact and contiguous geographical area of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that is the area that has historically been the primary location in the municipality where business has been transacted.

(e) In this section, "open container" means a container that is no longer sealed.

SECTION 90. Section 109.53, Alcoholic Beverage Code, is amended to read as follows:

Sec. 109.53. CITIZENSHIP OF PERMITTEE; CONTROL OF PREMISES; SUBTERFUGE OWNERSHIP; ETC. No person who has not been a citizen of Texas for a period of one year [~~three years~~] immediately preceding the filing of his application therefor shall be eligible to receive a permit under this code. No permit except a brewer's permit, and such other licenses and permits as are necessary to the operation of a brewer's permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least 51 percent of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of one year [~~three years~~] and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corporations that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this code which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the attorney general, when any such violation is called to his attention, to file a suit for such cancellation in a district court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, industrial, medicinal and carrier's permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. No applicant for a package store permit or a renewal thereof shall have authority to designate as "premise" and the commission or administrator shall not approve a lesser area than that specifically defined as "premise" in Section 11.49(a) of this code. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No minor, unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a package store permit. The prohibition against the presence of a minor on the premises of the holder of a package store permit does not apply to the presence on the premises of the holder or a person lawfully employed by the holder. Any package store permittee who shall be injured in his business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee. The provisions prohibiting the licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in this code.

SECTION 91. Subchapter D, Chapter 109, Alcoholic Beverage Code, is amended by adding Sections 109.531 and 109.532 to read as follows:

Sec. 109.531. ADDITIONAL REQUIREMENTS FOR APPLICATION OR RENEWAL OF PERMIT OR LICENSE BY OUT-OF-STATE RESIDENTS. In addition to any other

requirement for a license or permit under this code, a person who has not been a citizen of this state for a period of one year preceding the date the person filed an application for a permit or license under Chapters 25-34, 44, 48-51, 69-72, or Chapter 74 of this code shall:

(1) designate an agent, who is a citizen of this state, to represent the person in matters before the commission and to be responsible for the proper conduct of any activity of the licensee or permittee; and

(2) submit to a criminal history background check.

Sec. 109.592. CRIMINAL HISTORY BACKGROUND CHECKS. (a) The commission shall establish a uniform method of obtaining criminal history information. The uniform method must require:

(1) either a complete set of fingerprints or the complete name of the person being investigated to be submitted to the Department of Public Safety or to another law enforcement agency; and

(2) if fingerprints are submitted, the fingerprints must be submitted to the Federal Bureau of Investigation for further information if a relevant disqualifying record or other substantive information is not obtained from a state or local law enforcement agency.

(b) The commission may deny a license or permit or the renewal of a license or permit for an applicant if:

(1) the commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a license or permit; or

(2) the applicant fails to provide a complete set of fingerprints if the commission establishes that method of obtaining conviction information.

(c) All criminal history information received by the commission is privileged information and is for the exclusive use of the commission. The information may be released or otherwise disclosed to any other person or agency only:

(1) on court order; or

(2) with the consent of the person being investigated.

(d) The commission shall collect and destroy criminal history information relating to a person immediately after the commission makes a decision on the eligibility of the person for registration.

(e) A person commits an offense if the person releases or discloses in violation of this section criminal history information received by the commission. An offense under this subsection is a felony of the second degree.

(f) The commission may charge a fee to cover the cost of a criminal history background check.

SECTION 92. Subchapter D, Chapter 109, Alcoholic Beverage Code, is amended by adding Section 109.58 to read as follows:

Sec. 109.58. RELAXATION OF RESTRICTIONS AS TO CHARITABLE EVENTS. The commission by rule may set definite limitations consistent with the general provisions of this code that relax the restrictions of this code with respect to the making of a gift to civic, religious, or charitable organizations by the liquor or the wine industry.

SECTION 93. Subchapter D, Chapter 109, Alcoholic Beverage Code, is amended by adding Section 109.59 to read as follows:

Sec. 109.59. APPLICATION OF DISTANCE REQUIREMENTS. If at the time an original alcoholic beverage permit or license is granted for a premises the premises satisfies the requirements regarding distance from schools, churches, and other types of premises established in this code and any other law or ordinance of the state or a political subdivision of the state in effect at that time, the premises shall be deemed to satisfy the distance requirements for all subsequent renewals of the license or permit. On the sale or transfer of the premises or the business on the premises in which a new original license or permit is required for the premises, the premises shall be deemed to satisfy any distance requirements as if the issuance of the new original permit or license were a renewal of a previously held permit or license.

