

AN ACT

relating to the continuation and functions of the Texas Alcoholic Beverage Commission; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.04, Alcoholic Beverage Code, is amended by adding Subdivision (25) to read as follows:

(25) "Executive management" includes the administrator, the assistant administrator, individuals who report directly to the administrator, and the head of each division of the commission.

SECTION 2. Subsection (b), Section 5.01, Alcoholic Beverage Code, is amended to read as follows:

(b) The Texas Alcoholic Beverage Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and Subchapter A, Chapter 5, [~~of this code~~] expires September 1, 2019 [~~2007. In the review of the commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 79th Legislature. In the Sunset Advisory Commission's report to the 80th Legislature, the sunset commission may include any recommendations it considers appropriate~~].

SECTION 3. Subsection (c), Section 5.02, Alcoholic Beverage

1 Code, is amended to read as follows:

2 (c) Appointments to the commission shall be made without
3 regard to the race, color, disability [~~handicap~~], sex, religion,
4 age, or national origin of the appointees.

5 SECTION 4. Subchapter A, Chapter 5, Alcoholic Beverage
6 Code, is amended by adding Section 5.022 to read as follows:

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

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

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

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

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

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

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

1 SECTION 5. Section 5.04, Alcoholic Beverage Code, is
2 amended to read as follows:

3 Sec. 5.04. PRESIDING OFFICER [~~CHAIRMAN~~]. The governor
4 shall designate a [one] member of the commission as the presiding
5 officer of the commission to serve in that capacity at the pleasure
6 of the governor [~~chairman~~].

7 SECTION 6. Subsections (c) through (f), Section 5.05,
8 Alcoholic Beverage Code, are amended to read as follows:

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

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

20 (1) the person is an [~~An~~] officer, employee, or paid
21 consultant of a Texas trade association in the field of alcoholic
22 beverages; or

23 (2) the person's [~~beverage manufacture, distribution,~~
24 ~~service, or sales may not be a member or employee of the commission.~~

25 [~~(e) A person who is the~~] spouse is [~~of~~] an officer,
26 manager, or paid consultant of a Texas trade association in the
27 field of alcoholic beverages [~~beverage manufacture, distribution,~~

1 ~~or sales may not be a member or employee of the commission].~~

2 (e) In [~~(f) For the purposes of~~] this section, "Texas trade
3 association" means [~~a Texas trade association is~~] a [~~nonprofit,~~
4 cooperative~~]~~ and voluntarily joined statewide association of
5 businesses or professional competitors in this state [~~persons~~]
6 designed to assist its members and its industry or profession in
7 dealing with mutual business or professional problems and in
8 promoting their common interest.

9 SECTION 7. Section 5.051, Alcoholic Beverage Code, is
10 amended to read as follows:

11 Sec. 5.051. GROUNDS FOR REMOVAL FROM COMMISSION. (a) It is
12 a ground for removal from the commission that [~~if~~] a member:

13 (1) does not have at the time of taking office
14 [~~appointment~~] the qualifications required by Section 5.02 [~~of this~~
15 ~~code~~];

16 (2) does not maintain during [~~the~~] service on the
17 commission the qualifications required by Section 5.02 [~~of this~~
18 ~~code for appointment to the commission~~];

19 (3) is ineligible for membership under [~~violates a~~
20 ~~prohibition established by~~] Section 5.05 [~~of this code~~];

21 (4) cannot, [~~is unable~~] because of illness or
22 disability, [~~to~~] discharge the member's duties for a substantial
23 part [~~portion~~] of the member's term [~~for which the member was~~
24 ~~appointed~~]; or

25 (5) is absent from more than half [~~one-half~~] of the
26 regularly scheduled commission meetings that the member is eligible
27 to attend during a [~~each~~] calendar year without an excuse

1 approved [~~except when the absence is excused~~] by a majority vote of
2 the commission.

3 (b) The validity of an action of the commission is not
4 affected by the fact that it was taken when a ground for removal of a
5 [~~member of the~~] commission member exists [~~existed~~].

