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TEXAS PEACE OFFICER'S GUIDE

to the

ALCOHOLIC BEVERAGE CODE

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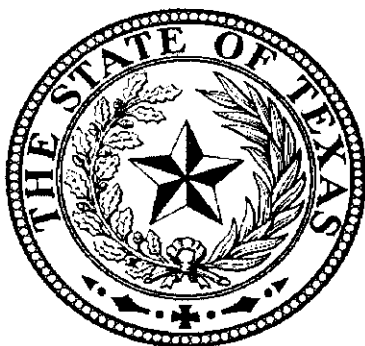
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TEXAS ALCOHOLIC
BEVERAGE COMMISSION

NOVEMBER, 1997

Information in this guide is subject to change with the enactment of new laws and rules. The reader is advised to review current statute or rules or to contact the nearest office of the Texas Alcoholic Beverage Commission to verify that the information is current. This version contains revisions of the Alcoholic Beverage Code which became effective September 1, 1997.

For more information on the programs and services of the TABC, please write to:

Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711
(512) 206-3333

or e-mail your questions to:

questions@tabc.state.tx.us

To report a violation of the Texas Alcoholic Beverage Code, call toll-free:

1-888-THE-TABC

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Fellow Texas Peace Officers:

As you may already know, the provisions of the Alcoholic Beverage Code are far-reaching and impact the welfare, health, peace, temperance and safety of the citizens of the State of Texas.

One thing experience has taught us is that enforcement of the Code cannot be accomplished solely by the agents of the TABC. Consequently, we realize that only through mutual cooperation and collaboration can the alcoholic beverage laws of the State of Texas be fully enforced.

This booklet will provide you with a basic overview of the Alcoholic Beverage Code. I encourage you to contact your local TABC office with any questions you may have about our agency and the work we do. We welcome any input you might have regarding this publication.

Sincerely,

Doyme Bailey
Administrator

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INTRODUCTION

This guide contains information about the Texas Alcoholic Beverage Code and the Texas Alcoholic Beverage Commission to help Texas peace officers apply the relevant alcoholic beverage laws in their day to day duties.

Any legal citations contained in this document are referencing the Alcoholic Beverage Code unless otherwise stated.

Brief History of Liquor Legislation

The national prohibition law was passed in the United States on January 16, 1920 by the ratification of the 18th Amendment, and was repealed on December 5, 1933 by the 21st Amendment of the United States Constitution.

This amendment vested the sovereign authority to control alcoholic beverages to each state. Approximately two years later on November 16, 1935, the Texas Liquor Control Board was organized and began functioning with the passage of the Texas Liquor Control Act.

On January 1, 1970, the Texas Liquor Control Board was changed to the Texas Alcoholic Beverage Commission.

Texas Alcoholic Beverage Code

The laws contained in the Texas Alcoholic Beverage Code are an exercise of the police power of the state for the protection of the welfare, health, peace, temperance and safety of the people of Texas. [Section 1.03]

Duty of Peace Officers

All peace officers in the state, including those of cities, counties, and state, shall enforce the provisions of this Code and cooperate with and assist the Commission in detecting violations and apprehending offenders. [Section 101.07]

Definitions

Code refers to the Alcoholic Beverage Code.

Commission is the Texas Alcoholic Beverage Commission.

Alcoholic Beverage is alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

Illicit Beverage is an alcoholic beverage:

1. manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of the Code;
2. one which a tax imposed by the laws of this state has not been paid and to which the tax stamp, if required, has not been affixed; or
3. possessed, kept, stored, owned, or imported with intent to use, transport or sell in violation of this Code.

A *Permit* or *License* is a privilege, not a right. Generally, a *permit* authorizes the handling of liquor while a *license* authorizes the handling of beer.

Permittee is a person who is the holder of a permit provided for in this Code, or an agent, servant, or employee of that person.

Licensee is a person who is the holder of a license provided in this Code, or any agent, servant, or employee of that person.

Premises are the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

Licensed Premises are any premises covered by permit or license issued by the Commission.

Beer is a malt beverage containing between 0.5% of alcohol by volume and 4% of alcohol by weight. Beer is designated on the label of the product.

Ale or Malt Liquor is a malt beverage containing more than 4% alcohol by weight.

Liquor is any alcoholic beverage containing alcohol in excess of 4% by weight, unless otherwise indicated. It includes distilled spirits, wine, ale and malt liquor.

Distilled Spirits is alcohol or any liquor produced in whole or in part by the process of distillation (for example: whiskey, tequila, rum and vodka) and includes spirit coolers that may have an alcohol content as low as 4% alcohol by volume.

Wine and Vinous Liquor is the product obtained from the alcoholic fermentation of juice of grapes, fruits, berries, or honey, and includes wine coolers.

Barrel is a quantity of beer equal to 31 standard gallons.

ARRREST, SEARCH AND SEIZURE

Arrest Without a Warrant

A peace officer may arrest without a warrant any person he observes violating any provision of this Code or any rule of the Commission. The officer shall take possession of all illicit beverages the person has in his possession or on his premises. [Section 101.02]

Search Without a Warrant

A peace officer may inspect or conduct an inspection of the premises covered by a license or permit at any time without a search warrant for the purpose of performing any duty imposed by the Code. A permittee or licensee may designate a portion of the grounds, building, vehicles, and appurtenances to be excluded from the licensed premises (for example: a private residence or hotel). The diagram which shows the designation is approved by the Commission must be displayed next to the license or permit on the premises.

By accepting a license or permit, the holder consents that the Commission, an authorized representative of the Commission, or a peace officer may enter the license premises at any time to conduct an investigation or

inspect the premises for the purpose of performing any duty imposed by the Code.

No holder of a permit may refuse to allow the Commission, its authorized representative or a peace officer, on request, to make a full inspection, investigation, or search of any vehicle. [Section 101.71]

Search With a Warrant

In most circumstances, if the place to be searched is not a licensed premise then the agent or peace officer must obtain a search warrant to search for, seize and destroy or otherwise dispose of an illicit beverage or any equipment, vehicles used to manufacture or transport the illicit beverage, as well as, the seizure of any counterfeit stamp, die, plate, official signature, certificate, evidence of tax payment, license or other instrument pertaining to the Code.

Any items seized by the officer with a search warrant is retained by the officer pending final judgement in the proceedings. [Section 101.03]

The affidavit for a search warrant:

1. must be based on probable cause to believe that the property to be seized will be found on the premises;
 2. to search any place other than a private residence requires only one affiant;
-
-

3. to search a private residence requires the signature of two affiants.

The warrant must clearly indicate the premises to be searched and must state the objects or things to be seized.

Authorized Seizures

The following items may be seized without a warrant:

1. any illicit beverage, its container, and its packaging;
2. any vehicle, including an aircraft or watercraft, used to transport an illicit beverage;
3. any equipment designed for use in or used in manufacturing an illicit beverage;
4. any material to be used in manufacturing an illicit beverage.

A person found in possession of the above items may be arrested without a warrant at the time of the seizure. [Sections 103.03 and 103.04]

Seizure Reports

A peace officer who makes a seizure of alcoholic beverages is required to make a report in triplicate, one of which shall be verified by oath. [Section 103.05]

Distribution of Seizure Reports

1. The verified copy shall be retained in the permanent files of the agency making the seizure.
2. One copy shall be given to the person from which the seizure is made.
3. The third copy is generally kept with the seizure of alcoholic beverages.