SECTION 94. Subchapter D, Chapter 109, Alcoholic Beverage Code, is amended by adding Section 109.60 to read as follows:

Sec. 109.60. PURCHASES BY CERTAIN PERMITEES. For the convenience of the commission in performing its regulatory functions and the comptroller in examining tax accounts of mixed beverage permittees and private club permittees, each of these permittees is required to purchase separately and individually for each licensed premises any and all alcoholic beverages to be sold or served on the licensed premises.

SECTION 95. Subchapter A, Chapter 201, Alcoholic Beverage Code, is amended by adding Section 201.011 to read as follows:

Sec. 201.011. TIMELY FILING: DILIGENCE. A person filing a report or making a tax payment complies with the filing requirements for timeliness for a report not filed or a payment not made on time if the person exercised reasonable diligence to comply with the filing requirements and the failure to file or the making of a late payment is not the fault of the person.

SECTION 96. Subchapter A, Chapter 201, Alcoholic Beverage Code, is amended by adding Section 201.075 to read as follows:

Sec. 201.075. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a report or return or to make a tax payment required by this subchapter. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the permittee or the permittee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments that are due.

SECTION 97. Subchapter B, Chapter 201, Alcoholic Beverage Code, is amended by adding Section 201.53 to read as follows:

Sec. 201.53. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the permit of a permittee who fails to file a report or return or to make a tax payment required by this subchapter. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the permittee or the permittee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the permittee files all required returns and makes all required tax payments that are due.

SECTION 98. Chapter 203, Alcoholic Beverage Code, is amended by adding Section 203.13 to read as follows:

Sec. 203.13. SUMMARY SUSPENSION. (a) The commission may summarily suspend, without a hearing, the license of a licensee who fails to file a report or return or to make a tax payment required by this subchapter. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to the commission in the enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date the notice of suspension is given. The notice shall be given to the licensee or the licensee's agent or employee by registered or certified mail if not given in person.

(c) The commission shall terminate a suspension made under this section when the licensee files all required returns and makes all required tax payments that are due.

SECTION 99. Sections 204.01(a), (b), (c), (d), (f), (g), (h), and (i), Alcoholic Beverage Code, are amended to read as follows:

(a) Except as otherwise provided in this section, the following licensees and permittees shall furnish a bond:

- (1) those authorized to import alcoholic beverages into the state;
- (2) manufacturers of beer and brewers of ale or malt liquor in the state; *and*
- (3) ~~[permittees subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code; and~~
- ~~[(4)]~~ all other permittees.

(b) No bond is required of a holder of a *mixed beverage, private club registration, carriers, local cartage, wine and beer retailers, nonresident seller's, manufacturer's agent's, or agent's* permit.

(c) No bond is required of a retail licensee or permittee who is not responsible for the primary payment of an alcoholic beverage excise tax to this state. ~~[This subsection does not exempt permittees subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code.]~~

(d) ~~The [A permittee required to furnish a bond to secure the payment of the gross receipts tax on mixed beverages, the]~~ holder of a wholesaler's or class B wholesaler's permit, or the holder of a distributor's license may furnish, in lieu of all or part of the amount of the bond required:

(1) one or more certificates of deposit or savings assigned to the state, issued by one or more banks or savings institutions authorized to do business in this state; or

(2) one or more letters of credit issued by one or more banks or savings institutions authorized to do business in this state.

(f) ~~The [A permittee subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code, the]~~ holder of a wholesaler's or class B wholesaler's permit, or the holder of a distributor's license is not required to furnish a bond if for the preceding 36 months the permittee or licensee has paid all taxes and fees required by this code on or before the due date. ~~[A finding of deficiency under Section 202.09 of this code does not constitute a failure to pay a tax when due for purposes of this subsection or Subsection (g) or (h) of this section if the deficiency and any applicable penalty are paid within 10 days of the date of demand for payment by the commission.]~~

(g) An exemption under Subsection (f) of this section terminates and the permittee or licensee must furnish a bond *or tax security* if the permittee or licensee fails to pay a tax or fee imposed by this code on or before the due date.