6 (c) If the administrator has knowledge that a potential
7 ground for removal exists, the administrator shall notify the
8 presiding officer [~~chairman~~] of the commission of the potential
9 ground. The presiding officer [~~chairman of the commission~~] shall
10 then notify the governor and the attorney general that a potential
11 ground for removal exists. If the potential ground for removal
12 involves the presiding officer, the administrator shall notify the
13 next highest ranking officer of the commission, who shall then
14 notify the governor and the attorney general that a potential
15 ground for removal exists.

16 SECTION 8. Section 5.12, Alcoholic Beverage Code, is
17 amended to read as follows:

18 Sec. 5.12. [~~CONCURRENT~~] DUTIES OF ADMINISTRATOR. The
19 commission shall specify the duties and powers of the administrator
20 by printed rules and regulations entered in its minutes and shall
21 develop and implement policies that clearly separate the
22 policy-making [~~define the respective~~] responsibilities of the
23 commission and the management responsibilities of the
24 administrator [~~, the assistant administrator,~~] and the staff of the
25 commission. The commission or administrator may develop a
26 procedure under which the commission or administrator, or the
27 designee of either, may negotiate the repayment of debts owed the

1 commission, including fees and delinquent taxes. When this code
2 imposes concurrent powers or duties on the commission and the
3 administrator, the commission shall designate those powers and
4 duties which it delegates to the administrator. An order,
5 decision, or judgment rendered and entered by the administrator in
6 a matter in which the administrator has been authorized to act is
7 not subject to change, review, or revision by the commission. A
8 concurrent power or duty which has not been specifically delegated
9 to the administrator by the commission's order is retained by the
10 commission, and an order, decision, or judgment rendered and
11 entered by the commission in a matter in which the commission has
12 retained authority is not subject to change, review, or revision by
13 the administrator.

14 SECTION 9. Section 5.31, Alcoholic Beverage Code, is
15 amended to read as follows:

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

26 (b) The commission shall:

27 (1) protect the public safety by deterring and

- 1 detecting violations of this code;
- 2 (2) promote legal and responsible alcohol
- 3 consumption;
- 4 (3) ensure fair competition within the alcoholic
- 5 beverage industry;
- 6 (4) ensure consistent, predictable, and timely
- 7 enforcement of this code;
- 8 (5) ensure a consistent, predictable, and timely
- 9 licensing and permitting process;
- 10 (6) promote and foster voluntary compliance with this
- 11 code; and
- 12 (7) communicate the requirements of this code clearly
- 13 and consistently.

14 SECTION 10. Subchapter B, Chapter 5, Alcoholic Beverage
15 Code, is amended by adding Sections 5.361 and 5.362 to read as
16 follows:

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

- 20 (1) detecting serious violations that impact public
- 21 safety;
- 22 (2) monitoring entities that have a history of
- 23 complaints and violations of this code; and
- 24 (3) any other factors the commission considers
- 25 important.

26 (b) The commission shall develop benchmarks and goals to
27 track key enforcement activities and the results of those

1 activities. For each type of enforcement activity, the commission
2 shall track the number of violations detected by the enforcement
3 activity, the amount of time spent on the enforcement activity, and
4 any other information the commission considers necessary. The
5 commission shall use the information collected under this
6 subsection and other information to compare the enforcement
7 performance of each region and to determine the most effective
8 enforcement activities.

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

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

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

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

22 Sec. 5.362. SCHEDULE OF SANCTIONS. (a) The commission by
23 rule shall adopt a schedule of sanctions that may be imposed on a
24 license or permit holder for violations of this code or rules
25 adopted under this code. In adopting the schedule of sanctions, the
26 commission shall ensure that the severity of the sanction imposed
27 is appropriate to the type of violation that is the basis for

1 disciplinary action.

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

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

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

10 (2) the type of violation;

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

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

15 (d) The schedule must:

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

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

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

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

4 SECTION 11. Section 5.38, Alcoholic Beverage Code, is
5 amended to read as follows:

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

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

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

20 (1) is accurately represented to the public; and

21 (2) complies with state law and commission rules.

