

## 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; PENALTY.** (a) By accepting a license or permit, the holder consents to the commission, an authorized representative of the commission, or a peace officer entering 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.

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

**Sec. 101.05. NEGATION OF EXCEPTION: 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.** (a) 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.

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

(c) If it is shown on the trial of an offense under this section that the person has previously been convicted two or more times of an offense under this section, the offense is a state jail felony.

**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 liquor measure.

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

- (1) by wording, lettering, numbering, or illustration, or in any other manner refers or alludes to or suggests 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. 101.45. 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), (c), and (d) of this section, no person may import, sell, or possess with intent to sell any liquor in a container with a capacity of less than 20 milliliters. A container of liquor offered for sale that has a capacity of less than six fluid ounces must substantially conform to the labeling requirements of the Bureau of Alcohol, Tobacco, and Firearms for larger containers in which liquor is sold. Holders of distiller's or rectifier's permits wishing to sell liquor bottled in containers of less than six fluid ounces to wholesalers must sell such containers of liquor to wholesalers in units of unbroken, sealed cases. Wholesalers shall sell liquor bottled in containers of less than six fluid ounces to package stores in units of unbroken, sealed cases. Containers of liquor with a capacity of less than six fluid ounces offered for sale in a package store must be sold in units of sealed packages featuring multiple bottles of liquor.

(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.

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

**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 20 milliliters 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 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 the person with criminal negligence 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 a 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) any compound made from synthetic materials;
- (2) substandard wines;
- (3) imitation wines; or
- (4) 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, wine coolers, and spirit coolers.

**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 an independent, reputable laboratory or the commission for analysis to verify the alcohol content of the beverage; 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.

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

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

**Sec. 101.671. PRIOR APPROVAL OF DISTILLED SPIRITS AND WINE.** (a) Before an authorized permittee may ship distilled spirits or wine into the state or sell distilled spirits or wine within the state, the permittee must register the distilled spirits or wine with the commission. The registration application must include a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau for the product.

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

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

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

**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 Texas Department of Criminal Justice [~~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.

**Sec. 101.74. OFFENSES RELATING TO BINGO.** (a) An organization licensed to conduct bingo under Chapter 2001, Occupations Code, may not offer an alcoholic beverage as a bingo prize or as a door prize at a bingo occasion.

(b) A person who holds a permit or license at the manufacturing or wholesale levels of the alcoholic beverage industry or a person who holds a package store permit may not participate in advertising any bingo game or pay or contribute toward payment of the printing of bingo cards or of the supplying of any novelties of any sort to be used during or in connection with the conduct of a bingo game.

**Sec. 101.75. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR SCHOOLS.** (a) A person commits an offense if the person possesses an open container or consumes an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a facility that is a public or private school, including a parochial school, that provides all or any part of prekindergarten through twelfth grade.

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

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

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

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

**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 permit, 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 Subsections (b), (d), and (g), no person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler, nor the agent, servant, or employee of such a person, may:

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

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

(3) guarantee a financial obligation of a retailer;

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

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

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

(7) allow an excessive discount to a retailer; or

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

(b) A permittee covered by Subsection (a) of this section may furnish to a retailer without cost advertising specialties showing the name of the product advertised. The total value of all advertising specialties for any one brand furnished to a retailer in any one calendar year may not exceed \$78. Not more than once a year, the administrator on the administrator's own motion or on the motion of the permittee may increase or decrease the total amount of advertising specialties permitted under this subsection by not more than six percent based on the consumer price index and previous adjustments, if any. For the purposes of this subsection, "consumer price

index" means the annual average over a calendar year of the consumer price index (all items, United States city average) published monthly by the Bureau of Labor Statistics, United States Department of Labor, or its successor in function. Permittees covered by Subsection (a) of this section may not pool or combine their dollar limitations to provide a retailer with advertising specialties valued in excess of the maximum permitted under this subsection.

(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.

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

(e) A permittee covered under Subsection (a) may conduct a sweepstakes promotion. A purchase or entry fee may not be required of any person to enter a sweepstakes event authorized under this subsection. A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

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

(g) Subsection (a) does not prohibit a permittee covered under Subsection (a) from prearranging or preannouncing a promotional activity otherwise permitted by this code with a retailer about a promotional activity to be held on the retailer's premises. A holder of a wholesaler's or class B wholesaler's permit may prearrange a promotional activity only for distilled spirits or wine. Notwithstanding any other provision, a permittee may:

- (1) preannounce a promotion to a consumer; or
- (2) preannounce the purchase of wine or distilled spirits to a consumer.