(h) A permittee or licensee required to furnish a bond *or tax security* under Subsection (g) of this section is again entitled to exemption from the surety requirement if the permittee or licensee:

(1) pays all delinquent taxes and fees and any applicable penalties; and

(2) pays all taxes and fees required by this code on or before the due date for 18 consecutive months after the month in which the delinquent taxes and fees and the penalties are paid.

(i) A permittee or licensee who qualifies for an exemption under Subsection (f) of this section is also exempt from the bonding requirement for any other ~~[mixed beverage permit,]~~ wholesaler's permit, class B wholesaler's permit, or distributor's license currently held by or subsequently issued to the same permittee or licensee for use at licensed premises different from and additional to those covered by the permit or license under which the permittee or licensee qualified for exemption. However, if a permittee or licensee fails to pay a tax or fee imposed by this code on or before the due date and the permittee or licensee holds multiple permits or licenses, the requirement for a bond *or tax security* shall be imposed or reimposed under Subsection (g) of this section only on the permit or license covering the licensed premises for which the tax or fee and any applicable penalty were not timely paid.

SECTION 100. Section 204.03(d), Alcoholic Beverage Code, is amended to read as follows:

(d) Bonds, *letters of credit, or certificates of deposit* to insure the payment of the tax on distilled spirits imposed by Section 201.03 of this code, the tax on vinous liquor imposed by Section 201.04 of this code, the tax on ale and malt liquor imposed by Section 201.42 of this code, or the tax on beer imposed by Section 203.01 of this code, shall be set at an amount that

will protect the state against the anticipated tax liability of the principal for any six-week period.

SECTION 101. Chapter 204, Alcoholic Beverage Code, is amended by adding Section 204.06 to read as follows:

Sec. 204.06. COMPREHENSIVE WINERY BOND. A person who holds both a winery permit and a wine bottler's permit may execute a single bond in an amount determined by the commission instead of multiple bonds to secure the performance of different activities by the holder.

SECTION 102. Sections 206.01(a) and (b), Alcoholic Beverage Code, are amended to read as follows:

(a) A permittee who distills, rectifies, manufactures, or receives any liquor shall make and keep a record of each day's production or receipt of liquor and the amount of tax stamps purchased by the permittee. A permittee other than a retailer shall make and keep a record of each sale of liquor and to whom the sale is made. Each transaction shall be entered on the day it occurs. Permittees shall make and keep any other records required by the commission. All required records shall be kept available for inspection by the commission or its authorized representatives for at least *four [two]* years.

(b) No person may fail or refuse to make and retain for at least *four [two]* years any record required by this section.

SECTION 103. Chapter 206, Alcoholic Beverage Code, is amended by adding Sections 206.08 and 206.09 to read as follows:

Sec. 206.08. COORDINATION OF AUDITS. (a) Before the commission makes a demand to a licensee or permittee for any taxes due, as established by an audit, the commission shall:

(1) hold an informal conference with the licensee or permittee to discuss the audit and the rights of the permittee or licensee to both an informal and formal appeal of the taxes due;

(2) review the audit in the commission headquarters with the office of quality control to ensure that the uniform application of audit standards has been applied in all aspects to the audit; and

(3) send a certified letter stating the amount of taxes owed by the licensee or permittee, the amount of the delinquency, and the proper procedure to appeal the decision.

(b) The commission shall annually update and review all audit manuals to ensure compliance with national audit standards and impartiality and provide audit training to auditors responsible for auditing tax accounts. The commission may expend funds necessary to ensure adequate training of commission auditors or trainers to provide the standardization of audits throughout the state.

Sec. 206.09. CONTESTS OF TAXABLE AMOUNTS OWED. (a) A licensee or permittee contesting the amount of taxes owed, after receiving a demand for payment of taxes due from the commission, is entitled to a hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) An appeal from a final order issued by the commission must be filed in Travis County.

