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# ALCOHOLIC BEVERAGE CODE

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# ALCOHOLIC BEVERAGE CODE

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# ALCOHOLIC BEVERAGE CODE

## TITLE 1. GENERAL PROVISIONS

### CHAPTER 1. GENERAL PROVISIONS

**Sec. 1.01. PURPOSE OF CODE.** (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent alcoholic beverage law more accessible and understandable, by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

**Sec. 1.02. CONSTRUCTION OF CODE.** The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

**Sec. 1.03. PUBLIC POLICY.** This code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. It shall be liberally construed to accomplish this purpose.

**Sec. 1.04. DEFINITIONS.** In this code:

(1) "Alcoholic beverage" means 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.

(2) "consignment sale" means:

(A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;

(B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;

(C) the delivery of alcoholic beverages to a factor or broker;

(D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;

(E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or

(F) any other type of transaction which may legally be construed as a consignment sale.

(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.

(4) "Illicit beverage" means an alcoholic beverage;

(A) manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this code;

(B) on 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

(C) possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of this code.

(5) "Liquor" means any alcoholic beverage containing alcohol in excess of four percent by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero, or barreteago, is prima facie evidence that it is liquor.

(6) "Person" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

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

(8) "Hotel" means the premises of an establishment:

(A) where, in consideration of payment, travelers are furnished food and lodging;

(B) in which are located at least 10 adequately furnished completely separate rooms with adequate facilities so comfortably disposed that persons usually apply for and receive overnight accommodations in the establishment, either in the course of usual and regular travel or as a residence; and

(C) which operates a regular dining room constantly frequented by customers each day.

(9) "Applicant" means a person who submits or files an original or renewal application with the county judge, commission, or administrator for a license or permit.

(10) "Commission" means the Texas Alcoholic Beverage Commission.

(11) "Permittee" means a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person.

(12) "Ale" or "malt liquor" means a malt beverage containing more than four percent of alcohol by weight.

(13) "Mixed beverage" means one or more servings of a beverage composed

in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.

(14) "Barrel" means, as a standard of measure, a quantity of beer equal to 31 standard gallons.

(15) "Beer" means a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.

(16) "Licensee" means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person.

(17) "Manufacturer" means a person engaged in the manufacture or brewing of beer, whether located inside or outside the state.

(18) "Original package," as applied to beer, means a container holding one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel of beer in bulk, or any box, crate, carton, or other device used in packing beer that is contained in bottles or other containers.

(19) "Premises" has the meaning given it in Section 11.49 of this code.

(20) "Citizen of Texas" and "citizen of this state" mean a person who is a citizen of both the United States and Texas.

**Sec. 1.05. GENERAL PENALTY.** (a) 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.

(b) The term "specific penalty," as used in this section, means a penalty which might be imposed as a result of a criminal prosecution.

**Sec. 1.06. CODE EXCLUSIVELY GOVERNS.** Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

**Sec. 1.07. RESIDENT ALIENS.** (a) For purposes of any provision of this code that requires an applicant for a license or permit to be a United States citizen or Texas citizen, regardless of whether it applies to an individual, a percentage of stockholders of a corporation, or members of a partnership, firm, or association, an individual who is not a United States citizen but who legally resides in the state is treated as a United States citizen and a citizen of Texas.

(b) If it is required that an individual have resided in the state for a specified period of time, an alien legally residing in the state satisfies the requirement if he has legally resided in the state for the prescribed period of time. If an alien becomes a United States citizen while residing in Texas, any continuous period of time he legally resided in the state immediately before becoming a citizen is included in computing his period of continuous residence in the state.





## TITLE 2. ADMINISTRATION OF CODE

### CHAPTER 5. ALCOHOLIC BEVERAGE COMMISSION

#### SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

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

(b) The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless it is continued in existence as provided by that Act, the commission is abolished and this code expires on September 1, 1987.

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

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

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

**Sec. 5.04. CHAIRMAN.** The governor shall designate one member of the commission as chairman.

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

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

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

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

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

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

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

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

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

**Sec. 5.09. ANNUAL REPORT.** Once each year, the commission shall report to

the governor and to the presiding officer of each house of the legislature concerning its administration of this code. The commission shall determine the format and contents of the report, and the commission may have copies of the report printed for distribution as it considers appropriate.

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

(b) The commission or administrator shall determine the duties of all employees. The employees shall be compensated as provided by legislative appropriation.

(c) The commission may require an employee to give bond for the faithful performance of his duties in an amount it considers adequate and under conditions it considers proper.

**Sec. 5.11. ADMINISTRATOR.** The commission shall appoint an administrator to serve at its will and, subject to its supervision, administer this code. Unless the commission orders otherwise, the administrator shall be manager, secretary, and custodian of all records. The administrator shall devote his entire time to the office and shall receive a salary as appropriated by the legislature. The administrator shall execute a bond in the sum of \$10,000, payable to the state, and conditioned as the commission requires.

**Sec. 5.12. CONCURRENT DUTIES OF ADMINISTRATOR.** The commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes. When this code imposes concurrent powers or duties on the commission and the administrator, the commission shall designate those powers and duties which it delegates to the administrator. An order, decision, or judgment rendered and entered by the administrator in a matter in which he has been authorized to act is not subject to change, review, or revision by the commission. A concurrent power or duty which has not been specifically delegated to the administrator by the commission's order is retained by the commission, and an order, decision, or judgement rendered and entered by the commission in a matter in which the commission has retained authority is not subject to change, review, or revision by the administrator.

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

**Sec. 5.14. INSPECTORS AND REPRESENTATIVES.** The commission or

administrator may commission as many inspectors and representatives as are necessary to enforce this code. Each inspector and representative shall take the constitutional oath of office, which shall be filed in the office of the commission. Each commissioned inspector and representative has all the powers of a peace officer coextensive with the boundaries of the state. Each commissioned inspector and representative shall make and execute a bond as required by the commission.

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

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

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

## **SUBCHAPTER B. POWERS AND DUTIES**

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

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

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

**Sec. 5.34. DELEGATION OF AUTHORITY.** The commission may authorize its agents, servants, and employees to carry out, under its direction, the provisions

of this code.

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

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

(b) A law enforcement agency of this state or of any of its political subdivisions shall furnish to the commission without charge any criminal history information in its files or available to it from any source. Information obtained by the commission under this subsection may be used only for the enforcement and administration of this code.

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

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

(c) For the purpose of complying with Chapter 455, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 678f, Vernon's Texas Civil Statutes), the commission is considered to be a public authority and unless the commission requests facilities to be obtained in accordance with Chapter 258, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 666b, Vernon's Texas Civil Statutes), the provisions of that Act do not apply to the acquisition of facilities under this Act.

**Sec. 5.38. QUALITY AND PURITY OF BEVERAGES.** The commission shall require by rule that any alcoholic beverage sold in this state conform in all respects to its advertised quality. The commission shall promulgate and enforce rules governing the labeling and advertising of all alcoholic beverages sold in the state, and shall adopt and enforce a standard of quality, purity, and identity of all alcoholic beverages. The commission shall promulgate and enforce necessary rules to safeguard the public health and to insure sanitary conditions in the manufac-

turing, refining, blending, mixing, purifying, bottling, rebottling, and sale of alcoholic beverages.

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

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

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

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

**Sec. 5.43. WHO MAY HOLD HEARING; RULES OF EVIDENCE.** The commission 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.

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

- (1) issue subpoenas;
- (2) compel the attendance of witnesses;
- (3) administer oaths;
- (4) certify to official acts;
- (5) take depositions inside or outside the state, as provided by law;
- (6) compel the production of pertinent books, accounts, records, documents, and testimony; and

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

- (b) If a witness in attendance before the commission or before an authorized

representative refuses without reasonable cause to be examined or answer a legal or pertinent question, or to produce a book, record, or paper when ordered by the commission to do so, the commission may apply to the district court for a rule or order returnable in not less than two nor more than five days, directing the witness to show cause before the judge why he should not be punished for contempt. The commission may apply to the district court of any county where the witness is in attendance, on proof by affidavit of the fact, unless the order of contempt is sought under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), in which case the commission shall apply to a district court of Travis County in conformity with that Act. On return of the order, the judge hearing the matter shall examine the witness under oath, and the witness shall be given an opportunity to be heard. If the judge determines that the witness has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

(c) Subpoenas are served and witness fees and mileage paid as in civil cases in the district court in the county to which the witness is called, unless the proceeding for which the service or payment is made is pursuant to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), in which case the service or payment shall be made as provided in that Act. Witnesses subpoenaed at the instance of the commission shall be paid their fees and mileage by the commission out of funds appropriated for that purpose.

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

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

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

written instrument, and the person alleged to have executed the instrument denies by a sworn pleading to have executed the instrument, the court shall require the production and proof of the instrument.

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

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

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

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

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

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





# TITLE 3. LICENSES AND PERMITS

## SUBTITLE A. PERMITS

### CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO PERMITS

#### SUBCHAPTER A. GENERAL PROVISIONS

**Sec. 11.01. PERMIT REQUIRED.** (a) No person who has not first obtained a permit of the type required for the privilege exercised may, in a wet area, do any of the following:

(1) Manufacture, distill, brew, sell, possess for the purpose of sale, import into this state, export from this state, transport, distribute, warehouse, or store liquor;

(2) solicit or take orders for liquor; or

(3) for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process liquor.

(b) A person may manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process liquor, or possess equipment or material designed for or capable of use for manufacturing liquor, if the right or privilege of doing so is granted by this code.

(c) A right or privilege granted by this section as an exception to prohibitions contained elsewhere in this code may be exercised only in the manner provided. An act done by a person which is not permitted by this code is unlawful.

**Sec. 11.02. SEPARATE PERMIT REQUIRED.** A separate permit shall be obtained and a separate fee paid for each outlet of liquor in the state.

**Sec. 11.03. NATURE OF PERMIT.** A permit issued under this code is a purely personal privilege and is subject to revocation as provided in this code. It is not property, is not subject to execution, does not pass by descent or distribution, and except as otherwise provided in this code, ceases on the death of the holder.

**Sec. 11.04. MUST DISPLAY PERMIT.** All permits shall be displayed in a conspicuous place at all times on the licensed premises.

**Sec. 11.05. UNAUTHORIZED USE OF PERMIT.** No permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued.

**Sec. 11.06. PRIVILEGES LIMITED TO LICENSED PREMISES.** No person may use a permit or exercise any privileges granted by the permit except at the place, address, premises, or location for which the permit is issued, except as otherwise provided by this code.

**Sec. 11.07. DUPLICATE OR CORRECTED PERMIT.** If a permit is lost, destroyed, or needs to be changed, the commission may issue a duplicate or corrected permit.

**Sec. 11.08. CHANGE OF LOCATION.** If a permittee desires to change the location of his place of business, he may file an application for a change of location with the commission. The application shall be on a form prescribed by the commission. The commission or administrator may deny the application on any ground for which an original application may be denied. The application is subject to protest and hearing in the same manner as an original application for a permit.

**Sec. 11.09. EXPIRATION OF PERMIT.** A permit issued under this code expires one year after the date it is issued except as otherwise provided by this code.

**Sec. 11.10. SUCCESSION ON DEATH, BANKRUPTCY, ETC.** On the death of the permittee or of a person having an interest in the permit, or on bankruptcy, receivership, or partnership dissolution, the receiver or successor in interest may apply to the county judge of the county where the licensed premises are located for certification that he is the receiver or successor in interest. On certification, unless good cause for refusal is shown, the commission or administrator shall grant permission, by letter or otherwise, for the receiver or successor in interest to operate the business during the unexpired portion of the permit. The permit may not be renewed, but the receiver or successor in interest may apply for an original permit or license. A receiver or successor in interest operating for the unexpired portion of the permit is subject to the provisions of this code relating to suspension or cancellation of a permit.

## **SUBCHAPTER B. APPLICATION FOR AND ISSUANCE OF PERMITS**

**Sec. 11.31. APPLICATION FOR PERMIT.** All permits shall be applied for and obtained from the commission. This section does not apply to wine and beer retailer's permits, except those for railway cars or excursion boats, or to wine and beer retailer's off-premises permits.

**Sec. 11.32. RENEWAL APPLICATION.** Renewal applications shall be made under oath and shall contain all information required by the commission or administrator showing that the applicant is qualified to hold the permit. The application shall be accompanied by the required bond and state fee. The commission or administrator may issue a renewal permit if it is found that the applicant is qualified.

**Sec. 11.33. APPLICATION FORMS.** All permit application forms shall be provided by the commission.

**Sec. 11.34. CONSOLIDATED APPLICATION.** (a) An applicant for a wholesaler's, class B wholesaler's, distiller's and rectifier's, brewer's, or winery permit may consolidate in a single application his application for that permit and his application for:

- (1) private storage;
  - (2) storage in a public bonded warehouse;
  - (3) a private carrier's permit; and
  - (4) any other permit he is qualified to receive.
- (b) An applicant who files a consolidated application must pay the fee

prescribed in this code for each permit included in the application.

**Sec. 11.35. PAYMENT OF FEE.** Each permit application must be accompanied by a cashier's check or money order for the amount of the state fee, payable to the order of the state treasurer.

**Sec. 11.36. REFUND OF FEE.** The commission may not refund a permit fee except when the permittee is prevented from continuing in business because of a local option election or when an application for a permit is rejected by the commission or administrator. As much of the proceeds from permit fees as is necessary may be appropriated for that purpose.

**Sec. 11.37. CERTIFICATION OF WET OR DRY STATUS.** (a) The county clerk of the county in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by any valid order of the commissioners court.

(b) The city secretary or clerk of the city in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by charter or ordinance.

**Sec. 11.38. LOCAL FEE AUTHORIZED.** (a) The governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town. The commissioners court of a county may levy or collect a fee equal to one-half of the state fee for each permit issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the permittee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j-4.1, Vernon's Texas Civil Statutes), and the local sales and use tax levied under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

(b) The commission or administrator may cancel a permit if it finds that that permittee has not paid a fee levied under this section. A permittee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate permittees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

(d) The following are exempt from the fee authorized in this section:

(1) agent's, airline beverage, industrial, carrier's, private carrier's, private club registration, local cartage, storage, and temporary wine and beer retailer's permits;

(2) a wine and beer retailer's permit issued for a dining, buffet, or club car; and

(3) a mixed beverage permit during the three-year period following the issuance of the permit.

**Sec. 11.39. APPLICANT TO PUBLISH NOTICE.** (a) Every applicant for a

pharmacist's medicinal, brewer's, distiller's and rectifier's, mixed beverage, private club registration, winery, wholesaler's, class B wholesaler's, wine bottler's, or package store permit shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in the city or town in which his place of business is located. If no newspaper is published in the city or town, the notice shall be published in a newspaper of general circulation published in the county where the applicant's business is located. If no newspaper is published in the county, the notice shall be published in a qualified newspaper published in the closest neighboring county and circulated in the county of the applicant's residence.

(b) The notice shall be printed in 10-point boldface type and shall include:

- (1) The type of permit to be applied for;
- (2) the exact location of the place of business for which the permit is sought;
- (3) the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and
- (4) if the applicant is a corporation, the names and titles of all officers.

(c) An applicant for a renewal permit is not required to publish notice.

(d) This section does not apply to an applicant for a daily temporary mixed beverage permit or a caterer's permit.

**Sec. 11.40. NOTICE TO COUNTY JUDGE.** The commission shall give notice of all permit applications to the county judge of the county in which the applicant's place of business is located, unless the county judge waives the required notice in writing. Notice is not required in the case of an application for a wine and beer retailer's, wine and beer retailer's off-premise, temporary wine and beer retailer's, carrier's, private carrier's, airline beverage, industrial, agent's, manufacturer's agent's, bonded warehouse, or storage permit.

**Sec. 11.41. RECOMMENDATION OF LOCAL OFFICIALS.** (a) When a person applies for a permit, the commission or administrator shall give due consideration to the recommendations of the mayor, chief of police, city marshal, or city attorney of the city or town in which the premises sought to be licensed are located and of the county judge, sheriff, or county or district attorney of the county in which the premises sought to be licensed are located. If a protest against the issuance of a permit is made to the commission by any of these officers and it is found on a hearing or finding of facts that the issuance of the permit would be in conflict with the provisions of this code, the commission or administrator shall enter an order setting forth the reasons for refusal. A copy of the order shall be immediately mailed or delivered to the applicant.

(b) In the granting or withholding of a permit to sell alcoholic beverages at retail, the commission or administrator may give consideration to a recommendation made in writing by the commissioners court of the county in which the applicant proposes to conduct his business or by a representative of the commission.

**Sec. 11.42. STATEMENT OF STOCK OWNERSHIP.** The commission at any time may require an officer of a corporation holding a permit to file a sworn statement showing the actual owners of the stock of the corporation, the amount of

stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders.

**Sec. 11.43 DISCRETION TO GRANT OR REFUSE PERMIT.** 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.

**Sec. 11.44. PREMISES INELIGIBLE FOR PERMIT OR LICENSE.** If an order of suspension against a permit or license is pending or unexpired, or if the commission has initiated action to cancel or suspend a permit or license, no permit or license may be issued for or transferred to the same licensed premises.

**Sec. 11.45. "APPLICANT" DEFINED.** The word "applicant," as used in Sections 11.46 through 11.48 of this code, also includes as of the date of the application, each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

**Sec. 11.46. GENERAL GROUNDS FOR REFUSAL.** (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, or 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 less than 19 years of age;

(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 three years immediately preceding the filing of his ap-

plication, 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 have an adequate building available at the address for which the permit is sought;

(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.

(b) The commission or administrator shall refuse to issue an original permit authorizing the retail sale of alcoholic beverages unless the applicant for the permit files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit, if required for the place of business for which the alcoholic beverage permit is sought.

**Sec. 11.47. REFUSAL OF PERMIT: INTEREST IN BEER ESTABLISHMENT.** 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 the applicant or a person with whom he is residentially domiciled has a financial interest in a permit or license authorizing the sale of beer at retail, except as is authorized by Section 22.06, 24.05, or 102.05 of this code. This section does not apply to an applicant for a permit which authorizes the sale of mixed beverages.

**Sec. 11.48. REFUSAL OF PACKAGE STORE OR MIXED BEVERAGE PERMIT.** (a) The commission or administrator may refuse to issue an original or renewal mixed beverage permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant, directly or indirectly, or through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member owns an interest of any kind in the premises, business, or permit of a package store.

(b) The commission or administrator may refuse to issue an original or renewal package store permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant, directly or indirectly, through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns an interest of any kind in the premises, business, or permit of a mixed beverage establishment.

(c) This section does not apply to anything permitted by Section 102.05 of this code.

**Sec. 11.49. PREMISES DEFINED; DESIGNATION OF LICENSED PREMISES.** (a) In this code, "premises" means 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.

(b) (1) Subject to the approval of the commission or the administrator, and except as provided in Subsection (c) of this section, an applicant for a permit or license may designate a portion of the grounds, buildings, vehicles, and appurtenances to be excluded from the licensed premises.

(2) If such a designation has been made and approved as to the holder of a license or permit authorizing the sale of alcoholic beverages at retail or as to a private club registration permit, the sharing of space, employees, business facilities, and services with another business entity (including the permittee's lessor, which, if a corporation, may be a domestic or foreign corporation, but excluding a business entity holding any type of winery permit, a manufacturer's license, or a general, local, or branch distributor's license), does not constitute a subterfuge or surrender of exclusive control in violation of Section 109.53 of this code or the use or display of the license for the benefit of another in violation of Subdivision (15) of Subsection (a) of Section 61.71 of this code. This subsection shall not apply to original or renewal package store permits, wine only package store permits, local distributor's permits, or any type of wholesaler's permits.

(c) An applicant for an original or renewal package store permit, wine only package store permit, local distributor's permit, or any type of wholesaler's permit may not take advantage of the right conferred by Subsection (b) of this section except as permitted in Section 11.50 or 109.53 of this code.

(d) Any package store, wine only package store, wholesaler's, or local distributor's permittee who is injured in his business or property by another person (other than a person in his capacity as the holder of a wine and beer retailer's permit, wine and beer retailer's off-premise permit, private club registration permit, or mixed beverage permit or any person in the capacity of lessor of the holder of such a permit) by reason of anything prohibited in this section or Section 109.53 of this code is entitled to the same remedies available to a package store permittee under Section 109.53 of this code. Except for actions brought against a person in his capacity as the holder of or as the lessor of the holder of a wine and beer retailer's permit, wine and beer retailer's off-premise permit, mixed beverage permit, or private club registration permit, the statute of limitations for any action brought under this section or Section 109.53 of this code for any cause of action arising after the effective date of this Act is four years unless a false affidavit has been filed with the commission in which event the statute of limitations is 10 years for all purposes.

(e) When a designation under Subsection (b) of this section is made by a wine and beer retailer or a beer retailer, selling primarily for off-premise consumption, or by a wine and beer retailer's off-premise permittee, no more than 20 percent of the retail floor and display space of the entire premises may be included in the licensed premises, and all the retail floor and display space in the licensed premises must be compact and contiguous and may not be gerrymandered. However, the retail floor and display space included in the licensed premises may

be in two separate locations within the retail premises if the total retail floor and display space included in the licensed premises does not exceed 20 percent of the floor and display space of the entire premises and each of the two portions of floor and display space included in the licensed premises is itself compact and contiguous and not gerrymandered. In addition to the one or two separate locations of retail floor and display space on the premises, the licensed premises may include the cash register and check-out portions of the premises provided that (1) no alcoholic beverages are displayed in the check-out or cash register portion of the premises, and (2) the area of the check-out and cash register portions of the premises are counted towards the total of 20 percent of the retail floor and display space that may be dedicated to the sale and display of wine and beer. A storage area that is not accessible or visible to the public may be included in the licensed premises but shall not be considered retail floor and display space for purposes of this section. The commission or administrator shall adopt rules to implement this subsection and to prevent gerrymandering.

*NOTE: Section 11.49(d) of this code, as it applies to injury caused by a wine only package store permittee takes effect September 1, 1980.*

**Sec. 11.491. CHANGE OF LICENSE OR PERMIT.** (a) Any licensee or permittee who wishes to obtain a different license or permit to replace a current one for the same location and who is qualified to hold the license or permit desired may obtain the different license or permit as provided by this section without having to file an original application as otherwise provided by this code.

(b) The licensee or permittee shall file with the commission an application for a change of license or permit. The application may be filed in lieu of a renewal application for the current license or permit or it may be filed before a renewal application is due.

(c) The application must be made on a form prescribed by the commission. It must show that the applicant is eligible to hold the license or permit sought. The commission shall consider and pass on the application in the same manner as it would consider and pass on a renewal application for the current license or permit of the applicant. Procedures applicable to the application for an original license or permit but not ordinarily applicable to a renewal application do not apply.

(d) The applicant shall submit with the application the fee required for the license or permit sought.

(e) If the commission or administrator finds that the applicant is eligible to hold the license or permit sought, the commission or administrator shall issue the license or permit to take effect on the expiration of the license or permit it is to replace unless the applicant has requested in the application that it take effect immediately on approval, in which case the issuance of the new license or permit cancels the existing one. The licensee or permittee is not entitled to a refund for the unexpired portion of the cancelled license or permit.

(f) An application under this section may not be filed after August 31, 1980. This section expires September 1, 1980, except that it continues in effect for the consideration and disposition of applications filed before September 1, 1980.



**Sec. 11.492. CHANGE OF LICENSE OR PERMIT FROM ON-PREMISE TO OFF-PREMISE.** (a) A holder of a wine and beer retailer's permit may change the permit to a wine and beer retailer's off-premise permit, and a holder of a retail dealer's on-premise license may change the license to a retail dealer's off-premise license, in the manner provided by this section.

(b) Any time before the expiration of a wine and beer retailer's permit or a retail dealer's on-premise license the permittee or licensee may file an application for a change of permit or license under Subsection (a) of this section. The applicant must make the application on a form provided by the commission and the application must be accompanied by the appropriate fee for the permit or license sought.

(c) The commission shall consider an application under this section in the same manner and according to the same criteria as it would consider a renewal application of the license or permit held by the permittee or licensee. Procedures applicable to an application for an original license or permit do not apply. The commission shall issue a new license or permit to an applicant if the commission determines the applicant is eligible to hold the license or permit sought. The license or permit takes effect on the expiration of the old license or, if requested in the application, on approval. The former license is cancelled on the effective date of the new license. The licensee or permittee is not entitled to a refund for the unexpired portion of a cancelled license or permit.

**Sec. 11.50. LICENSING A PORTION OF A BUILDING AS PREMISES.** (a) This section applies to a package store permit which was issued on or before April 1, 1971, and which was in good standing not under suspension, and in actual operation and doing business on that date, unless temporarily prevented from operation by a natural disaster. This section does not apply to a permit if a change in the size or location of the licensed premises has occurred subsequent to April 1, 1971, or if after that date a change in ownership has occurred, by majority stock transfer or otherwise, except by devise or descent where the holder of the permit died on or after April 1, 1971.

(b) Notwithstanding any other provision of this code, the holder of a package store permit to which this section applies may continue to operate a package store on premises comprising a portion of a building if not later than November 28, 1971, he clearly defined the licensed premises by isolating it from the remainder of the building by the erection of a wall or screen so that the licensed premise is accessible from the remainder of the building only through a door or archway, eight feet or less in width, in the wall or screen. The door or archway must be kept closed during the hours in which it is not legal to sell liquor.

(c) If the right to continue operation under this exception terminates for any reason, the right shall not revive.

### **SUBCHAPTER C. CANCELLATION AND SUSPENSION OF PERMITS**

**Sec. 11.61. CANCELLATION OR SUSPENSION OF PERMIT.** (a) As used in Subsection (b) of this section, the word "permittee" also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be

construed as prohibiting anything permitted under Section 22.06, 24.05, or 102.05 of this code.

(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 or allowed an intoxicated person to remain on the premises;
- (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 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.

(c) The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a permit if the commission or administrator finds that the permittee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the alcoholic beverage permit; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

**Sec. 11.611. CONVICTION OF OFFENSE RELATING TO DISCRIMINATION.** 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:

(1) the permittee has been finally convicted of any offense under state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights or the discrimination against an individual on the basis of the individual's race, color, creed or national origin; and

(2) the offense was committed on the licensed premises or in connection with the operation of the permittee's business.

**Sec. 11.62. HEARING FOR CANCELLATION OR SUSPENSION OF PERMIT.** The commission or administrator may, on the motion of either, set a date for a hearing to determine if a permit should be cancelled or suspended. The commission or administrator shall set a hearing on the petition of the mayor, chief of police, city marshal, or city attorney of the city or town in which the licensed premises are located or of the county judge, sheriff, or county or district attorney of the county in which the licensed premises are located. The petition must be supported by the sworn statement of at least one credible person. The commission or administrator shall give the permittee notice of the hearing and of his right to appear and show cause why the permit should not be cancelled.

**Sec. 11.63. NOTICE OF HEARING.** At least 10 days' notice shall be given when a hearing is provided by this code. A notice of hearing for the refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the commission or sent by registered or certified mail addressed to the licensee or permittee.

**Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION.** (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 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.

(b) In the case of a violation of this code by a permittee or a retail dealer's off-premise licensee, the commission or administrator may relax any provision of the code relating to the suspension or cancellation of the permit or license and assess a sanction the commission or administrator finds just under the circumstances, and the commission or administrator may reinstate the license or permit at any time during the period of suspension on payment by the permittee or licensee of a fee of not less than \$75 nor more than \$500, if the commission or administrator finds that any of the circumstances described in Subsection (c) of this section exists.

(c) The following circumstances justify the application of Subsection (b) of this section:

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped;

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee;

(4) that the permittee or licensee did not knowingly violate this code; or

(5) that the violation was a technical one.

(d) Fees and civil penalties received by the commission under this section shall be deposited in the confiscated liquor fund until the unexpended and unencumbered balance contained in the confiscated liquor fund on September 1, 1983, and the amount deposited in the fund from all sources on or after September 1, 1983, totals \$2.4 million. Thereafter, fees and civil penalties received by the commission under this section shall be deposited in the general revenue fund.

**Sec. 11.65. NOTICE OF CANCELLATION OR SUSPENSION.** A notice of cancellation or suspension of a license or permit shall be given to the licensee or permittee personally or by registered or certified mail. Cancellation or suspension takes effect when the notice is given or delivered.

**Sec. 11.66. SUSPENSION OR CANCELLATION AGAINST RETAILER.** Except for a violation of the credit or cash law, a penalty of suspension or cancellation of the license or permit of a retailer shall be assessed against the permit or license for the premises where the offense was committed.

**Sec. 11.67. APPEAL FROM CANCELLATION, SUSPENSION, OR REFUSAL OF LICENSE OR PERMIT.** (a) An appeal from an order of the commission or administrator refusing, cancelling, or suspending a permit or license may be taken to the district court of the county in which the applicant, licensee, or

permittee resides or in which the owner of involved real or personal property resides.

(b) The appeal shall be under the substantial evidence rule and against the commission alone as defendant. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

(1) the appeal shall be perfected and filed within 30 days after the date the order, decision, or ruling of the commission or administrator becomes final and appealable;

(2) the case shall have precedence over all other cases of a different nature;

(3) the case shall be tried before a judge within 10 days from the date it is filed;

(4) neither party is entitled to a jury; and

(5) the order, decision, or ruling of the commission or administrator may be suspended or modified by the court pending a trial on the merits, but the final judgment of the district court may not be modified or suspended pending appeal.

**Sec. 11.68. ACTIVITIES PROHIBITED DURING SUSPENSION.** No permittee may sell, offer for sale, distribute, or deliver any alcoholic beverage while his permit is suspended.

**Sec. 11.69. DISPOSAL OF BEVERAGES IN BULK.** The commission may provide by rule the manner and time in which person whose license or permit is suspended or cancelled or a receiver or successor in interest of a deceased, insolvent, or bankrupt permittee or licensee may dispose of in bulk the alcoholic beverages on hand at the termination of the use of the permit or license.

**Sec. 11.70 LIABILITY OF SURETY.** (a) If a permittee or a person having an interest in a permit is finally convicted of the violation of a provision of this code or of a rule or regulation of the commission, or if a permit is cancelled by the commission and no appeal is pending, the commission may institute action in its own name, for the benefit of the state, on the bond supporting the permit. If the cancellation or conviction is proved, the court shall render judgment in favor of the commission for all fines, costs, and 15 percent of the face value of the bond.

(b) If a permittee fails to seasonably remit any money due the state, the surety on his bond is liable for the amount of money due the state plus a penalty of 15 percent of the face value of the bond.

(c) A suit for the collection of any of the amounts specified in this section shall be brought in a court of competent jurisdiction in Travis County.

(d) Nothing in this code shall be construed as imposing on a surety a greater liability than the total amount of the bond less any portion of the bond which has been extinguished by a prior recovery.

**Sec. 11.71. SURETY MAY TERMINATE LIABILITY.** A surety under the bond of a permittee may terminate its liability by giving 30 days' written notice of termination, served personally or by registered mail on the principal and the commission. The surety is discharged from all liability under the bond for any act or omission of the principal occurring after the expiration of 30 days from the date the notice is served. If the principal fails to duly file a new bond in the same amount and with the same conditions as the original bond before the expiration of the 30-

day period, his permit shall terminate when the 30-day period expires.

## **CHAPTER 12. BREWER'S PERMIT**

**Sec. 12.01. AUTHORIZED ACTIVITIES.** The holder of a brewer's permit may:

- (1) manufacture, bottle, package, and label malt liquor;
- (2) import ale and malt liquor acquired from a holder of a nonresident brewer's permit; and
- (3) sell the ale and malt liquor only to wholesale permit holders in this state or to qualified persons outside the state.

**Sec. 12.02. FEE.** The annual state fee for a brewer's permit is \$1,500.

**Sec. 12.03. ALE OR MALT LIQUOR FOR EXPORT.** Regardless of any other provision of this code, a holder of a brewer's permit may manufacture and package malt beverages, or import them from outside the state, for shipment out of the state, even though the alcohol content, containers, packages, or labels make the beverages illegal to sell within the state. The permittee may export the beverages out of the state or deliver them at his premises for shipment out of the state without being liable for any state tax on beer, ale, or malt liquor sold for resale in the state.

**Sec. 12.04. CONTINUANCE OF OPERATION AFTER LOCAL OPTION ELECTION.** The right of a brewer's permittee to continue operation after a prohibitory local option election is covered by Section 251.75 of this code.

## **CHAPTER 13. NONRESIDENT BREWER'S PERMIT**

**Sec. 13.01. PERMIT REQUIRED.** A nonresident brewer's permit is required for any brewer located outside the state before his ale or malt liquor may be imported into Texas or offered for sale in Texas.

**Sec. 13.02. FEE.** The annual state fee for a nonresident brewer's permit is \$1,500.

**Sec. 13.03. NONRESIDENT SELLER'S PERMIT REQUIRED.** The holder of a nonresident brewer's permit is also required to hold a nonresident seller's permit.

## **CHAPTER 14. DISTILLER'S AND RECTIFIER'S PERMIT**

**Sec. 14.01. AUTHORIZED ACTIVITIES.** (a) The holder of a distiller's and rectifier's permit may:

- (1) manufacture distilled spirits;
- (2) rectify, purify, and refine distilled spirits and wines;
- (3) mix wines, distilled spirits, or other liquors;
- (4) bottle, label, and package his finished products;
- (5) sell the finished products in this state to holders of wholesaler's permits and to qualified persons outside the state; and
- (6) import distilled spirits, to be used only for manufacturing or rectification

purposes, from holders of nonresident seller's permits.

(b) The privileges granted to a distiller and rectifier are confined strictly to distilled spirits and wines manufactured and rectified under his permit.

**Sec. 14.02. FEE.** The annual state fee for a distiller's and rectifier's permit is \$1,500.

**Sec. 14.03. CONTINUANCE OF OPERATION AFTER LOCAL OPTION ELECTION.** The right of a distiller's and rectifier's permittee to continue in operation after a prohibitory local option election is covered by Section 251.76 of this code.

*NOTE: Chapter 15, (Repealed by Acts of the 68th Legislature, Regular Session, 1983.)*

## **CHAPTER 16. WINERY PERMIT**

**Sec. 16.01. AUTHORIZED ACTIVITIES.** 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.

**Sec. 16.02. FEE.** the annual state fee for a winery permit is \$75.

**Sec. 16.03. IMPORTATION FOR BLENDING.** The holder of a winery permit may, for blending purposes only, import wines or grape brandy. The wine or grape brandy may be purchased only from the holders of nonresident seller's permits. The state tax on wines imported for blending purposes does not accrue until the wine has been used for blending purposes and the resultant product placed in containers for sale.

**Sec. 16.04. FEDERAL PERMIT REQUIRED.** A winery permit may be granted only on presentation of a winemaker's and blender's basic permit of the federal alcohol tax unit.

**Sec. 16.05. LOCATION OF PREMISES.** A winery permit may be issued for licensed premises in a dry area, but the permittee may not sell wine in a dry area. If the premises are in a dry area, the permittee may sell wine in this state to permit holders authorized to sell wine to the ultimate consumer in unbroken packages for off-premises consumption in an amount not to exceed 25,000 gallons annually and to holders of wholesaler's permits, winery permits, and wine bottler's permits.

*NOTE: In 1979, the 66th Legislature enacted HB 2229, which consolidated the three existing types of winery permits (Class A, Class B, Farm Winery) into a single permit simply called a "Winery Permit". Certain procedural statutory instructions as to the manner in which the commission shall treat the conversions of the permits and other*

matters were included in HB 2229, but were not codified as a part of the Alcoholic Beverage Code. They are reprinted below:

Subsection (4a), Article 15, Article I, of the Texas Liquor Control Act, added by Section 1, Chapter 384, Acts of the 65th Legislature, Regular Session, 1977, and Chapter 17, of the Texas Alcoholic Beverage Code are repealed.

Also each class A winery permit, class B winery permit, and farm winery permit in existence on the effective date of this Act is converted to a winery permit subject to the provisions of Chapter 16, of the Texas Alcoholic Beverage Code, as if the permit had originally been issued under that chapter as amended by this Act. Each of those permits expires on the date it would have expired had this Act not been in effect.

The Texas Alcoholic Beverage Commission shall treat an application for an original or renewal class A winery permit, class B winery permit, or farm winery permit that is pending on the effective date of this Act as an original or renewal application, respectively, for a winery permit. Such an application is sufficient if it was sufficient according to the law that governed it at the time the application was made or if it is sufficient under the Alcoholic Beverage Code as it exists after this Act takes effect, except that the commission shall require the applicant to submit any additional state fee that may be due before issuance of the original or renewal permit.

## CHAPTER 18. WINE BOTTLER'S PERMIT

**Sec. 18.01. AUTHORIZED ACTIVITIES.** The holder of a wine bottler's permit may:

- (1) purchase and import wine only from the holders of nonresident seller's permits or their agents who are holders of manufacturer's agent's permits;
- (2) purchase wine in this state from holders of wholesaler's, winery, or wine bottler's permits;
- (3) bottle, rebottle, label, package, and sell wine to permit holders in this state authorized to purchase and sell wine; and
- (4) sell wine to qualified persons outside the state.

**Sec. 18.02. FEE.** The annual state fee for a wine bottler's permit is \$225.

**Sec. 18.03. PERMANENT RECORD.** A holder of a wine bottler's permit shall keep a permanent record of each purchase and sale of wine. The record shall include the name of the person from whom the wine is purchased or to whom it is sold, the number of gallons purchased or sold, and the percentage of alcohol of the wine by volume.