**Sec. 102.071. SALE OF GLASSWARE AND NONALCOHOLIC BEVERAGES.**

**(a) In this section:**

**(1) "Branded glassware" means glassware that contains the name, emblem, or logo of or any reference to a brand of alcoholic beverage.**

**(2) "Unbranded glassware" means glassware that does not contain the name, emblem, or logo of or any reference to a brand of alcoholic beverage.**

**(b) Notwithstanding Sections 102.04 and 102.07 or any other provision of this code, the holder of a wholesaler's permit who is primarily engaged in the wholesale sale of distilled spirits and wine may sell branded or unbranded glassware to retailers, provided that the glassware is not marketed or sold in a manner:**

- (1) to influence a retailer to purchase any quantity of alcoholic beverages;**

(2) to affect the terms by which a retailer may purchase alcoholic beverages;  
or

(3) that threatens the independence of a retailer.

(c) Section 102.32 applies to payment for unbranded glassware or glassware bearing the name, emblem, or logo of a brand of distilled spirits or wine by the holder of a wholesaler's permit under Subsection (b).

(d) Sections 61.73 and 102.31 apply to payment for glassware bearing the name, emblem, or logo of a brand of malt beverage by the holder of a wholesaler's permit or a distributor's license.

(e) Section 102.32 applies to payment for a nonalcoholic beverage sold by the holder of a wholesaler's permit or a distributor's license to a retailer if:

(1) the nonalcoholic beverage is produced or sold by a manufacturer of alcoholic beverages other than malt beverages; or

(2) the name, emblem, logo, or brand of a manufacturer of alcoholic beverages other than malt beverages appears on the label of the nonalcoholic beverage.

(f) Sections 61.73 and 102.31 apply to payment for a nonalcoholic beverage sold by the holder of a wholesaler's permit or a distributor's license to a retailer if:

(1) the nonalcoholic beverage is produced or sold by a manufacturer of malt beverages; or

(2) the name, emblem, logo, or brand of a manufacturer of malt beverages appears on the label of the nonalcoholic beverage.

(g) For the purposes of Subchapters C and D, the sale, by the holder of a distributor's license, of a nonalcoholic beverage produced or sold by a manufacturer of malt beverages or that bears the name, emblem, logo, or brand of a manufacturer of malt beverages is the same as a sale of beer.

**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.

**Sec. 102.19. PROMOTIONAL GIFT WINE.** A holder of a winery permit may give one or more unopened bottles of Texas-made wine produced or bottled by the winery to a person 21 years of age or older on the premises of a convention center or civic center that holds a mixed beverage permit if no charge is made by the winery or by the mixed beverage permittee for the wine. A recipient of a bottle of wine under this section must take the unopened gift bottle off the premises of the mixed beverage permittee.

**Sec. 102.20. RESTOCKING AND ROTATION OF ALCOHOLIC BEVERAGES AUTHORIZED.** Restocking of a display and rotation of alcoholic beverage stock in a retail establishment from the retailer's storeroom, salesroom, display counter, or cooler by a representative of a wholesaler or distributor is lawful. The commission or administrator may publish guidelines regarding this activity as the commission or administrator determines to be necessary.

**Sec. 102.21. CONTINUITY OF CERTAIN PROTECTIONS FOR BEER DISTRIBUTORS.** The protections provided to beer distributors by Subchapters C and D apply regardless of whether there is a transfer or change of ownership of a brand at the manufacturing level.

NOTE: Section 102.21, Alcoholic Beverage Code, as added by this Act, is not intended to change the law but is intended to affirm the policy of this state that the protections provided to beer distributors by Subchapters C and D, Chapter 102, Alcoholic Beverage Code, apply to a distributor regardless of whether there is a transfer or change of ownership of a brand in the manufacturing tier.

## **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 or 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, including by electronic mail or facsimile transmission, to the commission or administrator. A wholesale dealer may not 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).

(d-1) The commission or administrator may not accept the voluntary cancellation or suspension of a permit or allow a permit to be renewed or transferred if the permit holder is delinquent in the payment of an account for liquor under this section. A person whose permit is canceled by the commission or whose permit has expired is not eligible to hold any other permit or license under this code until the person has cured any delinquency of the person under 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 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 pursuant 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.** Nothing in Section 102.51 of this code limits or alters the right of a holder of a general, local, or branch distributor's license to sell beer to any other holder of a general, local, or branch distributor's license, except that a distributor who has purchased beer from another distributor may distribute and sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by the general, local, or branch distributor making the purchase.