22 SECTION 12. Section 5.53, Alcoholic Beverage Code, is
23 amended to read as follows:

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

1 **(b)** The commission shall make [~~prepare~~] information [~~of~~
2 ~~public interest~~] describing its [~~the functions of the commission~~
3 ~~and the commission's~~] procedures for complaint investigation and
4 resolution [~~by which complaints are filed with and resolved by the~~
5 ~~commission. The commission shall make the information~~] available
6 to the public and appropriate state agencies, including by posting
7 the information on the commission's Internet website.

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

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

20 SECTION 13. Section 5.54, Alcoholic Beverage Code, is
21 amended by amending Subsection (a) and adding Subsections (a-1) and
22 (c) to read as follows:

23 **(a)** The commission shall maintain a system to promptly and
24 efficiently act on complaints [~~keep an information file about each~~
25 ~~complaint~~] filed with the commission. The commission shall assign
26 priorities to complaint investigations based on risk so that the
27 commission handles the most serious complaints first.

1 (a-1) The ~~that the~~ commission shall maintain information
2 about parties to the complaint, the subject matter of the
3 complaint, a summary of the results of the review or investigation
4 of the complaint, and its disposition ~~[has authority to resolve].~~

5 (c) The commission shall:

6 (1) compile:

7 (A) detailed statistics and analyze trends on
8 complaint information, including:

9 (i) the nature of the complaints;

10 (ii) their disposition; and

11 (iii) the length of time to resolve
12 complaints; and

13 (B) complaint information on a statewide and a
14 regional basis;

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

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

21 SECTION 14. Section 5.55, Alcoholic Beverage Code, is
22 amended to read as follows:

23 Sec. 5.55. ~~[AGREEMENTS FOR]~~ ELECTRONIC PROCESSING OF
24 LICENSES OR PERMITS. (a) The commission shall expedite the
25 processing of original and renewal applications for licenses and
26 permits by using electronic means, including the Internet.

27 (b) The commission or administrator may enter into an

1 agreement with another agency of this state to provide for the
2 issuance of original or renewal licenses or permits through the use
3 of electronic means, including use of the Internet, to facilitate
4 the licensing process.

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

13 SECTION 15. Subchapter B, Chapter 5, Alcoholic Beverage
14 Code, is amended by adding Sections 5.57 through 5.61 to read as
15 follows:

16 Sec. 5.57. MARKETING PRACTICES REGULATORY DECISIONS.

17 (a) The commission shall develop a formal process for making
18 policy decisions regarding marketing practices regulations and for
19 communicating those decisions to agency staff and the alcoholic
20 beverage industry.

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

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

27 (1) the manufacturing, distribution, and retail tiers

1 of the industry; and

2 (2) the liquor, beer, and wine segments of the
3 industry.

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

6 (1) take into consideration recommendations of the
7 industry representatives consulted under this section;

8 (2) document its policy decisions by:

9 (A) using a precedents manual; or

10 (B) drafting formal advisories; and

11 (3) make those documents available to regional staff
12 and industry members through its Internet website, electronic mail,
13 or commission publications.

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

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

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

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

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

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

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

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

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

22 (1) negotiated rulemaking procedures under Chapter
23 2008, Government Code, for the adoption of commission rules; and

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

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

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

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

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

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

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

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

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

24 (2) selling, serving, or offering for sale an
25 alcoholic beverage during prohibited hours in violation of Chapter
26 105 or Section 11.61(b)(23), 32.17(a)(7), or 61.71(a)(7);

27 (3) consuming or permitting consumption of an

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

4 (4) violating Section 11.61(b)(2), 32.17(a)(2),
5 32.17(a)(3), 61.71(a)(14), or 101.04 by:

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

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

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

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

17 SECTION 16. Subchapter A, Chapter 11, Alcoholic Beverage
18 Code, is amended by adding Section 11.042 to read as follows:

19 Sec. 11.042. HEALTH RISKS WARNING SIGN. (a) The commission
20 by rule shall require the holder of a permit authorizing the sale of
21 alcoholic beverages for on-premises consumption to display a
22 warning sign on the door to each restroom on the permitted premises
23 that informs the public of the risks of drinking alcohol during
24 pregnancy.