A peace officer who makes a false report of property seized commits a felony punishable by confinement in the penitentiary for two to five years. [Section 103.05(d)]

A peace officer who fails to file the reports of a seizure as required commits a misdemeanor punishable by a fine of \$50 to \$100, or by confinement in jail for 10 to 90 days, or by both. [Section 103.05(e)]

After final judgement has been rendered, any alcoholic beverage, its container, and its packaging which has been seized by a peace officer may not be replevied and shall be delivered to the Commission for immediate disposal or sale. [Sections 101.03 and 103.06]

C RIMINAL OFFENSE PROVISIONS

General Penalty

A person who violates a provision of this Code for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both. The term *specific penalty*, as used in this section, means a penalty which might be imposed as a result of a criminal prosecution. [Section 1.05]

Offenses Relating to Minors [Chapter 106]

A minor is a person under 21 years of age. [Section 106.01]

***Possession of Alcohol By a Minor* [Section 106.05]**

A minor may not possess an alcoholic beverage, except:

- while in the course and scope of the minor's employment and the employment is not prohibited by this Code;
- if the minor is in the visible presence of an adult parent, guardian, spouse, or other adult to whom he had been committed by court; or

- if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this Code.

The term "possession" has the same meaning as that found in Section 1.07(a)(39) of the *Texas Penal Code*. The minor-in-possession offense can be proven if the minor is in actual control of the alcoholic beverage(s) by physical contact or by establishing an "affirmative link" between the alcoholic beverage and the minor.

Some affirmative links include:

1. the alcoholic beverages were within the minor's plain view;
2. the amount of alcoholic beverages;
3. the alcoholic beverage was accessible to the minor;
4. the minor's ownership or right of possession of the site of the alcoholic beverages;
5. the relationship of the minor to other persons with access to the alcoholic beverages; or
6. knowledge of the presence of the alcoholic beverages.

The number of factors present is not as important as the logical force or the degree to which the factors, alone or in combination, tend to link the minor to the alcoholic beverages. For example, a minor who is present at a pasture party may or may not be affirmatively linked to the alcoholic beverages present at the party.

Some county attorneys and judges refuse to accept criminal cases to take action where possession is established by affirmative links. Contact the local prosecution in your area to determine if you can prosecute cases where possession is established by affirmative links.

Purchase of Alcohol By a Minor [Section 106.02]

A minor commits an offense if the minor purchases an alcoholic beverage. The minor may purchase an alcoholic beverage if under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this Code.

Attempt to Purchase Alcohol by a Minor
[Section 106.025]

A minor commits an offense if, with specific intent to purchase alcoholic beverages, the minor does an act amounting to more than mere preparation but fails to purchase alcoholic beverages.

Consumption of Alcohol By a Minor [Section 106.04]

A minor commits an offense if the minor consumes an alcoholic beverage.

It is a defense to prosecution that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse.

Misrepresentation of Age by a Minor [Section 106.07]

A minor commits an offense if the minor falsely states that he or she is 21 years of age or older, or presents any document that indicates he or she is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.

Punishment for Alcohol Related Offenses by a Minor
[Sections 106.071 and 106.115]

The following punishment applies to the offenses of:

- minor in possession [Section 106.05]
- consumption of alcohol by a minor [Section 106.04]
- attempted purchase of alcoholic beverages by a minor [Section 106.025]
- purchase of alcoholic beverages by a minor [Section 106.02]
- misrepresentation of age [Section 106.07]
- public intoxication by a minor [*Texas Penal Code*, Section 49.02(e)]

First Offense:

1. Class C misdemeanor
2. Alcohol awareness class
3. Community service: 8-12 hours relating to education about or prevention of misuse of alcohol
4. The court shall order the Department of Public Safety to suspend or deny the minor's driver's license for 30 days.

Second Offense:

1. Class C misdemeanor
2. Alcohol awareness class at the judge's discretion
3. Community service: 20-40 hours relating to education about or prevention of misuse of alcohol
4. The court shall order the Department of Public Safety to suspend or deny the minor's driver's license for 60 days.

Third Offense:

If it is shown at the trial of the defendant that the defendant is a minor who is not a child, the offense is punishable by:

1. Fine of less than \$250 or more than \$2,000;
 2. Confinement in jail not to exceed 180 days, or
 3. Both the fine and confinement
 4. The court shall order the Department of Public Safety to suspend or deny the minor's driver's license for 180 days.
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If the minor is a child (under 17 years of age as defined by Section 51.02, Family Code), the offense is punishable by the following:

1. The court shall order the Department of Public Safety to suspend or deny the minor's driver's license for 180 days.
2. The child shall be remanded to juvenile court as a child in need of supervision; or remanded to criminal court to be adjudicated as an adult.

For the purpose of determining whether a minor has been previously convicted of an offense to which this section applies:

1. An adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and
2. An order of deferred adjudication for an offense alleged under this section is considered a conviction of an offense under this section.

Possession of False Identification

[Transportation Code, Section 521.453]

A person under the age of 21 years commits an offense if the person possesses (with the intent to represent that the

person is 21 years of age or older or with the intent to use, circulate or pass a forged or counterfeit instrument) a document that is deceptively similar to a driver's license or personal identification certificate unless the document displays the statement "NOT A GOVERNMENT DOCUMENT" diagonally on both the front and back of the document in solid red capital letters at least 1/4 inch in height.

The document is deceptively similar if a reasonable person would assume the document was issued by the Department of Public Safety, another agency of this state, another state or the United States.

An offense under this section is a class C misdemeanor.

Delivery or Manufacture of Counterfeit Identification
[Transportation Code, Section 521.456]

A person who possesses with the intent to sell, distribute, or deliver a forged or counterfeit instrument that is not made or distributed by an authority authorized to do so under a state, federal, or Canadian law commits an offense. An offense under this section is a class A misdemeanor.

A person who manufactures or produces with the intent to sell, distribute, or deliver a forged or counterfeit instrument that the person knows is not made by the

appropriate authority commits an offense. An offense under this section is a third degree felony.

Driving Under Influence of Alcohol by a Minor

[Section 106.41, *Alcoholic Beverage Code*

Section 524.022, *Transportation Code*]

This law is known as the zero tolerance law. A minor commits an offense if the minor operates a motor vehicle in a public place while having a *detectable* amount of alcohol in the minor's system.

First Offense:

1. Class C misdemeanor
2. Alcohol awareness course
3. Community service: 20-40 hours relating to education about or prevention of misuse of alcohol
4. The court shall order the Department of Public Safety to suspend or deny the minor's driver's license for 60 days, 30 days of which the minor is not eligible for an occupational license
5. The charge cannot be a lesser included offense of DWI

Second Offense:

1. Class C misdemeanor
 2. Alcohol awareness course (judge's discretion)
 3. Community service: 40-60 hours relating to education about or prevention of misuse of alcohol
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-

4. The court shall order the Department of Public Safety to suspend or deny the minor's driver's license for 120 days, 90 days of which the minor is not eligible for an occupational license
5. The charge cannot be a lesser included offense of DWI.

Third Offense:

If it is shown at the trial of the defendant that the defendant is a minor who is not a child, the offense is punishable by the following:

1. Class B misdemeanor: a fine of less than \$250 or more than \$2,000;
2. Confinement in jail for a term not to exceed 180 days, or
3. Both the fine and confinement.
4. The court shall order the Department of Public Safety to suspend or deny the minor's driver's license for 180 days, during which the minor is not eligible for occupational license.
5. Is not eligible for deferred adjudication.
6. Cannot be a lesser included offense of DWI.

If the minor is a child (under 17 years of age as defined by Section 51.02, *Family Code*), the offense is punishable by the following:

1. The court shall order the Department of Public Safety to suspend or deny the minor's driver's license for
-
-

- 180 days, and the minor is not eligible for an occupational license
2. Is not eligible for deferred adjudication
 3. Cannot be a lesser included offense of DWI
 4. The child is remanded to juvenile court as delinquent conduct; or remanded to criminal court to be adjudicated as an adult.