## CHAPTER 19. WHOLESALER'S PERMIT

**Sec. 19.01. AUTHORIZED ACTIVITIES.** The holder of a wholesaler's permit may:

- (1) purchase and import liquor from distillers, brewers, wineries, wine bottlers, rectifiers, and manufacturers who are holders of nonresident seller's permits or from their agents who hold manufacturer's agents permits;



- (2) purchase liquor from other wholesalers in the state;
- (3) sell liquor in the original containers in which it is received to retailers and wholesalers in this state authorized to sell the liquor; and
- (4) sell liquor to qualified persons outside the state.

**Sec. 19.02. FEE.** The annual state fee for a wholesaler's permit is \$1,875.

**Sec. 19.03. PROMOTIONAL ACTIVITIES.** The holder of a wholesaler's permit or his agent may enter the licensed premises of a mixed beverage permittee or private club registration permittee to determine the brands offered for sale and suggest or promote the sale of other brands, to the extent authorized by Section 102.07 of this code. The holder or his agent may not accept a direct order from a mixed beverage permittee except for wine or malt liquor.

**Sec. 19.04. MINIATURE CONTAINERS.** In addition to other authorized containers, a wholesaler's permittee may import, sell, offer for sale, and possess for the purpose of resale distilled spirits, wine, and vinous liquors in containers of not less than one ounce nor more than two ounces. Liquor in containers of that size may be sold to:

- (1) package store permittees for resale to airline beverage permittees, as provided in Section 34.05 of this code; and
- (2) local distributor's permittees.

## **CHAPTER 20. GENERAL CLASS B WHOLESALER'S PERMIT**

**Sec. 20.01. AUTHORIZED ACTIVITIES.** The holder of a general class B wholesaler's permit may:

- (1) purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and wine bottlers who are the holders of nonresident seller's permits or their agents who are holders of manufacturer's agent permits;
- (2) purchase malt and vinous liquors from holders of brewer's permits or other wholesalers in the state;
- (3) sell the malt and vinous liquors in the original containers in which they are received to retailers and wholesalers authorized to sell them in this state, including holders of local distributor's permits, mixed beverage permits, and daily temporary mixed beverage permits; and
- (4) sell the malt and vinous liquors to qualified persons outside the state.

**Sec. 20.02. FEE.** The annual state fee for a general class B wholesaler's permit is \$300.

## **CHAPTER 21. LOCAL CLASS B WHOLESALER'S PERMIT**

**Sec. 21.01. AUTHORIZED ACTIVITIES.** The holder of a local class B wholesaler's permit may:

- (1) purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and bottlers who are holders of nonresident

seller's permits and from their agents who are holders of manufacturer's agent permits;

(2) purchase malt and vinous liquors from holders of brewer's permits and from other wholesalers in the state; and

(3) sell the malt and vinous liquors, in the original containers in which he receives them, to general and local class B wholesaler's permittees and, in his county of residence, to local distributor's permittees and retailers, including mixed beverage permittees and daily temporary mixed beverage permittees.

**Sec. 21.02. FEE.** The annual state fee for a local class B wholesaler's permit is \$75.

## CHAPTER 22. PACKAGE STORE PERMIT

**Sec. 22.01. AUTHORIZED ACTIVITIES.** The holder of a package store permit may:

(1) purchase liquor in this state from the holder of a winery, wholesaler's, class B wholesaler's, or wine bottler's permit;

(2) sell liquor in unbroken original containers on or from his licensed premises at retail to consumers for off-premises consumption only and not for the purpose of resale, except that if the permittee is a hotel, the permittee may deliver unbroken packages of liquor to bona fide guests of the hotel in their rooms for consumption in their rooms;

(3) sell malt and vinous liquors in original containers of not less than six ounces; and

(4) sell liquor to holders of airline beverage permits as provided in Section 34.05 of this code.

**Sec. 22.02. FEE.** The annual state fee for a package store permit is \$300.

**Sec. 22.03. DELIVERIES TO CUSTOMERS.** (a) The holder of a package store permit or wine only package store permit issued for a location within a city or town or within two miles of the corporate limits of a city or town, who also holds a local cartage permit, may make deliveries of and collections for alcoholic beverages off the premises in areas where the sale of the beverages is legal. The permittee must travel by the most direct route and may make deliveries and collections only within the city or town or within two miles of its corporate limits, and only in response to bona fide orders placed by the customer, either in person at the premises, in writing, by mail, or by telegraph or telephone. This section shall not be construed as preventing a holder of a package store permit or wine only package store permit from delivering alcoholic beverages to the holder of a carrier's permit for transportation to persons authorized to purchase the beverages.

(b) The holder of a package store permit who also holds a local cartage permit may transport alcoholic beverages to a commercial airline in a regional airport located all or partly in an adjoining county if the airport is governed by a board, commission, or authority, some of whose members reside in the county where the package store is located.

**Sec. 22.04. LIMITATION ON PACKAGE STORE INTERESTS.** (a) No person may hold or have an interest, directly or indirectly, in more than five package stores or in their business or permit.

(b) For the purpose of this section:

(1) a person has an interest in any permit in which his spouse has an interest; and

(2) as to a corporate permittee, the stockholders, managers, officers, agents, servants, and employees of the corporation have an interest in the permit, business, and package stores of the corporation.

(c) The limitations prescribed in this section do not apply to an original or renewal package store permit issued before May 1, 1949, and in effect on that date. The commission or administrator shall renew each permit of that type on proper application if the applicant is otherwise qualified. If a person who holds or has an interest in more than five package store permits under the authority of this subsection has one of the permits cancelled, voluntarily or for cause, he may not obtain an additional permit in lieu of the cancelled permit. No person who has more than five package store permits may place any of the permits in suspense with the commission.

(d) This section does not apply to the stockholders, managers, officers, agents, servants, or employees of a corporation operating hotels, with respect to package stores operated by the corporation in hotels.

**Sec. 22.05. CONSOLIDATION OF PERMITS.** If one person or two or more persons related within the first degree of consanguinity have a majority of the ownership in two or more legal entities holding package store permits, they may consolidate the package store businesses into a single legal entity. That single legal entity may then be issued permits for all the package stores, notwithstanding any other provision of this code. After the consolidation, none of the permits may be transferred to another county.

**Sec. 22.06. PROHIBITED INTERESTS.** (a) Except as otherwise provided in Section 102.05 of this code and in Subsection (b) of this section, no person who holds a package store permit or owns interest in a package store may have a direct or indirect interest in any of the following:

(1) a manufacturer's, retail dealer's on-premise, retail dealer's off-premise, or general, branch, or local distributor's license;

(2) a wine and beer retailer's, wine and beer retailer's off-premise, or mixed beverage permit; or

(3) the business of any of the permits or licenses listed in Subdivisions (1) and (2) of this section.

(b) A package store permit and a retail dealer's off-premise license may be issued to the same person if they are for the same address and for the same trade name.

**Sec. 22.07. VIOLATION WHEN LICENSE ALSO HELD.** If a person holding a package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both the

package store permit and the retail dealer's off-premise license for the premises where the violation was committed.

**Sec. 22.08. TRANSFER OF BEVERAGES.** The owner of more than one package store who is also the holder of a local cartage permit may transfer alcoholic beverages between any of his licensed premises in the same county between the hours of 7 a.m. and 9 p.m. on any day when the sale of those beverages is legal, subject to rules prescribed by the commission.

**Sec. 22.09. LIMIT ON SINGLE TRANSACTION.** A package store permittee may not sell more than five gallons of vinous liquor in a single transaction.

**Sec. 22.10. OPENING CONTAINERS PROHIBITED.** 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.** 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.

**Sec. 22.12. BREACH OF PEACE.** The commission or administrator may suspend or cancel a package store permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

## CHAPTER 23. LOCAL DISTRIBUTOR'S PERMIT

**Sec. 23.01. AUTHORIZED ACTIVITIES.** (a) The holder of a local distributor's permit may:

(1) purchase alcoholic beverages from wholesalers authorized to sell them for resale, but may purchase only those brands available for general distribution to all local distributor's permittees;

(2) sell and distribute the alcoholic beverages to mixed beverage and private club registration permittees; and

(3) rent or sell to mixed beverage and private club registration permittees any equipment, fixtures, or supplies used in the selling or dispensing of distilled spirits.

(b) A local distributor's permittee may purchase liquor only from a wholesaler's, general class B wholesaler's, or local class B wholesaler's permittee and may purchase only the types of liquor the particular wholesaler is authorized by his permit to sell.

**Sec. 23.02. FEE.** The annual state fee for a local distributor's permit is \$100. The fee is in addition to and subject to the same conditions as the fee paid for the holder's package store permit.

**Sec. 23.03. ELIGIBILITY FOR PERMIT.** The commission or the administrator may issue a local distributor's permit only to a holder of a package store permit.

**Sec. 23.04. MAY TRANSFER BEVERAGES.** If the holder of a local distributor's permit also holds a local cartage permit, he may transfer alcoholic beverages:

(1) to any place where the sale of alcoholic beverages is legal in the city or county where his premises are located; and

(2) to a regional airport located all or partly in an adjoining county if the airport is governed by a board, commission, or authority, some of whose members reside in the county where the local distributor's premises are located.

**Sec. 23.05. SIZE OF CONTAINERS.** (a) A holder of a local distributor's permit may not sell distilled spirits to the holder of a mixed beverage or private club permit in individual containers containing less than one fluid ounce.

(b) A holder of a local distributor's permit may sell to holders of mixed beverage permits distilled spirits, wine, and vinous liquor in containers containing not less than one ounce nor more than two ounces or in any other container authorized by this code.

**Sec. 23.06. SIZE OF DELIVERY.** A holder of a local distributor's permit may not deliver less than two and four-tenths gallons of distilled spirits in a single delivery.

## **CHAPTER 24. WINE ONLY PACKAGE STORE PERMIT**

**Sec. 24.01. AUTHORIZED ACTIVITIES.** The holder of a wine only package store permit may:

(1) purchase ale, wine, and vinous liquors in this state from the holder of a winery, wine bottler's, wholesaler's, or class B wholesaler's permit; and

(2) sell those beverages to consumers at retail on or from the licensed premises in unbroken original containers of not less than six ounces for off-premises consumption only and not for the purpose of resale.

**Sec. 24.02. FEE.** The annual state fee for a wine only package store permit is \$75.

**Sec. 24.03. DELIVERIES AND COLLECTIONS.** The holder of a wine only package store permit may make deliveries to and collections from customers as provided in Section 22.03 of this code.

**Sec. 24.04. DESIGNATION OF PLACE OF STORAGE.** The owner of more than one wine only package store who is also the holder of a local cartage permit may designate one of his places of business as a place of storage. He may transfer alcoholic beverages to and from his place of storage and his other stores in the same county, subject to rules prescribed by the commission.

**Sec. 24.05. PROHIBITED INTERESTS.** (a) No person who holds a wine only package store permit or owns an interest in a wine only package store may have a direct or indirect interest in any of the following:

(1) a manufacturer's, retail dealer's on-premise, or general, branch, or local

distributor's license;

(2) a wine and beer retailer's or wine and beer retailer's off-premise permit;

or

(3) the business of any of the permits or licenses listed in Subdivisions (1) and (2) of this section.

(b) A person may hold both a wine only package store permit and a retail dealer's off-premise license.

**Sec. 24.06. VIOLATION WHEN LICENSE ALSO HELD.** If a person holding a wine only package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both the wine only package store permit and the retail dealer's off-premise license for the premises where the violation was committed.

**Sec. 24.07. WHEN LICENSE ALSO HELD: HOURS OF SALE, ETC.** A holder of a wine only package store permit who also holds a retail dealer's off-premise license for the same location may remain open and sell ale, wine, vinous liquors, and beer, for off-premises consumption only, on any day and during the same hours that the holder of a wine and beer retailer's permit may sell ale, beer, and wine, except that he may not sell wine or vinous liquor containing more than 14 percent alcohol by volume on a Sunday or after 10 p.m. on any day.

**Sec. 24.08. LIMIT ON SINGLE TRANSACTION.** A wine only package store permittee may not sell more than five gallons of ale, wine, and vinous liquors in a single transaction.

**Sec. 24.09. OPENING CONTAINERS PROHIBITED.** No person may break or open a container of liquor or beer or possess an opened container of liquor or beer on the premises of a wine only package store.

**Sec. 24.10. BEVERAGE FROM OPENED CONTAINER.** No person may sell, barter, exchange, deliver, or give away a drink of alcoholic beverage from a container that has for any reason been opened or broken on the premises of a wine only package store.

**Sec. 24.11. BREACH OF PEACE.** The commission or administrator may suspend or cancel a wine only package store permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

## CHAPTER 25. WINE AND BEER RETAILER'S PERMIT

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

**Sec. 25.02. FEE.** Except as provided in Section 25.03 of this code, the annual state fee for a wine and beer retailer's permit is \$175.

**Sec. 25.03. RAILWAY CARS AND EXCURSION BOATS: PERMITS, FEES.** (a) A wine and beer retailer's permit may be issued for railway dining, buffet, or club cars on the payment of an annual state fee or \$30 for each car.

(b) A wine and beer retailer's permit may be issued for a regularly scheduled excursion boat which is licensed by the United States Coast Guard to carry passengers on the navigable waters of the state and which has a tonnage of not less than 35 tons, a length of not less than 55 feet, and a passenger capacity of not less than 45 passengers. The annual state fee for the permit is \$130.

(c) Application for a permit for a railway car or an excursion boat and payment of the required fee shall be made directly to the commission.

(d) A permit for a railway car or an excursion boat is inoperative in a dry area.

**Sec. 25.04. ISSUANCE, CANCELLATION, AND SUSPENSION OF PERMIT.** (a) A wine and beer retailer's permit is issued by the commission or administrator. The qualification of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's on-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit.

**Sec. 25.05. HEARINGS ON PERMIT APPLICATION: NOTICE AND ATTENDANCE.** (a) On receipt of an original application for a wine and beer retailer's permit, the county judge shall give notice of all hearings before him concerning the application to the commission, the sheriff, and the chief of police of the incorporated city in which, or nearest which, the premises for which the permit is sought are located.

(b) The individual natural person applying for the permit or, if the applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who will be primarily responsible for the management of the premises shall attend any hearing involving the application.

**Sec. 25.06. DENIAL OF ORIGINAL APPLICATION.** (a) The county judge shall deny an original application for a wine and beer retailer's permit if he finds that the applicant, or the applicant's spouse, during the three years immediately preceding the application, was finally convicted of a felony or one of the following offenses:

- (1) prostitution;
- (2) a vagrancy offense involving moral turpitude;
- (3) bookmaking;
- (4) gambling or gaming;
- (5) an offense involving controlled substances as defined in the Texas Controlled Substances Act or other dangerous drugs;
- (6) a violation of this code resulting in the cancellation of a license or permit, or a fine of not less than \$500;

- (7) more than three violations of this code relating to minors;
- (8) bootlegging; or
- (9) an offense involving firearms or a deadly weapon.

(b) The county judge shall also deny an original application for a permit if he finds that three years have not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(c) The commission shall refuse to issue a renewal of a wine or beer retailer's permit if it finds:

(1) that the applicant, or the applicant's spouse, has been convicted of a felony or one of the offenses listed in Subsection (a) of this section at any time during the three years immediately preceding the filing of the application for renewal; or

(2) that three years have not elapsed since the termination of a sentence, parole, or probation served by the applicant, or the applicant's spouse, of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(d) In this section the word "applicant" includes the individual natural person holding or applying for the permit or, if the holder or applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.

**Sec. 25.07. FINGERPRINTS.** (a) An applicant for an original wine and beer retailer's permit shall submit to the county judge of the county in which the applicant desires to engage in business a complete set of fingerprints of the individual natural person applying for the permit or, if the applicant is not an individual natural person, a complete set of fingerprints of the individual partner, officer, trustee, or receiver who is to be primarily responsible for the management of the premises.

(b) The county judge shall, no later than the next calendar day after receiving the prints, forward them by mail to the Texas Department of Public Safety. The department shall classify the prints and check them against their fingerprint files and shall certify their findings concerning the criminal record of the applicant, or the lack of record, to the county judge. No permit may be issued until the certification is made to the county judge.

(c) The sheriff of any county, or any district office of the commission, shall take the fingerprints of an applicant for a permit without charge on forms approved by and furnished by the Texas Department of Public Safety and shall immediately deliver them to the county judge of the county where the applicant desires to engage in business.

**Sec. 25.08. CONTENTS OF PERMIT.** Each wine and beer retailer's permit shall contain the name of the individual natural person holding the permit or, if the holder is not an individual natural person, the name of the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.



**Sec. 25.09. POSSESSION OF CERTAIN BEVERAGES PROHIBITED.** No wine and beer retailer's permittee, nor officer of the permittee, may possess distilled spirits or liquor containing alcohol in excess of 14 percent by volume on the licensed premises.

**Sec. 25.10. APPLICATION OF OTHER CODE PROVISIONS.** Sections 61.78, 61.81, 61.82, and 61.84 of this code also apply to a wine and beer retailer's permit. The restrictions in this code relating to beer as to the application of local restrictions, sales to minors and intoxicated persons, age of employees, and the use of blinds or barriers apply to the sale of alcoholic beverages by a wine and beer retailer's permittee.

**Sec. 25.11. SEATING AREA REQUIRED.** A wine and beer retailer's permittee must have an area designated on the premises for the permittee's customers to sit if they wish to consume beverages sold by the permittee on the premises.

## **CHAPTER 26. WINE AND BEER RETAILER'S OFF-PREMISE PERMIT**

**Sec. 26.01. AUTHORIZED ACTIVITIES.** The holder of a wine and beer retailer's off-premise permit may sell for off-premises consumption only, 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. 26.02. FEE.** The annual state fee for a wine and beer retailer's off-premise permit is \$60.

**Sec. 26.03. ISSUANCE, CANCELLATION AND SUSPENSION OF PERMIT.** (a) A wine and beer retailer's off-premise permit is issued by the commission or administrator. The qualifications of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's off-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's off-premise license also apply to the cancellation and suspension of a wine and beer retailer's off-premise permit.

**Sec. 26.04. APPLICATION OF OTHER CODE PROVISIONS.** Sections 61.78, 61.81, 61.82, and 61.84 of this code also apply to a wine and beer retailer's off-premise permit. The restrictions in this code relating to beer as to the application of local restrictions, sales to minors and intoxicated persons, and age of employees apply to the sale of alcoholic beverages by a wine and beer retailer's off-premise permittee.

**Sec. 26.05. WARNING SIGN REQUIRED.** (a) Each holder of a wine and beer retailer's off-premise permit shall display in a prominent place on his premises a sign stating in letters at least two inches high: **IT IS A CRIME (MISDEMEANOR) TO CONSUME LIQUOR OR BEER ON THESE PREMISES.**

(b) A permittee who fails to comply with this section commits a misdemeanor punishable by a fine of not more than \$25.

## **CHAPTER 27. TEMPORARY WINE AND BEER RETAILER'S PERMIT**

**Sec. 27.01. AUTHORIZED ACTIVITIES.** The holder of a temporary wine and beer retailer's permit may sell 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 but not more than 14 percent by volume. The permit does not authorize the sale of those beverages outside the county for which it is issued.

**Sec. 27.02. FEE.** The state fee for a temporary wine and beer retailer's permit is \$30. No refund shall be allowed for the surrender or nonuse of the permit.

**Sec. 27.03. DURATION OF PERMIT.** A temporary wine and beer retailer's permit may be issued for a period of not more than four days.

**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 or mixed beverage permit.

**Sec. 27.05. ISSUANCE AND USE OF PERMIT; RULES AND REGULATIONS.** (a) Temporary wine and beer retailer's permits are issued by the administrator, the commission, or an authorized representative of the commission. The commission shall adopt rules and regulations governing the issuance and use of temporary wine and beer retailer's permits.

(b) The permits shall be issued only for the sale of authorized alcoholic beverages at picnics, celebrations, or similar events.

(c) The administrator or commission may refuse to issue a permit if there is reason to believe the issuance of the permit would be detrimental to the public.

**Sec. 27.06. CANCELLATION OR SUSPENSION OF BASIC PERMIT.** The basic permit under which a temporary wine and beer retailer's permit was issued may be cancelled or suspended for a violation on the premises covered by the temporary permit that would result in the cancellation or suspension of the basic permit if committed on the premises covered by the basic permit.

## **CHAPTER 28. MIXED BEVERAGE PERMIT**

**Sec. 28.01. AUTHORIZED ACTIVITIES.** (a) The holder of a mixed beverage permit may sell, offer for sale, and possess mixed beverages, including distilled spirits, for consumption on the licensed premises:

(1) from sealed containers containing not less than one fluid ounce nor more than two fluid ounces or of any legal size; and

(2) from unsealed containers.

(b) The holder of a mixed beverage permit for an establishment in a hotel may deliver mixed beverages, including wine and beer, to individual rooms of the hotel or to any other location in the hotel building or grounds, except a parking area or the licensed premises of another alcoholic beverage establishment, without regard to whether the place of delivery is part of the licensed premises. A permittee in a hotel may allow a patron or visitor to enter or leave the licensed premises, even though the patron or visitor possesses an alcoholic beverage, if the beverage is in an open container and appears to be possessed for present consumption.

(c) The holder of a mixed beverage permit may also:

(1) purchase wine, beer, ale, and malt liquor containing alcohol of not more than 21 percent by volume in containers of any legal size from any permittee or licensee authorized to sell those beverages for resale; and

(2) sell the wine, beer, ale, and malt liquor for consumption on the licensed premises.

**Sec. 28.02. FEE.** (a) The annual state fee for an original mixed beverage permit is \$3,000.

(b) the annual state fee for the first renewal of a mixed beverage permit is \$2,250.

(c) The annual state fee for the second renewal of a mixed beverage permit is \$1,500.

(d) The annual state fee for the third and each subsequent renewal of a mixed beverage permit is \$750.

*NOTE: S.B. 285, Acts of the 68th Legislature, Regular Session, provides for a transitional fee for the year beginning September 1, 1983 until September 1, 1984, when the above listed fees become effective. The fees for the year September 1, 1983 to August 31, 1984 are:*

*\$2,500 for an original application for a mixed beverage permit.*

*\$1,875 for the first renewal of a mixed beverage permit.*

*\$1,250 for the second renewal of a mixed beverage permit.*

*\$675 for the third and subsequent renewals of a mixed beverage permit.*

**Sec. 28.03. INFORMATION REQUIRED OF APPLICANTS.** In addition to the information required of applicants for permits under this code, the applicant for a mixed beverage permit must file with his original and renewal application a sworn statement in a form prescribed by the commission or administrator containing the following information:

(1) the name and residential address of the lessor of the premises;

(2) the name and address of the lessee of the premises;

(3) the amount of monthly rental on the premises and the date of expiration of the lease;

(4) whether the lease or rental agreement includes furniture and fixtures;

(5) whether the business is to be operated under a franchise and, if so, the name and address of the franchisor;

(6) the name and address of the accountant of the business;

(7) a list of all bank accounts, including account numbers, used in connection with the business; and

(8) any information required by the commission or administrator relevant to the determination of all persons having a financial interest of any kind in the granting of the mixed beverage permit.

**Sec. 28.04. CHANGE IN CORPORATE CONTROL.** (a) A mixed beverage permit held by a corporation may not be renewed if the commission or administrator finds that legal or beneficial ownership of over 50 percent of the stock of the corporation has changed since the time the original permit was issued.

(b) The commission or administrator may adopt reasonable rules and regulations in accordance with the provisions of this section.

(c) A corporation which is barred from renewing a permit because of this section may file an application for an original permit and may be issued an original permit if otherwise qualified.

(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 to a person who possesses the qualifications required of other applicants for permits and is an officer of the corporation or has been an officer of the corporation since the original permit was issued.

**Sec. 28.05. RENEWAL OF PERMIT BY DESCENDANT OR SURVIVING SPOUSE.** If the surviving spouse or surviving descendant of a holder of a mixed beverage permit qualifies as the successor in interest to the permit as provided in Section 11.10 of this code, the descendant or surviving spouse may continue to renew the permit by paying a renewal fee equal to the fee the permittee would be required to pay had he lived.

**Sec. 28.06. POSSESSION OF ALCOHOLIC BEVERAGE NOT COVERED BY INVOICE.** (a) No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may possess or permit to be possessed on the premises for which the permit is issued any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

(b) A person who violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not more than \$1,000 or by confinement in the county jail for no more than 30 days or by both.

(c) No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may knowingly possess or permit to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

(d) A person who violates Subsection (c) of this section commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than two years. The commission or administrator shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or to have been convicted of violating Subsection (c) of this section.

**Sec. 28.07. PURCHASE AND TRANSPORTATION OF ALCOHOLIC BEVERAGES.** (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.

(b) If a holder of a mixed beverage permit is in an area where there are no local distributors, he may purchase alcoholic beverages in 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.

(c) If a mixed beverage permittee holds a beverage cartage permit and his premises are located in a regional airport governed by a board, commission, or authority composed of members from two or more counties, and there is no local distributor at the airport, the mixed beverage permittee may purchase alcoholic beverages from any local distributor in a trade area served by the airport and transport them to his licensed premises. The transportation of the beverages must be in accordance with Subsection (b) of this section.

**Sec. 28.08. REFILLING CONTAINERS PROHIBITED.** No holder of a mixed beverage permit may refill with any substance a container which contained distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid.

**Sec. 28.09. INVALIDATION OF STAMP.** (a) A holder of a mixed beverage permit or any person employed by the holder who empties a bottle containing distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid, shall immediately after emptying the bottle invalidate the identification stamp on the bottle in the manner prescribed by rule or regulation of the commission or administrator.

(b) Each holder of a mixed beverage permit shall provide at all service counters where distilled spirits are poured from bottles the necessary facilities for the invalidation of identification stamps on bottles so that persons emptying distilled spirits bottles may immediately invalidate the identification stamps on them.

(c) If an empty distilled spirits bottle has locked on it an automatic measuring and dispensing device of a type approved by the commission or administrator, which prevents the refilling of the bottle without unlocking the device and removing it from the bottle, the identification stamp is not required to be invalidated until immediately after the device has been unlocked and removed from the bottle.

(d) A holder of a mixed beverage permit or any of his officers, agents, or employees who is found in possession of an empty distilled spirits bottle which contained distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid and on which the identification stamp has not been invalidated in accordance with this section commits a separate offense for each bottle so possessed.

**Sec. 28.10. CONSUMPTION RESTRICTED TO PREMISES.** (a) Except as permitted by Subsection (b) of this section and by Subsection (b) of Section 28.01, a mixed beverage permittee may not sell an alcoholic beverage to another mixed beverage permittee or to any other person except for consumption on the seller's licensed premises.

(b) A mixed beverage permittee may not permit any person to take any alcoholic beverage purchased on the licensed premises from the premises where sold, except that a person who orders wine with food and has a portion of the open container remaining may remove the open container of wine from the premises.

**Sec. 28.11. BREACH OF PEACE.** The commission or administrator may suspend or cancel a mixed beverage permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

**Sec. 28.12. SALE OF MALT BEVERAGES TO PERMITTEE.** The sale of malt beverages to a mixed beverage permittee by a local distributor's permittee or by a licensee authorized to sell them for resale is subject to the provisions of Section 61.73 of this code.

## **CHAPTER 29. MIXED BEVERAGE LATE HOURS PERMIT**

**Sec. 29.01. AUTHORIZED ACTIVITIES.** The holder of a mixed beverage late hours permit may sell mixed beverages on Sunday between the hours of 1:00 a.m. and 2 a.m. and on any other day between the hours of 12 midnight and 2 a.m. if the premises covered by the permit are in an area where the sale of mixed beverages during those hours is authorized by this code.

**Sec. 29.02. FEE.** The annual state fee for a mixed beverage late hours permit is \$150.

**Sec. 29.03. APPLICATION OF PROVISIONS REGULATING MIXED BEVERAGE PERMITS.** All provisions of this code which apply to a mixed beverage permit also apply to a mixed beverage late hours permit.

## **CHAPTER 30. DAILY TEMPORARY MIXED BEVERAGE PERMIT**

**Sec. 30.01. AUTHORIZED ACTIVITIES.** The holder of a daily temporary mixed beverage permit may sell mixed beverages for consumption on the premises for which the permit is issued.

**Sec. 30.02. FEE.** The state fee for a daily temporary mixed beverage permit is \$50 per day.

**Sec. 30.03. ISSUANCE OF PERMIT.** (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 two temporary mixed beverage permits in each calendar year to a person who does not also hold a mixed beverage permit.

(b) The provisions of this code which apply to the application for and issuance of other permits do not apply to the application and issuance of a daily temporary mixed beverage permit.

**Sec. 30.04. PURCHASE OF DISTILLED SPIRITS.** Distilled spirits sold under a daily temporary mixed beverage permit must be purchased from the holder of a local distributor's permit.

**Sec. 30.05. APPLICATION OF PROVISIONS REGULATING MIXED BEVERAGE PERMITS.** All provisions of this code applicable to a mixed beverage permit also apply to a daily temporary mixed beverage permit unless there is a special provision to the contrary.

**Sec. 30.06. ADOPTION OF RULES.** The commission may adopt rules which it determines to be necessary to implement and administer the provisions of this chapter, including limitations on the number of times during any calendar year a qualified organization may be issued a permit.

## CHAPTER 31. CATERER'S PERMIT

**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 an area where the sale of mixed beverages has been authorized by a local option election.

**Sec. 31.02. FEE.** The annual state fee for a caterer's permit is \$500.

**Sec. 31.03. ISSUANCE OF PERMIT.** (a) A caterer's permit may be issued only to the holder of a mixed beverage permit.

(b) The commission shall adopt rules and regulations governing the application for and the issuance and use of caterer's permits.

(c) The provisions of this code which apply to the application for and issuance of other permits do not apply to the application for and issuance of a caterer's permit.

**Sec. 31.04. APPLICATION OF PROVISIONS REGULATING MIXED BEVERAGE PERMITS.** (a) A caterer's permit is auxiliary to the primary mixed beverage permit held by the permittee.

(b) The restrictions and regulations which apply to the sale of mixed beverages on the licensed premises also apply to the sale under the authority of a caterer's permit, and any act that is prohibited on the licensed premises is also prohibited when the permittee is operating other than on the licensed premises under a caterer's permit.

(c) Any act which if done on the licensed premises would be a ground for cancellation or suspension of the mixed beverage permit is a ground for cancellation of both the mixed beverage permit and the caterer's permit if done when the permittee is operating away from the licensed premises under the authority of the caterer's permit.

(d) All receipts from the sale of mixed beverages under the authority of the caterer's permit shall be treated for tax purposes as if they were made under the authority of the primary permit.

(e) If the primary permit ceases to be valid for any reason, the caterer's permit ceases to be valid.

(f) All provisions of this code applicable to the primary permit and not inconsistent with this chapter apply to a caterer's permit.

## CHAPTER 32. PRIVATE CLUB REGISTRATION PERMIT

**Sec. 32.01. AUTHORIZED ACTIVITIES.** A private club registration permit authorizes alcoholic beverages belonging to members of the club to be:

(1) stored, possessed, and mixed on the club premises; and

(2) served for on-premises consumption only to members of the club and their families and guests, by the drink or in sealed, unsealed, or broken containers of any legal size.

**Sec. 32.02. FEE.** (a) Each private club registration permittee shall pay an annual state fee for each separate place of business.

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

0 to 250—\$ 750	651 to 750—\$2,250
251 to 350—\$1,050	751 to 850—\$2,550
351 to 450—\$1,350	851 to 950—\$2,850
451 to 550—\$1,650	951 to 1,000—\$3,000
551 to 650—\$1,950	Over 1,000—\$3 per member

(c) All fees collected pursuant to this section shall be deposited in the general revenue fund.

(d) No later than 90 days before the expiration of the year for which the permit fee is paid, the permit holder may submit an amended application with as much additional fee as is required under the amended return.

*NOTE: S.B. 285, Acts of the 68th Legislature, Regular Session, provides for a transitional fee for the year beginning September 1, 1983 until September 1, 1984, when the above stated fees become effective. The permit fee for the year September 1, 1983 through August 31, 1984 shall be 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—\$ 625	651 to 750—\$1,875
251 to 350—\$ 875	751 to 850—\$2,125
351 to 450—\$1,125	851 to 950—\$2,375
451 to 550—\$1,375	951 to 1,000—\$2,500
551 to 650—\$1,625	Over 1,000—\$2.50 per member



**Sec. 32.03. QUALIFICATIONS FOR PERMIT.** (a) A private club registration permit may only be issued to a club which meets the requirements of this section.

(b) The club must be an association of persons, whether unincorporated or incorporated under the laws of this state, for the promotion of some common object.

(c) Members of the club must be passed on and elected by a committee or board made up of members of the club, and no employee of the club shall be eligible to serve on the membership committee or board.

(d) No application for membership may be approved until the application has been filed with the chairman of the membership committee or board and approved by the chairman. The committee or board may authorize the chairman or a designated agent to issue preliminary memberships without the approval of the committee or board for a period not exceeding three days on the request of an applicant for membership. A preliminary member has all of the privileges of membership in the club. If the committee or board does not approve the application before the expiration of the preliminary membership, the club shall pay to the state the fee required of temporary members under Section 32.09 of this code. The club shall remit the fees and record and report preliminary memberships as the commission or the administrator prescribes.

(e) At least 50 members of the club must reside in the county in which the premises of the club are located, or at least 100 members must reside in an area comprised of the county in which the premises of the club is located and an adjacent county or counties.

(f) The club must own, lease, or rent a building, or space in a building of such extent and character as in the judgment of the commission is suitable and adequate for the club's members and their guests.

(g) The club must provide regular food service adequate for its members and their guests.

(h) The club's total annual membership fees, dues, or other income, excluding proceeds from the disposition of alcoholic beverages but including service charges, must be sufficient to defray the annual rental of its leased or rented premises or, if the premises are owned by the club, sufficient to meet the taxes, insurance, and repairs and the interest on any mortgage on the premises.

(i) The club's affairs and management must be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting.

(j) No member or any officer, agent, or employee of the club may be paid or receive any money as salary of other compensation, directly or indirectly, from the disposition of alcoholic beverages to members of the club and their guests, other than charges for the service of the beverages.

**Sec. 32.04. APPLICATIONS FOR PERMITS; RENEWALS.** (a) A private club which meets the requirements set forth in Section 32.03 of this code may apply for a private club registration permit on forms furnished by the commission and containing all information necessary to insure compliance with the provisions of this code.

(b) Each applicant shall furnish a true copy of his application to the commission's district office in the district in which the premises sought to be covered by the permit are located prior to the filing of the original application with the commission at Austin.

(c) Applications for a renewal permit shall be filed with the commission within 30 days prior to the expiration of the current permit.

**Sec. 32.05. LOCKER SYSTEM.** The locker system of storage is a system whereby the club rents a locker to a member in which he may store alcoholic beverages for consumption by himself and his guests. All alcoholic beverages stored at a club under the locker system must be purchased and owned by the member individually.

**Sec. 32.06. POOL SYSTEM.** (a) The pool system of storage may be used in any area. Under this system all members of a pool participate equally in the original purchase of all alcoholic beverages. The replacement of all alcoholic beverages shall be paid for either by money assessed equally from each member and collected in advance or by the establishment of an alcoholic beverages replacement account in which a designated percentage of each charge for the service of alcoholic beverages, as determined by the club's governing body, is deposited.

(b) If an alcoholic beverages replacement account is used:

(1) each service check shall have printed on it the percentage of the service charge that is to be deposited in the alcoholic beverages replacement account;

(2) no money other than the designated percentage of service charges may be deposited in the replacement account;

(3) the replacement of alcoholic beverages may be paid for only from money in the replacement account;

(4) the club's governing body may transfer from the replacement account to the club's general operating account any portion of the replacement account that the governing body determines is in excess of the amount that will be needed to purchase replacement alcoholic beverages, but it may make only one transfer in a calendar month; and

(5) the club shall maintain a monthly record of the total amount of alcoholic beverage service charges collected, the amount deposited in the replacement account, the amount used to purchase alcoholic beverages, and the amount transferred to the club's general operating account.

**Sec. 32.07. DISPLAY OF PERMIT.** A private club registration permit shall be displayed in a conspicuous place at all times on the licensed premises.

**Sec. 32.08. PURCHASE AND TRANSPORTATION OF ALCOHOLIC BEVERAGES.** (a) All distilled spirits sold by a club holding a private club registration permit must be purchased in this state from a holder of a local distributor's permit.

(b) If the club holding the permit is in an area where there are no local distributors, alcoholic beverages may be purchased in any area where local distributors are located and may be transported to the club premises if the club also holds a beverage cartage permit. The transporter may acquire the alcoholic

beverages only on the written order of an officer or manager of the club holding the 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.

(c) If a private club registration permittee holds a beverage cartage permit and his premises are located in a regional airport governed by a board, commission, or authority composed of members from two or more counties, and there is no local distributor at the airport, the private club registration permittee may purchase alcoholic beverages from any local distributor in a trade area served by the airport and transport them to his licensed premises. The transportation of the beverages must be in accordance with Subsection (b) of this section.

**Sec. 32.09. TEMPORARY MEMBERS.** (a) The manager or other person in charge of the club premises may allow a person to enter the club if he possesses a valid temporary membership card which has no erasures or changes and which has the temporary dates in a prominent position on the card. A temporary member may enjoy the club's services and privileges for a period of not more than three days per invitation. A temporary member may bring not more than three guests to the club and must remain in their presence while they are at the club.