25 (b) The commission's rules shall specify the language of the
26 warning and the size and graphic design of the sign, including font
27 size and type.

1 SECTION 17. Subsection (a), Section 11.64, Alcoholic
2 Beverage Code, is amended to read as follows:

3 (a) When the commission or administrator is authorized to
4 suspend a permit or license under this code, the commission or
5 administrator shall give the permittee or licensee the opportunity
6 to pay a civil penalty rather than have the permit or license
7 suspended, unless the basis for the suspension is a violation of
8 Section 11.61(b)(14), 22.12, 28.11, 32.17(a)(2), 32.17(a)(3),
9 61.71(a)(5), 61.71(a)(6), 61.74(a)(14), 69.13, 71.09, 101.04,
10 101.63, 106.03, 106.06, or 106.15, the sale or offer for sale of an
11 alcoholic beverage during hours prohibited by Chapter 105,
12 consumption or the permitting of consumption of an alcoholic
13 beverage on the person's licensed or permitted premises during
14 hours prohibited by Chapter 105 or Section 32.17(a)(7), or an
15 offense relating to prostitution or gambling, in which case the
16 commission or administrator shall determine whether the permittee
17 or licensee may have the opportunity to pay a civil penalty rather
18 than have the permit or license suspended. The commission shall
19 adopt rules addressing when suspension may be imposed pursuant to
20 this section without the opportunity to pay a civil penalty. In
21 adopting rules under this subsection, the commission shall consider
22 the type of license or permit held, the type of violation, any
23 aggravating or ameliorating circumstances concerning the
24 violation, and any past violations of this code by the permittee or
25 licensee. In cases in which a civil penalty is assessed, the
26 commission or administrator shall determine the amount of the
27 penalty. The amount of the civil penalty may not be less than \$150

S.B. No. 904

1 or more than \$25,000 for each day the permit or license was to have
2 been suspended. If the licensee or permittee does not pay the
3 penalty before the sixth day after the commission or administrator
4 notifies him of the amount, the commission or administrator shall
5 impose the suspension.

6 SECTION 18. Subchapter A, Chapter 61, Alcoholic Beverage
7 Code, is amended by adding Section 61.111 to read as follows:

8 Sec. 61.111. HEALTH RISKS WARNING SIGN. (a) The commission
9 by rule shall require the holder of a license authorizing the sale
10 of beer for on-premises consumption to display a warning sign on the
11 door to each restroom on the licensed premises that informs the
12 public of the risks of drinking alcohol during pregnancy.

13 (b) The commission's rules shall specify the language of the
14 warning and the size and graphic design of the sign, including font
15 size and type.

16 SECTION 19. Section 101.04, Alcoholic Beverage Code, is
17 amended to read as follows:

18 Sec. 101.04. CONSENT TO INSPECTION; PENALTY. (a) By
19 accepting a license or permit, the holder consents to ~~that~~ the
20 commission, an authorized representative of the commission, or a
21 peace officer entering ~~may enter~~ the licensed premises at any
22 time to conduct an investigation or inspect the premises for the
23 purpose of performing any duty imposed by this code.

24 (b) A person commits an offense if the person refuses to
25 allow the commission, an authorized representative of the
26 commission, or a peace officer to enter a licensed or permitted
27 premises as required by Subsection (a). An offense under this

S.B. No. 904

1 section is a Class A misdemeanor.