Specimen of Breath or Blood from a Child

[*Family Code, Section 52.02*]

A person who takes a child into custody and who has reasonable grounds to believe that the child has been operating a motor vehicle in a public place while having any detectable amount of alcohol in the child's system may, (before releasing the child to a parent, bringing the child before the juvenile court, bringing the child to a detention center or medical facility) take the child to a place to obtain a specimen of the child's breath or blood and perform intoxilyzer processing and videotaping of the child in an adult processing office of a police department.

A child may submit to the taking of a breath specimen or refuse to submit to the taking of a breath specimen without the concurrence of an attorney, but only if the request made of the child to give the specimen and the child's response to that request is videotaped. A videotape made under this subsection must be maintained until the disposition of any proceeding against the child relating to

the arrest is final and be made available to an attorney representing the child during that period.

Sale to a Minor [Section 106.03]

A person commits an offense if, with criminal negligence, the person sells an alcoholic beverage to a minor. A person who sells an alcoholic beverage to a minor does not commit an offense if the minor falsely represents himself to be 21 years old or older by displaying an apparently valid *Texas* driver's license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage. An offense under this section is a class A misdemeanor.

***Purchase of Alcohol for a Minor
Furnishing Alcohol to a Minor***
[Section 106.06]

Generally, a person commits an offense if the person (adult or minor) purchases an alcoholic beverage for or gives or with criminal negligence makes available an alcoholic beverage to a minor.

A person may purchase an alcoholic beverage for or give an alcoholic beverage to a minor if the person is the

minor's adult parent, guardian, spouse, or an adult in whose custody the minor has been committed by a court, and he is visibly present when the minor possesses or consumes the alcoholic beverage.

An offense under this section is a class B misdemeanor.

Under Section 1.08 of the *Alcoholic Beverage Code* a person acts with criminal negligence if the person acts with a mental state that would constitute criminal negligence under Section 6.03(d) of the *Texas Penal Code*.

This section of the *Texas Penal Code* defines criminal negligence as: "A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint."

Other Criminal Provisions

Lewd, Immoral, Indecent Conduct [Section 104.01]

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

1. The use of loud and vociferous or obscene, vulgar, or indecent language, or permitting its use;
2. The exposure of person or permitting a person to expose his person; Refer to Section 21.08 or 42.01 (a) (12) of the *Texas Penal Code*.
3. Rudely displaying or permitting a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb person in the retail establishment;
4. Solicitation of any person to buy drinks for consumption by the retailer or any of his employees;
5. Being intoxicated on the licensed premises;
6. Permitting lewd or vulgar entertainment or acts; Refer to Chapter 21 of the *Texas Penal Code* for actions that constitute public lewdness.
7. Permitting solicitations of persons for immoral or sexual purposes;
8. Failing or refusing to comply with state or municipal health or sanitary laws or ordinances; or

9. Possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so. [Narcotic is defined in the *Texas Controlled Substances Act* §481.002(5)(6)(7) or (26).]

NOTE: Parts of the *Alcoholic Beverage Code*, Section 104.01, relating to lewd or vulgar entertainment have been declared unconstitutional because the statute does not state what constitutes lewd or vulgar entertainment.

Should the offense committed for lewd or vulgar entertainment violate Chapter 21 or Chapter 43 of the *Texas Penal Code*, both criminal and administrative charges may be pursued. Any case written for these offenses should cite Chapter 21 or 43 of the *Texas Penal Code*, rather than Section 104.01 of the *Alcoholic Beverage Code*.

Consent to Inspection [Section 101.04]

By accepting a license or permit, the holder consents that the Commission, an authorized representative of the Commission, or *any* peace officer may enter the licensed premises at any time to conduct any investigation or inspect the premises for the purpose of performing any duty imposed by this Code.

Consumption - Legal Hours [Section 105.06]

In a standard hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 1:15 a.m. and 12 noon or on any other day between 12:15 a.m. and 7 a.m.

In an extended hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a.m. and 12 noon and on any other day between 2:15 a.m. and 7 a.m.

Proof that an alcoholic beverage was possessed with intent to consume in violation of this section requires evidence that the person consumed an alcoholic beverage on that day in violation of this section. Exception: Alcoholic beverages may be served to a customer between 10 a.m. and 12 noon on Sunday with the service of food. The beverages shall be served for on-premise consumption at establishments where consumption on the premises is authorized.

An offense under this section is a misdemeanor punishable by a fine of not more than \$50.

“Standard hours area” means an area which is not an extended hours area.

"Extended hours area" means an area subject to the extended hours of sale provided as follows:

1. In a county having a population of 500,000 or more, according to the last preceding federal census, a holder of a mixed beverage late hours permit may also sell and offer for sale mixed beverages between midnight and 2 a.m. on any day.
 2. In a county having a population of less than 500,000, according to the last preceding federal census, a holder of a mixed beverage late hours permit may also sell and offer for sale mixed beverages between midnight and 2 a.m. on any day:
 - a. in the unincorporated areas of the county if the hours are adopted by an order of the commissioners court; and
 - b. in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.
 3. In a county having a population of 500,000 or more, according to the last preceding federal census, a holder of a retail dealer's on -premise late hours license (beer) may also sell, offer for sale, and deliver beer between midnight and 2 a.m. on any day.
 4. In a county having a population of less than 500,000, according to the last preceding federal census, a holder of a retail dealer's on -premise late hours license (beer) may also sell, offer for sale, and deliver beer between midnight and 2 a.m. on any day, or *any part of these extended hours* prescribed:
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-

- a. in the unincorporated areas of the county if the hours are adopted by an order of the commissioners court; and
- b. in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

Consumption and Open Containers Prohibited

[Sections 22.10, 22.11, 24.09, 24.10, 52.01, 61.12, 101.72, and 102.02]

A person may not *open, break, or possess* an opened container of liquor or beer on the premises of a package store or wine only package store.

A person may not sell, exchange, deliver, or give away any alcoholic beverages from a container that has been opened on the premises of a package store, or on the premises of a wine only package store. No licensee except a holder of a license authorizing on-premises consumption of beer may permit beer to be consumed on the premises where it is sold.

Two exceptions are found which allow consumption or possession of an open container on an off-premise location.

1. Consumption as authorized for package store tasting events on the premises of a licensed package store.

2. A wholesaler or his/her employee or agent may give a sample of *liquor* to a retailer that handles that type of liquor if the retailer has not previously purchased that brand from that wholesaler. The retailer may sample the product on the licensed premises only if the wholesaler or his/her employee is present.

Criminal Offense of Consuming

[Sections 101.72 and 101.73]

A person (including a retailer or his/her employee) commits an offense if the person knowingly consumes liquor or beer on the premises of a wine and beer retailer's off-premise permit or a retail dealer's off-premise license. A person knowingly committed the offense if the required warning sign stating "*It is a crime (misdemeanor) to consume liquor or beer on these premises*" is displayed on the premises.

A violation of this section is a misdemeanor punishable by a fine of not less than \$25 nor more than \$200. If a person has been convicted of a violation of this section occurring within a year of a subsequent violation, the subsequent violation is a misdemeanor punishable by a fine of not less than \$100 nor more than \$200.

Consumption of Alcoholic Beverages Near Schools

[Section 101.75]

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 1,000 feet of the property line of a facility that is a public or private school that provides all or any part of kindergarten through twelfth grade.

Consumption in a Central Business District

[Section 109.35]

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 the central business district.