(b) At the time of his admission the temporary member shall pay the club a fee of \$3, which shall represent the fee payable by the permittee to the state. All fees and payments from temporary members shall be collected in cash or through credit cards approved by the commission or administrator.

(c) Temporary memberships shall be governed by rules promulgated by the commission consistent with the provisions of this section.

*NOTE: S.B. 285, Acts of the 68th Legislature, Regular Session, provides for a transitional fee for temporary membership fees for the year beginning September 1, 1983 through August 31, 1984. The fee for that year is \$2.50 per member. Effective September 1, 1984, the fee is \$3.00 per member.*

**Sec. 32.10. GUESTS.** (a) Guests shall be limited to those who accompany a member or temporary member onto the premises or for whom a member, other than a temporary member, has made prior arrangements with the management of the club.

(b) Except as provided in Subsection (c) of this section no guest shall be permitted to pay, by cash or otherwise, for any service of alcoholic beverages. Any charge for a service rendered to a guest by the club must be billed by the club to the member or temporary member sponsoring the guest. A club shall bill a member other than a temporary member for the service of guests in the club's regular billing cycle.

(c) The manager of a hotel who is a member of a private club located within the hotel building may issue a guest card to a patron of the hotel who is staying in the

hotel overnight or longer. The guest may not be allowed to pay, by cash or otherwise, at the time of service in the private club. The charge for service shall be billed to the hotel manager's account in the hotel and shall be collected by the hotel manager along with other hotel charges, including the charge for using the hotel room, when the patron leaves the hotel. The hotel records shall be available for inspection at the request of the commission. If the club operates under the locker system a guest shall be served from the locker rented to the manager of the hotel.

(d) The commission shall promulgate rules necessary to implement the provisions of this section.

**Sec. 32.11. FRATERNAL AND VETERANS ORGANIZATIONS.** (a) In this section:

(1) "Fraternal organization" means:

(A) any chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization or Texas state fraternal organization that, as the owner, lessee, or occupant, has operated an establishment for fraternal purposes for at least one year. If an American national fraternal organization, it must actively operate in not fewer than 31 states and have at least 300 local units in those 31 states, and must have been in active, continuous existence for at least 20 years. If a Texas state fraternal organization, it must actively operate in at least two counties of the state and have at least 10 local units in those two counties, and must have been in active, continuous existence for at least five years; or

(B) a hall association or building association of a local unit described in Paragraph (A), all the capital stock of which is owned by the local unit or the members of the local unit, and which operates the clubroom facilities of the local unit.

(2) "Veterans organization" means an organization composed of members or former members of the armed forces of the United States which is organized for patriotic and public service purposes, including the American Legion, Veterans of Foreign Wars, Disabled American Veterans, Jewish War Veterans, American GI Forum, Catholic War Veterans, or any veterans organization chartered by the United States Congress.

(b) The permit fee imposed by Section 32.02 of this code and the provisions of Sections 32.03 and 32.10 of this code requiring regular food service and prohibiting guests from paying in cash do not apply to a fraternal or veterans organization. Those organizations are also exempt from Sections 32.05 and 32.06 of this code, and the members of the organization may use any club funds owned by them jointly, including revenue from the service of alcoholic beverages, to replenish their joint stock of alcoholic beverages.

(c) The requirement that the fraternal or veterans organization hold a private club registration permit is satisfied by the issuance of a certificate by the commission that states that the organization meets the requirements of this section.

(d) All other provisions of this code apply to fraternal and veterans organizations.

**Sec. 32.12. INSPECTION OF PREMISES.** The acceptance of a private club

registration permit constitutes an express agreement and consent on the part of the private club that any authorized representative of the commission or any peace officer has the right and privilege to freely enter the club premises at any time to conduct an investigation or to inspect the premises for the purpose of performing a duty imposed by this code.

**Sec. 32.13. INSPECTION OF BOOKS AND RECORDS.** All books and records pertaining to the operation of any permittee club, including a current listing, correct to the last day of the preceding month, of all members of the club who have liquor stored on the club premises under either the locker or pool system, shall be made available to the commission or its authorized representatives on request.

**Sec. 32.14. UNREGISTERED CLUBS; PROHIBITED ACTIVITIES.** (a) No permittee, licensee, or any other person shall deliver, transport, or carry an alcoholic beverage to, into, or on the premises of any establishment, location, room, or place purporting to be a club, or holding itself out to the public or any person as a club or private club, unless the club holds a private club registration permit.

(b) No person may store, possess, mix, or serve by the drink or in broken or unsealed containers an alcoholic beverage on the premises of any establishment, location, room, or place purporting to be a club or private club unless the club holds a private club registration permit.

(c) An alcoholic beverage stored or possessed on the premises of any establishment, location, room, or place purporting to be a club, or holding itself out to the public or any person as a club or private club, is declared to be an illicit beverage and subject to seizure without a warrant unless a private club registration permit has been issued for the premises, location, room, or place.

**Sec. 32.15. REMOVAL OF BEVERAGES FROM PREMISES.** A private club, irrespective of location or system of storage of alcoholic beverages, may not permit any person to remove any alcoholic beverages from the club premises.

**Sec. 32.16. UNAUTHORIZED MEMBERSHIP.** No private club registration permittee may allow its average membership to exceed that authorized by its permit.

**Sec. 32.17. CANCELLATION OR SUSPENSION OF PERMIT; GROUNDS.** (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 beverages on the club premises:

(A) at any time on Sunday between the hours of 1:15 a.m. and 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; or

(B) at any time on Sunday between the hours of 2 a.m. and 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; or

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

(b) As used in Subsection (a)(1) of this section, the term "open saloon" means any place where an alcoholic beverage manufactured in whole or in part by distillation, or liquor composed or compounded in part of distilled spirits, is sold or offered for sale for beverage purposes by the drink or in broken or unsealed containers, or a place where any of the liquors are sold or offered for sale for on-premises consumption.

**Sec. 32.18. APPEALS FROM ORDERS OF COMMISSION OR ADMINISTRATOR.** An appeal from an order of the commission or administrator refusing, cancelling, or suspending a private club registration permit shall be taken to the district court of the county in which the private club is located. The proceeding on appeal shall be under the substantial evidence rule. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

(1) all appeals shall be perfected and filed within 30 days after the order, decision, or ruling of the commission or administrator becomes final and appealable;

(2) all causes shall be tried before the judge within 10 days from the filing, and neither party shall be entitled to a jury; and

(3) the order, decision, or ruling of the commission or administrator may be suspended or modified by the district court pending a trial on the merits, but the final judgment of the district court shall not be modified or suspended pending appeal.

**Sec. 32.19. AIDING OR ABETTING VIOLATION.** A person who commits, assists, aids, or abets a violation of this chapter commits an offense.

## **CHAPTER 33. PRIVATE CLUB LATE HOURS PERMIT**

**Sec. 33.01. AUTHORIZED ACTIVITIES.** The holder of a private club late

hours permit may allow persons to consume or be served alcoholic beverages on club premises on Sunday between the hours of 1:00 a.m. and 2 a.m. and on any other day between the hours of 12 midnight and 2 a.m. if the licensed premises are in an area where consumption or service of alcoholic beverages in a public place during those hours is authorized by this code.

**Sec. 33.02. FEE.** The annual state fee for a private club late hours permit is \$750.

*NOTE: S.B. 285, Acts of the 68th Legislature, Regular Session, provides for a transitional fee for a private club late hours permit for the year beginning September 1, 1983 through August 31, 1984. The fee for that year is \$625. Effective September 1, 1984, the fee is \$750.*

**Sec. 33.03. APPLICATION OF CODE PROVISIONS.** All provisions of this code which apply to a private club registration permit also apply to a private club late hours permit.

## CHAPTER 34. AIRLINE BEVERAGE PERMIT

**Sec. 34.01. AUTHORIZED ACTIVITIES.** The holder of an airline beverage permit may:

(1) sell or serve alcoholic beverages in or from any size container on a commercial passenger airplane operated in compliance with a valid license, permit, or certificate issued under the authority of the United States or of this state, even though the plane, in the course of its flight, may cross an area in which the sale of alcoholic beverages is prohibited; and

(2) store alcoholic beverages in sealed containers of any size at any airport regularly served by the permittee, in accordance with rules and regulations promulgated by the commission.

**Sec. 34.02. FEE.** The annual fee for an airline beverage permit is \$2,200.

**Sec. 34.03. ELIGIBILITY FOR PERMIT.** The commission or administrator may issue an airline beverage permit to any corporation operating a commercial airline in or through the state. Application and payment of the fee shall be made directly to the commission.

**Sec. 34.04. TAXES.** (a) The taxes imposed by this code shall be paid on all alcoholic beverages on a commercial passenger aircraft departing from an airport in this state, in accordance with rules and regulations prescribed by the commission.

(b) The preparation and service of alcoholic beverages by the holder of an airline beverage permit is exempt from the tax imposed by the Limited Sales, Excise and Use Tax Act. An airline beverage service fee of five cents is imposed on each individual serving of an alcoholic beverage served by the permittee inside the state. The fee accrues at the time the container containing an alcoholic beverage is delivered to the passenger. The permittee may absorb the cost of the fee or may collect it from the passenger. The permittee shall remit the fees to the commission each month under a reporting system prescribed by the commission.

**Sec. 34.05. SALE OF LIQUOR TO PERMITTEE.** (a) Only the holder of a package store permit may sell liquor to the holder of an airline beverage permit. For the purposes of this code, a sale of liquor to a holder of an airline beverage permit shall be considered as a sale at retail to a consumer.

(b) The holder of a package store permit may sell liquor in any size container authorized by Section 101.46 of this code to holders of an airline beverage permit, and may purchase liquor in any size container for resale from the holders of a wholesaler's permit. A holder of a wholesaler's permit may import, sell, offer for sale, or possess for resale to package store permittees to resell to holders of airline beverage permittees liquor in any authorized size containers.

**Sec. 34.06. INAPPLICABLE PROVISION.** Section 109.53 of this code does not apply to an airline beverage permit.

## CHAPTER 35. AGENT'S PERMIT

**Sec. 35.01. AUTHORIZED ACTIVITIES.** The holder of an agent's permit may:

(1) represent permittees other than retailers within the state who are authorized to sell liquor to retail dealers in the state; and

(2) solicit and take orders for the sale of liquor from authorized permittees.

**Sec. 35.02. FEE.** The annual state fee for an agent's permit is \$10.

**Sec. 35.03. EVIDENCE OF AGENCY OR EMPLOYMENT REQUIRED.** An agent's permit may not be issued to a person until he shows to the satisfaction of the commission that he has been employed by or authorized to act as the agent of the holder of a permit as described by Section 35.01 of this code.

**Sec. 35.04. CERTAIN EMPLOYEES EXEMPT.** An agent's permit is not required for an employee of a permit holder who sells liquor but remains on the licensed premises when making the sale.

**Sec. 35.05. SAMPLES.** The holder of an agent's permit may not transport or carry liquor as samples, but may carry or display empty sample containers.

**Sec. 35.06. INELIGIBILITY FOR MANUFACTURER'S AGENT'S PERMIT.** A person holding an agent's permit may not be issued a manufacturer's agent's permit.

**Sec. 35.07. UNAUTHORIZED REPRESENTATION.** A holder of an agent's permit in soliciting or taking orders for the sale of liquor may not represent himself to be an agent of any person other than the person designated in his permit application.

## CHAPTER 36. MANUFACTURER'S AGENT'S PERMIT

**Sec. 36.01. AUTHORIZED ACTIVITIES.** The holder of a manufacturer's agent's permit may:

(1) represent only the holders of nonresident seller's permits; and

(2) solicit and take orders for the sale of liquor from permittees authorized to import liquor for the purpose of resale.



**Sec. 36.02. FEE.** The annual state fee for a manufacturer's agent's permit is \$10.

**Sec. 36.03. AUTHORIZATION BY PRINCIPAL REQUIRED.** A manufacturer's agent's permit may not be issued to a person until he shows to the satisfaction of the commission that he has been authorized to act as agent of the principal he proposes to represent.

**Sec. 36.04. INELIGIBILITY FOR AGENT'S PERMIT.** A holder of a manufacturer's agent's permit may not be issued an agent's permit.

**Sec. 36.05. SAMPLES.** The holder of a manufacturer's agent's permit may not transport or carry liquor as samples, but may carry or display empty sample containers.

**Sec. 36.06. SOLICITATION FROM HOLDER OF MIXED BEVERAGE OR PRIVATE CLUB PERMIT.** A holder of a manufacturer's agent's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

**Sec. 36.07. UNAUTHORIZED REPRESENTATION.** A holder of a manufacturer's agent's permit is soliciting or taking orders for the sale of liquor may not represent himself as an agent of a person other than the person designated in his permit application.

**Sec. 36.08. RESTRICTION AS TO SOURCE OF SUPPLY.** A manufacturer's agent's permittee may not represent a person with respect to an alcoholic beverage unless the person represented is the primary American source of supply of the beverage as defined in Section 37.10 of this code.

## CHAPTER 37. NONRESIDENT SELLER'S PERMIT

**Sec. 37.01. AUTHORIZED ACTIVITIES.** The holder of a nonresident seller's permit may:

(1) solicit and take orders for liquor from permittees authorized to import liquor into this state;

(2) ship liquor into this state, or cause it to be shipped into this state, in consummation of sales made to permittees authorized to import liquor into the state.

**Sec. 37.02. FEE.** The annual state fee for a nonresident seller's permit is \$150.

**Sec. 37.03. PERMIT REQUIRED.** A nonresident seller's permit is required of any distillery, winery, importer, broker, or person who sells liquor to permittees authorized to import liquor into this state, regardless of whether the sale is consummated inside or outside the state.

**Sec. 37.04. INTEREST IN BREWER'S PERMIT.** A person who holds a nonresident seller's permit may have an interest in the business, assets, corporate stock, or permit of a person who holds a brewer's permit.

**Sec. 37.05. APPOINTMENT OF AGENT FOR SERVICE OF NOTICE.** (a) No person may be issued a nonresident seller's permit until he shows that he has filed a certificate with the secretary of state certifying that he has appointed a resident of this state as his agent for the purposes of this section. The certificate shall contain the name, street address, and business of the agent.

(b) A notice of a hearing for the refusal, cancellation, or suspension of a permit may be served on any of the following:

(1) the agent designated in the certificate on file with the secretary of state;

(2) any person authorized to sell liquor in this state as agent of the permittee; or

(3) the permittee or, if the permittee is a corporation, any officer of the corporation.

(c) If a permittee fails to maintain a designated agent, notice of a hearing may be served on the secretary of state. In that case, the secretary of state shall forward the notice to the permittee by registered mail, return receipt requested, and the receipt shall be prima facie evidence of service on the permittee.

(d) Provisions of this code generally applicable to hearings for the refusal, cancellation, or suspension of a permit also to apply to proceedings relating to the refusal, cancellation, or suspension of a nonresident seller's permit.

**Sec. 37.06. DESIGNATION OF AGENTS.** Every holder of a nonresident seller's permit shall designate, in the manner required by the commission and on forms prescribed by it, those persons authorized as agents to represent the permittee in this state. The failure to do so is a violation of this code.

**Sec. 37.07. PROHIBITED ACTIVITIES.** No holder of a nonresident seller's permit, nor any officer, director, agent, or employee of the holder, nor any affiliate of the holder, regardless of whether the affiliation is corporate or by management, direction, or control, may do any of the following:

(1) hold or have an interest in the permit, business assets, or corporate stock of a person authorized to import liquor into this state for the purpose of resale unless the interest was acquired on or before January 1, 1941, or unless the permittee is a Texas corporation holding a manufacturer's license and a brewer's permit issued before April 1, 1971;

(2) fail to make or file a report with the commission as required by a rule of the commission;

(3) sell liquor for resale inside this state that fails to meet the standards of quality, purity, and identity prescribed by the commission;

(4) advertise any liquor contrary to the laws of this state or to the rules of the commission, or sell liquor for resale in this state in violation of advertising or labeling rules of the commission;

(5) sell liquor for resale inside this state or cause it to be brought into the state in a size of container prohibited by this code or by rule of the commission;

(6) solicit or take orders for liquor from a person not authorized to import liquor into this state for the purpose of resale;

(7) induce, persuade, or influence, or attempt to induce, persuade, or influence, a person to violate this code or a rule of the commission, or conspire with a person to violate this code or a rule of the commission; or

(8) exercise a privilege granted by a nonresident seller's permit while an order or suspension against the permit is in effect.

**Sec. 37.08. CANCELLATION OR SUSPENSION: NOTICE TO IM-**

**PORTERS.** When a nonresident seller's permit is cancelled or suspended, the commission shall immediately notify in writing all permittees authorized to import liquor into the state.

**Sec. 37.09. RESTRICTION ON IMPORTATION.** No person who holds a permit authorizing the importation of liquor, nor his agent or employee, may purchase or order liquor for importation from any person other than a nonresident seller's permittee. An importer may not purchase or order liquor from a nonresident seller's permittee whose permit is under suspension after the importer has received notice of the suspension.

**Sec. 37.10. RESTRICTION AS TO SOURCE OF SUPPLY.** (a) No holder of a nonresident seller's permit may solicit, accept, or fill an order for distilled spirits or wine from a holder of any type of wholesaler's permit unless the nonresident seller is the primary American source of supply for the brand of distilled spirits or wine that is ordered.

(b) In this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler, or the exclusive agent of any of those. To be the "primary American source of supply" the nonresident seller must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

**Sec. 37.11. SUBMISSION OF SAMPLES AND LABELS.** (a) Before a nonresident seller's permittee may ship distilled spirits into this state, he shall furnish the commission samples of each brand, properly labeled and in the containers in which they are to be sold. He shall submit with the samples applications for label approval for each brand.

(b) The commission or its authorized agents shall test the contents and examine the label and container of the samples and determine whether they meet all requirements of state law and of the rules of the commission. If the label, container, and contents are found to be in compliance, the commission shall issue the permittee a certificate to that effect.

(c) As to distilled spirits imported directly from the distiller, bottler, or the exclusive agent of either, or distilled spirits distilled or bottled by the nonresident seller or by a distiller or bottler for whom the nonresident seller is the exclusive agent, if the samples are approved under Subsection (b) of this section, the permittee is not required to submit additional samples unless there is a change in the label, contents, or style or size of the container, or unless he is directed to do so by the commission.

(d) As to all other distilled spirits, samples must be furnished to the commission for each brand and size in each proposed shipment into the state, together with a sworn statement of the quantity and sizes to be shipped, the permittee to whom the spirits are to be shipped, and the person or firm from whom they are to be shipped. The permittee may not ship the distilled spirits until he has in his possession a certificate of approval from the commission.

**Sec. 37.12. INSPECTION OF RECORDS, DOCUMENTS, ETC.** (a) In this

section, "officer" means a representative of the commission, the attorney general, or an assistant or representative of the attorney general.

(b) If an officer wishes to examine the books, accounts, records, minutes, letters, memoranda, documents, checks, telegrams, constitution and bylaws, or other records of a nonresident seller's permittee, he shall make a written request to the permittee or his duly authorized manager or representative or, if the permittee is a corporation, to any officer of the corporation. An officer may examine the records as often as he considers necessary.

(c) When a request for an examination is made, the person to whom it is directed shall immediately allow the officer to conduct the examination, and the person shall answer under oath any question asked by the officer relating to the records.

(d) The officer may investigate the organization, conduct, and management of any nonresident seller's permittee and may make copies of any records which in the officer's judgment may show or tend to show that the permittee has violated state law or the terms of his permit.

(e) An officer may not make public any information obtained under this section except to a law enforcement officer of this state or in connection with an administrative or judicial proceeding in which the state or commission is a party concerning the cancellation or suspension of a nonresident seller's permit, the collection of taxes due under state law, or the violation of state law.

(f) The commission shall cancel or suspend a nonresident seller's permit in accordance with this code if a permittee or his authorized representative fails or refuses to permit an examination authorized by this section or to permit the making of copies of any document as provided by this section, without regard to whether the document is inside or outside the state, or if the permittee or his authorized representative fails or refuses to answer a question of an officer incident to an examination or investigation in progress.

**Sec. 37.13. SOLICITATION FROM HOLDER OF MIXED BEVERAGE OR PRIVATE CLUB PERMIT.** A holder of a nonresident seller's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

**Sec. 37.14. MONTHLY REPORTS.** The commission shall promulgate rules requiring holders of nonresident seller's permits to file monthly reports of liquor sold to persons within this state. The reports shall be supported by copies of invoices. The commission shall prescribe and furnish forms for this purpose.

## **CHAPTER 38. INDUSTRIAL PERMIT**

**Sec. 38.01. AUTHORIZED ACTIVITIES.** The holder of an industrial permit may import, transport, and use alcohol or denatured alcohol for the manufacture and sale of any of the following products:

- (1) denatured alcohol;
- (2) patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet

preparations;

(3) flavoring extracts, syrups, condiments, and food products; and

(4) scientific, chemical, mechanical, and industrial products, or products used for scientific, chemical, mechanical, industrial, or medicinal purposes.

**Sec. 38.02. EXEMPTIONS.** The following persons or entities are exempt from the requirement of obtaining an industrial permit:

(1) a pharmacist for the filling of prescriptions issued by a physician in the legitimate practice of medicine;

(2) a state institution;

(3) a bona fide or chartered school, college, or university when using alcohol for a scientific or laboratory use; and

(4) a hospital, sanatorium, or other bona fide institution for the treatment of the sick.

**Sec. 38.03. PROHIBITED ACTS.** (a) No person may purchase, transport, or use alcohol for any purpose enumerated in this chapter without an industrial permit unless the person is exempt under Section 38.02 of this code from the requirement of obtaining a permit.

(b) No person may sell, possess, or divert any of the products enumerated in Subdivisions (1) through (4) of Section 38.01 of this code for beverage purposes or under circumstances from which he might reasonably deduce that the intention of the purchaser is to use those products for beverage purposes.

**Sec. 38.04. FEE.** The annual state fee for an industrial permit is \$60.

**Sec. 38.05. OTHER CODE PROVISIONS INAPPLICABLE.** No provisions of this code other than this chapter apply to alcohol intended for industrial, medicinal, mechanical, or scientific purposes.

**Sec. 38.06. ACTIVITIES TAX FREE.** The taxes imposed by this code do not apply to activities authorized in Section 38.01 of this code.

## CHAPTER 39. MEDICINAL PERMIT

### SUBCHAPTER A. GENERAL PROVISIONS

**Sec. 39.01. AUTHORIZED ACTIVITIES.** The holder of a medicinal permit may buy or dispense liquor at his pharmacy for medicinal purposes only.

**Sec. 39.02. QUALIFICATIONS FOR PERMIT.** To be qualified to receive a medicinal permit:

(1) a person must be the owner of a pharmacy properly qualified as a pharmacy under state law;

(2) the applicant's pharmacy must be a bona fide pharmacy continuously operated for not less than two years;

(3) the applicant's pharmacy must have been continuously located for not less than two years in the particular justice precinct or incorporated city or town in which it is located at the time the permit is sought;

(4) the applicant's pharmacy must have been registered with the state board of pharmacy for two years immediately preceding the date of application for the

permit;

(5) the applicant's pharmacy must have employed at all times a registered pharmacist during the two years immediately preceding the date of application for the permit; and

(6) the applicant's pharmacy must not have operated under a permit which was cancelled during the past two years.

**Sec. 39.03. RULES.** The board, by rule, may require the keeping of whatever records it considers necessary to properly enforce the provisions of this code.

**Sec. 39.04 FEE.** The annual state fee for a medicinal permit is \$10 if the permittee's pharmacy is located in a dry area and is the same as the annual state fee for a package store permit if the permittee's pharmacy is located in a wet area.

**Sec. 39.05. CERTIFICATE TO ACCOMPANY APPLICATION.** Each applicant for a medicinal permit shall present with his application a certificate issued by the state board of pharmacy showing the registration record of his pharmacy with that board during the preceding two years.

## **SUBCHAPTER B. PROHIBITED ACTIVITIES**

**Sec. 39.21. PRESCRIPTIONS.** (a) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor except upon a prescription properly issued by the holder of a physician's permit.

(b) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription which does not meet the specifications required by this code.

(c) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor more than once on any prescription.

(d) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription dated more than three days prior to the date when the prescription is presented for filling.

(e) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription knowing that the prescription was written without a physical examination of the patient by the doctor prescribing the liquor.

(f) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor to any person knowing that the prescription was issued to a patient under a name other than his true name.

(g) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription bearing any false statement or information.

(h) No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor without having first obtained physical possession of and carefully examining the prescription on which the sale is made.

(i) No holder of a medicinal permit or any of his agents or employees may prepare a prescription for liquor.

(j) No holder of a medicinal permit or any of his agents or employees may fail to attach to each container of liquor sold a label in the English language bearing the full name and address of the pharmacy making the sale, the name and address

of the prescribing physician, the full name and address of the patient to whom the sale is made, the directions for use, the signature of the pharmacist filling the prescription, and the number of the prescription.

**Sec. 39.22. RECORDS, REPORTS, AND INFORMATION.** (a) No holder of a medicinal permit or any of his agents or employees may fail to preserve and keep for two years any prescription on which liquor has been sold. The permittee shall make these prescriptions available at all times for inspection by a representative of the commission, peace officer, or county or district attorney.

(b) No holder of a medicinal permit or any of his agents or employees may fail to make and keep for two years any other record required by the commission, or may fail to produce that record on demand of a representative of the commission, peace officer, or county or district attorney.

(c) No holder of a medicinal permit or any of his agents or employees may fail to make a report required by the commission within the time required, or make or cause to be made a report so required which is false in any particular.

(d) No holder of a medicinal permit or any of his agents or employees may fail or refuse to divulge any information concerning the purchase, storage, or disposal of liquor to a representative of the commission, peace officer, or county or district attorney.

(e) No holder of a medicinal permit or any of his agents or employees may fail to produce on demand a prescription for each container of liquor disposed of or unaccounted for.

**Sec. 39.23. STANDARDS.** No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor not meeting the standards established by the United States Pharmacopoeia or the National Formulary.

**Sec. 39.24. SALE FOR MEDICINAL PURPOSES ONLY.** No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor for other than medicinal purposes.

**Sec. 39.25. CONSUMPTION ON PREMISES PROHIBITED.** No holder of a medicinal permit or any of his agents or employees may permit any liquor to be consumed on the pharmacy premises.

**Sec. 39.26. AMOUNT SOLD TO ONE PERSON.** No holder of a medicinal permit or any of his agents or employees may sell or dispense more than one pint of liquor to a person in one day.

**Sec. 39.27. NUMBER OF PRESCRIPTIONS LIMITED.** No holder of a medicinal permit or any of his agents or employees may in any one week sell or dispense liquor on prescriptions exceeding the number of prescriptions filled during that week for other medicines, excluding narcotics. For the purposes of this section a week begins Sunday at midnight.

**Sec. 39.28. LIMITATION ON AMOUNT POSSESSED.** No holder of a medicinal permit or any of his agents or employees may have in his physical possession more than 10 gallons of liquor at one time.

**Sec. 39.29. FROM WHOM PURCHASED.** No holder of a medicinal permit or any of his agents or employees may purchase or acquire stocks of liquor from any person who is not the holder of a wholesaler's permit in this state.

**Sec. 39.30. COMPENSATION OF PHYSICIANS PROHIBITED.** No holder of a medicinal permit or any of his agents or employees may compensate or guarantee any income to a physician in this state for writing a prescription for liquor.

**Sec. 39.31. SALES TO MINORS.** No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor to a person under 19 years of age unless that minor presents with his prescription the written consent of his parent or guardian. The person making the sale shall file the written consent with the prescription.

**Sec. 39.32. SALE TO INTOXICATED PERSON.** No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor to a person showing evidence of intoxication.

### **SUBCHAPTER C. SUSPENSION OR CANCELLATION OF PERMIT**

**Sec. 39.41. CHANGE OF LOCATION.** The commission or administrator shall cancel the medicinal permit of a pharmacy owner if the pharmacy for which the permit was issued moves from the place where it was located when the permit was issued into an incorporated city or town, into a different incorporated city or town or into a different justice precinct.

**Sec. 39.42. BREACH OF PEACE.** The commission or administrator may suspend or cancel a medicinal permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the pharmacy premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the pharmacy premises or on premises under his control.

## **CHAPTER 40. PHYSICIAN'S PERMIT**

**Sec. 40.01. AUTHORIZED ACTIVITIES.** The holder of a physician's permit may write prescriptions for liquor for medical purposes in accordance with the restrictions set forth in this chapter.

**Sec. 40.02. FEE.** The annual state fee for a physician's permit is \$1.

**Sec. 40.03. ELIGIBILITY FOR PERMIT.** (a) A physician licensed by the State Board of Medical Examiners to administer internal medicine to human beings may obtain a physician's permit. Each applicant for a permit must present with the application a certificate issued by the State Board of Medical Examiners showing his qualification to hold a permit.

(b) No person who has been convicted of a violation of this code or who has had a permit authorized by this code cancelled within two years preceding the date of filing an application for a permit may be issued a physician's permit.

**Sec. 40.04. PRESCRIPTION FORMS.** (a) The commission shall adopt rules determining the form of and manner of furnishing prescription forms. No person may prescribe liquor on any form not obtained from the commission or in a man-



ner not meeting the requirements specified in this chapter.

(b) A prescription, when issued, must contain the following information:

- (1) the date of issuance;
- (2) the name and address of the issuing physician;
- (3) the name, address, sex, and age of the patient and the diagnosis of the disease or ailment of the patient;
- (4) the amount and type of liquor prescribed;
- (5) the directions for use by the patient; and
- (6) the signature of the issuing physician.

(c) The commission may adopt regulations regarding the printing and issuance of prescription blanks, the keeping of records of prescriptions issued, the making of reports, and the disposal of unused, mutilated, or defaced blanks which it deems necessary to require physicians to strictly conform to the provisions of this chapter.

**Sec. 40.05. PROHIBITED ACTIVITIES.** No physician may:

- (1) prescribe liquor for any purpose unless he holds a physician's permit;
- (2) prescribe liquor for other than medicinal purposes;
- (3) issue prescriptions for liquor to any person without first making a physical examination of the patient to determine the disease or ailment afflicting him;
- (4) issue a prescription which does not contain all the information required by this chapter written in the English language;
- (5) accept any sort of compensation or guarantee as to income or material benefit from a holder of a medicinal permit for writing a prescription;
- (6) prescribe more than one pint of liquor for a person in any one day;
- (7) prescribe liquor for any person showing evidence of intoxication;
- (8) prescribe liquor for any person under any name other than the true name of the person for whom the liquor is intended;
- (9) prescribe liquor for any person under the age of 19 years unless he has the written consent of the person's parent or guardian;
- (10) issue more than 100 prescriptions for liquor in any period of 90 days, beginning from the date designated by the physician in any order for prescription forms placed with the commission;
- (11) fail or refuse to make and keep for a period of two years any record of prescriptions issued for liquor as required by the commission;
- (12) fail to make reports required by the commission; or
- (13) fail to divulge information or produce records of the issuance of prescriptions when requested to do so by a representative of the commission or by any peace officer or any county or district attorney.

## **CHAPTER 41. CARRIER PERMIT**

**Sec. 41.01. AUTHORIZED ACTIVITIES.** (a) The holder of a carrier permit may transport liquor into and out of this state and between points within the state.

(b) The holder may transport liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

**Sec. 41.02. FEE.** The annual state fee for a carrier permit is \$30.

**Sec. 41.03. ELIGIBILITY FOR PERMIT.** A carrier permit may be issued to:

- (1) a water carrier;
- (2) an airline;
- (3) a railway; or

(4) a common carrier operating under a certificate of convenience and necessity issued by the Railroad Commission of Texas or under a certificate issued by the Interstate Commerce Commission.

**Sec. 41.04. REQUIRED INFORMATION.** The holder of a carrier permit shall furnish information required by the commission concerning the transportation of liquor.

## **CHAPTER 42. PRIVATE CARRIER PERMIT**

**Sec. 42.01. AUTHORIZED ACTIVITIES.** (a) The holder of a private carrier permit who is also a holder of a brewer's, distiller's and rectifier's, winery, wholesaler's, class B wholesaler's, or wine bottler's permit may transport liquor from the place of purchase to his place of business and from the place of sale or distribution to the purchaser in vehicles owned or leased in good faith by the holder if the transportation is for a lawful purpose.

(b) The holder of a private carrier permit may transport liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

**Sec. 42.02. FEE.** The annual state fee for a private carrier permit is \$30.

**Sec. 42.03. APPLICATION OF MOTOR CARRIER LAWS.** A person desiring to transport liquor for hire must first secure a certificate or permit from the Railroad Commission in accordance with the applicable motor carrier laws, and he shall comply with the provisions of the motor carrier laws when engaging in the business of transporting liquor for hire.

**Sec. 42.04. VEHICLES USED FOR TRANSPORTING LIQUOR.** (a) Each application for a private carrier permit must contain a full description of the motor vehicles used by the applicant for transporting liquor as well as all other information required by the commission.

(b) Each vehicle used for the transportation of liquor within the state shall have printed or painted on it the designation required by the commission.

(c) A permittee may not transport liquor in any vehicle which is not fully described in his application for a permit.

**Sec. 42.05. TRANSPORTATION OF ALE AND MALT LIQUOR: RULES.** The commission may issue rules prescribing the manner in which ale and malt liquor may be transported in the state by private carrier's permittees who also hold class B wholesaler's permits.

## **CHAPTER 43. LOCAL CARTAGE PERMIT**

**Sec. 43.01. AUTHORIZED ACTIVITIES.** (a) A warehouse or transfer com-

pany that holds a local cartage permit may transport liquor for hire inside the corporate limits of any city or town in the state.

(b) A package store, wine only package store, or local distributor's permittee who also holds a local cartage permit may transfer alcoholic beverages in accordance with Sections 22.08, 23.04, and 24.04 of this code.

**Sec. 43.02. FEE.** The annual state fee for a local cartage permit is \$30.

**Sec. 43.03. PERMIT REQUIRED.** No person may transport liquor for hire inside a city or town unless he holds a local cartage permit. No person may transport liquor in violation of the motor carrier laws of this state.

**Sec. 43.04. ELIGIBILITY FOR PERMIT.** The commission may issue a local cartage permit to a warehouse or transfer company or to a holder of a package store, wine only package store, or local distributor's permit.

**Sec. 43.05. VEHICLES USED BY PERMITTEE.** (a) No local cartage permittee may transport liquor unless:

(1) a description of each vehicle used in the transportation, as required by the commission, has been submitted to the commission; and

(2) each vehicle has been plainly marked or lettered to indicate that it is being used for the transportation of liquor by a local cartage permittee.

(b) the transportation of liquor by a permittee in a vehicle not described and marked in accordance with this section is a violation of this code and is a ground for the cancellation of the permit.

**Sec. 43.06. CERTAIN TRANSPORTATION PROHIBITED.** No holder of a local cartage permit may for hire transport liquor between incorporated cities or towns in this state.

**Sec. 43.07. VIOLATION OF CODE, RULE.** If a holder of a local cartage permit who also holds a package store permit or wine only package store permit violates any provision of this code or any rule or regulation of the commission, the violation is a ground for the suspension or cancellation of any or all permits or licenses held by that person for the premises where the offense was committed.

#### **CHAPTER 44. BEVERAGE CARTAGE PERMIT**

**Sec. 44.01. AUTHORIZED ACTIVITIES.** A beverage cartage permit authorizes the holder of a mixed beverage or private club registration permit to transfer alcoholic beverages from the place of purchase to the licensed premises as provided in this code.

**Sec. 44.02. FEE.** The annual state fee for a beverage cartage permit is \$20.

**Sec. 44.03. ELIGIBILITY FOR PERMIT.** The commission may issue a beverage cartage permit to the holder of a mixed beverage or private club registration permit.

#### **CHAPTER 45. STORAGE PERMIT**

**Sec. 45.01. AUTHORIZED ACTIVITIES.** The holder of a storage permit may

store liquor in a public bonded warehouse for which a permit has been issued or in a private warehouse owned and operated by the holder.

**Sec. 45.02. FEE.** The annual state fee for a storage permit is \$100.

**Sec. 45.03. ELIGIBILITY FOR PERMIT; RESTRICTIONS; EXCEPTIONS.**

(a) A storage permit may be issued to a holder of a brewer's, distiller's and rectifier's, winery, wholesaler's, class B wholesaler's, or wine bottler's permit.

(b) A permit must be obtained for each place of storage.

(c) A storage permit may not be issued for a location outside the county in which the permittee's business is located.

(d) No storage permit may be issued for a location in a dry area.

(e) A permit is not required for the storage of stock in trade on the licensed premises.

## **CHAPTER 46. BONDED WAREHOUSE PERMIT**

**Sec. 46.01. AUTHORIZED ACTIVITIES.** The holder of a bonded warehouse permit may store liquor for any permittee who holds a permit authorizing its storage in a public bonded warehouse.

**Sec. 46.02. FEE.** The annual state fee for a bonded warehouse permit is \$150.

**Sec. 46.03. QUALIFICATIONS FOR PERMIT.** A bonded warehouse permit may be issued to any public bonded warehouse 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.

**Sec. 46.04. STORAGE INFORMATION.** The holder of a bonded warehouse permit shall furnish such information concerning the liquor stored and withdrawn as may be required by the commission.