SECTION 104. Section 251.11, Alcoholic Beverage Code, is amended to read as follows:

Sec. 251.11. REQUIREMENTS TO ORDER ELECTION. The commissioners court, at its next regular session after the petition is filed, shall order a local option election to be held on the issue set out in the petition if the petition is filed with the registrar of voters not later than 30 days after it is issued and bears in the actual handwriting of the signers the following:

(1) the actual signatures of a number of qualified voters of the political subdivision equal to 35 percent of the *registered voters [votes cast]* in the subdivision [~~for governor in the last preceding general election for that office~~];

(2) a notation showing the residence address of each of the signers; and

(3) each signer's voter registration certificate number.

SECTION 105. Section 402.0211(e), Government Code, is amended to read as follows:

(e) This section does not apply to:

- (1) the governor's office;
- (2) an institution of higher education, as defined by Section 61.003, Education Code;
- (3) an agency expressly authorized by the General Appropriations Act or other statute to hire or select legal counsel;
- (4) an agency governed by one or more elected officials;
- (5) an agency with a director appointed by the governor;
- (6) the Central Education Agency;
- (7) the Department of Public Safety;
- (8) the Employees Retirement System of Texas or the Teacher Retirement System of Texas;
- (9) the Parks and Wildlife Department;
- (10) the State Board of Insurance;
- (11) the State Highway and Public Transportation Commission or the State Department of Highways and Public Transportation;
- (12) the Texas Department of Criminal Justice;
- (13) the Texas Employment Commission;
- (14) the Texas Higher Education Coordinating Board;
- (15) the Texas Natural Resource Conservation Commission;
- (16) the Texas Workers' Compensation Commission; ~~[or]~~
- (17) the Texas Youth Commission; *or*
- (18) *the Texas Alcoholic Beverage Commission.*

SECTION 106. Subtitle G, Title 2, Tax Code, is amended by adding Chapter 183 to read as follows:

CHAPTER 183. MIXED BEVERAGE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 183.001. DEFINITIONS. (a) The definitions in Section 1.04, Alcoholic Beverage Code, apply to this chapter.

(b) In this chapter:

- (1) "Permittee" means a mixed beverage permittee or a private club registration permittee.*
- (2) "Business day" means the period beginning at 3 a.m. one day and ending at 3 a.m. the next day.*

SUBCHAPTER B. MIXED BEVERAGE TAX

Sec. 183.021. TAX IMPOSED ON MIXED BEVERAGES. A tax at the rate of 14 percent is imposed on the gross receipts of a permittee received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

Sec. 183.022. TAX RETURN DUE DATE. (a) A permittee shall file a sworn tax return with the comptroller not later than the 20th day of each month.

(b) The return under this section shall be in a form prescribed by the comptroller and shall include a statement of the total gross taxable receipts during the preceding month and any other information required by the comptroller.

(c) A tax due for a business day that falls in two different months is allocated to the month in which the business day begins.

Sec. 183.023. PAYMENT. The tax due for the preceding month shall accompany the return and shall be payable to the state. The comptroller shall deposit the revenue in the mixed beverage tax clearance fund.

SUBCHAPTER C. MIXED BEVERAGE CLEARANCE FUND

Sec. 183.051. MIXED BEVERAGE TAX CLEARANCE FUND. (a) Not later than the last day of the month following a calendar quarter, the comptroller shall calculate the total amount of taxes received during the quarter from permittees outside an incorporated municipality within each county and the total amount received from permittees within each incorporated municipality in each county.

(b) The comptroller shall issue to each county a warrant drawn on the mixed beverage tax clearance fund in the amount of 10.7143 percent of receipts from permittees within the county during the quarter and shall issue to each incorporated municipality a warrant drawn on that fund in the amount of 10.7143 percent of receipts from permittees within the incorporated municipality during the quarter. The remainder of the receipts for the quarter and all interest earned on that fund shall be transferred to the general revenue fund.

Sec. 183.052. CONFLICT OF RULES. If a rule or policy adopted by the commission conflicts with a rule adopted by the comptroller for the application, enforcement, or collection of the tax imposed by this chapter, the comptroller's rule prevails. A conflicting rule or policy adopted by the commission is invalid to the extent of the inconsistency. If the comptroller determines that a rule or policy adopted by the commission conflicts with one adopted by the comptroller relating to the application, enforcement, or collection of the tax imposed by this chapter, the comptroller shall notify the commission in writing of the determination. After receipt of the notification, the commission must amend or repeal the conflicting rule or policy not later than the 90th day after the date of notification.