Dry Areas Offenses

The *Alcoholic Beverage Code* gives each political subdivision of the state the ability to hold local option

elections to determine if the political subdivision will allow or not allow the sale of alcoholic beverages.

An area may be entirely wet, which means the area allows the sale of all types of legal alcoholic beverages. An area may be partially wet, which means the area may only allow the sale of certain alcoholic beverages such as wine or wine and beer. An area may also be completely dry, which means the sale of alcoholic beverages is illegal in the subdivision. Many combinations of wet and dry are possible.

Alcoholic Beverages in Dry Areas [Section 101.31]

Generally, no person in a dry area may manufacture, distill, brew, sell, import into the state, export from the state, transport, distribute, warehouse, store, solicit or take orders for, or possess with intent to sell an alcoholic beverage. An adult may possess beer for personal use in any area.

Prima Facie Evidence of Intent to Sell [Section 101.32]

Possession of more than one quart of liquor, or more than 24 twelve-ounce bottles of beer, or an equivalent amount, in a dry area is prima facie evidence that it is possessed with intent to sell.

Contact your local county or district attorney for any special requirements or considerations for prosecution.

Transportation of Beverages for Personal Consumption
[Section 107.08]

A person who purchases an alcoholic beverage for his own consumption may transport it from a place where its sale is legal to a place where its possession is legal without holding a license or permit.

Hours of Sale

See individual type of license or permit in section "Common Retail Alcoholic Beverage Permits and Licenses" for legal hours of sale.

GUN REGULATIONS

Firearms on Licensed Premises

[Sections 11.61(e) and 61.71(f)]

The Commission shall cancel a retail alcoholic beverage permit or license if it is found, after notice and hearing, that the permittee or licensee knowingly allowed a person to possess a firearm in a building on the licensed premises. (See "Exceptions" below for instances when a person may carry a firearm on the premises.)

Unlawful Carrying Weapons

[Section 46.02, *Texas Penal Code*]

A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

An offense under this section is a Class A misdemeanor. An offense under this section is a third degree felony if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages. (See "Exceptions" below for instances when a person may carry a firearm on the premises of an alcoholic beverage establishment.)

Exceptions

[Sections 11.61(e) and 61.71(f), *Alcoholic Beverage Code* Section 46.15, *Texas Penal Code*]

Sections 11.61(e) and 61.71(f) of the *Alcoholic Beverage Code* and Section 46.02 of the *Texas Penal Code* do not apply to a person who:

1. 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;
2. is a peace officer;
3. is an alcoholic beverage licensee or permittee or employee of a licensee or permittee if the person is supervising the operation of the premises; or the firearm is possessed for ceremonial and/or display purposes, if such firearm is disabled from use as a firearm; or
4. possesses a concealed handgun of the same category the person is licensed to carry.

An offense still occurs if the concealed handgun licensee is on the premises of a business that has a mixed beverage permit, a private club registration permit, a wine and beer retailer's permit or a beer retailer's on-premise license if the business derives 51

percent or more of its income from the sale of alcoholic beverages for on-premise consumption.

Unlawful Carrying of Handgun by Concealed Handgun License Holder [Section 46.035, *Texas Penal Code*]

A concealed handgun license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of the concealed handgun law, and intentionally fails to conceal the handgun.

A concealed handgun license holder commits an offense if, *while intoxicated*, the license holder carries a handgun under the authority of the concealed handgun statutes, regardless of whether the handgun is concealed.

An offense under this section is a Class A misdemeanor unless the offense is committed on the premises of a business that has a mixed beverage permit, a private club registration permit, a wine and beer retailer's permit or a beer retailer's on premise license if the business derives 51 percent or more of its income from the sale of alcoholic beverages for on-premise consumption, in which case the offense is a third degree felony.

Possession and Sale of Firearms on Licensed Premises
[Sections 11.61(e), 71.61(f), and
TABC Rule 16TAC §36.1]

The Commission may adopt a rule allowing:

1. a gun or firearm show on the premises of a license or permit holder, if the premises is owned or leased by a governmental entity or a nonprofit civic, religious, charitable, fraternal, or veterans' organization;
2. the holder of a license or permit for the sale of alcoholic beverages for off-premises consumption to also hold a federal firearms license; or
3. the ceremonial display of firearms on the premises of the alcoholic beverage license or permit holder.

Gun Shows

Alcoholic beverage permittees or licensees may use or allow a portion of the grounds, buildings, vehicles and appurtenances of their licensed premises for the use of gun shows if they:

1. suspend all sales, complimentary offers and consumption of all alcoholic beverages during the gun show including time required for preparation or set-up and dismantling of the gun show; and
 2. operate the licensed premises at a facility regularly used for special functions, directly or indirectly, under a lease, concession or similar agreement from a governmental entity or legally formed and duly
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recognized civic, religious, charitable, fraternal or veterans' organization.

Off-Premise Retailers and Gun Sales

The holder of a retail dealer's off-premise license, a wine and beer retail dealer's off-premise permit, a wine only package store or package store permit may allow the sale or offer for sale firearms at the licensed location if:

1. alcoholic beverages are not being displayed or sold in any area where firearms are readily accessible or can be viewed; and
2. the firearms are secure from the general public and are only accessible by employees of the person or entity offering the firearms for sale.

Weapons Warning Sign [Sections 11.41 and 61.11]

Mixed beverage permittees, private club registration permittees, wine and beer retailer's permittees, brewpub licensees and beer retailer's on-premise licensees who derive 51% or more of their income from the sale of alcoholic beverages and do not hold a food and beverage certificate must prominently display a sign that gives notice that it is unlawful for a person to carry a handgun on the premises, even if the person is licensed under the concealed handgun law. The sign must appear in contrasting colors with block letters at least one inch in

height and must include on its face the number "51" printed in solid red at least five inches in height.

Each *off-premise retailer* and other retail licensees and permittees not listed in the above paragraph are required to display a sign in a prominent place on the premises which is clearly visible to the public. The sign must be at least at least 6 inches high and 14 inches wide and in contrasting colors giving notice that it is unlawful for a person to carry a weapon on the premises unless the person is licensed to carry the weapon under the concealed handgun law.

The Commission may require the holder of the license to also display the sign in a language other than English.

ADMINISTRATIVE CASES

If a violation occurs on a licensed premises the TABC may take administrative action against the permit or license.

This action, if proven, may result in the suspension or cancellation of the permit/license, or a fine in lieu of the suspension.

Information Needed for Administrative Action

In filing a case with the Commission for administrative action, including the following information:

1. Date and time of offense.
2. Location (correct address, trade name, license/permit number).
3. Reason for being at licensed premises:
 - a. Routine inspection.
 - b. In response to complaint.
 - c. Surveillance.
 - d. Passing while on patrol.
4. Primary observations:
 - a. What caught your attention and why?

- b. Exact position of the permittee, licensee, or person in charge and any employees on the premises in relation to the violation.
- c. Exact location where the violation occurred on the premises.
- d. Number of persons present during the violation.
- e. Were the premises dark or well lighted?
- f. What were the actions of the licensee, permittee, or employees?

5. Identities:

- a. Positive identification of the permittee, licensee, or person in charge of the licensed premises and any other employees involved. (The TABC requests social security numbers of these people to determine if the permittee's or licensee's liability may be limited because the employee was seller trained. All of the TABC seller training records are accessed and verified by social security numbers.)
- b. Positive identification of all persons involved in the violation.
- c. Positive identification of witnesses to the violation.

6. Statements:

- a. Any statements made by permittee, licensee or other persons involved in the violation.
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7. Evidence:
 - a. Note any seizure and disposition of alcoholic beverages.