## **CHAPTER 47. LOCAL INDUSTRIAL ALCOHOL MANUFACTURER'S PERMIT**

**Sec. 47.01. AUTHORIZED ACTIVITIES.** The holder of a local industrial alcohol manufacturer's permit may:

(1) manufacture, rectify, and refine industrial alcohol, which term as used in this chapter means an alcohol which is produced for industrial purposes only and is not fit for human consumption;

(2) denature alcohol produced under the permit;

(3) sell denatured or industrial alcohol produced under the permit to holders of local industrial alcohol manufacturer's permits or industrial permits and to qualified persons outside the state; and

(4) blend industrial alcohol produced under the permit with petroleum distillates and sell or use the resulting product as a motor fuel.

**Sec 47.02. FEE.** The annual state fee for a local industrial alcohol manufacturer's permit is \$100.

**Sec. 47.03. TRANSPORTATION.** (a) A local industrial alcohol manufacturer's permittee may transport the alcohol produced under the local industrial alcohol manufacturer's permit by railway tank car, barge, or motor truck if the tank car, barge, or motor truck is owned by him or leased in good faith.

(b) The permittee must comply with all applicable state and federal laws regulating transportation.

(c) The permittee may not transport alcohol under the authority of this section unless, at the time the transportation occurs, the tank car, barge, or motor truck is fully described in a sworn statement on file with the commission.

(d) The permittee may transport the alcohol to a wet area by crossing a dry area if that route is necessary or convenient.

**Sec. 47.04. STORAGE FACILITY.** (a) A local industrial alcohol manufacturer's permit applicant or permittee may request in the permit application or in writing after the permit is issued that the commission or administrator authorize the permittee to store alcohol at a storage facility under the permittee's control that is located off the licensed premises. The permittee shall supply any information regarding the storage that the commission or administrator requires.

(b) A request under this section may include a request that the permittee be permitted to transport the alcohol to the storage facility by pipeline or other means.

(c) If the request is granted, the commission or administrator may attach any conditions regarding the use of the facility or transportation of alcohol to the facility that the commission or administrator considers proper.

(d) A storage facility authorized under this section is treated as a part of the licensed premises for the purpose of the permittee's consent to inspection under Section 101.04 of this code.

**Sec. 47.05. PLANT PLAN REQUIREMENTS.** If the plant plans submitted by the applicant establish to the satisfaction of the commission that the plant is not capable of producing alcohol for beverage purposes and if no change in the plant is made without commission approval, the permit for which application is made shall be considered to be an industrial permit as that term is used in Section 109.53 of this code.

**Sec. 47.06. EXEMPTION FOR STATE INSTITUTIONS.** A state institution is exempt from these provisions of the code when manufacturing industrial alcohol for scientific or laboratory use.

**Sec. 47.07. LOCAL OPTION STATUS OF AREA.** Whether an area is wet or dry under the local option laws does not affect the eligibility of an applicant to hold a permit under this chapter.

## **SUBTITLE B. LICENSES**

### **CHAPTER 61. PROVISIONS GENERALLY APPLICABLE TO LICENSES**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 61.01. LICENSE REQUIRED.** No person may manufacture or brew beer

for the purpose of sale, import it into this state, distribute or sell it, or possess it for the purpose of sale without having first obtained an appropriate license or permit as provided in this code. Each licensee shall display his license at all times in a conspicuous place at the licensed place of business.

**Sec. 61.02. NATURE OF LICENSE; SUCCESSION ON DEATH, BANKRUPTCY, ETC.** (a) A license issued under this code is a purely personal privilege and is subject to revocation as provided in this code. It is not property, is not subject to execution, does not pass by descent or distribution, and ceases on the death of the holder.

(b) On the death of the licensee or of a person having an interest in the license, or on bankruptcy, receivership, or partnership dissolution, the receiver or successor in interest may apply to the county judge of the county where the licensed premises are located for certification that he is the receiver or successor in interest. On certification, unless good cause for refusal is shown, the commission or administrator shall grant permission, by letter or otherwise, for the receiver or successor in interest to operate the business during the unexpired portion of the license. The license may not be renewed, but the receiver or successor in interest may apply for an original license. A receiver or successor in interest operating for the unexpired portion of the license is subject to the provisions of this code relating to the suspension or cancellation of a license.

**Sec. 61.03. DURATION AND EXPIRATION OF LICENSE.** No license may be issued for a term longer than one year. Any license except a branch, importer's, importer's carrier's, or temporary license expires one year after the date on which it is issued.

**Sec. 61.04. LICENSE NOT ASSIGNABLE.** No holder of a license may assign his license to another person.

**Sec. 61.05. NAME OF BUSINESS.** No person may conduct a business engaged in the manufacture, distribution, importation, or sale of beer as owner or part owner except under the name to which the license covering his place of business is issued.

**Sec. 61.06. PRIVILEGES LIMITED TO LICENSED PREMISES; DELIVERIES.** No person licensed to sell beer, except a manufacturer or distributor, may use or display a license or exercise a privilege granted by the license except at the licensed premises. Deliveries of beer and collections may be made off the licensed premises in areas where the sale of beer is legal inside the county where the license is issued, but only in response to orders placed by the customer in person at the licensed premises or by mail or telephone to the licensed premises.

**Sec. 61.07. AGENT FOR SERVICE.** Each manufacturer, distributor, or person shipping or delivering beer into this state shall file a certificate with the secretary of state designating the name, street address, and business of his agent on whom process may be served. If a certificate is not filed, service may be had on the secretary of state in any cause of action arising out of a violation of this code; and the secretary of state shall send any citation served on him by registered mail, return receipt requested, to the person for whom the citation is intended. The

receipt is prima facie evidence of service on the person.

**Sec. 61.08. STATEMENT OF STOCK OWNERSHIP.** The commission at any time may require an officer of a corporation holding a license to file a sworn statement showing the actual owners of the stock of the corporation, the amount of stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders.

**Sec. 61.09. CHANGE OF LOCATION.** If a licensee desires to change his place of business, he may do so by applying to the county judge on a form prescribed by the commission and obtaining his consent. The application may be subject to protest and hearing in the same way as an application for an original license. The county judge may deny the application for any cause for which an original license application may be denied. No additional license fee for the unexpired term of the license shall be required in the case of an application for a change of location.

**Sec. 61.10. REPLACEMENT OF LICENSE.** If a license is mutilated or destroyed, the commission or administrator may issue another license as a replacement in a manner acceptable to the commission or administrator.

**Sec. 61.11. WARNING SIGN REQUIRED.** (a) Each holder of a license shall display in a prominent place on his premises a sign, at least 6 inches high and 14 inches wide, stating: FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF TEN YEARS' IMPRISONMENT AND A FINE NOT TO EXCEED \$5,000 FOR CARRYING WEAPONS WHERE ALCOHOLIC BEVERAGES ARE SOLD, SERVED, OR CONSUMED.

(b) A licensee who violates this section commits a misdemeanor punishable by a fine of not more than \$25.

**Sec. 61.12. RESTRICTION ON CONSUMPTION.** 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.

## **SUBCHAPTER B. APPLICATION AND ISSUANCE OF LICENSES**

**Sec. 61.31. APPLICATION FOR LICENSE.** (a) A person may file an application for a license to manufacture, distribute, or sell beer in termtime or vacation with the county judge of the county in which he desires to conduct business. He shall file the application in duplicate.

(b) The county judge shall set the application for a hearing to be held not less than 5 nor more than 10 days after the application is filed.

(c) Each applicant for an original license, other than a branch or temporary license, shall pay a hearing fee of \$5 to the county clerk at the time of the hearing. The county clerk shall deposit the fee in the county treasury. The applicant is liable for no other fee except the annual license fee prescribed by this code.

(d) No person may sell beer during the pendency of his original license application. No official may advise a person to the contrary.

**Sec. 61.32. HEARING BY COUNTY JUDGE.** (a) On hearing an application, if the county judge finds that all facts stated in the application are true and no legal

ground to refuse a license exists, he shall enter an order certifying those findings and give the applicant a copy of the order. If the county judge finds otherwise, he shall enter an order accordingly.

(b) If the county judge enters an order favorable to the applicant, the applicant shall present a copy of the order to the assessor and collector of taxes of the county and pay that officer the appropriate license fee. The assessor and collector of taxes then shall report to the commission on a form prescribed by the commission, certifying that the application was approved and that all required fees have been paid and furnishing any other information the commission requires. The assessor and collector of taxes shall attach a copy of the original application to the report.

(c) In the case of an application to sell beer at retail, the county judge shall give due consideration to any recommendations made by representatives of the commission, the sheriff or county or district attorney of the county where the license is sought, or the mayor or chief of police of the incorporated city where the applicant seeks to conduct business.

**Sec. 61.33. ACTION BY COMMISSION OR ADMINISTRATOR.** (a) On receiving a report from the assessor and collector of taxes under Section 61.32(b) of this code, the commission or administrator shall issue the appropriate license if the commission or administrator finds that the applicant is entitled to a license. The license shall show the class of business the applicant is authorized to conduct, the amount of fees paid, the address of the place of business, the date the license is issued and the date it expires, and any other information the commission considers proper.

(b) The commission or administrator may refuse to issue a license after receiving the report of the assessor and collector of taxes if the commission or administrator possesses information from which it is determined that any statement in the license application is false or misleading or that there is other legal reason why a license should not be issued. If the commission or administrator refuses to issue a license, it or he shall enter an order accordingly and the applicant is entitled to a refund of any license fee he paid the assessor and collector of taxes in connection with the application.

**Sec. 61.34. APPEAL FROM DENIAL.** (a) If the county judge, commission, or administrator denies an application, the applicant may appeal within 30 days from the date the order becomes final and appealable to the district court of the county where the application was made. The appeal is governed by Section 11.67 of this code, and the court may hear the appeal in termtime or vacation.

(b) If the judgment of the district court is in favor of the applicant, regardless of whether an appeal is taken, a copy of the judgment shall be presented to the assessor and collector of taxes of the county where the application was made: The assessor and collector of taxes shall accept the fees required by this code and proceed as provided under Section 61.32 of this code as if the county judge had approved the application.

(c) If a license is issued on the basis of a district court judgment and that judgment is reversed on appeal, the mandate of the appellate court automatically invalidates the license and the applicant is entitled to a proportionate refund of



fees for the unexpired portion of the license. As much of the proceeds from license fees collected under this subtitle as is necessary may be appropriated for the payment of those refunds.

(d) A person appealing from an order under this section shall give bond for all costs incident to the appeal and shall be required to pay those costs if the judgement on appeal is unfavorable to the applicant, but not otherwise. No bond is required on appeals filed on behalf of the state.

**Sec. 61.35. LICENSE FEES.** (a) A separate license fee is required for each place of business that manufactures, imports, or sells beer.

(b) All license fees, except those for temporary licenses, shall be deposited as provided in Section 205.02 of this code. The assessor and collector of taxes shall make statements of the amounts collected by him under this code to the commission at the times and in the manner required by the commission or administrator.

(c) No licensee may obtain a refund on the surrender of nonuse of a license except as provided by this code.

(d) If a licensee engaged in selling beer is prevented from continuing in business by a local option election, he is entitled to a refund of a proportionate amount of the license fees he has paid covering the unexpired term of his license. As much of the proceeds derived under the provisions of this subtitle as is necessary may be appropriated for that purpose.

**Sec. 61.36. LOCAL FEE AUTHORIZED.** (a) The governing body of an incorporated city or town may levy and collect a fee not to exceed one-half of the state fee for each license, except a temporary or agent's beer license, issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half the state fee for each license, except a temporary or agent's beer license, issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the licensee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j-4.1, Vernon's Texas Civil Statutes), and the local sales and use tax levied under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

(b) The commission or administrator may cancel a license if it finds the permittee has not paid a fee levied by a city under this section. A licensee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate licensees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

**Sec. 61.37. CERTIFICATION OF WET OR DRY STATUS.** (a) The county clerk of the county in which an application for a license is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by any valid order of the commissioners court.

(b) The city secretary or clerk of the city in which an application for a license is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by charter or ordinance.

**Sec. 61.38. NOTICE OF APPLICATION.** (a) When an application for a license to manufacture or distribute beer is filed, the county clerk shall post at the courthouse door a written notice containing the substance of the application and the date set for hearing.

(b) When an original application to sell beer at retail at a location previously licensed is filed, the county clerk shall post at the courthouse door a written notice containing the substance of the application and the date set for hearing.

(c) When an original application to sell beer at retail at a location not previously licensed is filed, the county clerk shall publish notice for two consecutive issues in a newspaper of general circulation published in the city or town in which the applicant's place of business is to be located. If no newspaper of the general circulation is published in that city or town, the notice shall be published in a newspaper of general circulation in the county where the applicant's business is to be located. If no newspaper of general circulation is published in that county, the notice shall be published in a newspaper which is published in the closest neighboring county and is circulated in the county where the license is sought. The notice shall be in 10-point boldface type and shall set forth the type of license applied for; the exact location of the business; the name of the owner or owners; the trade name, if operating under an assumed name; and in the case of a corporate applicant the names and titles of all officers of the corporation. At the time the application is filed, the applicant shall deposit with the clerk the cost of publishing notice, which the clerk shall use to pay for the publication.

**Sec. 61.39. MAY CONTEST APPLICATION.** Any person may contest the facts stated in an application for a license to distribute, manufacture, or sell beer at retail, or the applicant's right to secure a license, if he gives security for all costs which may be incurred in the contest if the case should be decided in favor of the applicant. No security for costs may be required of an officer of a county or incorporated city or town.

**Sec. 61.40. PREMISES INELIGIBLE FOR LICENSE.** Section 11.44 of this code, which describes certain premises that are ineligible for a license, applies to licenses issued under this subtitle.

**Sec. 61.41. SECOND LICENSE AT SAME LOCATION; EFFECT ON EXISTING LICENSE.** No license may be issued for a premises, location, or place of business for which a license is in effect unless the holder of the existing license has shown to the satisfaction of the commission that he will no longer exercise any privilege granted by the existing license at that location. If the holder of the existing license desires to transfer the license to another location, he may apply for a transfer of location in accordance with this code. If the holder of the existing license has made a declaration required by the commission that he will no longer use the license, he may not manufacture or sell beer or possess it for the purpose of sale until the license has been reinstated. The holder may apply to the county judge

for the reinstatement of his license in the same manner and according to the same procedure as in the case of an original license application. The county judge or the commission or administrator may deny reinstatement of the license for any cause for which an original license application may be denied.

**Sec. 61.42. MANDATORY GROUNDS FOR REFUSAL: DISTRIBUTOR OR RETAILER.** (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 under 19 years of age;
- (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 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.

(b) The county judge, commission, or administrator shall refuse to approve or issue an original retail dealer's or retail dealer's on-premise license unless the applicant for the license files with the application a certificate issued by the comptroller of public accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit for the place of business for which the license is sought.

**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;

(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.

**Sec. 61.44. REFUSAL OF DISTRIBUTOR'S OR RETAILER'S LICENSE: PROHIBITED INTERESTS.** (a) 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 a financial interest in an establishment authorized to sell distilled spirits, except as authorized in Section 22.06, 24.05, or 102.05 of this code;

(2) a person engaged in the business of selling distilled spirits has a financial interest in the business to be conducted under the license sought by the applicant, except as authorized in Section 22.06, 24.05, or 102.05 of this code; or

(3) the applicant is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling distilled spirits, except as authorized in Section 22.06, 24.05, or 102.05 of this code.

(b) the county judge may refuse to approve an application for a retail dealer's license if he has reasonable grounds to believe and finds that:

(1) the applicant has a real interest in the business or premises of the holder of a manufacturer's or distributor's license; or

(2) the premises sought to be licensed are owned in whole or part by the

holder of a manufacturer's or distributor's license.

**Sec. 61.45. REFUSAL OF RETAILER'S OR DISTRIBUTOR'S LICENSE: PROHIBITED INTEREST IN PREMISES.** (a) The county judge may refuse to approve an application for a retail dealer's license if he has reasonable grounds to believe and finds that:

(1) the applicant owns or has an interest in the premises covered by a manufacturer's or distributor's license; or

(2) the holder of a manufacturer's or distributor's license owns or has an interest in the premises sought to be licensed.

(b) the county judge may refuse to approve an application for a distributor's license if he has reasonable grounds to believe and finds that:

(1) the applicant owns or has an interest in the premises covered by a retail dealer's license; or

(2) a holder of a retail dealer's license owns or has an interest in the premises sought to be licensed.

**Sec. 61.46. MANUFACTURER'S LICENSE: GROUNDS FOR REFUSAL.**

(a) This section applies to any applicant for a manufacturer's license, including a domestic corporation or foreign corporation qualified to do business in Texas, administrator or executor, or other person. This section does not apply to a holder of a subsequent renewal of a manufacturer's license which was in effect on January 1, 1953.

(b) The county judge shall refuse to approve an application for a manufacturer's license if he has reasonable grounds to believe and finds that the applicant has failed to state under oath that it will engage in the business of brewing and packaging beer in this state within three years after the issuance of its original license in sufficient quantities as to make its operation that of a bona fide brewing manufacturer.

(c) In the case of a corporate applicant, the statement shall be sworn to and subscribed by one of the corporation's principal officers.

**Sec. 61.47. RETAIL LICENSE: REFUSAL BY COMMISSION OR ADMINISTRATOR.** If the county judge approves an application for a license as a retail dealer, the commission or administrator may refuse to issue a license for any reason which would have been a ground for the county judge to have refused to approve the application.

**Sec. 61.48. Renewal application.** An application to renew a license shall be filed in writing with the assessor and collector of taxes of the county in which the licensed premises are located no earlier than 30 days before the license expires but not after it expires. The application shall be signed by the applicant and shall contain complete information required by the commission showing that the applicant is not disqualified from holding a license. The application shall be accompanied by the appropriate license fee plus a filing fee of \$2. The assessor and collector of taxes shall deposit the \$2 filing fee in the county treasury and shall account for it as a fee of office. No applicant for a renewal may be required to pay any fee other than license fees and the filing fee unless he is required by the commission or ad-

ministrator to submit to a renewal hearing before the county judge.

**Sec. 61.49. RENEWAL APPLICATION TRANSMITTED TO COMMISSION.** When the renewal application has been filed in accordance with Section 61.48 of this code, the assessor and collector of taxes shall transmit to the commission the original copy of the application plus a certification that all required fees have been paid for the ensuing license period. On receiving the application and certification, the commission or administrator may in its discretion issue a renewal license or reject the application and require the applicant to file an application with the county judge and submit to a hearing as is required in the case of an original application. When an application for renewal is rejected, the applicant is entitled to a refund of any license fee that was paid to the assessor and collector of taxes at the time the renewal application was filed.

**Sec. 61.50. RENEWAL OF RETAIL DEALER'S LICENSE: GROUNDS FOR REFUSAL.** The commission or administrator, without a hearing, may refuse to issue a renewal of a retail dealer's license and require the applicant to make an original application if it is found that circumstances exist which would warrant the refusal of an original application under any pertinent provision of this code.

**Sec. 61.51. PREMISES DEFINED; DESIGNATION OF LICENSED PREMISES.** "Premises" is defined in Section 11.49 of this code. The designating of licensed premises by license applicants is also covered by that section.

### **SUBCHAPTER C. CANCELLATION AND SUSPENSION OF LICENSES**

**Sec. 61.71. GROUNDS FOR CANCELLATION OR SUSPENSION: RETAIL DEALER.** (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) knowingly sold, served, or delivered beer to a person under 19 years of age;

(6) sold, served, or delivered beer to a person showing evidence of intoxication;

(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-premise 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 those 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.

(b) Subdivisions (9), (28), (29), and (30) of Subsection (a) of this section do not apply to a licensee whose business is located in a hotel in which an establishment authorized to sell distilled spirits in unbroken packages is also located if the licensed premises of the businesses do not coincide or overlap.

(c) The grounds listed in Subsection (a) of this section, except the ground contained in Subdivision (2), also apply to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. This subsection shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

(d) The grounds set forth in Subdivisions (1), (4)—(14), (16), (18), (19), (21), (23), and (26), of Subsection (a) of this section, also apply to an agent, servant, or employee of the licensee.

**Sec. 61.711. RETAIL DEALER: CONVICTION OF OFFENSE RELATING TO DISCRIMINATION.** 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:

(1) the licensee 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 or the discrimination against an individual on the basis of the individual's race, color, creed, or national origin; and

(2) the offense was committed on the licensed premises or in connection with the operation of the licensee's business.

**Sec. 61.712. GROUNDS FOR CANCELLATION OR SUSPENSION: SALES TAX.** The commission or administrator may refuse to renew or after notice and hearing, suspend for not more than 60 days or cancel a license if the commission or administrator finds that the licensee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the license; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales,



Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act as amended (Article 1066c, Vernon's Texas Civil Statutes.)

**Sec. 61.72. SUSPENSION OR CANCELLATION: RETAILER: PREMISES.**

Except for a violation of the credit or cash law, a penalty of suspension or cancellation of the license of a retail dealer shall be assessed against the license for the premises where the offense was committed.

**Sec. 61.73 RETAIL DEALER: CREDIT PURCHASE OR DISHONORED CHECK.**

(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 purchased beer or the containers or original packages in which it is contained or packaged except by cash payment to the seller on or before delivery. No holder of either type of license may use a maneuver, device, subterfuge, or shift by which credit is accepted, including payment or attempted payment by a postdated check or draft. Credit for the return of unbroken or undamaged containers or original packages previously paid for by the purchaser may be accepted as cash by the seller in an amount not more than the amount originally paid for them by the purchaser.

(b) 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 gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.

**Sec. 61.74. GROUNDS FOR CANCELLATION OR SUSPENSION:**

**DISTRIBUTOR.** (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 on his original application or a renewal application;

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

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

(14) knowingly sold or delivered beer to a person under 19 years of age; 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.

(b) Each ground specified in Subsection (a) of this section also applies to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. The grounds specified in Subdivisions (7)-(9) and (13)-(15) also apply to an agent, servant, or employee of the licensee.

**Sec. 61.75. SUSPENSION OF MANUFACTURER'S LICENSE.** If a manufacturer violates a provision of this code or a rule of the commission, the commission or administrator may order the manufacturer to cease and desist from the violation and may suspend its license, after notice and hearing, until the licensee obeys the order.

**Sec. 61.76. SUSPENSION INSTEAD OF CANCELLATION.** When a cause for the cancellation of a license is prescribed by this code, the commission or administrator has the discretionary authority to suspend the license for not more than 60 days rather than to cancel the license.

**Sec. 61.761. ALTERNATIVES TO SUSPENSION, CANCELLATION.** Section 11.64 of this code relates to alternatives to the suspension or cancellation of a license.

**Sec. 61.77. CERTAIN ACTS ALSO VIOLATIONS OF CODE.** Any act of omission or commission which is a ground for cancellation or suspension of a license under Section 61.71, 61.74, or 61.75 of this code is also a violation of this code, punishable as provided in Section 1.05 of this code, except that the penalty for making a false statement in an application for a license or in a statement, report, or other instrument to be filed with the commission, which is required to be sworn, is provided in Section 101.69 of this code.

**Sec. 61.78. VIOLATOR NOT EXCUSED BY CANCELLATION OR SUSPENSION.** The cancellation or suspension of a license does not excuse the violator from the penalties provided in this code.

**Sec. 61.79. NOTICE OF HEARING: REFUSAL, CANCELLATION, OR SUSPENSION OF LICENSE.** Section 11.63 of this code relates to notice of a hearing for the refusal, cancellation, or suspension of a license.

**Sec. 61.80. HEARING FOR CANCELLATION OR SUSPENSION OF LICENSE.** The commission or administrator, on the motion of either, may set a date for a hearing to determine if a license should be cancelled or suspended. The commission or administrator shall set a hearing on the petition of the mayor or chief of police of the city or town in which the licensed premises are located or of the county judge, sheriff, or county attorney of the county in which the licensed premises are located. The commission or administrator shall notify the licensee of the hearing and of his right to appear and show cause why his license should not be cancelled or suspended.

**Sec. 61.81. APPEAL FROM CANCELLATION, SUSPENSION, OR REFUSAL OF LICENSE.** Section 11.67 of this code applies to an appeal from a decision or order of the commission or administrator refusing, cancelling, or suspending a license.

**Sec. 61.82. MAY NOT RESTRAIN SUSPENSION ORDER.** No suit of any nature may be maintained in a court of this state to restrain the commission or administrator or any other officer from enforcing an order of suspension issued by the commission or administrator.

**Sec. 61.83. CANCELLATION OR SUSPENSION: WHEN EFFECTIVE.** The manner in which the suspension or cancellation of a license takes effect is governed by Section 11.65 of this code.

**Sec. 61.84. ACTIVITIES PROHIBITED DURING CANCELLATION OR SUSPENSION.** (a) No person whose license is cancelled may sell or offer for sale beer for a period of one year immediately following the cancellation, unless the order of cancellation is superceded pending trial or unless he prevails in a final judgment rendered on an appeal prosecuted in accordance with this code.

(b) No person may sell or offer for sale an alcoholic beverage which he was authorized to sell under a license after the license has been suspended. If it is established to the satisfaction of the commission or administrator at a hearing that an alcoholic beverage was sold on or from a licensed premise during a period of suspension, the commission or administrator may cancel the license.

**Sec. 61.85. DISPOSAL OF STOCK ON TERMINATION OF LICENSE.** (a) A person whose license is cancelled or forfeited may, within 30 days of the cancellation or forfeiture, make a bulk sale or disposal of any stock of beer on hand at the time of the cancellation or forfeiture.

(b) The authority of the commission to promulgate rules relating to the disposal of beverages in bulk on the suspension or cancellation of a license or on the death, insolvency, or bankruptcy of a licensee is covered by Section 11.69 of this code.

## **CHAPTER 62. MANUFACTURER'S LICENSE**

**Sec. 62.01. AUTHORIZED ACTIVITIES.** The holder of a manufacturer's license may:

(1) manufacture or brew beer and distribute and sell it in the state to the holders of general, local, and branch distributor's licenses and to qualified persons outside the state;

- (2) dispense beer for consumption on the premises; and
- (3) bottle and can beer and pack it into containers for resale in this state, regardless of whether the beer is manufactured or brewed in this state or in another state and imported into Texas.

**Sec. 62.02. FEE.** (a) Each person who establishes, operates, or maintains one or more licensed manufacturing establishments in this state under the same general management or ownership shall pay an annual state fee as follows:

- (1) the fee for the first establishment is \$750;
- (2) the fee for the second establishment is \$1,500;
- (3) the fee for the third, fourth, and fifth establishments is \$4,275 for each establishment; and
- (4) the fee for each establishment in excess of five is \$8,400.

(b) For the purposes of this section, two or more establishments are under the same general management or ownership if:

- (1) they bottle the same brand of beer or beer brewed by the same manufacturer; or
- (2) the persons (regardless of domicile) who establish, operate, or maintain the establishments are controlled or directed by one management or by an association of ultimate management.

**Sec. 62.03. STATEMENT OF INTENTION.** (a) Each applicant for a manufacturer's license shall file with his application a sworn statement that he will be engaged in the business of brewing and packaging beer in Texas in quantities sufficient to make of his operation that of a bona fide brewing manufacturer within three years of the issuance of his original license. If the applicant is a corporation, the statement must be signed by one of its principal officers. The county judge shall not approve an application unless it is accompanied by the required sworn statement.

(b) This section does not apply to the holder of a manufacturer's license which was in effect on January 1, 1953.

**Sec. 62.04. RENEWAL OF LICENSE DURING PRELIMINARY STAGES OF OPERATION.** (a) renewal of a manufacturer's license may not be denied during the two-year period following the issuance of the original license on the ground that the licensee has not brewed and packaged beer in this state if the licensee is engaged in good faith in constructing a brewing plant on the licensed premises or is engaged in one of the following preparatory stages of construction:

- (1) preliminary engineering;
- (2) preparing drawings and specifications;
- (3) conducting engineering, architectural, or equipment studies; or
- (4) preparing for the taking of bids from contractors.

(b) During the three-year period following the issuance of a manufacturer's license, as long as the licensee is engaged in construction or in a preliminary stage of construction enumerated in Subsection (a) of this section, the commission shall issue each renewal license to take effect immediately on the expiration of the expiring license and shall not require the licensee to make an original application.

(c) After two years and 11 months has expired following the issuance of an original manufacturer's license, the commission shall not issue a renewal license if it finds that the licensee has not complied with his sworn statement filed with his original application or that he has not begun construction of a plant or initiated any of the preliminary stages of construction enumerated in Subsection (a) unless the commission also finds that the applicant has been prevented from doing so by causes beyond his reasonable control. If the commission finds that the licensee has been prevented from complying by causes beyond his reasonable control it may grant one additional renewal for the licensee to comply with the terms of his sworn statement. Otherwise, the commission shall deny the renewal application and may not grant a subsequent original application by the licensee for a period of two years following the date of the denial.

(d) This section does not apply to the holder of a license that was in effect on January 1, 1953.

**Sec. 62.05. RECORDS.** (a) The holder of a manufacturer's license shall make and keep a record of each day's production or receipt of beer and of every sale of beer, including the name of each purchaser. Each transaction shall be recorded on the day it occurs. The licensee shall make and keep any other records that the commission or administrator requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least two years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code.

**Sec. 62.06. ISSUANCE OF BREWER'S PERMIT.** A holder of a manufacturer's license is entitled to be issued an original or renewal brewer's permit for the same location on application to the commission and payment of the required fee.

**Sec. 62.07. IMPORTATION OF BEER; CONTAINERS, USE OF TANK CARS.** The holder of a manufacturer's license may import beer into this state in barrels or other containers in accordance with the provisions of this code. No person may ship beer into the state in tank cars.

**Sec. 62.08. WAREHOUSES; DELIVERY TRUCKS.** (a) The holder of a manufacturer's or distributor's license may maintain or engage necessary warehouses for storage purposes in areas where the sale of beer is lawful and may make deliveries from the warehouses without obtaining licenses for them. The licensee may not import beer from outside the state directly or indirectly to an unlicensed warehouse.

(b) A warehouse or railway car in which orders for the sale of beer are taken or money from the sale of beer is collected is a separate place of business for which a license is required.

(c) A truck operated by a licensed distributor for the sale and delivery of beer to a licensed retail dealer at the dealer's place of business is not a separate place of

business for which a license is required.

(d) The commission shall promulgate rules governing the transportation of beer, the sale of which is to be consummated at a licensed retailer's place of business.

**Sec. 62.09. BEER FOR EXPORT.** Regardless of any other provision of this code, a holder of a manufacturer's license may brew and package malt beverages or import them from outside the state, for shipment out of the state, even though the alcohol content, containers, packages, or labels make the beverages illegal to sell within the state. The licensee may export the beverages out of state or deliver them at his premises for shipment out of state without being liable for any state tax on beer, ale, or malt liquor sold for resale in the state.

*NOTE: Section 62.10 of the Alcoholic Beverage Code is repealed by Acts of the 66th Legislature, Regular Session, 1979.*

**Sec. 62.11. CONTINUANCE OF OPERATION AFTER LOCAL OPTION ELECTION.** The right of a manufacturer's licensee to continue operation after a prohibitory local option election is covered by Section 251.75 of this code.

**Sec. 62.12. SALES BY CERTAIN MANUFACTURERS.** (a) A manufacturer's licensee whose annual production of beer in this state does not exceed 75,000 barrels may sell beer produced under the license to those permittees, licensees, and persons to whom a general distributor's licensee may sell beer under Section 64.01(2) of this code. With regard to such a sale, the manufacturer has the same authority and is subject to the same requirements as apply to a sale made by a general distributor's licensee.

(b) The authority granted by this section is additional to that granted by Section 62.01 of this code.

## **CHAPTER 63. NONRESIDENT MANUFACTURER'S LICENSE**

**Sec. 63.01. AUTHORIZED ACTIVITIES.** The holder of a nonresident manufacturer's license may transport beer into Texas only to holders of importer's licenses. The nonresident manufacturer's licensee may transport the beer in carriers or vehicles operated by holders of carrier's permits or in motor vehicles owned or leased by the nonresident manufacturer. The beer must be shipped in barrels or other containers in accordance with the provisions of this code and may not be shipped into the state in tank cars.

**Sec. 63.02. FEE.** The annual state fee for a nonresident manufacturer's license is \$750. No county or city is entitled to a fee for the issuance of the license.

**Sec. 63.03. LIABILITY FOR TAXES: BOND.** The holder of a nonresident manufacturer's license that transports beer into Texas in a motor vehicle owned or leased by him is not primarily responsible for the payment of the taxes on the beer, which remains the responsibility of the holder of the importer's license. However, the nonresident manufacturer shall furnish the commission with a bond in an amount which, in the commission's judgment, will protect the revenue of the state

from the tax due on the beer over any six-week period.

**Sec. 63.04. APPLICATION OF CODE PROVISIONS AND RULES.** A holder of a nonresident manufacturer's license is subject to all applicable provisions of this code and all applicable rules of the commission which apply to holders of manufacturer's licenses, including rules relating to the quality, purity, and identity of beer and to protecting the public health. The commission may suspend or cancel a nonresident manufacturer's license and apply penalties in the same manner as it does with respect to a manufacturer's license.

## **CHAPTER 64. GENERAL DISTRIBUTOR'S LICENSE**

**Sec. 64.01. AUTHORIZED ACTIVITIES.** (a) The holder of a general distributor's license may:

(1) receive beer in unbroken original packages from manufacturers and from general, local, or branch distributors;

(2) distribute or sell beer in the unbroken original packages in which it is received to general, branch, or local distributors to local distributor permittees, to permittees or licensees authorized to sell to ultimate consumers, to private club registration permittees, to authorized outlets located on any installation of the national military establishment, or to qualified persons for shipment and consumption outside the state; and

(3) serve free beer for consumption on the licensed premises.

(b) All sales made under the authority of this section except sales to general, local, or branch distributor's licensees must be made in accordance with Sections 61.73 and 102.31 of this code.

**Sec. 64.02. FEE.** The annual state fee for a general distributor's license is \$300.

**Sec. 64.03. SALE OF BEER TO PRIVATE CLUBS.** The holder of a general distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

**Sec. 64.04. RECORDS.** (a) Each holder of a general, local or branch distributor's license shall make and keep a daily record of every receipt of beer and of every sale of beer, including the name of each purchaser. Each transaction shall be recorded on the day it occurs. The licensee shall make and keep any other records that the commission or administrator requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least two years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code.

**Sec. 64.05. PERSONS INELIGIBLE FOR LICENSE.** A general distributor's license may not be issued to a person who is the holder of a package store permit or a wine only package store permit.

**Sec. 64.06. WAREHOUSES; DELIVERY TRUCKS.** Section 62.08 of this

code applies to the use of warehouses and delivery trucks by general distributor's licensees.

**Sec. 64.07. MAY SHARE PREMISES.** Any number of general, local, and branch distributors may use the same premises, location, or place of business as licensed premises if the beer owned and stored by each of the distributors is segregated.

## **CHAPTER 65. LOCAL DISTRIBUTOR'S LICENSE**

**Sec. 65.01. AUTHORIZED ACTIVITIES.** (a) The holder of a local distributor's license may:

(1) receive beer in unbroken original packages from manufacturers and from general, branch, or local distributors;

(2) sell and distribute beer in the unbroken original packages in which it is received:

(A) to the following, if located in the county of the licensee's residence: local distributor permittees, permittees or licensees authorized to sell to ultimate consumers, private club registration permittees, authorized outlets located on any installation of the national military establishment, or qualified persons for shipment and consumption outside of the state; or

(B) to other licensed distributors in the state; and

(3) serve free beer for consumption on the licensed premises.

(b) All sales made under the authority of this section except sales to general, local, or branch distributor's licensees must be made in accordance with Sections 61.73 and 102.31 of this code.

**Sec. 65.02. FEE.** The annual state fee for a local distributor's license is \$75.

**Sec. 65.03. SALE OF BEER TO PRIVATE CLUBS.** The holder of a local distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

**Sec. 65.04. RECORDS.** Section 64.04 of this code applies to recordkeeping by local distributor's licensees.

**Sec. 65.05. PERSONS INELIGIBLE FOR LICENSE.** A local distributor's license may not be issued to any person who is the holder of a package store permit or a wine only package store permit.

**Sec. 65.06. WAREHOUSES; DELIVERY TRUCKS.** Section 62.08 of this code applies to the use of warehouses and delivery trucks by local distributor's licensees.

**Sec. 65.07. MAY SHARE PREMISES.** The sharing of premises by distributors is covered by Section 64.07 of this code.

## **CHAPTER 66. BRANCH DISTRIBUTOR'S LICENSE**

**Sec. 66.01. AUTHORIZED ACTIVITIES.** The holder of a branch



distributor's license may engage in the same activities as a holder of a general distributor's license.

**Sec. 66.02. FEE.** The annual state fee for a branch distributor's license is \$75 per year or fraction of a year.

**Sec. 66.03. ISSUANCE OF LICENSE.** (a) Except as provided in Subsection (b) of this section, a branch distributor's license may be issued only to the holder of a general distributor's license who first has obtained the primary license in the county of his residence or domicile. The branch distributor's license may be issued for premises in any county where the sale of beer is legal.

(b) A general distributor's licensee whose primary license was voided by a local option election under prior law, who took advantage of the right then existing to obtain a primary license in another county where he held a branch distributor's license without qualifying as a resident or domiciliary of that county, is not prevented from continuing to renew the primary license or from holding one or more branch licenses by the fact that the primary license is not in the county of his residence or domicile.