2 SECTION 20. Section 101.67, Alcoholic Beverage Code, is
3 amended by amending Subsections (a) and (d) and adding Subsection
4 (e) to read as follows:

5 (a) No person may ship or cause to be shipped into the state,
6 import into the state, manufacture and offer for sale in the state,
7 or distribute, sell, or store in the state any beer, ale, or malt
8 liquor unless:

9 (1) a sample of the beverage or a sample of the same
10 type and quality of beverage has been first submitted to an
11 independent, reputable laboratory or the commission for analysis to
12 verify the alcohol content of the beverage [~~and been found by the~~
13 ~~commission or its representative to comply with all rules and~~
14 ~~regulations of the commission relating to quality, purity, and~~
15 ~~standards of measure~~]; and

16 (2) the label of the beverage has been first submitted
17 to the commission or its representative and found to comply with all
18 provisions of this code relating to the labeling of the particular
19 type of beverage.

20 (d) If the commission determines that the product analysis
21 provided by the independent laboratory or the sample, and the
22 label, required by Subsection (a) [~~of this section~~] comply with the
23 provisions of this code and the rules of the commission, the
24 commission shall issue a certificate of approval upon receipt of a
25 fee in an [~~the~~] amount that is sufficient to cover the cost of
26 administering this section [~~of \$25~~]. A copy of the certificate
27 shall be kept on file in the office of the commission.

1 (e) The commission by rule shall establish the procedures
2 for accepting analysis of beer, ale, or malt liquor by an
3 independent laboratory under Subsection (a)(1).

4 SECTION 21. Subchapter D, Chapter 101, Alcoholic Beverage
5 Code, is amended by adding Section 101.671 to read as follows:

6 Sec. 101.671. PRIOR APPROVAL OF DISTILLED SPIRITS AND WINE.

7 (a) Before an authorized permittee may ship distilled spirits or
8 wine into the state or sell distilled spirits or wine within the
9 state, the permittee must register the distilled spirits or wine
10 with the commission. The registration application must include a
11 certificate of label approval issued by the United States Alcohol
12 and Tobacco Tax and Trade Bureau for the product.

13 (b) On registration of a certificate of label approval
14 issued by the United States Alcohol and Tobacco Tax and Trade
15 Bureau, the commission shall approve the product under this section
16 and issue a letter to that effect to the permittee. The commission
17 may not require additional approval for the product unless there is
18 a change to the label or product that requires reissuance of the
19 federal certificate of label approval. The commission shall accept
20 the certificate of label approval as constituting full compliance
21 with any applicable standards adopted under Section 5.38 regarding
22 quality, purity, and identity of distilled spirits or wine.

23 (c) The commission may not register a product unless the
24 application is accompanied by a fee set by the commission in an
25 amount that is sufficient to cover the cost of administering this
26 section. A copy of the registration shall be kept on file in the
27 office of the commission.

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1 (d) The commission by rule shall establish procedures for
2 accepting federal certificates of label approval for registration
3 under this section.

4 SECTION 22. Subsection (d), Section 102.32, Alcoholic
5 Beverage Code, is amended to read as follows:

6 (d) Each delivery of liquor shall be accompanied by an
7 invoice giving the date of purchase. If a retailer becomes
8 delinquent in the payment of an account for liquor, the wholesale
9 dealer immediately shall report that fact in writing, including by
10 electronic mail or facsimile transmission, to the commission or
11 administrator. A [No] wholesale dealer may not sell any liquor to a
12 retailer who is delinquent until the delinquent account is paid in
13 full and cleared from the records of the commission. An account
14 becomes delinquent if it is not paid when it is required to be paid
15 under Subsection (c) [~~of this section~~].

16 SECTION 23. Section 105.06, Alcoholic Beverage Code, is
17 amended by adding Subsection (a-1) to read as follows:

18 (a-1) For the purposes of this section, a licensed or
19 permitted premises is a public place.

20 SECTION 24. Chapter 105, Alcoholic Beverage Code, is
21 amended by adding Section 105.10 to read as follows:

22 Sec. 105.10. PENALTY. (a) A person commits an offense if
23 the person, in violation of this chapter or Section 32.17(a)(7):

24 (1) sells or offers for sale an alcoholic beverage
25 during prohibited hours; or

26 (2) consumes or permits the consumption of an
27 alcoholic beverage on the person's licensed or permitted premises

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1 during prohibited hours.