8. Disposition of persons involved:
 - a. Identity of arrested persons and charges filed.
 - b. Identity of persons receiving citations.

**CANCELLATION AND SUSPENSION
OF ALCOHOLIC BEVERAGE PERMITS AND
LICENSES:**

Administrative Action

[Sections 11.61, 11.611, 11.612, 61.71, 61.711]

After notice and hearing, the Commission may suspend for not more than 60 days, or cancel a retail permit or license if it is found that any of the following is true.

The licensee or permittee:

- conducts the business in a place or manner which warrants the cancellation or suspension of the permit or license based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency;
 - maintains a noisy, lewd, disorderly, or unsanitary establishment or has supplied impure or otherwise deleterious beverages;
 - is insolvent or mentally or physically unable to carry on the management of the establishment;
 - is in the habit of using alcoholic beverages to excess;
 - was intoxicated on the licensed premises;
 - with criminal negligence sold, served, or delivered an alcoholic beverage to a person under 21 years of age;
 - sold, served, or delivered an alcoholic beverage to an intoxicated person;
 - sold, served, or delivered alcoholic beverages at a time when its sale is prohibited;
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- does not have at his licensed premises running water, if it is available, and separate, identified toilets for both sexes;
 - 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-premise consumption;
 - refused to allow or interfered with an inspection of the licensed premises by an authorized representative of the Commission or a peace officer;
 - permitted the use or display of his license or permit in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;
 - maintained blinds or barriers at his place of business in violation of the Code;
 - consumed an alcoholic beverage or allowed one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by the Code;
 - purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or allowed one to be consumed on the licensed premises while the license or permit was under suspension;
 - failed to promptly report to the Commission a breach of the peace occurring on the licensed premises;
 - has been finally convicted of any offense under a state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights
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or the discrimination against an individual on the basis of the individual's race, color, creed, or national origin; and the offense was committed on the licensed premises or in connection with the operation of the licensee's or permittee's business.

By definition, the terms "licensee" and "permittee" include the agents, servants and employees of the license or permit holder.

NOTE: The above list is not inclusive, nor direct quotes, of all violations for which administrative action may be considered by the Commission.

Suspension for Violent Acts

[Sections 11.61(d), 11.613 and 61.71(e)]

The Commission, without a hearing, may for investigative purposes, summarily suspend a retail dealer's license, a mixed beverage permit, a private club registration permit, or a wine and beer retailer's permit for not more than seven (7) days if the Commission finds that a shooting, stabbing, or murder has occurred on the licensed premises *which is likely to result in a subsequent act of violence*.

Notice of the order suspending the license or permit is given to the licensee or permittee personally within 24 hours of the time the violent act occurs or if the licensee

or permittee cannot be located, the notice is posted on the front door of the licensed premises. Notice is given to a private club permittee within 72 hours of the time the violent act occurs.

Contact your local TABC office to inquire about this type of summary suspension.

Cancellation of Private Club Permit [Section 11.612]

The Commission may cancel a private club registration permit and private club late hours permit and may refuse to issue any new alcoholic beverage permit for the same premises for one year after the date of cancellation if:

1. the chief of police of the municipality, if the premises are located in an incorporated area, or the sheriff of the county in which the premises are located has submitted a sworn statement to the Commission stating specific allegations that the place or manner in which the permittee conducts its business endangers the general welfare, health, peace, morals, or safety of the community; and
2. the Commission finds, after notice and hearing within the county where the premises are located, that the place or manner in which the permittee conducts its business does in fact endanger the general welfare, health, peace, morals, or safety of the community.

This section does not apply to a permit issued to a fraternal or veterans' organization or the holder of a food and beverage certificate.

Place and Manner Defined (16TAC §35.31)

Under "Grounds for Cancellation and Suspension or Grounds to Deny" a license or a permit, language appears which states, or is similar to: *"the licensee or permittee 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."*

Any of the following offenses are regarded as "place and manner violations" and are grounds to suspend, cancel or deny permits and licenses. Civil notices or criminal citations must have been issued or arrests made. The offense must be shown to have been committed on a premise by a retailer, an applicant or by a person permitted to be on the premises if the retailer or applicant knew or should have known that such offense was occurring on the premise:

1. The preparatory offenses of: criminal intent, criminal conspiracy and criminal solicitation as defined in Chapter 15 of the *Texas Penal Code*;
 2. The assaultive offenses of: assault, sexual assault, aggravated assault, aggravated sexual assault, injury to a child, elderly or disabled individual, abandoning
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- or endangering a child, deadly conduct, terroristic threat, tampering with consumer product, as defined in Chapter 22 of the *Texas Penal Code*;
3. Theft offenses as defined in Sections 31.01 or 31.03 of the *Texas Penal Code*;
 4. The bribery offenses of: bribery, coercion of public servant or voter, improper influence, tampering with witness, obstruction or retaliation, offering gift to public servant as defined in Chapter 36 of the *Texas Penal Code*;
 5. The obstruction offenses of: resisting arrest, search or transportation, evading arrest or detention, hindering apprehension or prosecution as defined in Chapter 38 of the *Texas Penal Code*;
 6. The disorderly conduct offenses of: disorderly conduct, riot, obstructing highway or other passageway, false alarm or report, included in Chapter 42 of the *Texas Penal Code*;
 7. The weapons offenses of: unlawful carrying weapons, places that weapons are prohibited, prohibited weapons, unlawful transfer of certain weapons, interstate purchase, components of explosives as defined by Chapter 46 of the *Texas Penal Code*;
 8. Any gambling offense included in Chapter 47 of the *Texas Penal Code*;
 9. Any other offense included in any law of the United States or the State of Texas, or any charter, ordinance, law, or regulation of an incorporated municipality or county in which a premise is located if such offense is shown to have occurred on the
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premise and is detrimental to the general welfare, health, peace and safety of the people;

The above list is not inclusive of all offenses which may be considered place and manner violations.

Other Administrative Violations

Seating Required [Sections 25.11 and 69.14]

A wine and beer retailer's permittee and a retail dealer's on-premise licensee must have an area designated on the premises for the customers to sit if they wish to consume beverages sold by the permittee or licensee on the premises.

Public Interest Information Sign

[Section 5.53 and 16TAC §31.4]

Any retailer in the state which sells or serves alcoholic beverages to consumers must display at the business in a prominent place easily seen by the public, i.e. near the door or by the cash register, a sign that provides the following information:

"If you have a complaint about the sale or service of alcoholic beverages in this establishment, please contact the Texas Alcoholic Beverage

*Commission, P. O. Box 13127, Austin, Texas
78711-3127, or phone (512) 206-3333."*

This sign must be no smaller than 6 inches by 3-1/2 inches and in lettering or type of a size sufficient to render it both conspicuous and readily legible. The sign must be made of sturdy material; paper weight of no less than 65# stock.

Consumption Warning Sign [Sections 26.05 and 71.10]

Each holder of a wine and beer retailer's off-premise permit or a retail dealer's off-premise license is required to display in a prominent place on the premises a sign stating in letters at least two inches high:

***IT IS A CRIME (MISDEMEANOR) TO
CONSUME LIQUOR OR BEER ON THESE
PREMISES.***

The Commission may require the holder to also display the sign in a language other than English if determined that a substantial portion of the expected customers speak another language as their day-to-day language. A permittee who fails to post this sign commits a misdemeanor punishable by a fine of not more than \$25.

Adjudication of Administrative Offenses

When the Commission is authorized to suspend a license or permit, the Commission is required to give the licensee or permittee the option of paying a civil penalty in lieu of the suspension. If the offense was for a violation which threatened the health, safety and welfare of the general public, the Commission retains the right to suspend the license or permit instead of allowing the payment of a fine.