**Sec. 66.04. PERSONS INELIGIBLE FOR LICENSE.** A branch distributor's license may not be issued to a person who holds a package store permit or a wine only package store permit.

**Sec. 66.05. EXPIRATION OF LICENSE.** A branch distributor's license expires at the same time as the holder's primary license.

**Sec. 66.06. RENEWAL OF LICENSE.** Application for renewal of a branch distributor's license may be made concurrently with the filing of the application for the renewal of the holder's primary license.

**Sec. 66.07. SALE OF BEER TO PRIVATE CLUBS.** The holder of a branch distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

**Sec. 66.08. RECORDS.** Section 64.04 of this code applies to recordkeeping by branch distributor's licensees.

**Sec. 66.09. WAREHOUSES; DELIVERY TRUCKS.** Section 62.08 of this code applies to the use of warehouses and delivery trucks by branch distributor's licensees.

**Sec. 66.10. MAY SHARE PREMISES.** The sharing of premises by distributors is covered by Section 64.07 of this code.

## **CHAPTER 67. IMPORTER'S LICENSE**

**Sec. 67.01. AUTHORIZED ACTIVITIES.** A holder of an importer's license may import beer into this state only from the holder of a nonresident manufacturer's license. The beer may be transported by a railway carrier, or by a common motor carrier operated under a certificate of convenience and necessity issued by the Railroad Commission of Texas or by the Interstate Commerce Commission. Each carrier must hold a carrier's permit issued under Chapter 41 of this code. All provisions of Chapter 41 relating to the transportation of liquor also apply to the transportation of beer. A carrier may not transport beer into the state unless it is

consigned to an importer.

**Sec. 67.02. FEE.** The fee for an importer's license is \$20 per year or fraction of a year.

**Sec. 67.03. DEFINITION.** As used in this subtitle, "importer" means a person who imports beer into the state in quantities in excess of 288 fluid ounces in any one day.

**Sec. 67.04. ELIGIBILITY FOR LICENSE.** An importer's license may be issued only to a holder of a manufacturer's or distributor's license.

**Sec. 67.05. EXPIRATION OF LICENSE.** An importer's license expires at the same time as the primary manufacturer's or distributor's license under which it is issued.

**Sec. 67.06. APPLICATION FOR LICENSE.** An application for an importer's license must contain all information required by the commission.

## **CHAPTER 68. IMPORTER'S CARRIER'S LICENSE**

**Sec. 68.01. AUTHORIZED ACTIVITIES.** An importer who holds an importer's carrier's license may import beer into this state in vehicles owned or leased in good faith by him.

**Sec. 68.02. FEE.** The fee for an importer's carrier's license is \$20 per year or fraction of a year.

**Sec. 68.03. ELIGIBILITY FOR LICENSE.** An importer's carrier's license may be issued only to a holder of an importer's license.

**Sec. 68.04. APPLICATION FOR LICENSE; DESCRIPTION OF VEHICLES.** (a) An application for an importer's carrier's license must contain a description of the vehicles to be used and other information required by the commission.

(b) An importer may not import beer into the state in any vehicle not fully described in his application, except as permitted in Section 67.01 of this code.

**Sec. 68.05. EXPIRATION OF LICENSE.** An importer's carrier's license expires at the same time as the holder's primary importer's license.

**Sec. 68.06. DESIGNATION OF VEHICLES.** All vehicles used under an importer's carrier's license must have painted or printed on them the designation required by the commission.

## **CHAPTER 69. RETAIL DEALER'S ON-PREMISE LICENSE**

**Sec. 69.01. AUTHORIZED ACTIVITIES.** The holder of a retail dealer's on-premise license may sell beer in or from any lawful container to the ultimate consumer for consumption on or off the premises where sold. The licensee may not sell beer for resale.

**Sec. 69.02. FEE.** Except as provided in Section 69.03 of this code, the annual state fee for a retail dealer's on-premise license is \$150.

**Sec. 69.03. ISSUANCE OF LICENSE FOR RAILWAY CARS.** A retail dealer's on-premise license may be issued for a railway dining, buffet, or club car.

Application for a license of this type shall be made directly to the commission, and the annual state fee is \$30 for each car.

**Sec. 69.04. HOTELS NOT DISQUALIFIED.** The fact that a hotel holds a permit to sell distilled spirits in unbroken packages does not disqualify the hotel from also obtaining a license to sell beer for on-premises consumption.

**Sec. 69.05. HEARINGS ON LICENSE APPLICATION: NOTICE AND ATTENDANCE.** (a) On receipt of an original application for a retail dealer's on-premise license, the county judge shall give notice of all hearings before him concerning the application to the commission, the sheriff, and the chief of police of the incorporated city in which, or nearest which, the premises for which the license is sought are located.

(b) The individual natural person applying for the license or, if the applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who will be primarily responsible for the management of the premises shall attend any hearing involving the application.

**Sec. 69.06. DENIAL OF ORIGINAL APPLICATION.** (a) The county judge shall deny an original application for a retail dealer's on-premise license if he finds that the applicant or the applicant's spouse, during the three years immediately preceding the application, was finally convicted of a felony or one of the following offenses;

- (1) prostitution;
- (2) a vagrancy offense involving moral turpitude;
- (3) bookmaking;
- (4) gambling or gaming;
- (5) an offense involving controlled substances as defined in the Texas Controlled Substances Act or other dangerous drugs;
- (6) a violation of this code resulting in the cancellation of a license or permit, or a fine of not less than \$500.
- (7) more than three violations of this code relating to minors;
- (8) bootlegging; or
- (9) an offense involving firearms or a deadly weapon.

(b) The county judge shall also deny an original application for a license if he finds that three years has not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(c) The commission shall refuse to issue a renewal of a retail dealer's on-premise license if it finds:

- (1) that the applicant or the applicant's spouse has been finally convicted of a felony or one of the offenses listed in Subsection (a) of this section at any time during the three years immediately preceding the filing of the application for renewal; or
- (2) that three years has not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a

felony prosecution or prosecution for any of the offenses described in Subsection (a) of this section.

(d) In this section the word "applicant" includes the individual natural person holding or applying for the license or, if the holder or applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.

**Sec. 69.07. FINGERPRINTS.** (a) An applicant for an original retail dealer's on-premise license shall submit to the county judge of the county in which the applicant desires to engage in business a complete set of fingerprints of the individual natural person applying for the license or, if the applicant is not an individual natural person, a complete set of fingerprints of the individual partner, officer, trustee, or receiver who is to be primarily responsible for the management of the premises.

(b) The county judge shall, no later than the next calendar day after receiving the prints, forward them by mail to the Texas Department of Public Safety. The department shall classify the prints and check them against their fingerprint files and shall certify their findings concerning the criminal record of the applicant, or the lack of record, to the county judge. No license may be issued until the certification is made to the county judge.

(c) The sheriff of any county, or any district office of the commission, shall take the fingerprints of an applicant for a license without charge on forms approved by and furnished by the Texas Department of Public Safety and shall immediately deliver them to the county judge of the county where the applicant desires to engage in business.

**Sec. 69.08. CONTENTS OF LICENSE.** Each retail dealer's on-premise license shall contain the name of the individual natural person holding the license or, if the holder is not an individual natural person, the name of the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.

**Sec. 69.09. ACQUISITION OF BEVERAGES FOR RESALE FROM OTHER LICENCEES PROHIBITED.** No holder of a retail dealer's on-premise license may borrow or acquire from, exchange with, or loan to any other holder of a retail dealer's on-premise license or holder of a retail dealer's off-premise license any alcoholic beverage for the purpose of resale.

**Sec. 69.10. STORING OR POSSESSING BEER OFF PREMISES PROHIBITED.** No holder of a retail dealer's on-premise license may own, possess, or store beer for the purpose of resale except on the licensed premises.

**Sec. 69.11. EXCHANGE OR TRANSPORTATION OF BEER BETWEEN LICENSED PREMISES UNDER SAME OWNERSHIP.** The owner of two or more licensed retail premises may not exchange or transport beer between them unless all of the conditions set out in Section 24.04 of this code are met, except that beer may be transferred between two licensed retail premises that are both covered by package store permits as provided in Section 22.08 of this code.

**Sec. 69.12. POSSESSION OF CERTAIN BEVERAGES PROHIBITED.** No

retail dealer's on-premise licensee, nor the licensee's officer, agent, servant, or employee, may possess on the licensed premises an alcoholic beverage which is not authorized to be sold on the premises.

**Sec. 69.13. BREACH OF PEACE: RETAIL ESTABLISHMENT.** The commission or administrator may suspend or cancel the license of a retail beer dealer after giving the licensee notice and the opportunity to show compliance with all requirements of law for retention of the license if it finds that a breach of the peace has occurred on the licensed premises or on premises under the licensee's control and that the breach of the peace was not beyond the control of the licensee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

**Sec. 69.14. SEATING AREA REQUIRED.** A retail dealer's on-premise licensee must have an area designated on the premises for the permittee's customers to sit if they wish to consume beverages sold by the licensee on the premises.

## **CHAPTER 70. RETAIL DEALER'S ON-PREMISE LATE HOURS LICENSE**

**Sec. 70.01. AUTHORIZED ACTIVITIES.** The holder of a retail dealer's on-premise late hours license may sell beer for consumption on the premises on Sunday between the hours of 1:00 a.m. and 2 a.m. and on any other day between the hours of 12 p.m. and 2 a.m. if the premises covered by the license are in an area where the sale of beer during the hours is authorized by this code.

**Sec. 70.02. FEE.** The annual state fee for a retail dealer's on-premise late hours license is \$250.

**Sec. 70.03. APPLICATION OF CERTAIN CODE PROVISIONS.** All provisions of this code which apply to a retail dealer's on-premise license also apply to a retail dealer's on-premise late hours license.

## **CHAPTER 71. RETAIL DEALER'S OFF-PREMISE LICENSE**

**Sec. 71.01. AUTHORIZED ACTIVITIES.** The holder of a retail dealer's off-premise license may sell beer in lawful containers to consumers, but not for resale and not to be opened or consumed on or near the premises where sold.

**Sec. 71.02. FEE.** The annual state fee for a retail dealer's off-premise license is \$60.

**Sec. 71.03. AUTHORITY OF LICENSEE HOLDING PACKAGE STORE PERMIT OR WINE ONLY PACKAGE STORE PERMIT.** (a) The holder of a retail dealer's off-premise license who also holds a package store permit may sell beer directly to consumers by the container, but not for resale and not to be opened or consumed on or near the premises where sold. Beer in containers holding 32 ounces or less may be sold only as follows:

(1) 12, 24, and 32 ounce containers may be sold only in the following lots or full multiples thereof:

- (A) 6 containers holding 12 ounces each;
- (B) 3 containers holding 24 ounces each; or
- (C) 3 containers holding 32 ounces each; and

(2) 7, 8, and 16 ounce containers may be sold only in lots or full multiples of the number of containers in a retail package for that size container; for purposes of this section "retail package" shall mean original packages as defined in Section 1.04(18) of this code including 6-packs, 8-packs, or other packages containing at least 3 containers which are packaged for purposes of retail sales.

(b) The holder of a retail dealer's off-premise license who also holds a wine only package store permit may sell beer to consumers by the container, but not for resale and not to be opened or consumed on or near the premises where sold.

(c) The sale of beer by a holder of a retail dealer's off-premise license who also holds a package store permit is subject to the same restrictions and penalties governing the sale of liquor by package stores with regard to:

- (1) the hours of sale and delivery;
- (2) blinds and barriers;
- (3) employment of persons under the age of 18 or sales and deliveries to minors;
- (4) sales and deliveries on Sunday; and
- (5) advertising.

(d) The sale of beer by a holder of a retail dealer's off-premise license who also holds a wine only package store permit is subject to the same restrictions and penalties governing the sale of liquor by package stores with regard to:

- (1) blinds and barriers;
- (2) employment of persons under the age of 18 or sales and deliveries to minors;
- (3) delivery to the licensee or permittee on Sunday; and
- (4) advertising.

**Sec. 71.04. POSSESSION OF CERTAIN BEVERAGES PROHIBITED.** No retail dealer's off-premise licensee, nor his officer, may possess liquor containing alcohol in excess of 14 percent by volume on the licensed premises.

**Sec. 71.05. ACQUISITION OF BEVERAGES FOR RESALE FROM OTHER LICENSEES PROHIBITED.** No holder of a retail dealer's off-premise license may borrow or acquire from, exchange with, or loan to any other holder of a retail dealer's off-premise license or holder of a retail dealer's on-premise license any alcoholic beverage for the purpose of resale.

**Sec. 71.06. STORING OR POSSESSING BEER OFF PREMISES PROHIBITED.** No holder of a retail dealer's off-premise license may own, possess, or store beer for the purpose of resale except on the licensed premises.

**Sec. 71.07. EXCHANGE OR TRANSPORTATION OF BEER BETWEEN LICENSED PREMISES UNDER SAME OWNERSHIP.** Section 69.11 of this code relates to the exchange or transportation of beer between licensed premises by retail dealers.

**Sec. 71.08. MITIGATING CIRCUMSTANCES: RETAIL DEALER'S OFF-**

**PREMISE LICENSE.** Section 11.64 of this code relates to mitigating circumstances with respect to cancellation or suspension of a retail dealer's off-premise license.

**Sec. 71.09. BREACH OF PEACE: RETAIL ESTABLISHMENT.** The application of sanctions for the occurrence of a breach of the peace at a retail beer establishment is covered by on Section 69.13 of this code.

**Sec. 71.10. WARNING SIGN REQUIRED.** (a) Each holder of a retail dealer's off-premise license shall display in a prominent place on his premises a sign stating in letters at least two inches high: IT IS A CRIME (MISDEMEANOR) TO CONSUME LIQUOR OR BEER ON THESE PREMISES.

(b) A licensee who fails to comply with this section commits a misdemeanor punishable by a fine of not more than \$25.

## **CHAPTER 72. TEMPORARY LICENSES**

**Sec. 72.01. AUTHORIZED ACTIVITIES.** The holder of a temporary license may sell beer in the county where the license is issued to ultimate consumers in or from any lawful container for consumption on or off the premises where sold.

**Sec. 72.02 FEE.** The state fee for a temporary license is \$30. No refund shall be allowed for the surrender or nonuse of a temporary license.

**Sec. 72.03. DURATION OF LICENSE.** A temporary license may be issued for a period of not more than four days.

**Sec. 72.04 REQUIRED BASIC LICENSE OR PERMIT.** A temporary license may be issued only to a holder of a retail dealer's on-premise license or a wine and beer retailer's permit.

**Sec. 72.05. ISSUANCE AND USE OF LICENSE; RULES.** (a) Temporary licenses shall be issued by the administrator or the commission or the commission's authorized representative. The commission shall adopt rules governing the issuance and use of temporary licenses.

(b) Licenses shall be issued only for the sale of beer at picnics, celebrations, or similar events.

(c) The administrator or commission may refuse to issue a license if there is reason to believe the issuance of the license would be detrimental to the public.

**Sec. 72.06. CANCELLATION OR SUSPENSION OF PRIMARY LICENSE OR PERMIT.** The primary license or permit under which a temporary license was issued may be cancelled or suspended for a violation of this code on the premises covered by the temporary license that would justify the cancellation or suspension of a license under Section 61.71 of this code.

## **CHAPTER 73. AGENT'S BEER LICENSE**

**Sec. 73.01. AUTHORIZED ACTIVITIES.** 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.

**Sec. 73.02. FEE.** (a) The annual state fee for an agent's beer license is \$10.

(b) The commission may not refund any part of the fee for any reason.

(c) No manufacturer or distributor may pay the license fee for any person or reimburse any person for the payment of the fee.

**Sec. 73.03. LICENSE REQUIRED.** A person whose compensation is based mainly on the activities specified in Section 73.01 may not engage in those activities unless he holds an agent's beer license.

**Sec. 73.04. QUALIFICATION FOR LICENSE.** The commission shall not issue an agent's beer license to a person unless it is shown to the satisfaction of the commission that the applicant is employed or has good prospects for employment as agent or representative of a manufacturer or distributor.

**Sec. 73.05. GRACE PERIOD.** A person may engage in the activities specified in Section 73.01 for an initial grace period of five days during which he shall procure an agent's beer license from the commission.

**Sec. 73.06. EMPLOYMENT OF UNLICENSED AGENT PROHIBITED.** No manufacturer or distributor may use or be the beneficiary of the services of any person to carry on the activities specified in Section 73.01 if he does not hold an agent's beer license and is not covered by the grace period provided by Section 73.05 of this code.

**Sec. 73.07. EMPLOYMENT OF AGENT WHOSE LICENSE HAS BEEN SUSPENDED OR CANCELLED.** (a) No manufacturer or distributor may employ or continue to employ in any capacity a person whose agent's beer license has been suspended by the commission during the period of suspension.

(b) No manufacturer or distributor may employ or continue to employ in any capacity a person whose agent's beer license has been cancelled for cause by the commission within one year after the date of the cancellation.

**Sec. 73.08. RULES.** The commission may promulgate reasonable rules defining the qualifications and regulating the conduct of holders of agent's beer licenses.

**Sec. 73.09. APPLICATION FOR LICENSE.** (a) An application for an agent's beer license is filed with the commission or any designated employee of the commission. The application must be on a form prescribed by the commission and include all information required by the commission.

(b) The commission, administrator, or a designated employee of the commission shall act on applications, and the county judge has no authority over the issuance or approval of agent's beer licenses.

**Sec. 73.10. RENEWAL OF LICENSE.** An application for the renewal of an agent's beer license shall be made to the commission not more than 30 days before the license expires. The commission shall prescribe forms for that purpose and shall prescribe what information is required in the application.



**Sec. 73.11. SUSPENSION OR CANCELLATION OF LICENSE.** An agent's beer license may be suspended or cancelled by the commission for a violation of any rule or regulation of the commission or for any of the reasons a manufacturer's or distributor's license may be suspended or cancelled. The same procedure applicable to the suspension or cancellation of the manufacturer's or distributor's license shall be followed in the suspension or cancellation of an agent's beer license.

## **TITLE 4. REGULATORY AND PENAL PROVISIONS**

### **CHAPTER 101. GENERAL CRIMINAL PROVISIONS**

#### **SUBCHAPTER A. PROCEDURAL PROVISIONS**

**Sec. 101.01. RESTRAINING ORDERS AND INJUNCTIONS.** (a) If a credible person by affidavit informs the attorney general or a county or district attorney that a person is violating or is about to violate a provision of this code, or that a permit or license was wrongfully issued, the attorney general or county or district attorney shall begin proceedings in district court to restrain the person from violating the code or operating under the permit or license.

(b) The court may issue a restraining order without a hearing, and on notice and hearing may grant an injunction, to prevent the threatened or further violation or operation. The court may require the complaining party to file a bond in an amount and with the conditions the court finds necessary.

(c) If the court finds that a person has violated a restraining order or injunction issued under this section, it shall enter a judgment to that effect. The judgment operates to cancel without further proceedings any license or permit held by the person. The district clerk shall notify the county judge of the county where the premises covered by the permit or license are located and shall notify the commission when a judgment is entered that operates to cancel a license or permit.

(d) No license or permit may be issued to a person whose license or permit is cancelled under Subsection (c) of this section for one year after the cancellation.

**Sec. 101.02. ARREST WITHOUT WARRANT.** A peace officer may arrest without a warrant any person he observes violating any provision of this code or any rule or regulation of the commission. The officer shall take possession of all illicit beverages the person has in his possession or on his premises as provided in Chapter 103 of this code.

**Sec. 101.03. SEARCH AND SEIZURE.** (a) A search warrant may issue under Chapter 18, Code of Criminal Procedure, 1965, as amended, to search for, seize, and destroy or otherwise dispose of in accordance with this code:

(1) an illicit beverage;

(2) any equipment or instrumentality used, or capable or designed to be used, to manufacture an illicit beverage;

(3) a vehicle or instrumentality used or to be used for the illegal transportation of an illicit beverage;



(4) unlawful equipment or materials used or to be used in the illegal manufacturing of an illicit beverage;

(5) a forged or counterfeit stamp, die, plate, official signature, certificate, evidence of tax payment, license, permit, or other instrument pertaining to this code; or

(6) any instrumentality or equipment, or parts of either of them, used or to be used, or designed or capable of use, to manufacture, print, etch, indite, or otherwise make a forged or counterfeit instrument covered by Subdivision (5) of this subsection.

(b) Any magistrate may issue a search warrant on the affidavit of a credible person, setting forth the name or description of the owner or person in charge of the premises (or stating that the name and description are unknown), the address or description of the premises, and showing that the described premises is a place where this code has been or is being violated. If the place to be searched is a private dwelling occupied as such and no part of it is used as a store, shop, hotel, boarding house, or for any other purpose except as a private residence, the affidavit must be made by two credible persons.

(c) All provisions of Chapter 18, Code of Criminal Procedure, 1965, as amended, apply to the application, issuance, and execution of the warrant except those that conflict with this section.

(d) The officer executing the warrant shall seize all items described in Subsection (a) of this section, and those items may not be taken from his custody by a writ of replevin or any other process. The officer shall retain the items pending final judgment in the proceedings.

(e) This section does not require a peace officer to obtain a search warrant to search premises covered by a license or permit.

**Sec. 101.04. CONSENT TO INSPECTION.** 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 licensed premises at any time to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this code.

**Sec. 101.05. NEGATION OF EXCEPTIONS: INFORMATION, COMPLAINT, OR INDICTMENT.** An information, complaint, or indictment charging a violation of this code need not negate an exception to an act prohibited by this code, but the exception may be urged by the defendant as a defense to the offense charged.

**Sec. 101.06. TESTIMONY OF ACCOMPLICE.** A conviction for a violation of this code cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

**Sec. 101.07. 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.

**Sec. 101.08. DUTY OF COUNTY COURT.** When a violation of this code occurs, the county court shall make a recommendation to the commission as to cancellation or suspension of any permit or license connected with the violation.

**Sec. 101.09. REPORTS OF CONVICTIONS.** Every county and district clerk in the state shall furnish the commission or its representative, on request, a certified copy of the judgment of conviction and of the information against a person convicted of a violation of this code. The clerk may not charge a fee for furnishing the copy.

**Sec. 101.10. WHOLESALE OR RETAIL SALE: PRIMA FACIE EVIDENCE.** (a) Proof that a retail permittee sold or delivered more than three gallons of distilled spirits to a person in a single or continuous transaction is prima facie evidence that the sale was at wholesale.

(b) Proof that a permittee authorized to sell distilled spirits at wholesale sold or delivered less than three gallons of distilled spirits in a single transaction is prima facie evidence that the sale was a retail sale.

(c) The presumption created by Subsection (b) of this section does not apply to the lawful delivery of 2.4 gallons or more of distilled spirits under the authority of a local distributor's permit.

## **SUBCHAPTER B. OFFENSES RELATING TO DRY AREAS**

**Sec. 101.31. ALCOHOLIC BEVERAGES IN DRY AREAS.** Except as otherwise provided in this code, 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.

**Sec. 101.32. PRIMA FACIE EVIDENCE OF INTENT TO SELL.** (a) Possession of more than one quart of liquor in a dry area is prima facie evidence that it is possessed with intent to sell.

(b) Possession in a dry area of more than 24 twelve-ounce bottles of beer, or an equivalent amount, is prima facie evidence of possession with intent to sell.

**Sec. 101.33. DELIVERY OF LIQUOR IN DRY AREA.** Section 107.03 of this code relates to the delivery of liquor in a dry area.

## **SUBCHAPTER C. CONTAINERS**

**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 liquid 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.

**Sec. 101.42. RETURNABLE CONTAINER: ACCEPTANCE BY ANOTHER MANUFACTURER.** No manufacturer of beer may purchase, accept as a return, or use a barrel, half-barrel, keg, case, or bottle permanently branded or imprinted with the name of another manufacturer.

**Sec. 101.43. MISBRANDING OF BREWERY PRODUCT.** (a) No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may sell or otherwise introduce into commerce a brewery product that is misbranded.

(b) A product is misbranded if:

(1) it is misbranded within the meaning of the federal Food and Drug Act;

(2) the container is so made or filled as to mislead the purchaser, or if its contents fall below the recognized standards of fill;

(3) it misrepresents the standard of quality of products in the branded container; or

(4) it is so labeled as to purport to be a product different from that in the container.

**Sec. 101.44. CONTAINERS OF BEER: CAPACITIES.** No person may possess, sell, or transport any beer except in containers having a capacity of one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel, or in bottles or cans having a capacity of 32, 24, 16, 12, 8, or 7 fluid ounces.

*Note: This section takes effect January 1, 1980.*

**Sec. 101.45. CONTAINERS OF WINE: MAXIMUM CAPACITY.** No person may sell wine to a retail dealer in containers with a capacity greater than 4.9 gallons.

**Sec. 101.46. CONTAINERS OF LIQUOR: MINIMUM CAPACITIES.** (a) Except as provided by Subsections (b) and (c) 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.

(b) Subsection (a) of this section does not apply to permittees or licensees while engaged in supplying airline beverage or mixed beverage permittees, nor to the possession or sale of liquor by an airline beverage or mixed beverage permittee, but none of the permittees or licensees covered by this subsection may possess

liquor in a container with a capacity of less than one fluid ounce.

(c) Subsection (a) of this section does not apply to liquor imported under Section 107.07 of this code.

**Sec. 101.47. CARRIER MAY TRANSPORT LIQUOR IN SMALL CONTAINERS.** The commission may authorize a common carrier of persons engaged in interstate commerce to transport liquor in containers of less than six fluid ounces if the liquor is not for sale, use, or consumption in the state.

**Sec. 101.48. COMMISSION'S REGULATORY AUTHORITY.** Sections 5.39 and 5.40 of this code relate to the commission's authority to regulate liquor containers and beer container deposits.

## **SUBCHAPTER D. MISCELLANEOUS OFFENSES**

**Sec. 101.61. VIOLATION OF CODE OR RULE.** (a) A person who fails or refuses to comply with a requirement of this code or a valid rule of the commission violates this code.

**Sec. 101.62. OFFENSIVE NOISE ON PREMISES.** No licensee or permittee, on premises under his control, may maintain or permit a radio, television, amplifier, piano, phonograph, music machine, orchestra, band, singer, speaker, entertainer, or other device or person that produces, amplifies, or projects music or other sound that is loud, vociferous, vulgar, indecent, lewd, or otherwise offensive to persons on or near the licensed premises.

**Sec. 101.63. SALE TO CERTAIN PERSONS.** (a) A person commits an offense if he knowingly sells an alcoholic beverage to an habitual drunkard or an intoxicated or insane person.

(b) Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by fine of not less than \$100 nor more than \$500, by confinement in jail for not more than one year, or by both.

(c) If a person has been previously convicted of a violation of this section or of Section 106.03 of this code, a violation is a misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000, by confinement in jail for not more than one year, or by both.

**Sec. 101.64. INDECENT GRAPHIC MATERIAL.** No holder of a license or permit may possess or display on the licensed premises a card, calendar, placard, picture, or handbill that is immoral, indecent, lewd, or profane.

**Sec. 101.65. BEVERAGES MADE FROM CERTAIN MATERIALS PROHIBITED.** No person may manufacture, import, sell, or possess for the purpose of sale an alcoholic beverage made from:

- (1) dried grapes, dried fruits, or dried berries;
- (2) any compound made from synthetic materials;
- (3) substandard wines;
- (4) imitation wines; or
- (5) must concentrated at any time to more than 80 degrees Balling.

**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.

**Sec. 101.67. PRIOR APPROVAL OF MALT BEVERAGES.** (a) No person may ship or cause to be shipped into the state, import into the state, manufacture and offer for sale in the state, or distribute, sell, or store in the state any beer, ale, or malt liquor unless:

(1) a sample of the beverage or a sample of the same type and quality of beverage has been first submitted to the commission for analysis and been found by the commission or its representative to comply with all rules and regulations of the commission relating to quality, purity, and standards of measure; and

(2) the label of the beverage has been first submitted to the commission or its representative and found to comply with all provisions of this code relating to the labeling of the particular type of beverage.

(b) Only a brewer's or nonresident brewer's permittee or a manufacturer's or nonresident manufacturer's licensee may apply for and receive label approval on beer, ale, or malt liquor.

(c) This section does not apply to the importation of beer for personal consumption and not for sale.

**Sec. 101.68. CONSIGNMENT SALE PROHIBITED.** A person commits an offense if he is a party to, or directly or indirectly interested in or connected with, a consignment sale of an alcoholic beverage.

**Sec. 101.69. FALSE STATEMENT.** Except as provided in Section 103.05 (d) of this code, a person who makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the commission and required to be sworn commits an offense punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years.

**Sec. 101.70. COMMON NUISANCE.** (a) A room, building, boat, structure, or other place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of this code or under circumstances contrary to the purposes of this code, the beverages themselves, and all property kept or used in the place, are a common nuisance. A person who maintains or assists in maintaining the nuisance commits an offense.

(b) The county or district attorney in the county where the nuisance exists or the attorney general may sue in the name of the state for an injunction to abate and temporarily and permanently enjoin it. Except as otherwise provided in this section, the proceeding is conducted as other similar proceedings.

(c) The plaintiff is not required to give a bond. The final judgment is a judgment in rem against the property and a judgment against the defendant. If the court finds against the defendant, on final judgment it shall order that the place where the nuisance exists be closed for one year or less and until the owner, lessee, tenant, or occupant gives bond with sufficient surety as approved by the court in the penal sum of at least \$1,000. The bond must be payable to the state and conditioned:

(1) that this code will not be violated;

(2) that no person will be permitted to resort to the place to drink alcoholic beverages in violation of this code; and

(3) that the defendant will pay all fines, costs, and damages assessed against him for any violation of this code.

(d) On appeal, the judgment may not be superseded except on filing an appeal bond in the penal sum of not more than \$500, in addition to the bond for costs of the appeal. That bond must be approved by the trial court and must be posted before the judgment of the court may be superseded on appeal. The bond must be conditioned that if the judgment of the trial court is finally affirmed it may be forfeited in the same manner and for any cause for which a bond required on final judgment may be forfeited for an act committed during the pendency of an appeal.

**Sec. 101.71. INSPECTION OF VEHICLE.** No holder of a permit issued under Title 3, Subtitle A, of this code, may refuse to allow the commission or its authorized representative or a peace officer, on request, to make a full inspection, investigation, or search of any vehicle.

**Sec. 101.72. CONSUMPTION OF ALCOHOLIC BEVERAGE ON PREMISES LICENSED FOR OFF-PREMISES CONSUMPTION.** (a) A person commits an offense if the person knowingly consumes liquor or beer on the premises of a holder of a wine and beer retailer's off-premise permit or a retail dealer's off-premise license.

(b) A person is presumed to have knowingly violated Subsection (a) of this section if the warning sign required by either Section 26.05 or 71.10 of this code is displayed on the premises.

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

(d) 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.

**Sec. 101.73. EXPUNGEMENT OF CONVICTION FOR CONSUMPTION ON PREMISES LICENSED FOR OFF-PREMISES CONSUMPTION.** (a) A person convicted of not more than one violation of Section 101.72 of this code within 12 months, after the first anniversary of the conviction, may apply to the court in which he was convicted to have the conviction expunged.

(b) The application shall contain the applicant's sworn statement that he was not convicted of an additional violation of Section 101.72 of this code during the previous 12 months.

(c) If the court finds that the applicant was not convicted of another violation of Section 101.72 of this code during the preceding 12 months, the court shall order the conviction, together with all complaints, verdicts, fines, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.



## CHAPTER 102. INTRA-INDUSTRY RELATIONSHIPS

### SUBCHAPTER A. GENERAL PROVISIONS

**Sec. 102.01. TIED HOUSE PROHIBITED.** (a) In this section, "tied house" means any overlapping ownership or other prohibited relationship between those engaged in the alcoholic beverage industry at different levels, that is, between a manufacturer and a wholesaler or retailer, or between a wholesaler and a retailer, as the words "wholesaler," "retailer," and "manufacturer" are ordinarily used and understood, regardless of the specific names given permits under Subtitle A, Title 3, of this code.

(b) In considering an original or renewal application for a permit issued under Subtitle A, Title 3, of this code, the commission or administrator may make any investigation or request any additional information necessary to enforce this section and to provide strict adherence to a general policy of prohibiting the tied house and related practices. The activities prohibited by this section are unfair competition and unlawful trade practices.

(c) No person having an interest in a permit issued under Subtitle A, Title 3, of this code may secure or hold, directly or indirectly, an ownership interest in the business or corporate stocks, including a stock option, convertible debenture, or similar interest, in a permit or business of a permittee of a different level who maintains licensed premises in Texas.

(d) No person may act or serve as officer, director, or employee of the businesses of permittees at different levels.

(e) No permittee may own the premises, fixtures, or equipment of a permittee of a different level.

(f) No permittee may secure or in any manner obtain the use of any premises, fixtures, or equipment on the credit of a permittee of a different level.

(g) No permittee may loan to, or by means of his credit secure a loan for, a permittee of a different level. If a permittee secures a loan from a source outside the state, there is a presumption of a tied house relationship or subterfuge, and the permittee securing the loan has the burden of showing that he has not violated this section.

(h) No permittee may enter with a permittee of a different level or with another person or legal entity into a conspiracy or agreement to control or manage, financially or administratively, directly or indirectly, in any form or degree, the business or interests of a permittee of a different level.

(i) No permittee may enter with another permittee into any type of profit-sharing agreement or any agreement relating to the repurchase of any assets or any agreement attempting to effectuate the shipment or delivery of an alcoholic beverage on consignment.

(j) On finding that a person has violated any provision of Subsections (c) through (i) of this section, the commission or administrator shall suspend for not less than six months or cancel the permit of any permittee involved. A person who held or had an interest in a permit cancelled under the subsection is ineligible to hold or have an interest in a permit for one year after the cancellation.

(k) This section does not apply to the application for renewal of a permit held by an applicant who was engaged in the legal alcoholic beverage business in this state under a charter or permit before August 24, 1935, or to an application for a nonresident seller's or wholesaler's permit held by an applicant who continuously has been the holder of a permit of that type since January 1, 1941.

**Sec. 102.02. ATHLETIC FACILITY OWNED BY MANUFACTURER.** The total or partial ownership by a manufacturer of premises primarily designed and used for athletic contests is not a ground for the denial, suspension, or cancellation of a retail license located on those premises.

**Sec. 102.03. PERSONS BARRED FROM INTEREST IN PREMISES OF RETAIL LIQUOR OUTLET.** (a) This section applies to the holder of a brewer's, distiller's and rectifier's, winery, wholesaler's, class B wholesaler's, or wine bottler's permit.

(b) No holder of a permit named in Subsection (a) of this section may directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, own an interest of any kind in the premises where a package store permittee, wine only package store permittee, or mixed beverage permittee conducts his business.

**Sec. 102.04. PERSONS BARRED FROM INTEREST IN MIXED BEVERAGE BUSINESS.** (a) This section applies to any person who has an interest in the business of a distiller-rectifier brewer, wholesaler, class B wholesaler, winery, wine bottler, or local distributor's permittee. This section also applies to the agent, servant or employee of a person who has an interest in one of those businesses.

(b) Except as permitted in Section 23.01 of this code, no person to whom this section applies may:

(1) have a direct or indirect interest in the business, premises, equipment, or fixtures of a mixed beverage establishment;

(2) furnish or lend any money, service, or other thing of value to a mixed beverage permittee or guarantee the fulfillment of a financial obligation of a mixed beverage permittee;

(3) enter or offer to enter into an agreement, condition, or system which in effect amounts to the shipment and delivery of alcoholic beverages on consignment;

(4) furnish, rent, lend, or sell to a mixed beverage permittee any equipment, fixtures, or supplies used in the selling or dispensing of alcoholic beverages;

(5) pay or make an allowance to a mixed beverage permittee for a special advertising or distributing service, or allow the permittee an excessive discount;

(6) offer to a mixed beverage permittee a prize, premium, or other inducement, except as permitted by Section 102.07(b) of this code, or

(7) advertise in the convention program or sponsor a function at a meeting or convention or a trade association of holders of mixed beverage permits, unless the trade association was incorporated before 1950.

**Sec. 102.05. HOTEL: MULTIPLE INTERESTS AUTHORIZED.** A hotel may hold a package store permit, mixed beverage permit, wine and beer retailer's per-

mit, and retail dealer's license if the businesses are completely segregated from each other.

**Sec. 102.06. RELATIONSHIP BETWEEN AGENT OR MANUFACTURER'S AGENT AND PACKAGE STORE.** No holder of an agent's or manufacturer's agent's permit may directly or indirectly have an interest in a package store permit or wine only package store permit or be residentially domiciled with a person who has a financial interest in a package store permit or wine only package store permit.

**Sec. 102.07. PROHIBITED DEALINGS WITH RETAILER OR CONSUMER.** (a) Except as provided in Subsection (b) 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;
- (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 either.

(b) A permittee covered by Subsection (a) may furnish to a retailer without cost 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.

(c) No person who owns or has an interest in the business of a package store or wine only package store, nor the agent, servant, or employee of the person may allow an excessive discount on liquor.

**Sec. 102.08. WHOLESALER: LIQUOR MANUFACTURED BY AFFILIATE.** (a) No holder of a wholesaler's permit may own, possess, or sell any liquor, manufactured, distilled, or rectified by a person, firm, or corporation that is directly or indirectly affiliated with the wholesale permittee, regardless of whether the affiliation is corporate, by management, direction, or control, or through an officer, director, agent, or employee.