2 (b) An offense under this section is a Class A misdemeanor.

3 SECTION 25. Section 49.02, Penal Code, is amended by adding
4 Subsection (a-1) to read as follows:

5 (a-1) For the purposes of this section, a premises licensed
6 or permitted under the Alcoholic Beverage Code is a public place.

7 SECTION 26. Section 37.11, Alcoholic Beverage Code, is
8 repealed.

9 SECTION 27. (a) Not later than March 1, 2008, the Texas
10 Alcoholic Beverage Commission shall adopt the rules and policies
11 necessary to implement Sections 5.361, 5.362, 11.042, 61.111, and
12 101.671, Alcoholic Beverage Code, as added by this Act, and
13 Sections 5.53, 5.54, and 101.67, Alcoholic Beverage Code, as
14 amended by this Act.

15 (b) Not later than March 1, 2008, the Texas Alcoholic
16 Beverage Commission shall adopt the rules and policies necessary to
17 implement Sections 5.57, 5.58, 5.59, and 5.60, Alcoholic Beverage
18 Code, as added by this Act, and Section 5.12, Alcoholic Beverage
19 Code, as amended by this Act.

20 SECTION 28. The change in law made by Section 5.022,
21 Alcoholic Beverage Code, as added by this Act, and Sections 5.05 and
22 5.051, Alcoholic Beverage Code, as amended by this Act, regarding
23 the prohibitions on, qualifications of, and training for members of
24 the Texas Alcoholic Beverage Commission does not affect the
25 entitlement of a member serving on the commission immediately
26 before September 1, 2007, to continue to serve and function as a
27 member of the commission for the remainder of the member's term.

Page 1
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S.B. No. 904

1 The change in law described by this section applies only to a member
2 appointed on or after September 1, 2007.

3 SECTION 29. The change in law made by this Act related to
4 the filing or investigation of a complaint under Chapter 5,
5 Alcoholic Beverage Code, as amended by this Act, applies only to a
6 complaint filed with the Texas Alcoholic Beverage Commission on or
7 after the effective date of this Act. A complaint filed before the
8 effective date of this Act is governed by the law as it existed
9 immediately before that date, and the former law is continued in
10 effect for that purpose.

11 SECTION 30. Section 11.64, Alcoholic Beverage Code, as
12 amended by this Act, applies only to conduct that is a basis for
13 suspension of a license or permit that occurs on or after the
14 effective date of this Act. Conduct that occurs before the
15 effective date of this Act is governed by the law in effect
16 immediately before that date, and that law is continued in effect
17 for that purpose.

18 SECTION 31. (a) Sections 101.04 and 105.06, Alcoholic
19 Beverage Code, and Section 49.02, Penal Code, as amended by this
20 Act, and Section 105.10, Alcoholic Beverage Code, as added by this
21 Act, apply only to an offense committed on or after the effective
22 date of this Act. For the purposes of this section, an offense is
23 committed before the effective date of this Act if any element of
24 the offense occurs before that date.

25 (b) An offense committed before the effective date of this
26 Act is covered by the law in effect immediately before the effective
27 date of this Act, and that law is continued in effect for that

S.B. No. 904

1 purpose.

2 SECTION 32. This Act takes effect September 1, 2007. _____

David Newkum
President of the Senate

Jim Caddick
Speaker of the House

I hereby certify that S.B. No. 904 passed the Senate on March 28, 2007, by the following vote: Yeas 30, Nays 0. _____

Datsyq Jaw
Secretary of the Senate

I hereby certify that S.B. No. 904 passed the House on April 30, 2007, by the following vote: Yeas 144, Nays 0, two present not voting. _____

Robert Haney
Chief Clerk of the House

Approved:

11 MAY '07
Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
6:10 PM O'CLOCK
MAY 11 2007

Roger Whinnis