The following chart outlines a few of the violations and resulting penalties which may be used for an offense, based on whether the offense is a first, second or third violation.

This chart may be found in it's entirety in the *Texas Alcoholic Beverage Commission Rules* 16TAC§37.60.

Specifically designated Commission personnel are required to settle cases in accordance with this chart. The licensee or permittee may request a hearing if they do not wish to settle the case.

DESCRIPTION	1st	2nd	3rd
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71 (a)(12)	5-7	10-12	30-Cancel
Permit a minor to possess or consume an alcoholic beverage in violation of §§106.04, 106.05 and 106.06	7-15	10-90 Per §106.13	60-Cancel
Sale of an alcoholic beverage to a minor in violation of §106.03	7-20	10-90 §106.13	60-Cancel
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §§22.12 and 28.11	10-15	15-20	30-Cancel
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09	45-Cancel	60-Cancel	Cancel

DESCRIPTION	1st	2nd	3rd
Possession of narcotics by a licensee or permittee in violation of §104.01, or Title 16, §35.41(27), TAC	21- Cancel	45- Cancel	Cancel
Possession of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, or Title 16, §35.41(27), TAC	10-21	21-45	45- Cancel
The sale or delivery or permitting the sale or delivery of narcotics by a licensee or permittee in violation of §104.01 and Title 16, §35.41(27), TAC.	Cancel		
The sale or delivery or permitting the sale or delivery of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, Title 16, §35.41(27), TAC	30- Cancel	60- Cancel	Cancel

DESCRIPTION	1st	2nd	3rd
The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the license or permit holder in violation of §104.01	15-20	25-30	30- Cancel
The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the employee of any license or permit holder in violation of §104.01	10-15	20-25	30- Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63	7	10-15	25- Cancel
The license or permit holder or any employee being intoxicated on a licensed premise, §11.61(b)(13) or §104.01	7	10-15	25- Cancel

DESCRIPTION	1st	2nd	3rd
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, 16TAC§35.41(1) or the exposure of a person or permitting a person to expose his person, §104.01(2)	10	15-20	30- Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises, §101.62 or §11.61(b)(9)	Warn- ing - 3	5-7	15- Cancel
Possession or display on the licensed premises of any graphic material that is immoral, indecent, lewd or profane, §101.64	7	15-20	30- Cancel
Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises §61.71(a)(18) or §105.06	5	7-10	25- Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment, §104.01(3)	7	20-30	60- Cancel

DESCRIPTION	1st	2nd	3rd
<p>The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17) by committing the following violations. Requires detail on offenses. Examples (not limited to the following offenses): Possession of any gambling paraphernalia or device; Gambling on licensed premises; Keeping a gambling place; Bribery; Prostitution; Promotion of prostitution; Employment harmful to a minor; Violation of city codes (health, safety, welfare).</p>	<p>15- Cancel</p>		

Hearing Requested

If a hearing is requested, the administrative case is adjudicated before the State Office of Administrative Hearings as required by state law, with all the rules of due process. The location is allowed to stay in business during the adjudication and appeal process, even if the Commission recommends cancellation of the license or permit.

NOTES:

COMMON RETAIL ALCOHOLIC BEVERAGE PERMITS AND LICENSES

Introduction

The following is a list of retail alcoholic beverage permits and licenses which a peace officer may encounter.

On-premise consumption means the license or permit only allows the holder to sell or serve alcoholic beverages to be consumed on the premises and alcohol may not be taken off the licensed premises.

Off-premise consumption means the license or permit only allows the holder to sell alcoholic beverages to be consumed off the licensed premises. Some licenses and permits allow both types of sales and service.

Alcoholic beverage permit and license holders are required to display their license or permit in a conspicuous place on the premises.

In examining the document, notice that the permit or license number begins with a one or two letter alphabetical code, which identifies the type of establishment, followed by a 3 to 6 digit number which identifies the specific permittee or licensee (example: MB222222). In submitting cases to the Commission, please include this permit or license number.

On-Premise or Off-Premise Consumption

Retail Dealer's On-Premise License (Code BE):

- Authorizes the sale of beer.
- Minimum age of employee who can handle alcoholic beverages: 18 years of age.
- Hours of Sale:
7 a.m. - midnight on any day except Sunday.
Sunday: midnight to 1 a.m., noon to midnight, and 10:00 a.m. to noon if the beer is served to a customer during the service of food to the customer.

Other activities (stocking, deliveries from suppliers, etc.) are allowed at other times based on the type of permit or license.

May also hold a retail dealer's on-premise late hours license (code BL) which authorizes the holder to sell alcoholic beverages for consumption on the premises until 2:00 a.m.

Wine and Beer Retailer's Permit (Code BG):

- Authorizes the sale of: beer, ale, malt liquor, and wine not over fourteen percent (14%)
Also, sale of port or sherry for consumption on the premises.
 - Minimum age of employee who can handle alcoholic beverages: 18 years of age.
 - Hours of Sale:
-
-

7 a.m. - midnight on any day except Sunday.

Sunday: midnight to 1 a.m., noon to midnight

Between 10:00 a.m. and noon if the beer is served to a customer during the service of food to the customer.

No sale shall be allowed between 2 a.m. and noon on Sunday.

Other activities (stocking, deliveries from suppliers, etc.) are allowed at other times based on the type of permit or license.

May also hold a retail dealer's on-premise late hours license (code BL) which authorizes the holder to sell alcoholic beverages for consumption on the premises until 2:00 a.m.

Brewpub License (Code BP)

- Authorized the manufacture and sale of malt liquor, ale, and beer. A holder of a brewpub license must also hold a wine and beer retailer's permit (BG), a mixed beverage permit (MB), or a retail dealer's on-premise license (BE).
- Minimum age of employee who can handle alcoholic beverages: 18 years of age.
- Hours of Sale: See primary license/permit (BG, MB, or BE).

Off-Premise Consumption Only

Retail Dealer's Off-Premise License (Code BF)

- Authorizes the sale of beer.
- Age of employee who can handle alcoholic beverages: No minimum age.
- Hours of Sale:
Monday - Saturday: 7:00 a.m. to 12 midnight;
Sunday: 12 midnight to 1:00 a.m., 12 noon to 12 midnight.

Other activities (restocking, etc.) are allowed at other times based on the type of permit or license.

Wine and Beer Retailer's Off-Premise Permit (Code BQ)

- Authorizes the sale of beer, malt liquors, and wine not over fourteen percent (14%).
- Age of employee who can handle alcoholic beverages: no minimum age.
- Hours of Sale:
Monday - Saturday: 7:00 a.m. to 12 midnight;
Sunday: 12 midnight to 1:00 a.m., 12 noon to 12 midnight

No sale is allowed between 2:00 a.m. and noon on Sunday.

Other activities (restocking, etc.) are allowed at other times based on the type of permit or license.

Package Store Permit (Code P)

- Authorizes the sale of liquor, malt liquor, wine.
A package store permittee may also hold a retail dealer's off-premise license (BF) to handle beer.
- Minimum age of employee who can handle alcoholic beverages: 21 years of age.
Exception: An 18, 19, or 20 year old may be employed if the child is a dependent of the package store permittee.
- Hours of Sale:
Monday - Saturday, 10:00 a.m. to 9:00 p.m.
Closed on Sunday, Thanksgiving Day, Christmas Day, New Year's Day. If Christmas or New Year's Day fall on Sunday, closed following Monday.

May sell non-alcoholic products and may conduct other lawful business on the premises of a package store, but the premises must be closed to entry by the general public during all hours in which the sale of liquor by a package store is prohibited by law. "The general public" means retail customers and does not include vendors, service personnel, and other persons entering the premises for purposes other than the purchase of goods sold on the premises.