(b) This section does not apply to a holder of a wholesaler's permit who held the permit on January 1, 1941, and has held it continuously since that date, who was on that date selling liquor manufactured, distilled, or rectified by such an affiliate.

**Sec. 102.09. WHOLESALER: INTEREST IN DISTILLER AND RECTIFIER.** No holder of a wholesaler's permit may be affiliated with the holder of a

distiller's and rectifier's permit, or with a person, firm, or corporation engaged in distilling or rectifying liquor inside or outside this state, regardless of whether the affiliation is direct or indirect, through an officer, director, agent, or employee, or by management, direction, or control.

**Sec. 102.10. DISTILLER AND RECTIFIER: INTEREST IN WHOLESALER.** (a) This section applies to the following;

- (1) a holder of a distiller's and rectifier's permit;
- (2) a person, firm, or corporation engaged in distilling or rectifying liquor, either inside or outside this state.
- (3) an officer, director, agent, or employee of an entity named in subdivision (1) or (2) of this subsection; or
- (4) an affiliate of an entity named in Subdivision (1) or (2) of this subsection, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) No entity named in Subsection (a) of this section may have any interest in the permit, business, assets, or corporate stock of a holder of a wholesaler's permit.

**Sec. 102.11. MANUFACTURER OR DISTRIBUTOR: PROHIBITED INTERESTS.** No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

- (1) own any interest in the business or premises of a retail dealer of beer;
- (2) hold or have an interest in a license to sell brewery products for on-premises consumption, except to the extent that a manufacturer's license permits on-premises consumption.

**Sec. 102.12. COMMERCIAL BRIBERY BY MANUFACTURER OR DISTRIBUTOR.** No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may give or permit to be given money or any thing of value in an effort to induce agents, employees, or representatives of customers or prospective customers to influence their employees or principals to purchase or contract to purchase brewery products from the manufacturer or distributor or to refrain from buying those products from other persons.

**Sec. 102.13. EXCLUSIVE OUTLET AGREEMENT AS TO BREWERY PRODUCTS.** No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may require, by agreement or otherwise, that a retailer engaged in the sale of brewery products purchase any of those products from him to the total or partial exclusion of the products sold or offered for sale by a competitor or require the retailer to take or dispose of a certain quota of the product.

**Sec. 102.14. MANUFACTURER OR DISTRIBUTOR: FURNISHING EQUIPMENT OR FIXTURES.** (a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member may furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to a person engaged in selling brewery products for on-premises consumption.

(b) This section does not apply to equipment, fixtures, or supplies furnished, given, loaned, rented, or sold before November 16, 1935, except that transactions

made before that date may not be used as consideration for an agreement made after that date with respect to the purchase of brewery products. If a manufacturer or distributor of brewery products or an agent or employee of one of them removes the equipment, fixtures, or supplies from the premises of the person to whom they were furnished, given, loaned, rented, or sold, the exemption granted by this subsection no longer applies to the equipment, fixtures, or supplies.

(c) Notwithstanding any other provision of this code, a manufacturer or distributor may, with written approval of the administrator, sell for cash devices designed to extract brewery products from legal containers subject to the following conditions:

(1) the legal containers must not exceed a one-eighth barrel capacity and must not be reused or refilled;

(2) the selling price of such devices may be no less than the cost of acquisition to the manufacturer or distributor; and

(3) such devices which extract brewery products from legal containers covered by this section may not be furnished, given, rented, or sold by the manufacturer or distributor to a licensee or permittee authorized to sell or serve brewery products for on-premise consumption, or to the ultimate consumer.

**Sec. 102.15. MANUFACTURER OR DISTRIBUTOR: PROHIBITED DEALINGS WITH RETAILER.** No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

(1) furnish, give, or lend any money or other thing of value to a person engaged or about to be engaged in selling brewery products for on-premises or off-premises consumption, or give the person any money or thing of value for his use, benefit, or relief, or

(2) guarantee the repayment of a loan or the fulfillment of a financial obligation of a person engaged in or about to be engaged in selling beer at retail.

**Sec. 102.16. UNLAWFUL AGREEMENTS.** (a) A brewer, distiller and rectifier, winery permittee, or alcoholic beverage manufacturer, or the agent, servant, or employee of any of them, commits an offense if he orally or in writing enters or offers to enter into an agreement or other arrangement with a wholesaler or other person in the state:

(1) by which a person is required or influenced, or that is intended to require or influence a person, to purchase, otherwise obtain, produce, or require a certain volume or quota of business, more or less, of one or more types or brands of alcoholic beverages, either in a certain area, in a certain period of time, or on fulfillment of any condition; or

(2) to require or influence a person, or attempt to require or influence a person, to sell an alcoholic beverage in a manner contrary to law or in a manner calculated to induce a violation of the law.

(b) The commission or administrator shall investigate suspected violations of this section, and if either of them finds or has good reason to believe that this section has been or is being violated, the commission or administrator shall give the

affected parties notice of hearing as provided in this code. On finding that a person has violated or is violating a provision of this section, the commission or administrator shall enter an order prohibiting the violator or his agents to directly or indirectly ship any of his goods into the state for a period not to exceed one year. No person may violate that order.

(c) The commission shall adopt necessary rules to effectuate this section.

**Sec. 102.17. CONTRACT FOR SALE OF LIQUOR.** A brewer, distiller and rectifier, winery permittee, manufacturer, or nonresident seller of liquor and the holder of a wholesaler's permit may enter into a contract for the sale and purchase of a specified quantity of liquor to be delivered over an agreed period of time, but only if the contract is first submitted to the commission or administrator and found by the commission or administrator not to be calculated to induce a violation of this code.

**Sec. 102.18. MANUFACTURER: PROHIBITED INTERESTS.** (a) This section applies to the following:

- (1) a holder of a manufacturer's or nonresident manufacturer's license;
- (2) an officer, director, agent, or employee of an entity named in Subdivision (1) of this subsection; or
- (3) an affiliate of an entity named in Subdivision (1) of this subsection, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) No entity named in Subsection (a) of this section may have any interest in the license, business, assets, or corporate stock of a holder of a general, local, or branch distributor's license.

## **SUBCHAPTER B. REGULATION OF CREDIT TRANSACTIONS**

**Sec. 102.31. CASH PAYMENT REQUIRED.** (a) This section applies to:

- (1) the sale of beer or its containers of the original packages in which it is received, packaged, or contained by a distributor's licensee to a retail dealer's on-premise or off-premise licensee, a wine and beer retailer's permittee, or a wine and beer retailer's off-premise permittee; and
- (2) the sale of malt beverages by a local distributor's permittee, or by any licensee authorized to sell those beverages for resale, to a mixed beverage or daily temporary mixed beverage permittee.

(b) No person directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may make a sale covered by this section except for cash on or before delivery to the purchaser.

(c) A person who engages in a subterfuge by which credit is extended to the purchaser violates this code. Acceptance of a postdated check is not a cash sale, but a valid check or draft payable on demand may be accepted as cash. If a check or draft is accepted in payment, it must be deposited in the bank for payment or presented for payment within two days after it is received. If the check or draft is dishonored by the drawee, the licensee or permittee who accepted it shall report that fact to the commission within two days after receiving notice of dishonor. The

report shall be on a form prescribed by the commission and shall contain any information the commission requires.

(d) Sundays and legal holidays are not counted in determining time periods under this section.

(e) The commission may promulgate rules to give effect to this section.

**Sec. 102.32. SALE OF LIQUOR; CREDIT RESTRICTIONS.** (a) In this section:

(1) "Wholesale dealer" means a wholesaler, class B wholesaler, winery, wine bottler, or local distributor's permittee.

(2) "Retailer" means a package store, wine only package store, wine and beer retailer's, wine and beer retailer's off-premise, or mixed beverage permittee, any other retailer, or a private club registration permittee.

(3) "Month" means a calendar month.

(b) No wholesale dealer may sell and no retailer may purchase liquor except for cash or on terms requiring payment by the retailer in accordance with Subsection (c) of this section.

(c) On purchases made from the 1st through 15th day of a month, payment must be made on or before the 25th day of that month. On purchases made on the 16th through the last day of a month, payment must be made on or before the 10th day of the following month.

(d) Each delivery of liquor shall be accompanied by an invoice giving the date of purchase. If a retailer becomes delinquent in the payment of an account for liquor, the wholesale dealer immediately shall report that fact in writing to the commission or administrator. No wholesale dealer may sell any liquor to a retailer who is delinquent until the delinquent account is paid in full and cleared from the records of the commission. An account becomes delinquent if it is not paid when it is required to be paid under Subsection (c) of this section.

(e) A wholesale dealer who accepts a postdated check, a note or memorandum, or participates in a scheme to assist a retailer in the violation of this section commits an offense.

(f) The commission shall adopt rules and regulations to give effect to this section.

### **SUBCHAPTER C. TERRITORIAL LIMITS ON SALE OF BEER**

**Sec. 102.51. SETTING OF TERRITORIAL LIMITS.** (a) Each holder of a manufacturer's or nonresident manufacturer's license shall designate territorial limits in this state within which the brands of beer the licensee manufactures may be sold by general, local, or branch distributor's licensees.

(b) Each holder of a general, local, or branch distributor's license shall enter into a written agreement with each manufacturer from which the distributor purchases beer for distribution and sale in this state setting forth the sales territory within which each brand of beer purchased by that distributor may be distributed and sold. No holder of a general, local, or branch distributor's license shall make

any sales of any brand of beer outside the sales territory specified in the written agreement. No such agreement shall interfere with the rights of retailers to purchase beer as provided in Section 102.53. A manufacturer may agree to not assign all or any part of the same sales territory to more than one distributor. A copy of the agreement and any amendments to it shall be filed with the administrator.

(c) This Act is promulgated to the authority of the state under the provisions of the Twenty-first Amendment to the United States Constitution to promote the public interest in the fair, efficient, and competitive distribution of beer, to increase competition in such areas, and to assure product quality control and accountability by allowing manufacturers to assign sales territories within this state.

**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 a distributor.

(b) A holder of a 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.

**Sec. 102.53. RIGHTS OF RETAILERS.** Nothing in Section 102.51 or 102.52 of this code limits or alters the right of a holder of a retail license or permit to purchase beer at the licensed premises of any general, local, or branch distributor's licensee in the state and transport that beer to his licensed premises, except that the retailer may sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by a distributor.

## **SUBCHAPTER D. BEER INDUSTRY FAIR DEALING LAW**

**Sec. 102.71. DEFINITIONS.** In this subchapter:

(1) "This Act" means this subchapter which shall have the short title and may be cited as the "Beer Industry Fair Dealing Law."

(2) "Agreement" means any contract, agreement, or arrangement, whether expressed or implied, whether oral or written, for a definite or indefinite period between a manufacturer and a distributor pursuant to which a distributor has the right to purchase, resell, and distribute any brand or brands of beer offered by a manufacturer.

(3) "Distributor" means those persons licensed under Section 64.01 or 65.01 of this code.

(4) "Manufacturer" means those persons licensed under Section 62.01 or 63.01 of this code.

(5) "Territory" or "sales territory" means the geographic area of distribution and sale responsibility designated by an agreement between a distributor and manufacturer, as provided in Section 102.51 of this code, for any



brands of the manufacturer.

(6) "Good cause" means the failure by any party to an agreement, without reasonable excuse or justification, to comply substantially with an essential, reasonable, and commercially acceptable requirement imposed by the other party under the terms of an agreement.

**Sec. 102.72. PURPOSES.** (a) This act is promulgated pursuant to authority of the state under the provisions of the 21st amendment to the United States Constitution to promote the public's interest in the fair, efficient, and competitive distribution of beer within this state by requiring manufacturers and distributors to conduct their business relations so as to assure:

(1) that the beer distributor is free to manage its business enterprise, including the right to independently establish its selling prices; and

(2) that the public, retailers, and manufacturers are served by distributors who will devote their reasonable efforts and resources to the sales and distribution of all the manufacturer's products which the distributor has the right to sell and distribute and maintain satisfactory sales levels in the sales territory assigned the distributor.

(b) This Act shall govern all relations between manufacturers and their distributors, including any renewals or amendments to agreements between them, to the full extent consistent with the constitutions and laws of this state and the United States.

(c) The effect of this Act may not be varied by agreement. Any agreement purporting to do so is void and unenforceable to the extent of such variance only.

**Sec. 102.73. TERMINATION AND NOTICE OF CANCELLATION.** (a) Except as provided in Subsection (c) of this section, and except as may be specifically agreed upon at the time by the parties, no manufacturer or beer distributor may cancel, fail to renew, or otherwise terminate an agreement unless the manufacturer or distributor furnishes prior notification in accordance with Subsection (b) of this section to the affected party.

(b) The notification required under Subsection (a) of this section shall be in writing and must be received by the affected party not less than 90 days before the date on which the agreement will be cancelled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, failure to renew, or otherwise terminate an agreement, a statement of reasons therefor, and the date on which such action shall take effect.

(c) A manufacturer or distributor may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification for any of the following reasons:

(1) in the event of insolvency or bankruptcy or dissolution or liquidation of the other party;

(2) in the event the other party shall make an assignment for the benefit of creditors or similar disposition of substantially all of the assets of such party's business;

(3) in the event of a conviction or plea of guilty or no contest to a charge of

violating a law or regulation or the revocation or suspension of a license or permit for a period of 30 days or more relating to the business and which materially and adversely affects the party's ability to continue in business; or

(4) in the event of the failure to pay amounts owing the other when due, upon demand therefor, in accordance with agreed payment terms.

**Sec. 102.74. CANCELLATION.** No manufacturer or beer distributor may cancel, fail to renew, or otherwise terminate an agreement unless the party intending such action has good cause for such cancellation, failure to renew, or termination and, in any case in which prior notification is required under Section 102.73 of this code, the party intending to act has furnished said prior notification and the affected party has not eliminated the reasons specified in such notification as the reasons for cancellation, failure to renew, or termination within 90 days after the receipt of such notification.

**Sec. 102.75. PROHIBITED CONDUCT.** No manufacturer shall:

(1) induce or coerce, or attempt to induce or coerce, any distributor to engage in any illegal act or course of conduct;

(2) require a distributor to assent to any unreasonable requirement, condition, understanding, or term of an agreement prohibiting a distributor from selling the product of any other manufacturer or manufacturers;

(3) fix or maintain the price at which a distributor may resell beer;

(4) fail to provide to each distributor of its brands a written contract which embodies the manufacturer's agreement with its distributor;

(5) require any distributor to accept delivery of any beer or any other item or commodity which shall not have been ordered by the distributor.

**Sec. 102.76. TRANSFER OF BUSINESS ASSETS OR STOCK.** (a) No manufacturer shall unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock of a distributor or all or any portion of a distributor's assets, distributor's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling the distributor, including the distributor's rights and obligations under the terms of an agreement whenever the person or persons to be substituted meet reasonable standards imposed not only upon the distributor but upon all other distributors of that manufacturer of the same general class, taking into account the size and location of the sales territory and market to be served. Upon the death of one of the partners or a partnership operating the business of a distributor no manufacturer shall deny the surviving partner or partners of such partnership the right to become a successor-in-interest to the agreement between the manufacturer and such partnership. Provided that the survivor has been active in the management of the partnership and/or is otherwise capable of carrying on the business of the partnership.

(b) Notwithstanding the provisions of Subsection (a) of this section, upon the death of a distributor no manufacturer shall deny approval for any transfer of ownership to a surviving spouse or adult child of an owner of a distributor; provided however, that such subsequent transfers of such ownership by such surviving spouse or adult child shall thereafter be subject to the provisions of Sub-

section (a) of this section.

**Sec. 102.77. REASONABLE COMPENSATION.** (a) Any manufacturer who, without good cause, cancels, terminates, or fails to renew any agreement, or unlawfully denies approval of, or unreasonably withholds consent, to any assignment, transfer, or sale of a distributor's business assets or voting stock or other equity securities, shall pay such distributor with whom it has an agreement pursuant to Section 102.51 of this code the fair market value of the distributor's business with relation to the affected brand or brands. In determining fair market value, consideration shall be given to all elements of value, including but not limited to goodwill and going concern value.

(b) In the event that the manufacturer and the distributor are unable to mutually agree on whether or not good cause exists for cancellation under Section 102.74 of this code or on the reasonable compensation to be paid for the value of the distributor's business, as defined herein, the matter may, at the option of either the distributor or manufacturer, be submitted to three arbitrators, one of whom shall be named in writing by each party and the third of whom shall be chosen by the two arbiters so selected. Should the arbiters selected fail to choose a third arbiter within 10 days, a judge of a district court in the county in which the distributor's principal place of business is located shall select the third arbiter. Arbitration shall be conducted in accordance with the Texas General Arbitration Act, as amended (Article 224, Revised Civil Statutes of Texas, 1925). Arbitration costs shall be paid one-half by the distributor and one-half by the manufacturer. The award of the arbitrators shall be binding on the parties unless appealed within 10 days from the date of the award. All proceedings on appeal shall be in accordance with and governed by the Texas General Arbitration Act, as amended (Article 224, Revised Civil Statutes of Texas, 1925).

**Sec. 102.78. RIGHT OF FREE ASSOCIATION.** No manufacturer or distributor shall restrict or inhibit, directly or indirectly, the right of free association among manufacturers or distributors for any lawful purpose.

**Sec. 102.79. JUDICIAL REMEDIES.** (a) If a manufacturer or distributor who is a party to an agreement pursuant to Section 102.51 of this code fails to comply with this Act or otherwise engages in conduct prohibited under this Act, or if a manufacturer and distributor are not able to mutually agree on reasonable compensation under Section 102.77 of this code and the matter is not to be submitted to arbitration, the aggrieved manufacturer or distributor may maintain a civil action in a court of competent jurisdiction in the county in which the distributor's principal place of business is located.

(b) In any action under Subsection (a) of this section, the court may grant such relief as the court determines is necessary or appropriate considering the purposes of this Act.

(c) The prevailing party in any action under Subsection (a) of this section shall be entitled to actual damages, including the value of the distributor's business, as specified in Section 102.77 of this code, reasonable attorney's fees, and court costs.

**Sec. 102.80. COVERAGE AND EFFECTIVE DATE.** This Act shall cover

agreements in existence on the date of enactment of this Act and also shall apply to agreements entered into and any cancellation, termination, failure to renew, amendment, or material modification of any agreement occurring after the date of enactment of this Act.

### **CHAPTER 103. ILLICIT BEVERAGES**

**Sec. 103.1. ILLICIT BEVERAGES PROHIBITED.** No person may possess, manufacture, transport, or sell an illicit beverage.

**Sec. 103.02. EQUIPMENT OR MATERIAL FOR MANUFACTURE OF ILLICIT BEVERAGES.** No person may possess equipment or material designed for, capable of use for, or used in manufacturing an illicit beverage.

**Sec. 103.03. SEIZURE OF ILLICIT BEVERAGES, ETC.** A peace officer may seize 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; or
- (4) any material to be used in manufacturing an illicit beverage.

**Sec. 103.04. ARREST OF PERSON IN POSSESSION.** A peace officer may arrest without a warrant any person found in possession of:

- (1) an illicit beverage;
- (2) any equipment designed for use in or used in manufacturing an illicit beverage; or
- (3) any material to be used in manufacturing an illicit beverage.

**Sec. 103.05. REPORT OF SEIZURE.** (a) A peace officer who makes a seizure under Section 103.03 of this code shall make a report in triplicate which lists each item seized and the place and name of the owner, operator, or other person from whom it is seized. One copy of the report shall be verified by oath.

(b) The verified copy shall be retained in the permanent files of the commission or other agency making the seizure. The copy is subject to inspection by any member of the legislature or by any authorized law enforcement agency of the state.

(c) One copy of the report shall be delivered to the person from whom the seizure is made.

(d) A peace officer who makes a false report of the property seized commits a felony punishable by confinement in the penitentiary for not less than two years and not more than five years.

(e) A peace officer who fails to file the reports of a seizure as required by this section commits a misdemeanor punishable by a fine of not less than \$50 nor more than \$100 or by confinement in jail for not less than 10 nor more than 90 days or by both. The commission shall insure that the reports are made by peace officers.

**Sec. 103.06. BEVERAGE DELIVERED TO COMMISSION.** Any alcoholic beverage, its container, and its packaging which has been seized by a peace officer, as provided in Section 103.03 of this code, may not be replevied and shall be

delivered to the commission for immediate public or private sale in the manner the commission considers best.

**Sec. 103.07. BEVERAGE OF ILLICIT MANUFACTURE OR UNFIT FOR CONSUMPTION.** The commission may not sell but may destroy alcoholic beverages unfit for public consumption or of illicit manufacture.

**Sec. 103.08 SALE OF BEER.** (a) Any beer, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that beer has been seized, the commission shall promptly notify a holder of a general, local, or branch distributor's license who handles the brand of beer seized and who operates in the county in which it was seized. If the beer was seized in a dry area, the commission shall notify either the general, local, or branch distributor who handles the brand operating nearest the area or the manufacturer brewing the beer. The commission and the distributor or manufacturer shall jointly determine whether the beer is in a salable condition.

(c) If the beer is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall be offered for sale to the distributor or manufacturer. If offered to a distributor, the beer shall be sold at the distributor's cost price less any state taxes which have been paid on the beer, F.O.B. the distributor's place of business. If the beer is offered to a manufacturer, it shall be sold at the manufacturer's cost price to its nearest distributor, less any state taxes which have been paid on the beer, F.O.B., the nearest distributor's place of business. In either case, the storage or warehousing charges necessarily incurred as a result of the seizure shall be added to the cost price.

(d) If the distributor or manufacturer does not exercise the right to purchase salable beer or to purchase returnable bottles, containers, or packages at their deposit price within 10 days, the commission shall sell the beer, bottles, containers or packages at public or private sale as provided in this chapter.

**Sec. 103.09. SALE OF LIQUOR.** (a) Any liquor, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that liquor has been seized, the commission shall promptly notify a holder of a wholesaler's permit, a general class B wholesaler's permit, or a local class B wholesaler's permit who handles the brand of liquor seized and who operates in the county in which it was seized. If the liquor was seized in a dry area, the commission shall notify the wholesaler who handles the brand seized who operates nearest the area. The commission and the wholesaler shall jointly determine whether the liquor is in a salable condition.

(c) If the liquor is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall first be offered for sale to the wholesaler notified at the wholesaler's cost price F.O.B. its place of business, plus any storage or warehousing charges necessarily incurred as a result of the seizure.

(d) If the wholesaler does not exercise the right to purchase salable liquor, containers, or packages at the price specified in this section within 10 days, the commission shall sell the liquor, container, or packages at public or private sale, as provided in this chapter.

**Sec. 103.10. EXERCISE OF DISCRETION IN CASE OF MISTAKE.** The preceding sections of this subchapter shall not be construed as preventing the commission from exercising its discretion of illicit alcoholic beverages are seized as the result of an accidental shipment or other reasonable mistake. Under those circumstances, the commission may issue orders and make disposition of the alcoholic beverages as it finds just and reasonable.

**Sec. 103.11. PROCEEDS FROM SALE.** (a) The proceeds from the sale of seized alcoholic beverages, their containers, and their packaging shall be placed in escrow in a suspense account established by the commission for that purpose, pending the outcome of the forfeiture suit provided for in this chapter.

(b) Proceeds in escrow which are not forfeited to the state as a result of the suit shall be refunded to the alleged violator. Should the state illegally seize and sell any alcoholic beverages, the person legally entitled to possession of the beverages at the time of the seizure may recover from the state the fair market value of the beverages seized and sold, with the reimbursement paid out of the proceeds held in escrow from the sale and, if the funds in escrow are not sufficient, from the confiscated liquor funds.

**Sec. 103.12. CEILING PRICES DURING EMERGENCY.** If the federal government provides a method by which illicit alcoholic beverages or other property belonging to or forfeited to the state is sold at ceiling prices during a national emergency, the commission may comply with federal law or regulations in the sale or disposal of the beverages or property, even to the extent of partially or wholly abrogating provisions of this code that are inconsistent with the federal law or regulations.

**Sec. 103.13. BONDING OF SEIZED VEHICLES PENDING SUIT.** Any person with an ownership or a security interest in a vehicle that has been seized under Section 103.03 may recover possession of the vehicle pending suit for forfeiture by executing a bond with surety equal to double the appraised value of the vehicle. The bond shall be approved by the officer who made the seizure and shall secure the return of the vehicle to the custody of the seizing officer on the day of trial of the forfeiture suit.

**Sec. 103.14. INSTITUTION OF SUIT FOR FORFEITURE.** (a) The attorney general or the county or district attorney in the county in which a seizure is made shall institute a suit for forfeiture of the property or the proceeds in escrow from any sale of illicit beverages, or both, when notified by the commission or by the seizing officer that a seizure has been made under Section 103.03 of this code.

(b) The forfeiture suit shall be brought in the name of the State of Texas against the property or the proceeds in escrow, or both, and shall be brought in a court of competent jurisdiction in the county in which the seizure was made.

**Sec. 103.15. NOTICE OF FORFEITURE SUIT.** (a) Notice of the pendency of a suit for forfeiture under this chapter shall be served in the manner prescribed by law on any person in possession of the property at the time of seizure.

(b) If no person was in possession at the time of seizure or if the location of anyone who was in possession is unknown, notice of the suit shall be posted for 20 consecutive days immediately preceding the date of the suit at the courthouse door in the county in which the seizure was made.

**Sec. 103.16. FORFEITURE OF A SEIZED VEHICLE.** (a) In a suit for forfeiture of a vehicle seized under Section 103.03 of this code, the state shall have the burden of proving that the vehicle was used to transport an illicit beverage and that all intervenors under Subsection (b) of this section, if any knowingly violated some provision of this code.

(b) Any person with an ownership or security interest in the vehicle may intervene in the suit for forfeiture to establish his rights. An intervenor under the provisions of this section has the burden of proving that he has a valid ownership or security interest in the vehicle.

(c) If the state fails to prove that the vehicle was used to transport an illicit beverage, the court shall render judgment returning the vehicle to the owner.

(d) If the state proves that the vehicle was used to transport an illicit beverage and that all intervenors, if any, knowingly violated some provision of this code, the court shall render judgment forfeiting the vehicle to the state.

(e) If the state proves that the vehicle was used to transport an illicit beverage but fails to prove that any intervenor knowingly violated some provision of this code, the court shall render judgment delivering possession of the vehicle to the innocent intervenor with the highest priority to possession of the vehicle.

**Sec. 103.17. FORFEITURE OF OTHER SEIZED PROPERTY.** (a) In any suit for forfeiture of proceeds in escrow from a sale of illicit beverages or of property other than vehicles, or both, seized under Section 103.03 of this code, the state shall have the burden of proving that:

(1) the alcoholic beverages were illicit;

(2) the equipment is designed to be used on or is used in manufacturing an illicit beverage; or

(3) the material is to be used in manufacturing an illicit beverage.

(b) If the state fails to prove the facts necessary for forfeiture, the court shall render judgment returning possession of the property or of the proceeds in escrow to the owner or the person in possession at the time of seizure.

(c) If the state proves the facts necessary for forfeiture, the court shall render judgment forfeiting the property or the proceeds in escrow, or both, to the state and ordering disposal in accordance with the provisions of Section 103.20 or Section 103.18(c) of this code.

**Sec. 103.18. INTERVENTION BY SECURED CREDITORS.** (a) In any suit for forfeiture of proceeds in escrow from any sale of illicit beverages or of property

other than vehicles, or both, seized under Section 103.03 of this code, any person who has a security interest in any of the seized property may intervene to establish his rights.

(b) An intervenor under the provisions of this section shall have the burden of proving that he has a valid security interest in the property and that he had no knowledge that the property in which he has a security interest had been used or was to be used in violation of this code at the time the security interest was created.

(c) If an intervenor under this section establishes a security interest and a lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall issue an order of sale directed to the sheriff or any constable of the county in which the property was seized. The order shall command the sheriff or constable to conduct a sale at the courthouse door of all or part of the property, whichever the court considers proper, in the same manner as personal property is sold under execution.

(d) The proceeds of a sale under Subsection (c) of this section shall be applied first to the payment of the costs of suit and the expenses incident to the sale. After the costs of suit and expenses of sale have been approved by the court that tried the suit, any remaining proceeds shall be applied toward payment of creditors secured by the property, according to their priorities. After all secured creditors are satisfied, any remaining proceeds shall be paid to the commission to be allocated in accordance with the provisions of Section 103.23 of this code.

(e) If all intervenors under this section fail to establish a valid security interest or lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall order disposal of the property in accordance with the provisions of Section 103.20 of this code.

**Sec. 103.19. TRANSFER OF SECURITY INTERESTS.** All security interests in property sold under this chapter shall be transferred to the proceeds of the sale.

**Sec. 103.20. DISPOSITION OF FORFEITED PROPERTY.** (a) The commission may sell property, other than proceeds, in escrow, forfeited to the state at a public or private sale in the manner the commission considers best.

(b) If in the opinion of the commission or the administrator the property is needed for the use of the commission, the commission may retain and use the property until it is no longer needed, at which time it shall be sold in accordance with Subsection (a) of this section.

**Sec. 103.21. BILL OF SALE TO PURCHASER.** When executing a sale under this chapter, the commission or the sheriff or constable shall issue a bill of sale to each purchaser of property. The bill of sale shall convey a valid and unimpaired title in the property to the purchaser.

**Sec. 103.22. COSTS OF FORFEITURE SUITS.** The commission shall pay all costs of forfeiture suits out of the confiscated liquor fund or any other fund available to the commission for that purpose.

**Sec. 103.23. ALLOCATION OF PROCEEDS OF SALE.** Proceeds from a forfeiture sale and proceeds in escrow which are forfeited to the state in a forfeiture suit shall be disposed of by depositing 35 percent of the proceeds in a separate fund in the state treasury designated as the confiscated liquor fund and depositing 65



percent of the proceeds in the general revenue fund. The confiscated liquor fund may be appropriated to the commission to defray the expenses of accumulating evidence pertaining to violations of this code; assembling, storing, transporting, selling, and accounting for confiscated alcoholic beverages, containers, devices, and property; and any other purposes deemed necessary by the commission in administering and enforcing this code. Any unexpended balance in the confiscated liquor fund at the end of a biennium shall remain in the fund subject to further appropriation for the same purposes.

## CHAPTER 104. REGULATION OF RETAILERS

**Sec. 104.01. LEWD, IMMORAL, INDECENT CONDUCT.** 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;
- (3) rudely displaying or permitting a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment;
- (4) solicitation of any person to buy drinks for consumption by the retailer or any of his employees;
- (5) becoming intoxicated on the licensed premises or permitting an intoxicated person to remain on the licensed premises;
- (6) permitting lewd or vulgar entertainment or acts;
- (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.

**Sec. 104.02. BLINDS AND BARRIERS.** (a) No person may install or maintain a blind or barrier in the opening or door of a retail alcoholic beverage establishment or paint the windows, at or above a point 54 inches above the ground or sidewalk beneath the window, in a manner that will obstruct the view of the general public.

(b) No person may install or maintain a curtain, hanging, sign, or other obstruction that prevents a clear view of the interior of a package store or wine only package store, except a drug store that holds one of those permits may display drug merchandise notwithstanding this subsection.

**Sec. 104.03. CONSPIRACY; ACCEPTING UNLAWFUL BENEFIT.** A retail dealer or his agent, servant, or employee commits an offense if he conspires with another person to violate or accepts the benefits of a violation of this code or a valid rule of the commission.

**Sec. 104.04. DRAFT BEER DISPENSER: SIGN REQUIRED.** No retail dealer may dispense draft beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or brand of the product being dispensed through the faucet or apparatus. The sign must be in full sight of the purchaser, and the letters on it must be legible.

## **CHAPTER 105. HOURS OF SALE AND CONSUMPTION**

**Sec. 105.01. HOURS OF SALE: LIQUOR.** Except as provided in Sections 105.02, 105.03, and 105.04 of this code, no person may sell, offer for sale, or deliver any liquor:

- (1) on New Year's Day, Thanksgiving Day, or Christmas Day;
- (2) on Sunday; or
- (3) before 10 a.m. or after 9 p.m. on any other day.

(b) When Christmas Day or New Year's Day falls on a Sunday, Subsection (a) of this section applies to the following Monday.

**Sec. 105.02. HOURS OF SALE: WHOLESALERS AND LOCAL DISTRIBUTORS TO RETAILERS.** (a) Except as provided by Subsection (b) of this section, a wholesaler of a local distributor's permittee may sell, offer for sale, or deliver liquor to a retailer between 7 a.m. and 9 p.m. on any day except Sunday and Christmas Day.

(b) A local distributor's permittee may not sell, offer for sale, or deliver any liquor on a day on which a package store permittee is prohibited from selling liquor.

**Sec. 105.03. HOURS OF SALE: MIXED BEVERAGES.** (a) No person may sell or offer for sale mixed beverages at any time not permitted by this section.

(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 noon and midnight.

(c) In a county having a population of 300,000 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.

(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 are effective for the sale of mixed beverages and the offer to sell them by a holder of a mixed beverages late hours permit;

(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.

(e) A violation of a city ordinance or order of a commissioners court adopted pursuant to Subsection (d) of this section is a violation of this code.

**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.

**Sec. 105.05. HOURS OF SALE: BEER.** (a) No person may sell, offer for sale, or deliver beer at any time not permitted by this section.

(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.

(c) In a county having a population of 300,000 or more, according to the last preceding federal census, a holder of a retail dealer's on-premise late hours license may also sell, offer for sale, and deliver beer between midnight and 2 a.m. on any day.

(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 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.

(e) A violation of a city ordinance or order of a commissioners court adopted pursuant to Subsection (d) of this section is a violation of this code.

**Sec. 105.06. HOURS OF CONSUMPTION.** (a) In this section:

(1) "Extended hours area" means an area:

(A) located in a county having a population of more than 300,000, according to the last preceding federal census; or

(B) located in a county having a population of not more than 300,000, according to the last preceding federal census, if the area has been made subject to the extended hours of sale provided in Section 105.03 or 105.05 of this code.

(2) "Standard hours area" means an area which is not an extended hours area.

(b) 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.

(c) 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.

(d) 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.

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

## CHAPTER 106. PROVISIONS RELATING TO AGE

NOTE: *Senate Bill 306 was enacted during the 67th Legislature, Regular Session, and altered most provisions relating to age. However, Senate Bill 306 states that the changes in age requirements do not affect the eligibility of a person 18 years of age who holds a license or permit on September 1, 1981, to continue to hold the license or permit and to continue to engage in the activities authorized by the license or permit until the expiration thereof.*

**Sec. 106.01. DEFINITION.** In this code, "minor" means a person under 19 years of age.

**Sec. 106.02. PURCHASE OF ALOCHOL BY A MINOR.** (a) A minor commits an offense if he purchases an alcoholic beverage.

(b) Except as provided in 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 been previously convicted of a violation of this section, a violation is a misdemeanor punishable by fine of not less than \$100 nor more than \$500.

**Sec. 106.03. SALE TO MINORS.** (a) A person commits an offense if he knowingly sells an alcoholic beverage to a minor.

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 19 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.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500, by confinement in jail for not more than one year, or by both.

(d) If a person has been previously convicted of a violation of this section or Section 101.63 of this code, a violation is a misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000, by confinement in jail for not more than one year, or by both.

**Sec. 106.04. CONSUMPTION OF ALCOHOL BY A MINOR.** (a) Except as provided in Subsection (b) of this section, a minor commits an offense if he consumes an alcoholic beverage.

(b) A minor may consume an alcoholic beverage if he is in the visible presence of an adult parent, guardian, or spouse.

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

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

**Sec. 106.05. POSSESSION OF ALCOHOL BY A MINOR.** (a) Except as provided in Subsection (b) of this section, a minor commits an offense if he possesses an alcoholic beverage.

(b) A minor may possess an alcoholic beverage:

(1) while in the course and scope of his employment if he is an employee of a licensee or permittee and the employment is not prohibited by this code; or

(2) if he is in the presence of an adult parent, guardian, or spouse, or other adult to whom he has been committed by a court.

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

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

**Sec. 106.06. PURCHASE OF ALCOHOL FOR A MINOR; FURNISHING ALCOHOL TO A MINOR.** (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 knowingly makes available an alcoholic beverage to a minor.

(b) A person may purchase an alcoholic beverage for or give an alcoholic beverage to a minor if he is the minor's adult parent, guardian, or 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.

(c) A violation of this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

**Sec. 106.07. MISREPRESENTATION OF AGE BY A MINOR.** (a) A minor commits an offense if he falsely states that he is 19 years of age or older or presents any document that indicates he is 19 years of age or older to a person engaged in selling or serving alcoholic beverages.

(b) Except as provided in 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 been previously convicted of a violation of this section, a violation is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

**Sec. 106.08. IMPORTATION BY A MINOR.** No minor may import into this state or possess with intent to import into this state any alcoholic beverage.

**Sec. 106.09. EMPLOYMENT OF MINORS.** (a) Except as provided in Subsections (b) and (c) of this section, no person may employ a person under 18 years of age to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so.

(b) A holder of a wine only package store permit may employ a person 16 years old or older to work in any capacity.

(c) A holder of a mixed beverage permit may employ a person under 18 years of age to work in any capacity other than the actual selling, preparing, or serving of mixed beverages.

**Sec. 106.10. PLEA OF GUILTY BY MINOR.** No minor may plead guilty to an offense under this chapter except in open court before a judge.