Sec. 183.053. SECURITY REQUIREMENT. (a) A permittee subject to the tax imposed by this chapter must comply with the security requirements imposed by Chapter 151 except that a permittee is not required to comply with Section 151.253(b).

(b) The total of bonds, certificates of deposit, letters of credit, or other security determined to be sufficient by the comptroller of a permittee subject to the tax imposed by this chapter shall be in an amount that the comptroller determines to be sufficient to protect the fiscal interests of the state. The comptroller may not set the amount of security at less than \$1,000 or more than \$25,000.

Sec. 183.054. AUDIT FREQUENCY. The comptroller shall have the discretion to determine the frequency of mixed beverage tax audits. In determining the frequency of the audit the comptroller may consider the following factors:

- (1) reasonable and prudent accounting standards;
- (2) the audit history of the permittee;
- (3) the effect on state revenues; and
- (4) other factors the comptroller deems appropriate.

Sec. 183.055. PENALTY. When additional taxes are established as due based on an examination by the comptroller, a penalty equal to 10 percent of the additional taxes due shall be collected with the additional taxes due.

SECTION 107. (a) The Texas Alcoholic Beverage Commission shall adopt rules relating to the relaxation of restrictions as to charitable events as required by Section 92 of this Act on or before September 1, 1994.

(b) The employees, records, and equipment of the administrative law division of the Texas Alcoholic Beverage Commission are transferred to the State Office of Administrative Hearings on the effective date of this Act.

(c) On the effective date of this Act, a contested case pending before the administrative law division of the Texas Alcoholic Beverage Commission is transferred to the State Office of

Administrative Hearings. A proceeding transferred under this subsection is treated as if the actions taken in the proceeding had been taken by the State Office of Administrative Hearings.

(d) The change in law made by this Act relating to a penalty that may be imposed or to the suspension or cancellation of a license or permit by the Texas Alcoholic Beverage Commission applies only to a violation of a law regulated by the commission or of a rule or order of the commission that occurs on or after the effective date of this Act. A violation that occurs before the effective date is governed by the law in effect on the date it occurred, and the former law is continued in effect for that purpose.

SECTION 108. Section 11.015, Alcoholic Beverage Code, as added by this Act, applies only to a hearing held on or after September 1, 1993. A hearing held before September 1, 1993, is governed by the law in effect when the hearing was held, and that law is continued in effect for that purpose.

SECTION 109. (a) To prepare for the transfer of the administration of the mixed beverage tax from the Texas Alcoholic Beverage Commission to the comptroller of public accounts on the effective date of this Act, the comptroller and the commission may enter into any agreements they consider advisable to the use or transfer of funds, appropriations, personnel, furniture, equipment, office space, or other items or services between the comptroller and the commission.

(b) On January 1, 1994, all employees, records, and property of the commission relating to the mixed beverage tax shall be transferred to the comptroller. Before that date, the comptroller may transfer any records, employees, or property of the commission to the comptroller in preparation for the transfer of the administration of the mixed beverage tax to the comptroller.

(c) A change in the law made by this Act does not affect the validity of any action or proceeding initiated before the effective date of this Act.

SECTION 110. Sections 5.10(f), 11.491, 25.07, 69.07, and Chapter 50, Alcoholic Beverage Code, are repealed September 1, 1993. Sections 204.02(d) and (e), 204.03(b), 205.02(c) and (d), 205.03 and Chapter 202, Alcoholic Beverage Code, are repealed January 1, 1994.

SECTION 111. This Act takes effect September 1, 1993, except that Sections 34, 37, 42, 96, 97, 98, 99, and 106 of this Act take effect January 1, 1994.

SECTION 112. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 8, 1993, by a non-record vote; the House refused to concur in Senate amendments to H.B. No. 1445 on May 26, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 1445 on May 30, 1993, by a non-record vote; passed by the Senate, with amendments, on May 23, 1993, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 1445 on May 29, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993, except §§ 34, 37, 42, 96 to 99, and 106 effective Jan. 1, 1994.