Other activities (restocking, etc.) are allowed at other times based on the type of permit or license.

Package store permit with beer off-premise license (BF): Hours are the same as package store.

Wine Only Package Store Permit (Code Q)

- Authorizes the sale of wine, ale, malt liquor.
May also hold a retail dealer's off-premise license (BF) to handle beer.
- Minimum age of employee who can handle alcoholic beverages: 16 years of age.
- Hours of Sale: Wine Only Package Store with Beer Off-Premise (BF):
Monday - Saturday: 7:00 a.m. to 12 midnight.
Sunday: 12 midnight to 1:00 a.m., 12 noon to 12 midnight.
Wine over 14% alcohol by volume may not be sold after 10:00 p.m. any day and can never be sold on Sunday.
Other activities (restocking, etc.) are allowed at other times based on the type of permit or license.

On-Premise Consumption Only

Mixed Beverage Permit (Code MB)

- Authorizes the sale of all types of alcoholic beverages by the drink.
 - Minimum age of employee who can handle alcoholic beverages: 18 years of age.
 - Hours of Sale:
7 a.m.- midnight on any day except Sunday.
Sunday: midnight - 1:00 a.m. and 10 a.m. - midnight,
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10:00 a.m. to noon if the alcoholic beverage is served to a customer during the service of food to the customer.

Other activities (restocking, etc.) are allowed at other times based on the type of permit or license.

May also hold a mixed beverage late hours permit (LB) which authorizes a mixed beverage permittee to sell mixed beverages until 2:00 a.m.

Private Club Registration Permit (Code N)

- Authorizes the service only of all types of alcoholic beverages by the drink. Alcoholic beverages must belong to members of the club to be stored, possessed, and mixed on club premises, and served for on-premises consumption only to members, their families, and guests.
 - Minimum age of employee who can handle alcoholic beverages: 18 years of age.
 - Hours of Sale:
7 a.m.- midnight on any day except Sunday.
Sunday: midnight - 1:00 a.m. and 10 a.m. - 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.
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Other activities (restocking, etc.) are allowed at other times based on the type of permit or license.

May also hold a Private Club Late Hours Permit (NL) which authorizes the holder to allow persons to consume or be served alcoholic beverages on club premises until 2:00 a.m.

NOTES:

APPENDIX I

TABC Offices in Texas

AUSTIN HEADQUARTERS

5806 Mesa Drive, Austin, Texas 78731

MAIL: P.O. Box 13127, Austin, Texas 78711

(512) 206-3333 (Information),
1-888-THE-TABC (Complaint)

TDD# (512) 206-3270 Fax No. (512) 206-3351

REGION 1 - LUBBOCK

Amarillo District

Palo Duro Office Plaza

3131 Bell, Suite 106

Amarillo, Texas 79106

(806) 353-1286

(806) 353-1287 Fax

Lubbock District

3223 S. Loop 289, #301

Lubbock, Texas 79423

(806) 793-3221

(806) 793-3222 Fax

Wichita Falls Office

(940) 322-8606

(940) 322-8607 Fax

Vernon Outpost

(940) 522-6205

REGION 2 - DALLAS

Dallas District

8828 Stemmons Freeway
Suite 330

Dallas, Texas 75247

(214) 688-1603

(214) 688-1607 Fax

Fort Worth District

6800 Manhattan Blvd
Suite 100

Fort Worth, TX 76120

(817) 451-9466

(817) 451-9469 Fax

Greenville Office

(903) 454-2984

(903) 454-2207 Fax

Granbury Outpost

(940) 579-3342

(940) 573-7372 Fax

Denton Outpost

(940) 565-8670

(940) 565-8506 Fax

Mineral Wells Outpost

(940) 325-9372

(940) 325-3201 Fax

McKinney Outpost

(972) 547-5099

(972) 547-5093 Fax

Sherman Outpost

(903) 813-4256

(903) 868-2977

Terrell Outpost

(972) 551-1750

(972) 551-1750

REGION 3 - ODESSA

Odessa District

4222 Wendover, Ste 200
Odessa, Texas 79762
(915) 367-0760
(915) 367-0808 Fax

El Paso District

7400 Viscount, Ste 213
El Paso, Texas 79925
(915) 778-6324
(915) 778-6335 Fax

Big Spring Outpost

(915) 264-2212
(915) 264-2206 Fax

Alpine Outpost

(915) 837-3486
(915) 837-2616 Fax

REGION 4 - ABILENE

Abilene District

209-C South Danville
Suite 207
Abilene, Texas 79605
(915) 695-2841
(915) 695-2842 Fax

Waco District

Richland Office Plaza
6001 W. Waco Dr. # 8
Waco, Texas 76710
(254) 776-7626
(254) 776-7628 Fax

San Angelo Outpost

(915) 944-1534
(915) 944-1535 Fax

Belton Outpost

(254) 933-5368
(254) 933-5179 Fax

Killeen Outpost

(254) 699-2374
(254) 690-7393 Fax

Lampasas Outpost

(512) 566-4637
(512) 566-4637 Fax

Bryan Office

(409) 260-8222

(409) 260-8224 Fax

Athens Outpost

(903) 675-4736

(903) 677-6375 Fax

REGION 5 - BEAUMONT

Beaumont District

6450 Concord Road

Beaumont, Texas 77708

(409) 898-3116 (or 3117)

(409) 898-3155 Fax

Longview District

2800 Gilmer Rd., # 4

Longview, TX 75604

(903) 759-7828

(903) 759-7834 Fax

Jasper Outpost

(409) 384-2677

Nacogdoches Outpost

(409) 560-7763

Conroe Office

(409) 760-5841

(409) 760-5853 Fax

Texarkana Outpost

(903) 978-3239

Huntsville Outpost

(409) 291-5480, x 383

Tyler Outpost

(903) 597-7388

REGION 6 - HOUSTON

Houston District

427 West 20th, Suite 600

Houston, Texas 77008

(713) 880-3003

(713) 880-5526 Fax

Galveston Office

(281) 337-5611

(281) 337-5612 Fax

Harris County Outpost - Sector A

(281) 345-9449

Harris County Outpost - Sector B

(713) 988-6976

Harris County Outpost - Sector C

(713) 880-3003

(713) 880-5526 Fax

REGION 7 - AUSTIN

Austin District

Chevy Chase II

7600 Chevy Chase Dr.

Suite 550

Austin, Texas 78752

(512) 451-0231

(512) 451-0240 Fax

Victoria District

1205 Manor Drive

Victoria, Texas 77901

(512) 575-4776

(512) 575-4777 Fax

San Marcos Office

(512) 396-2808

(512) 396-3959 Fax

Richmond Office

(281) 341-4647

(281) 341-4733 Fax

Bastrop Outpost

(512) 303-1080, x 280

(512) 332-0641 Fax

Angleton Outpost

(409)849-5711, x 1299

(281)331-6101, x 1299

Kerrville Outpost

(830) 257-5757

(830) 896-7380 Fax

Brenham Outpost

(409) 277-6250

(409) 277-6258 Fax

Llano Outpost

(915) 247-3550

New Braunfels Outpost

(830) 620-5579

Wharton Outpost

(409) 532-1550

(409) 282-2849 Fax

REGION 8 - SAN ANTONIO

San Antonio District

4203 Woodcock

Goliad Building, #120

San Antonio, Texas 78228

(210) 736-4466

(210) 736-4225 Fax

McAllen District

821 Nolana, Suite A

McAllen, Texas 78504

(956) 687-5141

(956) 687-5585 Fax

Del Rio Outpost

(830) 774-8569

(830) 774-4111 Fax

Harlingen Outpost

(956) 427-8053

Devine Outpost

(830) 665-8030

(830) 665-8021 Fax

Laredo Outpost

(956) 722-6364

(956) 726-6906 Fax

Floresville Outpost

(830) 393-2535

(830) 393-7402 Fax

Corpus Christi Outpost

(512) 851-2531

(512) 851-2536 Fax

Uvalde Outpost

(830) 278-3415

A PPENDIX II

FREQUENTLY ASKED QUESTIONS

GENERAL

Q. What does an agent for the Texas Alcoholic Beverage Commission do?

A. Agents are commissioned peace officers. Agents enforce the provisions of the Alcoholic Beverage Code that regulates every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, distributing, state taxation of alcoholic beverages, and the possession of alcoholic beverages for the purpose of sale or otherwise. As commissioned peace officers, they also enforce any state law or local ordinance. [Section 5.31]