**Sec. 106.11. PARENT OR GUARDIAN AT TRIAL.** (a) Except as provided

in Subsection (d) of this section, no minor may be convicted of an offense under this chapter unless his parent or legal guardian is present in court.

(b) If the parent or legal guardian of a minor accused of a violation of this chapter resides within the jurisdiction of the court before whom the case is to be heard, the court shall summon the parent or legal guardian to appear in court and shall require him to be present at all proceedings in the case.

(c) If the parent or legal guardian of a minor accused of a violation of this chapter resides outside the jurisdiction of the court before whom the case is to be heard, the court shall give written notice of the charge against the minor to the parent or legal guardian.

(d) If the court is unable to locate or to compel the presence of a minor's parent or legal guardian after diligent effort, the court may waive the requirement of presence of a parent or legal guardian.

**Sec. 106.12. EXPUNGEMENT OF CONVICTION OF A MINOR.** (a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 19 years, may apply to the court in which he was convicted to have the conviction expunged.

(b) The application shall contain the applicant's sworn statement that he was not convicted of any violation of this code while a minor other than the one he seeks to have expunged.

(c) If the court finds that the applicant was not convicted of any other violation of this code while he was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

**Sec. 106.13. SANCTIONS AGAINST RETAILER.** (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 knowingly sold, served, dispensed, or delivered an alcoholic beverage to a minor in violation of this code or knowingly permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises.

(b) For a second offense the commission or administrator may cancel the license or permit or suspend it for not more than three months. For a third offense within a period of 36 consecutive months the commission or administrator may cancel the permit or suspend it for not more than 12 months.

(c) The commission or administrator may relax the provisions of this section concerning suspension and cancellation and assess a sanction the commission or administrator finds just under the circumstances if, at a hearing, the licensee or permittee establishes to the satisfaction of the commission or administrator:

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped; or

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee.

## CHAPTER 107. TRANSPORTATION AND IMPORTATION

**Sec. 107.01. TRANSPORTATION OF LIQUOR: STATEMENT REQUIRED.** (a) No person may transport liquor into this state or on a public highway, street, or alley in this state unless the person accompanying or in charge of the shipment has with him, available for exhibition and inspection, a written statement furnished and signed by the shipper showing the name and address of the consignor and the consignee, the origin and destination of the shipment, and any other information required by rule or regulation of the commission.

(b) The person in charge of the shipment while it is being transported shall exhibit the statement to the commission, an authorized representative of the commission, or a peace officer on demand, and it is a violation of this code to fail or refuse to do so. The representative or officer shall accept the written statement as prima facie evidence of the legal right to transport the liquor.

**Sec. 107.02. TRANSPORTATION OF BEER: STATEMENT REQUIRED.** (a) It is lawful for a person to transport beer from any place where its sale, manufacture, or distribution is authorized to another place in the state where its sale, manufacture, or distribution is authorized, or from the state boundary to a place where its sale, manufacture, or distribution is authorized, even though the route of transportation may cross a dry area.

(b) A shipment of beer must be accompanied by a written statement furnished and signed by the shipper showing:

- (1) the name and address of the consignor and consignee;
- (2) the origin and destination of the shipment; and
- (3) any other information required by the commission or administrator.

(c) The person in charge of the shipment while it is being transported shall exhibit the written statement to any representative of the commission or peace officer who demands to see it. The statement shall be accepted by the representative or peace officer as prima facie evidence of the legal right to transport the beer.

(d) A person who transports beer not accompanied by the required statement, or who fails to exhibit the statement after a lawful demand, violates this code.

**Sec. 107.03. DELIVERY OF LIQUOR IN DRY AREA.** No carrier may transport and deliver liquor to a person in a dry area in this state except for a purpose authorized by this code.

**Sec. 107.04. DELIVERY OF BEER IN DRY AREA.** A common carrier may not deliver beer in a dry area unless it is consigned to a local or general distributor's licensee who has previously stated that he intends to transport it to a licensed place of business in a wet area. A common carrier who transports beer to a distributor in a dry area shall comply strictly with this section and Section 107.02 of this code.

**Sec. 107.05. IMPORTATION OF LIQUOR.** (a) No person may import

liquor into the state and deliver it to a person not authorized to import it.

(b) This section does not apply to the transportation of liquor into the state as authorized by Section 107.07 of this code.

**Sec. 107.06. IMPORTATION OF BEER.** (a) No person may import beer into the state except the holder of a manufacturer's or general, local, or branch distributor's license.

(b) No person may transport beer into this state unless it is consigned and delivered to one of the licensees named in Subsection (a) of this section.

(c) This section does not apply to the importation or transportation of military beer consigned to a military installation or to the importation of beer as authorized under Section 107.07 of this code.

**Sec. 107.07. IMPORTATION FOR PERSONAL USE; IMPORTATION BY RAILROAD COMPANIES.** (a) A Texas resident may import not more than one quart of liquor for his own personal use without being required to hold a permit. A Texas resident may import for his own personal use not more than three gallons of wine without being required to hold a permit. A nonresident of Texas may import not more than a gallon of liquor for his own personal use without being required to hold a permit. A person importing liquor into the state under this subsection must pay the state tax on liquor and affix the required tax stamps. No person under the age of 19 years and no intoxicated person may import any liquor into the state. A person importing wine or liquor under this subsection must personally accompany the wine or liquor as it enters the state. A person may not avail himself of the exemptions set forth in this subsection more than once every thirty days.

(b) A person may import beer into this state for his own personal use without being required to hold a license, but may not import more than 24 twelve-ounce bottles or an equivalent quantity in one day. He must pay the state tax on beer.

(c) A member of the armed forces stationed in Texas is treated as a Texas resident for the purposes of Subsections (a) and (b) of this section.

(d) A railroad company operating in this state may import beer owned by the company in quantities necessary to meet the needs of its passengers, but it may not sell or serve beer in a dry area.

**Sec. 107.08. TRANSPORTATION OF BEVERAGES FOR PERSONAL CONSUMPTION.** 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.

## CHAPTER 108. ADVERTISING

### SUBCHAPTER A. GENERAL PROVISIONS RELATING TO ADVERTISING

**Sec. 108.01. DECEPTIVE, DISPARAGING, OR OTHERWISE UNLAWFUL ADVERTISING.** (a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or



firm member, may publish, disseminate, or cause to be published or disseminated by any medium enumerated in Subsection (b) of this section an advertisement of a brewery product that:

- (1) causes or is reasonably calculated to cause deception of the consumer with respect to the product advertised;
  - (2) directly or by ambiguity, omission, or inference tends to create a misleading impression;
  - (3) is untrue in any particular;
  - (4) refers to the alcohol content of the product;
  - (5) disparages a competitor's product; or
  - (6) is obscene or indecent.
- (b) The media covered by this section include:
- (1) radio broadcasting;
  - (2) newspapers, periodicals, and other publications;
  - (3) signs and outdoor advertising; and
  - (4) any printed or graphic matter.

**Sec. 108.02. PROHIBITED FORMS OF ADVERTISING.** No person may advertise an alcoholic beverage or the sale of an alcoholic beverage by the employment or use of a sound vehicle or handbill on a public street, alley, or highway.

**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 by brand name on caps, regalia, or uniforms worn by employees of manufacturers or distributors or by participants in a game, sport, athletic contest, or revue if the participants are sponsored by a manufacturer or distributor.

**Sec. 108.04. ACTS OF PROMOTIONAL OR COURTESY NATURE: ADMINISTRATIVE DISCRETION.** The commission may promulgate rules which shall set definite limitations consistent with the general provisions of this code, relaxing the restrictions of Sections 102.14, 102.15, and 108.06 of this code, with respect to:

- (1) the sale or gift of novelties advertising the product of a manufacturer or distributor;
- (2) the making of gifts to civic, religious, or charitable organizations;
- (3) the cleaning and maintenance of coil connections for dispensing draught beer;
- (4) the lending of equipment for special occasions; and
- (5) acts of a purely courtesy nature.

**Sec. 108.05. ALLOWANCE FOR ADVERTISEMENT OR DISTRIBUTION.** No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may pay or make an allowance to a retail dealer for an advertising or distribution

service.

**Sec. 108.06. PRIZES AND PREMIUMS.** No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may offer a prize, premium, gift, or other inducement to a dealer in or consumer of brewery products.

**Sec. 108.07. ADVERTISING OF MIXED BEVERAGE ESTABLISHMENTS.** The provisions of this code applicable to outdoor advertising and to advertising in or on the premises do not apply to establishments for which a mixed beverage permit has been issued. The commission or administrator shall promulgate reasonable rules relating to that type of advertising, and violation of any of those rules is a violation of this code.

## **SUBCHAPTER B. OUTDOOR ADVERTISING**

**Sec. 108.51. DEFINITIONS.** In this subchapter:

(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, 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.

(2) "Billboard" means a structure directly attached to the land, a house, or a building having one or more spaces used to display a sign or advertisement of an alcoholic beverage or a person engaged in the manufacture, sale, or distribution of alcoholic beverages, whether or not the structure is artificially lighted. "Billboard" does not include a bench or a wall or other part of a structure used as a building, fence, screen, front, or barrier.

(3) "Electric sign" means a structure or device other than an illuminated billboard by which artificial light produced by electricity is used to advertise the alcoholic beverage business by a person who manufactures, sells, or distributes alcoholic beverages or to advertise an alcoholic beverage.

**Sec. 108.52. PERMISSIBLE OUTDOOR ADVERTISING.** (a) No outdoor advertising is permitted in this state except that which is authorized by this section or under rules of the commission or administrator promulgated pursuant to Section 108.03 of this code.

(b) Billboards and electric signs are permitted if they are not located in a manner contrary to this code.

(c) Retail licensees and permittees may erect or maintain one sign at each place of business which may read as follows:

(1) if a beer retailer, the sign may read "Beer";

(2) if an off-premises beer retailer, the sign may read "Beer" or "Beer to Go";

(3) if a wine and beer retailer, the sign may read "Beer," "Beer and Wine," or "Beer, Wine and Ale";

(4) if a wine and beer off-premises retailer, the sign may read "Beer," "Beer to Go," "Beer and Wine," "Beer and Wine to Go," "Beer, Wine and Ale," or "Beer, Wine and Ale to Go";

(5) if a package store permittee, the sign may read "Package Store," "Liquors," or "Wines and Liquors," and if a retail dealer's off-premise license is also held, the sign may read "Package Store," "Wines, Liquors and Beer," or "Wine, Liquors and Beer to Go"; or

(6) if a wine only package store permittee, the sign may read "Wine" or "Wines," and if a retail dealer's off-premise license is also held, the sign may read "Wines and Beer," "Wine and Beer," or "Wine and Beer to Go."

(d) A sign erected under Subsection (c) of this section may be placed inside or outside the place of business so as to be visible to the general public. None of the letters on a sign may be more than 12 inches in height, and no sign may contain any wording, insignia, or device representative of the brand or name of an alcoholic beverage. The commission or administrator may permit a licensee or permittee to erect or maintain one sign at each entrance or side of a building occupied by him if it faces more than one street or highway.

(e) Billboards, electric signs, or other signs to designate the firm name or business of a permittee or licensee authorized to manufacture, rectify, bottle, or wholesale alcoholic beverages may be displayed at the licensee's or permittee's place of business.

(f) A display composed of alcoholic beverages or printed or lithographed material advertising alcoholic beverages located inside the licensed premises is permitted if the alcoholic beverages or advertising material is not placed within six inches of a window or opening facing a street, alley, or highway. A card or certificate of membership in an association or organization is not "advertising material" for the purpose of this subsection if it is not larger than 80 square inches.

(g) Outdoor advertising of an alcoholic beverage or of the business of any person engaged in the manufacture, sale, or distribution of an alcoholic beverage is permitted to be placed on or affixed to a bench unless;

(1) the advertising is prohibited by an ordinance of an incorporated city or town; or

(2) the advertising is in an area or zone where the sale of alcoholic beverages is prohibited by law.

**Sec. 108.53. BILLBOARDS AND ELECTRIC SIGNS: WHEN PERMIT IS REQUIRED.** (a) No person may erect a billboard or electric sign advertising an alcoholic beverage within 200 feet of a retail establishment authorized to sell that

beverage unless he has first obtained a permit for that purpose from the commission. No permit is required for a billboard or electric sign that is not located within 200 feet of a retail establishment authorized to sell the advertised alcoholic beverage.

(b) The commission or administrator shall provide permit application forms, which may contain any information the commission or administrator deems necessary. The application shall contain a statement that the erection or maintenance of the billboard or electric sign will not have the effect of advertising or directing patronage to a particular retail establishment authorized to sell alcoholic beverages. Application shall be made under oath, addressed to the commission or administrator.

(c) The commission or administrator shall issue a permit if either of them finds that all statements in the application are true and the erection or maintenance of the billboard or electric sign will not be contrary to this code or to a rule of the commission. Otherwise, the commission or administrator shall refuse to issue a permit.

**Sec. 108.54. NONCONFORMING OUTDOOR ADVERTISING; SEIZURE, REMOVAL.** (a) No person may erect, maintain, or display any outdoor advertising, billboard, or electric sign which does not conform in all respects to the provisions of this code. A billboard or electric sign that does not conform is illegal equipment which is subject to seizure and forfeiture as provided in this code.

(b) The owner of any outdoor advertising that does not conform to the provisions of this code is responsible for removing it from public view immediately, and the failure to do so is a violation of this code.

**Sec. 108.55. LOCAL REGULATION OF BILLBOARDS, ELECTRIC SIGNS.** No person may erect or maintain a billboard, electric sign or any outdoor advertising in violation of an ordinance of an incorporated city or town.

**Sec. 108.56. DRY AREAS.** No person may erect or maintain a billboard or electric sign in an area or zone where the sale of alcoholic beverages is prohibited by law.

## **CHAPTER 109. MISCELLANEOUS REGULATORY PROVISIONS**

### **SUBCHAPTER A. SALVAGED AND INSURED LOSSES**

**Sec. 109.01. SALE OF SALVAGED OR INSURED LOSS.** If a person who does not hold a permit or license to sell alcoholic beverages acquires possession of alcoholic beverages as an insurer or insurance salvor in the salvage or liquidation of an insured damage or loss sustained in this state by a qualified licensee or permittee, he may sell the beverages in one lot or parcel as provided in this subchapter without being required to obtain a license or permit.

**Sec. 109.02. REGISTRATION OF BEVERAGES WITH COMMISSION.** Immediately after taking possession of the alcoholic beverages, the insurer or insurance salvor shall register them with the commission, furnishing the commission

a detailed inventory and the exact location of the beverages. At the time of registration, the registrant shall post with the commission a surety bond in an amount that the administrator finds adequate to protect the state against the taxes due on the beverages, if any are due. The registrant shall remit with the registration a fee for \$10. The fee only permits the sale of the beverages listed in the registration.

**Sec. 109.03. PREREQUISITE TO SALABILITY.** An alcoholic beverage is salable under this subchapter only if it has not been adulterated, it is fit for human consumption, all tax stamps required by law have been affixed, and the labels are legible as to contents, brand, and manufacturer.

**Sec. 109.04. SALE OF BEER: PROCEDURE.** (a) When the commission is notified under this subchapter of the acquisition of beer or its containers or original packages, it shall immediately notify a holder of a general, local, or branch distributor's license who handles the brand of beer and who operates in the county where it is located or, if it is located in a dry area or if no distributor operates in the county, the nearest distributor handling the brand or the manufacturer who brewed it.

(b) The insurer or insurance salvor, the commission, and the distributor or manufacturer shall jointly agree whether the beer is salable. If it is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, the manufacturer or distributor shall be given the opportunity to purchase it. A distributor may purchase beer at the cost price less any state taxes that have been paid, F.O.B. its place of business. A manufacturer may purchase beer at the cost price to the nearest distributor of the brand, less any state taxes that have been paid, F.O.B. that distributor's place of business. A manufacturer or distributor may purchase returnable bottles, containers, or packages at their deposit price.

(c) If the distributor or manufacturer does not exercise the right to purchase the merchandise within 10 days after being given the opportunity to purchase it, the insurer or insurance salvor may sell it to any qualified licensee or permittee as provided in Section 109.01 of this code.

**Sec. 109.05. SALE OF LIQUOR: PROCEDURE.** (a) When the commission is notified under this subchapter of the acquisition of liquor or its containers, or original packages, it shall immediately notify the holder or holders of wholesaler's, class B wholesaler's, or local class B wholesaler's permits who handle and regularly sell the brand or brands of liquor involved and who operate in the area where the liquor is located, or who operate in the nearest wet area if the liquor is in a dry area. The commission shall also notify the nonresident seller's permittees who handle the brand or brands of liquor involved, or the manufacturer's agent's permittees who represent those nonresident seller's permittees.

(b) The commission, the permittees who are notified, and the insurer or insurance salvor shall jointly determine whether the liquor is salable. If the liquor is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, it shall first be offered for sale to the wholesaler and nonresident seller of the brand or brands at their cost price, less any state taxes that have been paid

on the liquor.

(c) If the wholesaler does not exercise the right to purchase the liquor, container, or packages within 10 days after it is offered, the commission shall sell it at a public or private sale.

**Sec. 109.06. PURCHASER'S RIGHT TO USE BEVERAGES.** A permittee or licensee who purchases alcoholic beverages under this subchapter may treat them as other alcoholic beverages acquired by him as provided in this code.

**Sec. 109.07. SALVOR MAY REJECT BID.** A salvor may reject a bid made on only a part of a whole salvage.

## **SUBCHAPTER B. HOME PRODUCTION OF WINE, ALE, MALT LIQUOR OR BEER**

**Sec. 109.21. HOME PRODUCTION OF WINE, ALE, MALT LIQUOR, OR BEER.** (a) The head of a family or an unmarried adult may produce, or have manufactured by a winery permittee, for the use of his family or himself not more than 200 gallons of wine, ale, malt liquor, or beer per year. No license or permit is required.

(b) The commission may prohibit the use of any ingredient it finds detrimental to health or susceptible of use to evade this code. Only wine made from the normal alcoholic fermentation of the juices of dandelions or grapes, raisins, or other fruits may be produced under this section. Only ale, malt liquor, or beer made from the normal alcoholic fermentation of malted barley with hops, or their products, and with or without other malted or unmalted cereals, may be produced under this section. The possession of wine, ale, malt liquor, or beer produced under this section is not an offense if the person making it complies with all provisions of this section and the wine, ale, malt liquor, or beer is not distilled, fortified, or otherwise altered to increase its alcohol content.

(c) There is no annual state fee for beverages produced in compliance with this section.

*(NOTE: Section 109.22 (Repealed by Acts of the 66th Legislature, Regular Session, 1979.)*

## **SUBCHAPTER C. LOCAL REGULATION OF ALCOHOLIC BEVERAGES**

**Sec. 109.31. MUNICIPAL REGULATION OF LIQUOR.** A city by charter may prohibit the sale of liquor in all or part of the residential sections of the city.

**Sec. 109.32. MUNICIPAL AND COUNTY REGULATION OF BEER.** (a) An incorporated city or town by charter or ordinance may:

(1) prohibit the sale of beer in a residential area; and

(2) regulate the sale of beer and prescribe the hours when it may be sold, except the city or town may not permit the sale of beer when its sale is prohibited by this code.

(b) In a county that has only one incorporated city or town that has a majority of the population of the county, according to the most recent federal census, and where the city or town has shortened the hours of sale for beer on Sundays by a valid charter amendment or ordinance before January 1, 1957, the commissioners court may enter an order prohibiting the sale of beer on Sundays during the hours it is prohibited in the city or town. The order may apply to all or part of the area of the county located outside the city or town. The commissioners court may not adopt the order unless it first publishes notice for four consecutive weeks in a newspaper of general circulation in the county published in the county or a nearby county.

(c) In exercising the authority granted by this section, the city, town, or county may distinguish between retailers selling beer for on-premises consumption and retailers, manufacturers, or distributors who do not sell beer for on-premises consumption.

**Sec. 109.33. SALES NEAR SCHOOL, CHURCH, OR HOSPITAL.** (a) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public school, or public hospital.

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public school shall be from the nearest property line of the public school to the nearest doorway by which the public may enter the place of business, along street lines and in direct line across intersections. For any permit or license covering a premise where minors are prohibited from entering the premises under Section 109.53, the measurement of the distance between the premises and a public school shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.

(c) Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public school before filing the application with the commission. A copy of the notice must be submitted to the commission with the application. This Subsection (c) does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under Section 109.53.

(d) As to any dealer who held a license or permit on September 1, 1983, in a location where a regulation under this section was in effect on that date, for purposes of Subsection (a), but not Subsection (c), of this section, the measurement of

the distance between the place of business of the dealer and a public school shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. This subsection applies only as long as the place of business is continuously in operation from that date, whether or not under the same license or permit.

(e) The commissioners court of a county or the governing board of a city or town that has enacted a regulation under Subsection (a) of this section may also allow variances to the regulation if the commissioners court or governing body determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the court or governing board, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

#### **SUBCHAPTER D. OTHER MISCELLANEOUS PROVISIONS**

**Sec. 109.51. SACRAMENTAL WINE.** Nothing in this code limits the right of a minister, priest, rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any lawful source inside or outside the state. No fee or tax may be directly or indirectly charged for the exercise of this right. The commission by rule and regulation may regulate the importation of sacramental wine and prevent unlawful use of the right granted by this section.

**Sec. 109.52. WAREHOUSE RECEIPTS.** A bank, trust company, or other financial institution that owns or possesses warehouse receipts for alcoholic beverages as security for a loan, after receiving permission from the commission or administrator, may sell the beverages to a licensee or permittee authorized to purchase them.

**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 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 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 person under the age of 19 years, 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 person under the age of 19 years 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 provision 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.

**Sec. 109.54. FESTIVALS AND CIVIC CELEBRATIONS.** (a) Any licensee who has purchased beer for sale at the site of a festival or civic celebration which has been held annually for at least 15 years during a specified period not exceeding 10 days shall be authorized for 24 hours following the official close of the celebration to sell any beer remaining at the site to any licensee or permittee authorized to purchase beer for resale.

(b) Records of any such transactions shall be kept as may be required by the administrator.



## TITLE 5. TAXATION

### CHAPTER 201. LIQUOR TAXES

#### SUBCHAPTER A. TAX ON LIQUOR OTHER THAN ALE AND MALT LIQUOR

**Sec. 201.01. LIQUOR.** In this subchapter, "liquor" does not include ale or malt liquor.

**Sec. 201.02. "FIRST SALE" DEFINED.** In this subchapter, "first sale".

(1) as applied to liquor imported into this state by the holder of a wholesaler's permit authorizing importation, means the first actual sale by the permittee to the holder of any other permit authorizing the retail sale of the beverage or to the holder of a local distributor's permit; and

(2) as applied to all other liquor, means the first sale, possession, distribution, or use in this state.

**Sec. 201.03. TAX ON DISTILLED SPIRITS.** (a) A tax is imposed on the first sale of distilled spirits at the rate of \$2 per gallon.

(b) The minimum tax imposed on packages of distilled spirits containing two ounces or less is five cents per package.

(c) Should packages containing less than one-half pint but more than two ounces ever be legalized in this state, the minimum tax imposed on each of these packages is \$0.122.

**Sec. 201.04. TAX ON VINOUS LIQUOR.** (a) A tax is imposed on the first sale of vinous liquor that does not contain over 14 percent of alcohol by volume at the rate of 17 cents per gallon.

(b) A tax is imposed on vinous liquor that contains more than 14 percent of alcohol by volume at the rate of 34 cents per gallon.

(c) A tax is imposed on artificially carbonated and natural sparkling vinous liquor at the rate of 43 cents per gallon.

**Sec. 201.05. REPORTING SYSTEM.** A person who holds a permit authorizing the importation of liquor into this state shall pay the liquor tax by the reporting system under bond.

**Sec. 201.06. PAYMENT OF TAX; DISCOUNTS.** (a) The tax on liquor, levied and computed under this subchapter, shall be paid by a remittance payable to the state treasurer and forwarded together with any required sworn statement of taxes due to the commission in Austin on or before the date it is due.

(b) A discount of two percent of the amount due shall be withheld by the permittee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

**Sec. 201.07. DUE DATE.** The tax on liquor is due and payable on the 15th of the month following the first sale.

**Sec. 201.08. EXEMPTION FROM TAX.** (a) No tax may be collected on

liquor:

- (1) shipped out of state for consumption outside the state; or
- (2) sold aboard a ship for ship's supplies.

(b) The commission shall provide forms for claiming the exemption prescribed by this section.

(c) A tax credit shall be allowed for payment of any unintended or excess tax.

**Sec. 201.09. REFUND DUE ON DISPOSITION OUTSIDE OF STATE.** The holder of any permit authorizing the transportation of liquor out of this state may apply to the commission for a refund of the excise tax on liquor on which the state tax has been paid on proper proof that the liquor was sold or disposed of outside of this state.

**Sec. 201.10. EXCESS TAX.** A permittee is entitled to a refund or tax credit on future tax payment for any excess tax on liquor paid through oversight, mistake, error, or miscalculation.

**Sec. 201.11. TAX CREDITS AND REFUNDS.** The commission shall provide by rule for the equitable and final disposition of tax refunds or credits when liquor tax is overpaid or paid by mistake. It shall prescribe the time and manner for filing claims for credits and refunds and provide appropriate forms.

**Sec. 201.12. APPROPRIATIONS FOR REFUNDS.** Necessary funds from the collection of the tax on imported liquor before the revenue from that tax has been allocated may be appropriated for the payment of refunds of tax on imported liquor.

**Sec 201.13. SALE OF UNTAXED LIQUOR PROHIBITED.** No person may sell, offer for sale, or store for the purpose of sale in this state any liquor on which the state or federal tax, if due, has not been paid.

**Sec. 201.14. INVOICES OF TRANSPORTED LIQUOR.** A holder of a permit authorizing the wholesaling of liquor and the transporting of liquor outside of this state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported outside of this state within 24 hours after the liquor has been removed from the permittee's place of business.

**Sec. 201.15. EVIDENCE IN SUIT.** In any suit brought to enforce the collection of tax owed by the holder of a permit authorizing the importation of liquor into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

- (1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and
- (2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

**Sec. 201.16. PENALTY.** A person who violates any section of this subchapter except Section 201.09 or 201.13 of this code commits a misdemeanor which on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for not less than 30 days nor more than one year. Violations of Sections 201.09 and 201.13 are punishable in accordance with Section 1.05 of this code.

**Sec. 201.17. LIQUOR IN METRIC CONTAINERS.** For the purpose of the taxes imposed on liquor by this subchapter and on ale and malt liquor by Subchapter B of this chapter, if the liquor is in metric containers the amount of tax due is determined by converting the metric amount into the equivalent amount in gallons and applying the appropriate tax rate. The commission shall prepare tables showing the amount of tax due on various types of liquor, including ale and malt liquor, in metric containers.

## **SUBCHAPTER B. TAX ON ALE AND MALT LIQUOR**

**Sec. 201.41. FIRST SALE.** "First sale" of ale or malt liquor means its first sale in Texas or its importation into this state, whichever occurs first, but not both.

**Sec. 201.42. TAX ON ALE AND MALT LIQUOR.** A tax is imposed on the first sale of ale and malt liquor at the rate of \$0.165 per gallon.

**Sec. 201.43. DUTY TO PAY TAX; DUE DATE.** (a) The importer has the primary duty to pay the tax on ale and malt liquor imported into this state.

(b) The brewer has the primary duty to pay the tax on ale and malt liquor brewed in this state.

(c) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs.

**Sec. 201.44. TAX EXEMPTIONS.** No tax may be collected on ale or malt liquor:

- (1) shipped out of the state for consumption outside the state; or
- (2) sold aboard a ship for ship's supplies.

**Sec. 201.45. PROHIBITION OF SALE OF UNTAXED ALE OR MALT LIQUOR.** No person may sell, offer for sale, or store for the purpose of sale in this state any ale or malt liquor on which the state or federal tax, if due, has not been paid.

**Sec. 201.46. TAX LIABILITY.** A person possessing ale or malt liquor on which the tax is delinquent is liable for the delinquent tax in addition to the criminal penalties.

**Sec. 201.47. TAX REFUNDS AND CREDITS.** (a) The holder of a permit authorizing the transportation of ale or malt liquor out of the state may apply to the commission for a refund of the excise tax on ale or malt liquor that has been paid on proper proof that the ale or malt liquor was sold or disposed of outside the state.

(b) Tax credits shall be allowed for overpayment or mistaken payment of the tax on ale or malt liquor, and the commission shall provide by rule for the equitable and final disposition of the tax credits.

**Sec. 201.48. PAYMENT.** The tax on ale and malt liquor shall be paid by a remittance payable to the state treasurer and forwarded, together with any required sworn statements of taxes due, to the commission in Austin on or before the date it is due. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting

for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

**Sec. 201.49. MAY REQUIRE INFORMATION.** (a) The commission may require all brewers, nonresident brewers, importers, wholesalers, and class B wholesalers of ale and malt liquor to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of the tax due. No brewer, nonresident brewer, importer, wholesaler, or class B wholesaler may fail or refuse to furnish the required information.

(b) The commission may seize or withhold from sale the brewer's, nonresident brewer's, importer's, wholesaler's, or class B wholesaler's ale or malt liquor for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records, whether the records are inside or outside of this state.

**Sec. 201.50. INVOICES OF TRANSPORTED LIQUOR.** The holder of a permit authorizing the wholesaling of liquor and the transportation of it out of the state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported out of the state within 24 hours after the liquor has been removed from the permittee's place of business. Violation of this section is punishable by the penalty prescribed in Section 201.16 of this code.

**Sec. 201.51. EVIDENCE IN SUIT.** In any suit brought to enforce the collection of tax due on ale or malt liquor brewed in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

**Sec. 201.52. ALE AND MALT LIQUOR IN METRIC CONTAINERS.** Section 201.17 of this code applies to the taxation of ale and malt liquor in metric containers.

## SUBCHAPTER C. STAMPS

**Sec. 201.71. STAMPS.** Unless the liquor is exempt from tax or payment has been or is to be made by a permittee in accordance with the provisions of Subchapter A, B, or D of this chapter, the tax levied under Subchapter A or B shall be paid by affixing a stamp or stamps on each bottle or container of liquor. The stamp shall be affixed in strict accordance with the commission's rules and regulations.

**Sec. 201.72. DUTY TO PRINT.** The commission and the board of control shall have engraved or printed the liquor and beer tax stamps required by this code. The board of control shall let the contracts for the stamps required by this code as provided by law. The commission shall expend funds necessary to keep an ample supply of stamps on hand.

**Sec. 201.73. DESIGN.** The commission shall prescribe the design and

denomination of the tax stamps. Each stamp must show the amount of tax for which it evidences payment and shall contain the words "Texas State Tax Paid."

**Sec. 201.74. STATE TREASURER.** (a) The state treasurer is responsible for the custody and sale of tax stamps and for the proceeds of the sales under his official bond.

(b) The treasurer shall sell tax stamps only to qualified persons designated by the commission and to no other person.

(c) The treasurer may designate any state or national bank in this state as his agent to deliver and collect for any tax stamps and to remit the sale proceeds to him.

(d) Invoices for tax stamps shall be issued by the treasurer in triplicate and numbered consecutively. The original of the invoice shall be forwarded to the purchaser or to the person in whose care it may be sent for the benefit of a qualified purchaser. The second copy shall be transmitted to the commission daily and accompanied by those statements required by the commission. The third copy shall be retained by the treasurer.

(e) The treasurer shall make and keep a permanent record of all tax stamps received by him as well as all tax stamps sold. This record shall provide a perpetual inventory of all tax stamps and their disposition. The record must be available at all times to the commission or its authorized representatives.

**Sec. 201.75. DELIVERY OF STAMPS.** The commission shall prescribe the manner in which tax stamps are delivered by the state treasurer to the commission for use and sale by its inspectors in charge of ports of entry.

**Sec. 201.76. REFUNDS.** (a) The commission may make refunds for tax stamps in all cases where:

(1) stamped liquor is returned to the distillery or manufacturer, on certification by a duly authorized representative of the commission who inspected the shipment;

(2) stamped liquor has been destroyed, on certification by a duly authorized representative of the commission that the liquor has been destroyed;

(3) a person who has been authorized to purchase tax stamps and is in possession of unused tax stamps on discontinuation of business; and

(4) tax stamps of improper value have been erroneously affixed to a bottle or container of liquor and those tax stamps have been destroyed in a manner prescribed by the commission.

(b) To obtain a refund under this section, it must be shown that the tax stamps for which a refund is asked were purchased from the state treasurer and that the refund is made to a person authorized to purchase tax stamps from the treasurer. No other refunds for tax stamps are allowed.

(c) Sufficient funds to pay refunds for tax stamps may be appropriated from the revenue derived from the sale of the tax stamps before that revenue has been allocated.

**Sec. 201.77. WHO MAY PURCHASE STAMPS.** The commission shall designate those permittees or other persons entitled to purchase state tax stamps.

**Sec. 201.78. STAMPS FOR WINE.** Tax stamps for wine shall be issued in multiples of the rate assessed for each pint and for each one-tenth of a gallon.

**Sec. 201.79. ALTERNATIVE METHOD OF COLLECTING TAX ON WINE.** The commission may provide by rule an alternative method of collecting the tax on wine. That method may dispense with the use of tax stamps.

**Sec. 201.80. EXEMPTION.** The commission may prescribe by order special rules for the payment of the tax imposed by Subchapter A or B of this chapter in any circumstance that in the judgment of the commission creates an emergency or makes it impractical to require the affixing of tax stamps.

**Sec. 201.81. STAMPS FOR DISTILLED SPIRITS.** Tax stamps for distilled spirits may be issued only in multiples of the rate assessed each half-pint, except that when distilled spirits are contained in containers of one-tenth of a gallon, tax stamps shall be issued at the assessed rate for each type of distilled spirit.

**Sec. 201.82 IMPORTED DISTILLED SPIRITS; FEDERAL STAMP.** A container of distilled spirits that has a federal liquor strip stamp attached or that has been imported from a foreign country is subject to taxation and must have the appropriate state tax stamp for distilled spirits affixed to it, unless it is taxed under the reporting system.

#### **SUBCHAPTER D. TAX ON LIQUOR PRESCRIPTIONS**

**Sec. 201.91. TAX ON LIQUOR PRESCRIPTIONS.** A tax is imposed on each liquor prescription filled by a pharmacist at the rate of 22 cents per prescription.

**Sec. 201.92. TAX STAMP.** The tax on liquor prescriptions levied by Section 201.91 of this code shall be paid by affixing a tax stamp to each prescription before the prescribed liquor is sold or dispensed by the pharmacist.

**Sec. 201.93. PROHIBITIONS.** No person may sell any liquor by prescription without first affixing the required tax stamp to the prescription and to the container of prescribed liquor.

**Sec. 201.94. LIABILITY FOR TAX.** The liquor prescription tax is a liability on the owner of the pharmacy or drug store selling the prescribed liquor.

**Sec. 201.95. REVOCATION OF PERMIT.** Failure to pay the tax due on liquor prescriptions is a ground for revocation of any permit authorizing the sale of liquor by prescription.

**Sec. 201.96. SUIT.** If the owner of a pharmacy fails to pay the tax on liquor prescriptions, the commission may sue him to collect the amount due.

**Sec. 201.97. PRINTING, DISTRIBUTION, AND USE OF STAMPS.** (a) The commission shall design the tax stamp required by this subchapter. Each tax stamp shall have a serial number or other identifying mark printed on it. Each tax stamp shall be in duplicate so that one of each of the counterparts may be affixed to the container of liquor and the other to the prescription under which the liquor is sold.

(b) On requisition of the commission, the tax stamps shall be printed under the direction of the board of control and furnished to the state treasurer, who shall furnish the tax stamps only to holders of medicinal permits in this state.



(c) The commission may regulate the manner in which the tax stamps are affixed, cancelled, or accounted for.

## CHAPTER 202. MIXED BEVERAGE TAX

**Sec. 202.01. DEFINITIONS.** In this chapter:

(1) "Permittee" means a mixed beverage permittee, mixed beverage late hours permittee, daily temporary mixed beverage permittee, private club registration permittee, or private club late hours permittee.

(2) "Business day" means the period of time between 3 a.m. one day and 3 a.m. the next day.

**Sec. 202.02. TAX ON GROSS RECEIPTS.** A tax at the rate of 10 percent is imposed on the gross receipts of a permittee 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 alcoholic beverages and consumed on the premises of the permittee.

**Sec. 202.03. TAX RETURN; DUE DATE.** (a) Each permittee shall file a sworn tax return with the commission on or before the 15th day of every month.

(b) The return shall be in a form prescribed by the commission or administrator and shall include a statement of the total gross taxable receipts during the preceding month and any other information required by the commission or administrator. The form may not request more detailed information from a permittee than is ordinarily readily available from a typical permittee's daily sales records.

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

**Sec. 202.04. PAYMENT.** The tax due for the preceding month shall accompany the return and be in the form of a cashier's check, certified check, or postal money order payable to the State of Texas. The commission shall deposit the revenue in the mixed beverage tax clearance fund.

**Sec. 202.05. CIVIL PENALTY FOR FAILURE TO FILE OR PAY.** If any permittee fails to file a return or to pay to the commission the tax as required by this subchapter when the return or payment is due, the permittee shall forfeit an amount equal to five percent of the amount due as a penalty, and after 30 days the penalty is increased to 10 percent of the amount due.