Q. Who qualifies for a retail license or permit?

A. A person must be 21 years or older, of good moral character, a law abiding citizen, and have been a resident of Texas for one year immediately preceding the filing of their application. [Sections 11.46 and 61.42]

Q. May a license or permit be used by or transferred to another person?

A. No. The privileges of a license or a permit expire annually unless renewed by the license or permit holder [Sections 11.05 and 61.04].

Q. May a license or permit be moved from one location to a new location?

A. Yes, but only upon approval of the TABC after the holder submits an application requesting such a change. A license to sell beer may only be transferred to a location within the county in which it was originally issued. A permit to sell liquor may be transferred to another location in Texas.

Q. After a license or permit is issued, does the TABC have the authority to cancel or suspend the license or permit?

A. Yes, for any violation of the *Alcoholic Beverage Code* after a hearing before the State Office of Administrative Hearings and possible appeal during which the licensee or permittee is allowed to continue operating. [Sections 5.35, 11.61 and 61.71]

AGE REQUIREMENTS

- Q. When may a minor legally possess an alcoholic beverage?**
- A. While in the course and scope of employment as an employee of a licensee or permittee. Also, if the minor is in the visible presence of an adult parent, guardian, or spouse or other adult to whom he has been committed by a court and if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this Code. [Section 106.05]
- Q. Is a person held responsible if he or his employee with criminal negligence sells or makes available an alcoholic beverage to a minor?**
- A. Yes, however, a defense to prosecution exists if the minor falsely represents himself to be 21 years of age or older by displaying an apparently valid Texas Driver's License or Department of Public Safety identification card containing a physical description consistent with his appearance. Any form of identification can be accepted, but only a **valid** Texas Driver's License or identification card, issued by the Texas Department of Public Safety can be used as a defense in criminal court. An out of state driver's license, altered, or apparently false identification or
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"flea market" identification cannot be used as a defense.

Any person (unless he or she is the minor's parent, legal guardian or adult spouse) who makes an alcoholic beverage available to a minor, is in violation of the law and is subject to criminal penalties. [Chapter 106]

Q. May a minor enter the premises where a license or permit is issued?

A. Generally yes, if he does not possess or consume an alcoholic beverage. A minor may not enter the premises of a package store unless accompanied by an adult parent, spouse or guardian. A licensee or permittee may have a "house rule" that minors may not enter their licensed premises.

HOURS OF SALE AND CONSUMPTION

Q. May holders of wholesaler's, beer distributor's or local distributor's permits sell or deliver liquor to retailers between 5 a.m. and 9 p.m.?

A. Yes, with the exception that a local distributor permittee may not sell or deliver any liquor on days

a package store permittee is prohibited from selling liquor. [Section 105.02]

Q. How does the time changes for Day Light Savings Time affect the hours of sale and consumption?

A. In the fall when the time changes at 2:00 a.m., licensees and permittees may sell for an additional hour because the legal time is 1:00 a.m., instead of 2:00 a.m., at that point in time. In the spring, when Day Light Savings Time takes place, the legal time is 3:00 a.m. when the time changes. Technically, no one should be consuming or selling alcoholic beverages at that time. TABC agents have traditionally given patrons the 15 minutes they have under the extended hours definition to consume the remainder of the drinks legally purchased before 2:00 a.m.

TRANSPORTATION OF LIQUOR AND BEER

Q. Is a license or permit required to transport any alcoholic beverages?

A. Yes, if being transported commercially (liquor), or commercially for hire (beer). No, if the alcoholic beverages are for the person's own personal consumption.

SEARCH

Q. What can be searched without a warrant?

- A. A peace officer may inspect or conduct an inspection of the premises covered by a license or permit at any time without a search warrant for the purpose of performing any duty imposed by the Code.

The premises include all of the grounds and related buildings, vehicles and appurtenances, as well as the adjacent premises under the control of the permittee or licensee when covered by permit or license by the TABC. The premises may not be diagrammed off the licensed premises. If living quarters are on the premises and have not been diagrammed off the licensed premises, the officer should obtain consent before searching this area.

IMPORTATION OF ALCOHOLIC BEVERAGES

Q. May a person import alcoholic beverages for his own personal use?

- A. Yes, in limited amounts not over once every 30 days. A Texas resident may import, for his own personal use, one quart of distilled spirits and three gallons of wine, and 24 12-ounce containers of beer or its equivalent. [Section 107.07(a)(b)]
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A non-resident of Texas may import not more than one gallon of liquor or wine or beer for his personal use. A person moving his or her household may import, as a part of that move, a personal wine collection.

instructors are certified peace officers who undergo a rigorous training period to become qualified instructors.

Contact your local TABC office to schedule a law enforcement Project SAVE session for your police agency.

COPS IN SHOPS AND COPS

Cops in Shops is a federally and state funded program where Texas Alcoholic Beverage Commission agents pose as employees or customers in retail establishments licensed for off-premise sales of alcoholic beverages (liquor stores, convenience stores and grocery stores).

COPS is a similar program where agents pose as employees or customers in retail establishments licensed for on-premise sales (bars and restaurants). The goal of these programs is to enforce Texas' laws regarding the illegal purchase of alcoholic beverages by persons under the age of 21. Deterring the illegal use of alcohol by minors will hopefully reduce the number of minors involved in alcohol related traffic crashes.

If your police agency is interested in cooperative efforts with the TABC using "Cops in Shops" program or the "COPS" program, please contact your local TABC office for information.

MINOR STING OPERATIONS

Minor sting operations are undercover stings which identify retail establishments that sell to minors by sending in a minor decoy to attempt to purchase alcohol. Generally, past sting operations have indicated approximately 35% of the establishments sell alcoholic beverages to minors. The use of minor sting operations in Texas has been a very valuable tool in addressing underage drinking. Working together with other law enforcement agencies, the agency has been able to make a concerted effort to curb the availability of alcohol to minors.

If your police agency is interested in conducting minor stings or working cooperatively with the TABC on minor stings, contact your local TABC office or write and request the brochure "Minor Sting Operation Guidelines." This brochure gives the basic guidelines the agency uses for conducting minor stings.

SOURCE INVESTIGATIONS

A source investigation attempts to identify the source of the alcoholic beverages consumed by parties who are involved in a serious accident or a DWI violation. Agents review accident reports received from the Department of Public Safety and other law enforcement agencies and

also rely on television and newspapers to learn of accidents and homicides in their area.

The source investigation attempts to determine if that source was acting within the law when the beverages were provided to the parties in question. If the alcoholic beverages were sold illegally, the TABC agent will prepare and file appropriate criminal and administrative charges against the provider of the alcoholic beverages. If you have a fatality or serious injury in your area which is alcohol related, contact your local TABC office.