**Sec. 202.06. RECORDS OF TAX RECEIPTS.** (a) Each permittee shall make and keep a record, in a form prescribed by the commission or administrator, of all tax receipts, including the total for each business day.

(b) Permittees, except daily temporary mixed beverage permittees, shall keep a copy of this record, as well as all other records of receipts and disbursements by the permittee, on file on the premises for a period of two years. The record is open to inspection by any agent of the commission or by any peace officer at any time.

(c) Daily temporary mixed beverage permittees shall file a copy of the records for each month with the tax return for that month as prescribed by the commission.

**Sec. 202.07. VIOLATIONS: PENALTY.** (a) No person may fail to keep a

record in the manner required by this chapter, fail to file any return in the manner required by this chapter, keep a false record, or file a false return.

(b) A person who violates this section is punishable by a fine of not more than \$1,000, or by confinement in the county jail for not more than 30 days, or by both.

**Sec. 202.08. AGGRAVATED VIOLATIONS; PENALTY.** (a) No person may knowingly fail to keep any record in the manner required by this chapter, fail to file any return in the manner required by this chapter, keep a false record, or file a false return.

(b) A person who violates this section is punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than two years.

(c) The commission or administrator shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or have been convicted of violating this section.

**Sec. 202.09. TAX ACCOUNT EXAMINATION; ADDITIONAL TAX; PENALTY.** (a) The commission shall examine the tax account of each permittee and collect any additional taxes due as established through any information or records in the possession of, or available to, the commission or that may come into the commission's possession.

(b) For the convenience of the commission in examining tax accounts of mixed beverage permittees and private club registration 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.

(c) When additional taxes are established as due based on an examination by the commission, a penalty equal to 10 percent of the additional taxes due shall be collected with the additional taxes due.

**Sec. 202.10. RECORD OF TAX RECEIPTS.** The commission shall keep a record indicating the name of the permittee from whom each return is received, the incorporated city or town, if any, and county in which the permittee's premises are located, and the amount of the tax received.

**Sec. 202.11. STAMPS.** (a) No mixed beverage permittee, daily temporary mixed beverage permittee, or private club registration permittee may possess or permit any person to possess on the premises any distilled spirits in any container not bearing a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(b) No local distributor's permittee may knowingly sell, ship, or deliver any distilled spirits in any container not bearing a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(c) Identification stamps shall be issued only to holders of local distributor's permits, who shall affix the stamps in a manner prescribed by the commission or administrator.

**Sec. 202.12. VIOLATORS INELIGIBLE FOR PERMIT.** (a) No mixed

beverage, daily temporary mixed beverage, or private club registration permit may ever be issued to any of the following:

(1) a person whose permit was cancelled for a violation of Section 28.06 (c) or 202.08 of this code;

(2) a person who held an interest of any kind in a permit that was cancelled for a violation of Section 28.06(c) or 202.08 of this code;

(3) a person who held 50 percent or more of the stock, either in his own name or by any other means, of a corporation whose permit was cancelled because of a violation of Section 28.06(c) or 202.08 of this code;

(4) a corporation if any person holding more than 50 percent or more of the stock, either in his own name or by any other means, is disqualified from obtaining a permit in his individual capacity because of a violation of Section 28.06(c) or 202.08 of this code; or

(5) a person residually domiciled with a person who is barred from obtaining a permit because of a violation of Section 28.06(c) or 202.08 of this code.

(b) For the purposes of this section, a person is treated as holding 50 percent or more of the stock in a corporation if that person and his parents, children, and siblings, and all persons with whom he is residually domiciled, together own 50 percent or more of the stock in the corporation.

**Sec. 202.13. MAY KEEP RECORDS AT SINGLE LOCATION.** (a) If two or more establishments operated under a permit or permits named in Section 202.01(1) of this code are located in the same county and are under the same or substantially the same ownership, the holder or holders of the permits may apply to the administrator, on a form furnished by the administrator for that purpose, for permission to keep all required records for those establishments at a single location in the county. The single location need not be the licensed premises of one of the establishments.

(b) If the administrator decides to approve the application, he must do so in writing and may impose any conditions regarding the keeping of the records that he finds appropriate.

(c) If records are kept at a single location under this section, the records for each establishment must still be kept separately.

**Sec. 202.14. SUMMARY SUSPENSION.** (a) If a permittee fails to file a return or make a tax payment as required by this chapter, including deficiencies under Section 202.09, the commission may summarily suspend the permit without a hearing. The Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), does not apply to the commission in their enforcement and administration of this section.

(b) A suspension under this section takes effect on the third day after the date on which the notice of suspension is given. The notice shall be given to the permittee, his agent, servant, 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, including payment of any penalties that are due.

**Sec. 202.15. EXCESS TAX.** A permittee is entitled to a refund or tax credit on future tax payment for any excess tax on gross receipts paid through oversight, mistake, error, or miscalculation.

**Sec. 202.16. TAX CREDITS AND REFUNDS.** The commission shall provide by rule for the equitable and final disposition of tax refunds or credits when gross receipts tax is overpaid or paid by mistake. It shall prescribe the time and manner for filing claims for credits and refunds and provide appropriate forms. The statute of limitations for refunds under Section 202.15 shall be four years.

## CHAPTER 203. BEER TAX

**Sec. 203. 01. TAX ON BEER.** A tax is imposed on the first sale of beer manufactured in this state or on the importation of beer into this state at the rate of five dollars per barrel.

**Sec. 203.02. TAX ON FIRST SALE OR IMPORTATION.** The tax levied by Section 203.01 of this code applies to the first sale in this state or to the importation into this state, whichever occurs first, but not to both.

**Sec. 203.03. DUTY TO PAY TAX; DUE DATE.** (a) The importer shall pay the tax on beer imported into this state.

(b) The manufacturer shall pay the tax on beer manufactured in this state.

(c) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale or importation occurred.

**Sec. 203.04. TAX ON UNSALABLE BEER.** No tax imposed under Section 203.01 of this code may be imposed or collected on beer that for any reason has been found and declared to be unsalable by the commission or administrator. A manufacturer or distributor is entitled to a refund of any tax he has paid on unsalable beer.

**Sec. 203.05. EXEMPTION FROM TAX.** (a) No tax may be collected on beer:

(1) shipped out of this state for consumption outside of this state;

(2) sold aboard ships for ship's supplies; or

(3) shipped to any installation of the national military establishment under federal jurisdiction for consumption by military personnel on that installation.

(b) The commission shall provide forms on which distributors and manufacturers may claim these exemptions from the tax on beer.

(c) If after paying the tax on beer a manufacturer or distributor becomes eligible for one of the above exemptions, the manufacturer or distributor is entitled to a refund.

**Sec. 203.06. EXCESS TAX.** A manufacturer or distributor is entitled to a refund or credit on future tax payment for any excess tax on beer paid through oversight, mistake, error, or miscalculation.

**Sec. 203.07. CLAIMS FOR REFUNDS.** (a) The commission or administrator shall prescribe by rule for the claiming of tax refunds and credits authorized under this chapter, including provisions as to the time and manner for claiming the refunds and credits.

(b) Necessary funds from the collection of beer tax before it is allocated may be

appropriated for the payment of beer tax refunds.

**Sec. 203.08. TAX EXEMPTION FOR CERTAIN MANUFACTURERS.** A manufacturer whose annual production of beer in this state does not exceed 75,000 barrels is exempt from the payment of 25 percent of the tax imposed under Section 203.01 of this code on each barrel of beer manufactured in this state.

**Sec. 203.09. STATEMENTS.** (a) The commission may require manufacturers of beer manufactured in this state or imported into this state, importers, and distributors to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of beer tax due. No manufacturer, importer, or distributor may fail or refuse to furnish the information.

(b) The commission may seize or withhold from sale the manufacturer's, importer's, or distributor's beer for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records whether inside or outside this state.

**Sec. 203.10. PAYMENT OF TAXES; DISCOUNT.** The tax on beer shall be paid by a remittance payable to the state treasurer and forwarded with any required sworn statements of taxes due to the commission in Austin on or before the due date. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

**Sec. 203.11. EVIDENCE IN SUIT.** In a suit brought to enforce the collection of tax due on beer manufactured in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code in relation to the computation and levy of the tax.

**Sec. 203.12. TAX LIABILITY.** A person possessing beer on which the tax is delinquent is liable for the delinquent taxes in addition to the criminal penalties.

## CHAPTER 204. BONDS

**Sec. 204.01. BOND REQUIRED.** (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;

(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 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 sub-

section does not exempt permittees subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code.

(d) 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 an importer'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.

(e) If certificates of deposit or savings or letters of credit are furnished under Subsection (d) of this section, the administrator shall keep them in his possession. Interest earned on a certificate of deposit or savings is not subject to the assignment and remains the property of the owner of the certificate.

(f) 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 an importer'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 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 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 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 importer'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 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 requirements for a bond 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.

*NOTE TO SECTION 204.01. For the purposes of Subsections (f) and (h) of Section 204.01, of the Alcoholic Beverage Code, as added, the 36 month period immediately preceding the effective date of this Act is counted in determining whether a permittee is entitled to an exemption from the requirement of furnishing a surety bond. (These instructions were enacted along with SB 472, 66th Legislature, R.S., but were not codified into the Alcoholic Beverage Code.)*

**Sec. 204.02. FORM AND CONDITIONS.** (a) A bond required under this chapter must be executed with the permittee or licensee as principal, a qualified surety company doing business in this state as surety, and the state as payee. All bonds of permittees must be payable in Travis County.

(b) The bond must be conditioned as required by the commission. Bonds required of permittees must be conditioned that as long as the applicant holds the permit he will not violate any law of this state relating to the traffic in or transportation, sale, or delivery of liquor or any valid rule of the commission. The bonds of permittees who are required to account for taxes and fees must also be conditioned that the permittee will account for and pay all permit fees and taxes levied by this code.

(c) The form of all bonds must be approved by the attorney general.

(d) A certificate of deposit or savings furnished by a permittee to secure the payment of the gross receipts tax on mixed beverages must be assigned to the state in a manner approved by the administrator to secure the payment of the tax.

(e) A letter of credit furnished by a permittee to secure the payment of the gross receipts tax on mixed beverages must be in a form and contain any conditions required by the administrator to secure the payment of the tax.

**Sec. 204.03. AMOUNT OF BOND.** (a) The commission or administrator shall set the amount of all bonds required under this chapter.

(b) A permittee who furnishes certificates of deposit or savings or letters of credit in lieu of all or part of the amount of bonds required by the commission or administrator to secure the payment of the gross receipts tax on mixed beverages may furnish any combination of these methods of securing the tax which satisfies that amount. The total of the bonds, certificates, and letters of credit of a permittee subject to the gross receipts tax on mixed beverages must be in an amount that, in the opinion of the commission or administrator, will protect the state, but in no case may the commission or administrator set the amount at less than \$1,000 or more than \$25,000.

(c) Bonds of other permittees, except those permittees covered by Subsection (d) of this section, may not be set at an amount less than \$1,000 or more than \$25,000.

(d) Bonds 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.

**Sec. 204.04. MULTIPLE PERMITS, ONE BOND.** If another permit is required, incidental to the operation of a business for which a basic permit is procured, the commission may accept one bond to support all of the permits. The commission shall determine the amount of the bond.

**Sec. 204.05. CANCELLATION OF BOND.** The commission may not cancel a surety bond until the surety company has paid and discharged in full all of its liabilities on the bond to the state as of the date of cancellation.

## **CHAPTER 205. REVENUE ALLOCATION**

### **Sec. 205. 01. REPEALED.**

*NOTE: Section 205.01 (repealed by Acts of the 67th Legislature, Regular Session, 1981.)*

**Sec. 205.02. DISPOSITION OF RECEIPTS.** (a) After allocation of funds to defray administrative expenses as provided in the current departmental appropriations act, receipts from the sale of tax stamps and funds derived from taxes on distilled spirits, wine, beer, and ale and malt liquor shall be deposited in the general revenue fund. An amount equal to one-fourth of the net revenue shall be transferred to the available school fund, and an amount equal to three-fourths of the net revenue shall be credited to the general revenue fund.

(b) All revenues derived from the collection of permit or license fees provided for in this code, except fees for temporary licenses, shall be deposited to the credit of the general revenue fund.

(c) Receipts derived from the gross receipts tax on mixed beverages imposed by Section 202.02 of this code shall be deposited to the credit of a special clearance fund known as the mixed beverage tax clearance fund.

**Sec. 205.03. MIXED BEVERAGE TAX CLEARANCE FUND.** (a) In this section, "permittee" means a mixed beverage permittee, mixed beverage late hours permittee, daily temporary mixed beverage permittee, private club registration permittee, or a private club late hours permittee.

(b) Before the end of the month following each calendar quarter, the commission shall submit to the comptroller of public accounts a report showing the total amount of taxes received during the quarter from permittees outside an incorporated city or town within each county and the total amount received from permittees within each incorporated city or town in each county.

(c) As soon as possible after receipt of each quarterly report of the commission, the comptroller shall issue to each county a warrant drawn on the mixed beverage tax clearance fund in the amount of 15 percent of receipts from permittees within the county during the quarter and shall issue to each incorporated city or town a warrant drawn on that fund in the amount of 15 percent of receipts from permittees within the incorporated city or town during the quarter, as shown by the commission's report. The remainder of the receipts for the quarter shall be transferred to the general revenue fund.

**Sec. 205.04. ALLOCATION FOR TAX COLLECTION EXPENSE.** When



the commission deems it necessary in order to comply with the purposes of Section 5.37(b) of this code, it may collect a surcharge equal to 10 percent of the state license and permit fees authorized under this code from designated classes of licensees or permittees at the time their fees are due, but in no event shall the surcharge exceed \$50 on any license or permit. All revenues derived from this tax collection expense surcharge shall be deposited in a separate fund in the state treasury designated as the confiscated liquor fund. This section expires September 1, 1988.

## **CHAPTER 206. PROVISIONS GENERALLY APPLICABLE TO TAXATION**

**Sec. 206.01. RECORDS.** (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 two years.

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

(c) No person may fail or refuse to keep any record required by this section open for inspection by the commission or its duly authorized representatives during reasonable office hours.

(d) No person may knowingly, with intent to defraud, make or cause to be made any false entry in any record required by this section or with like intent, alter or cause to be altered any item in one of those records.

**Sec. 206.02. PROOF OF TAXES DUE.** In a suit or claim by the attorney general for taxes due, he may attach or file as an exhibit a report or audit of a permittee or licensee with an affidavit made by the administrator or his representative stating that the taxes shown to be due by the report or audit are past due and unpaid and that all payments and credits have been allowed. Unless the opposing party files an answer in the same form and manner as required by Rule 185; Texas Rules of Civil Procedure, the audit or report constitutes prima facie evidence of the taxes due. The provisions of Rule 185 are applicable to a suit to collect taxes under this section.

**Sec. 206.03. IMPORTATION WITHOUT TAX STAMP.** A person commits an offense if he imports or transports liquor into this state without the proper state tax stamps affixed to the containers if the liquor is consigned to, intended for delivery to, or being transported to a person or place inside this state unless the liquor is consigned to a holder of a permit authorizing the importation of liquor.

**Sec. 206.04. JURISDICTION CEDED TO FEDERAL GOVERNMENT.** (a) No person may transport or ship or cause to be transported or shipped any alcoholic beverage into any area in this state in which the state has ceded police

jurisdiction to the federal government or any of its agencies unless the containers or packages holding those alcoholic beverages have a Texas tax stamp affixed if required by this code.

(b) Common carriers are not required to see that tax stamps are affixed.

**Sec. 206.05. UNMUTILATED STAMPS.** No person may possess, buy, sell, or offer to buy or sell any empty carton, case, package, keg, barrel, bottle, or any other kind of alcoholic beverage container on which the state tax stamps have not been mutilated or defaced.

**Sec. 206.06. FORGERY OR COUNTERFEITING.** (a) In this section, "counterfeit" or "forged" means printed, manufactured or made by, or under the direction of, or issued, sold, or circulated by a person not authorized to do so under the provisions of this code.

(b) No person may forge or counterfeit a stamp provided for in this code or print, engrave, make, issue, sell, circulate, or possess with intent to use, sell, circulate, or pass a forged or counterfeit stamp or place or cause to be placed any forged or counterfeit stamp on any container of alcoholic beverage.

(c) No person may print, engrave, make, issue, sell, or circulate with intent to defraud or knowingly possess a forged or counterfeit permit, license, official signature, certificate, evidence of tax payment, or other instrument.

(d) No person may possess a stamp or a part of a stamp, die, plate, device, machine, or other instrument used or designed for use for forging or counterfeiting any instrument named in Subsection (b) or (c) of this section.

(e) Conviction for an offense defined in this section may be had on the uncorroborated evidence of an accomplice. A court, officer, or tribunal having jurisdiction of an offense defined in this section or any district or county attorney may subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this section. Any person so summoned and examined is immune from prosecution for the violation of any provision of this section about which he may testify.

(f) A person who violates any provision of this section commits a felony punishable by imprisonment in the penitentiary for not less than 2 nor more than 20 years.

**Sec. 206.07. PAYMENT OF TAX BY MAIL.** (a) The payment of any tax imposed by this code is timely made if not later than the date on which payment is due the tax is mailed to the commission in an envelope with the proper address and postage and is received by the commission not later than the 10th day after the date on which it was due.

(b) A legible postmark made by the United States Postal Service is prima facie evidence of the date of mailing.

## TITLE 6. LOCAL OPTION ELECTIONS

### CHAPTER 251. LOCAL OPTION ELECTIONS

#### SUBCHAPTER A. MANNER OF CALLING ELECTION

**Sec. 251.01. ELECTION TO BE HELD.** On proper petition by the required number of voters of a county, or of a justice precinct or incorporated city or town in the county, the commissioners court shall order a local option election in the political subdivision to determine whether or not the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the county, justice precinct, or incorporated city or town.

**Sec. 251.02. QUALIFICATIONS FOR POLITICAL SUBDIVISION TO HOLD ELECTION.** (a) A political subdivision must have been in existence for at least 18 months before holding a local option election to legalize or prohibit the sale of liquor. The political subdivision must include substantially all the area encompassed by the subdivision at the time of its creation and may include any other area subsequently legally annexed by or added to the political subdivision.

(b) Subsection (a) of this section does not apply to a city or town incorporated before December 1, 1971.

**Sec. 251.03. APPLICATION FOR PETITION.** If 10 or more qualified voters of any county, justice precinct, or incorporated city or town file a written application, the county clerk of the county shall issue to the applicants a petition to be circulated among the qualified voters of that political subdivision for the signatures of those qualified voters in the area who desire that a local option election be called in that area for the purpose of determining whether the sale of alcoholic beverages of one more more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

**Sec. 251.04. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO PROHIBIT.** An application for a petition seeking an election to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed: "Application for Local Option Election Petition to Prohibit." The application shall contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above." The petition shall clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

**Sec. 251.05. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO LEGALIZE.** An application for a petition seeking an election to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed: "Application for Local Option Election Petition to Legalize." The application shall contain a statement just ahead of the

signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above." The petition shall clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

**Sec. 251.06. PETITION REQUIREMENTS.** Each petition shall show the date it is issued by the county clerk and be serially numbered. Each page of a petition shall bear the same date and serial number and the actual seal of the county clerk rather than a facsimile of that seal.

**Sec. 251.07. HEADING AND STATEMENT ON PETITION TO PROHIBIT.** The petition for a local option election seeking to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed "Petition for Local Option Election to Prohibit." The petition shall contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above." The petition must clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

**Sec. 251.08. HEADING AND STATEMENT ON PETITION TO LEGALIZE.** The petition for a local option election seeking to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed "Petition for Local Option Election to Legalize." The petition shall contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above." The petition must clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

**Sec. 251.09. COPIES OF PETITION.** (a) The county clerk shall supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or incorporated city or town. Each copy shall bear the date, number, and seal on each page as required on the original petition.

(b) The county clerk shall keep a copy of each petition and a record of the applicants for that petition.

**Sec. 251.10. VERIFICATION OF PETITION.** (a) The registrar of voters of the county shall check the names of the signers of petition and the voting precincts in which they reside to determine whether the signers of the petition were qualified voters of the county, justice precinct, or incorporated city or town at the time the petition was issued. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.

(b) No signature may be counted, either by the registrar or commissioners court, where there is reason to believe that:

- (1) it is not the actual signature of the purported signer;
- (2) the voter registration certificate number is not correct;

(3) the voter registration certificate number is not in the actual handwriting of the signer;

(4) it is a duplication either of a name or of handwriting used in any other signature on the petition;

(5) the residence address of the signer is not correct or is not in the actual handwriting of the signer; or

(6) the name of the voter is not signed exactly as it appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

**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 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.

**Sec. 251.12. RECORD IN MINUTES.** The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

**Sec. 251.13. ISSUES TO APPEAR IN ORDER FOR ELECTION.** (a) The order for the election shall state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the issue recited in the application and petition.

(b) The order shall state the issue to be voted on in the election.

**Sec. 251.14. ISSUES.** (a) In the ballot issues prescribed in this section, "wine" is limited to vinous beverages that do not contain more than 14 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. For local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) In areas where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications, the ballot shall be prepared to permit voting for or against one of the following issues:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(c) In areas where the sale of all alcoholic beverages including mixed beverages has been legalized, the ballot shall be prepared to permit voting for or against one of the following issues in any prohibitory election:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(d) In areas where the sale of all alcoholic beverages except mixed beverages has been legalized, the ballot shall be prepared to permit voting for or against one of the following issues in any prohibitory elections:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(e) In areas where the sale of beverages containing alcohol not in excess of 14 percent by volume has been legalized, and those of higher alcoholic content are prohibited, the ballot shall be prepared to permit voting for or against one of the following issues in any prohibitory election:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(f) In areas where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited, the ballot shall be prepared to permit voting for or against one of the following issues in any prohibitory election:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(g) In an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premises consumption, no alcoholic beverage may be consumed on the licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

**Sec. 251.15. ISSUE ON MIXED BEVERAGES.** (a) No local option election affects the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) In any legalization or prohibitory local option election where any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized prior to the election remains legalized without regard to the outcome of that election on the question of mixed beverages.

**Sec. 251.16. EVIDENCE OF VALIDITY.** The commissioners court order for election is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make it valid.

**Sec. 251.17. FREQUENCY OF ELECTIONS.** No local option election on a particular issue may be held in a political subdivision until one year has elapsed since the last local option election in that subdivision on that issue.

## **SUBCHAPTER B. ELECTION**

**Sec. 251.31. CONFORM TO GENERAL ELECTION LAWS.** (a) The officers holding the local option election shall conform to the general laws regulating elections unless otherwise provided in this chapter.

(b) The votes shall be counted after the polls are closed and the report of the election submitted to the commissioners court within 24 hours after the closing of the polls.

**Sec. 251.32. NOTICE OF ELECTION.** The county clerk shall post or cause to be posted at least one copy of the election order in each precinct of the county, justice precinct, or incorporated city or town affected. The notice shall be posted at least six days prior to election day.

**Sec. 251.33. TIME OF ELECTION.** The election must be held on a day not less than 20 nor more than 30 days after the date of the commissioners court order for an election.

**Sec. 251.34. VOTING PLACES.** (a) The election shall be held at a voting place in each regular county election precinct as established by the commissioners court inside the affected territory if the election is for the entire county or for a justice precinct.

(b) The election shall be held at a voting place in each election precinct established by the governing body of the city or town for its municipal elections if the election is for an incorporated city or town. If the governing body of a city or town has not established precincts for its municipal elections, the commissioners court shall prescribe the election precincts for the local option election under the rules governing establishment of precincts for municipal elections.

(c) The election shall be held at the customary polling place in each election precinct. If the customary polling place is not available, the commissioners court shall designate another polling place.

(d) The order for the election shall state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for an incorporated city or town.

**Sec. 251.35. APPOINTMENT OF ELECTION JUDGES, CLERKS, AND**

**WATCHERS.** (a) Election judges, clerks, and watchers shall be qualified voters of the election precinct in which they are named to serve.

(b) Appointment of election judges and clerks shall be in accordance with the general election laws.

(c) Election watchers may be appointed in accordance with general law, but they must be qualified voters of the election precinct where they serve.

**Sec. 251.36. PUBLIC SCHOOL OF INSTRUCTION.** (a) The county judge shall cause to be held a public school of instruction for those who actually conduct the election at the polling places not less than three days before the local option election.

(b) The county clerk shall post in his office a notice of the time and place of the school at least 48 hours before it is held.

(c) The county clerk shall notify each presiding judge of the time and place where the school is to be held.

(d) Each presiding judge shall notify each appointed clerk and watcher of the election in his precinct of the time and place of the school.

(e) This school will be open to any interested person.

**Sec. 251.37. NUMBER OF BALLOTS FURNISHED.** The county clerk shall furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of qualified voters in the precinct plus 10 percent of that number of voters.

**Sec. 251.38. ISSUE ON BALLOT.** (a) The issue ordered to appear on the ballot for an election ordered by the commissioners court shall be the same as that applied for and set out in the petition.

(b) The issue appropriate to the election shall be printed on the ballot in the exact language stated in Section 251.14 of this code.

**Sec. 251.381. METHODS OF VOTING.** Voting may be conducted by:

(1) paper ballot;

(2) voting machine, electronic voting system, or any other voting system approved for use in accordance with the Texas Election Code; or

(3) any combination of the methods of voting authorized by Subdivision (1) or (2) of this section that conforms to applicable requirements of the Texas Election Code.

*NOTE: Sec. 251.39 (Repealed by Acts of the 66th Legislature, Regular Session, 1979.)*

**Sec. 251.40 COUNTY TO PAY ELECTION EXPENSE.** (a) The county shall pay the expense of holding a local option election authorized by this code in the county, justice precinct, or incorporated city or town in that county, subject to the limitations in this section.

(b) County expense is limited to the holding of one election in each of the political subdivisions in Subsection (a) of this section in a one-year period where the intent of the election is to legalize the sale of alcoholic beverages. County expense is limited to the holding of one election in each of the political subdivisions in Subsection (a) of this section in a one-year period where the intent of the election is to prohibit the sale of alcoholic beverages.



(c) All other local option elections shall be paid by the county from funds derived by the county as prescribed in Section 251.41 of this code.

**Sec. 251.41. FINANCING ELECTION.** (a) If under Section 251.40 of this code the county is not required to pay the cost of the election, the county clerk shall require a deposit before the issuance of a petition for a local option election.

(b) The deposit must be in the form of a cashier's check in the total amount of 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or incorporated city or town where the election is to be held.

(c) The money received shall be deposited in the county's general fund. No refund may be made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) The county clerk may not issue a petition to the applicants unless the deposit is made, if a deposit is required by this code.

(e) A violation of Subsection (d) of this section is misdemeanor punishable by a fine of not less than \$200 nor more than \$500, or confinement in the county jail for not more than 30 days, or both.

### **SUBCHAPTER C. PROCEDURE FOLLOWING ELECTION**

**Sec. 251.51. CANVASS OF VOTES; DECLARATION OF RESULT.** (a) On the fifth day after the election, or as soon after the fifth day as practicable, the commissioners court shall meet in special session to canvass the returns. On completing the canvass, the commissioners court shall make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law.

(b) If, in a prohibitory election, a majority of the votes cast favor the issue "Against the legal sale...", the court's order must state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective 30 days after the order is entered. The prohibition remains in effect until changed by a subsequent local option election held under this code.

(c) If, in a legalization election, a majority of the votes cast favor the issue "For the legal sale...", the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. The legalization remains in effect until changed by a subsequent local option held under this code.

(d) The local option status of a subdivision is not changed if:

(1) in a prohibitory election, a majority of the votes cast favor the issue "For the legal sale..."; or

(2) in a legalization election, a majority of the votes cast favor the issue "Against the legal sale..."

**Sec. 251.511. RECOUNT. PAPER BALLOTS.** (a) A recount of the paper ballots may be obtained on the following grounds:

(1) the difference between the number of votes cast on the winning and losing sides of the measure is less than five percent of the number of votes cast on the winning side; or

(2) affidavit by an election judge and certification by the secretary of state that votes were miscounted, as provided by the Texas Election Code for a recount of paper ballots in a general election.

(b) The recount must be requested in writing by at least 25 registered voters of the territory covered by the election. To be valid, a request must contain the signature, residence address, and voter registration number of the requestor and be filed in accordance with the procedure for requesting a recount in a general election. A single document may contain the requests of more than one requestor.

(c) Except as otherwise provided by this section, the provisions of the Texas Election Code regulating the recount of paper ballots apply to a recount under this section with appropriate changes to account for the fact that the election is on a measure instead of for a public office.

**Sec. 251.512. RECOUNT: VOTING SYSTEM.** A recheck of the results registered on a voting machine, recount of the results of voting by an electronic voting system or an examination of the electronic system program, or a recount of the results of voting by any other method of voting other than paper ballot shall be conducted in the same manner as in a general election.

**Sec. 251.52. ORDER PRIMA FACIE EVIDENCE.** The order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

**Sec. 251.53. CERTIFICATION OF RESULT.** Within three days after the result of a local option election has been declared, the county clerk shall certify the result to the secretary of state and the commission. The clerk may not charge a fee for this service.

**Sec. 251.54. POSTING ORDER PROHIBITING SALE.** A commissioners court order declaring the result of a local option election and prohibiting the sale of any or all types of alcoholic beverages must be published by posting the order at three public places in the county or other political subdivision in which the election was held. The posting of the order shall be recorded in the minutes of the commissioners court by the county judge. The entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of posting.

**Sec. 251.55. ELECTION CONTEST.** (a) A qualified voter of the county, justice precinct, or incorporated city or town where a local option election is held may contest the election any time within 30 days after the result of that election is declared.

(b) The enforcement of local option laws in the political subdivision in which the election is being contested is not suspended during the election contest.

(c) The district court of the county in which the election is held has original and exclusive jurisdiction of all suits to contest the election. The district court has jurisdiction to try and determine all matters connected with the election. If it appears from the evidence that such irregularities existed in bringing about or holding the election that the true result of the election is impossible to determine

or the result is very doubtful, the court shall hold the election to be void and order the proper officer to order another election to be held by having a certified copy of the judgment and order of the court to be delivered to that officer.

(d) The election contest is conducted in the same manner as an election contest of a general election.

(e) Election contests have precedence in the appellate courts.

(f) The result of an election contest finally settles all questions relating to the validity of that election. No person may call the legality of that election in question again in any other suit or proceeding.

(g) If no election contest is instituted within the 30-day time limit, it is conclusively presumed that that election is valid and binding in all respects upon all courts.

#### **SUBCHAPTER D. MISCELLANEOUS LOCAL OPTION PROVISIONS**

**Sec. 251.71. WET AND DRY AREAS.** (a) An area is a "dry area" as to an alcoholic beverage of a particular type and alcohol content if the sale of that beverage is unlawful in the area. An area is a "wet area" as to an alcoholic beverage of a particular type and alcoholic content if the sale of that beverage is lawful in the area.

(b) Those areas that are wet or dry when this code takes effect retain that status until the status of the area is changed as provided in this code.

(c) All trial courts of this state shall take judicial notice of the wet or dry status of an area in a criminal prosecution.

(d) In an information, complaint, or indictment, an allegation that an area is a dry area as to a particular type of alcoholic beverage is sufficient, but a different status of the area may be urged and proved as a defense.

**Sec. 251.72. CHANGE OF STATUS.** Except as provided in Sec. 251.73 of this code, an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 251.14 of this code, until that status is changed by a subsequent local option election in the same authorized voting unit.

**Sec. 251.73. PREVAILING STATUS: RESOLUTION OF CONFLICTS.** To insure that each voter has the maximum possible control over the status of the sale of alcoholic beverages in the area where he resides:

(1) the status that resulted from or is the result of a duly called election for an incorporated city or town prevails against the status that resulted from or is the result of a duly called election in a justice precinct or county in which the incorporated city or town, or any part of it is contained; and

(2) the status that resulted or is the result of a duly called election for a justice precinct prevails against the status that resulted from or is the result of a

duly called election in an incorporated city or town in which the justice precinct is wholly contained or in a county in which the justice precinct is located.

**Sec. 251.74. AIRPORT AND STADIUM AS WET AREAS.** (a) This section applies to any county:

(1) that has a population of more than 240,000, according to the most recent federal census;

(2) in which the sale of all alcoholic beverages has been legalized in all or any part of the country; and

(3) where, at the general election on November 3, 1970, the voters approved the constitutional amendment authorizing the sale of mixed beverages on a local option basis.

(b) In a county covered by this section, the commissioners court may designate as an area wet for the sale of mixed beverages only:

(1) the area encompassed by the building structure of a professional sports stadium, used wholly or partly for professional sporting events and having a seating capacity of at least 40,000, and not more than 125 acres of adjacent land used for the benefit of the stadium, regardless of ownership of the land, if no registered voters reside there; and

(2) the area encompassed by a regional airport.

(c) The order of the commissioners court authorizes the issuance of a mixed beverage permit.

**Sec. 251.741. CERTAIN AIRPORTS AS WET AREAS.** In addition to those areas declared wet by order of the commissioners court under the authority of Section 251.74 of this code, in a county with a population of more than 175,000 according to the most recent federal census where the sale of mixed beverages only is legalized in the most populous city in the county by a local option election held after May 18, 1971, the area actually encompassed by any municipal airport under the jurisdiction of that city is wet for the sale of mixed beverages only. Subsequent local option elections held by that city do not affect the local option status of the airport unless the result of the election prohibits the sale of mixed beverages, in which case the provisions of this section do not apply.

**Sec. 251.75. CONTINUANCE OF OPERATION AS MANUFACTURER OR BREWER.** Notwithstanding any other provision of this code, if the sale of beer or ale is prohibited in an area by a local option election, a holder of a manufacturer's license or brewer's permit that was issued prior to the election may not be denied an original or renewal manufacturer's license or brewer's permit for the same location on the ground that the local option status of the area prohibits the sale of beer or ale. Except for the right to sell beer or ale contrary to the local option status of the area, the licensee or permittee may engage in all activities authorized by the license or permit, including the manufacturing, brewing, possessing, storing, and packaging of beer or ale, and transporting it to an area where its sale is legal. The licensee or permittee may deliver beer or ale at his licensed premises to a purchaser from outside the state, an authorized carrier, distributor, or class B wholesaler. The purchaser, carrier, distributor, or class B

wholesaler may not receive the beer or ale for transportation unless there has first been an order, acceptance, and payment or legal satisfaction of payment in an area where the sale of beer or ale is legal.

**Sec. 251.76. CONTINUANCE OF OPERATION AS DISTILLER AND RECTIFIER.** Notwithstanding any other provision of this code, a person who has been issued a distiller's and rectifier's permit may not subsequently be denied an original or renewal distiller's and rectifier's permit for the same location on the ground that the sale of distilled spirits has been prohibited in the area by a local option election. A person holding a permit at the time of the election or issued a permit under this section may exercise all privileges granted by this code to the holder of a distiller's and rectifier's permit, including the manufacturing, possessing, storing, packaging, and bottling of distilled spirits and the transportation of them to areas in which their sale is legal.

**Sec. 251.77. CONTINUANCE OF OPERATION AS DISTRIBUTOR.** (a) Notwithstanding any other provision of this code, if the sale of beer is prohibited by local option election, a licensed distributor of beer whose warehouse or other facilities used in connection with the distributorship are located in the area affected, has the right to continue to operate as a distributor in that area and maintain the necessary premises and facilities for distribution. The distributor continues to enjoy all the rights and privileges incident to distributorship, including the right to possess, store, warehouse, and sell beer in that area, and deliver beer into and out of that area.

(b) A distributor in the area affected may sell or deliver beer only to licensed outlets located where the sale of beer is legal.

**Sec. 251.78. CONTINUANCE OF OPERATION AS WHOLESALER.** (a) Notwithstanding any other provision of this code, if the sale of the type or types of liquor authorized to be sold by the holder of a wholesaler's permit whose warehouse or other facility used in connection with the wholesale operation is prohibited in an area by local option election, the holder of the wholesaler's permit shall have the right to continue to operate as a wholesaler in that area and maintain the necessary premises and facilities for the wholesale operation. The wholesaler shall enjoy all the rights and privileges incident to the permit, including the right to possess, store, warehouse, sell, deliver, and receive liquor.

(b) A wholesaler in the area affected may only sell or deliver liquor to permittees located where the sale of liquor is legal.

**Sec. 251.79. AREAS IN WHICH CERTAIN PERMITS AND LICENSES MAY BE ISSUED.** Notwithstanding any other provision of this code, a wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, or general, local or branch distributor's license may be issued and licensed premises maintained in any area where the sale of any alcoholic beverage is legal. A person issued a permit or license under this section may exercise all rights and privileges of other permittees and licensees of the same class.

*NOTE: In 1979, the 66th legislature passed HB 1456, which altered the existing statutes concerning local option elections. The provisions set forth in the notes below were enacted, but were not codified as a specific section or subchapter of the Alcoholic Beverage Code. The language set forth below is meant to enable county commissioners' courts to deal with certain elections which were ordered prior to the time HB 1456 is effective.*

*If the commissioners court of a county before September 1, 1979 entered an order for an election under Chapter 251, Alcoholic Beverage Code, and the date set for the election falls on or after that date, the officials conducting the election may prepare the ballot and conduct the election under the law as it existed on the date that the order was entered or under the law as it exists on or after September 1, 1979.*

*The provisions relating to election recounts apply to any local option election held on or after September 1, 1979. Those provisions do not apply to an election held before that date.*

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