**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.

**Sec. 102.54. ADDITIONAL REQUIREMENTS FOR APPLICANTS FOR DISTRIBUTOR'S LICENSE.** (a) In addition to any other requirements necessary for issuance or renewal of a distributor's license, the commission or administrator shall require an applicant for a license or a holder of a license to show that the applicant or holder:

(1) has entered into or will acquire a written agreement designating an assigned territory from a manufacturer in accordance with this subchapter and Subchapter D;

(2) has received or has applied for and will maintain all licenses or permits required to engage in business in the assigned territory as a holder of a distributor's license, including any state or federal licenses or permits;

(3) has ordered, received, and stored or has committed to order, receive, and store a sufficient amount of beer that the distributor is authorized to sell to ensure that the distributor can supply the reasonable needs of all retailers in the assigned territory;

(4) has received and stored or has committed to receive and store beer received from a manufacturer in a manner complying with a product quality control standard established by the manufacturer or the commission; and

(5) has or will have the ability to sell, deliver, and promote each brand of beer sold by the distributor to all retailers in the assigned territory:

(A) in a manner that complies with the product quality control standards of the manufacturer or of the commission; and

(B) on a continuing and recurring basis in response to reasonable market demand for a brand of beer by the retailer or the retailer's customers in the assigned territory.

(b) In determining whether an applicant for or holder of a distributor's license meets the requirement of Subsection (a)(5), the commission or administrator may require the applicant or holder to show that the applicant or holder has or will have:

(1) storage facilities of a sufficient size to store each brand of beer in an amount equal to the demand for the product from all retailers in the holder's or applicant's assigned territory;

(2) an inventory or a commitment to acquire an inventory of each brand of beer in an amount equal to the demand for the brand from all retailers in the holder's or applicant's assigned territory;

(3) a sufficient number of employees to provide the holder or applicant with the ability:

(A) to sell, deliver on a reasonably prompt basis, and promote each brand of beer to all retailers in the holder's or applicant's assigned territory; and

(B) to prepare and submit in a timely manner any fee or tax payments or reports required by any authorized governmental regulatory authority, including the Bureau of Alcohol, Tobacco, and Firearms and the commission; and

(4) a sufficient number of delivery vehicles and rolling stock to provide the holder or the applicant with the capability of transporting, selling, delivering, or promoting each brand of beer to all retailers in the assigned territory.

(c) The commission or administrator shall refuse to approve an application for a distributor's license or shall refuse to renew a distributor's license if the commission or administrator finds the holder or applicant has failed to comply with any of the requirements of Subsection (a) or (b).

(d) In this section:

(1) "Distributor" means a person who holds a license issued under Chapter 64 or 65.

(2) "Manufacturer" means a person who holds a license issued under Chapter 62 or 63.

(3) "Retailer" means a person who holds a permit or license issued under Chapters 25 through 34, Chapter 48, Chapters 69 through 72, or Chapter 74.

**Sec. 102.55. TERRITORIAL ASSIGNMENTS; DEFINITIONS.** (a) In this subchapter and Subchapter D, and as the terms relate to an agreement between a manufacturer and a distributor describing the sales territory in which a distributor may sell the beer of a manufacturer:

(1) "Brand" means any word, name, group of letters, symbol, or trademark or a combination of any word, name, group of letters, symbol, or trademark that is adopted and used by a manufacturer on a label or on packaging to identify a specific beer or malt beverage and to distinguish the beer or malt beverage product from the label or packaging of another beer or



malt beverage produced or marketed by any manufacturer. The term does not include the name of the manufacturer unless the name of the manufacturer is included in the name of the brand.

(2) "Brand extension" means a brand that incorporates a brand name or brand logo, or a substantial part of an existing brand name or brand logo, of the same manufacturer.

(b) A brand extension is not a new or different brand.

(c) A manufacturer shall assign a brand extension to the distributor to whom the brand was originally assigned, if the distributor elects to distribute and sell the brand extension.

**NOTE:** A territorial agreement in effect on April 11, 1995, between a manufacturer and a distributor in which a manufacturer has not assigned all or part of a territory to more than one distributor is considered to be an enforceable agreement requiring a manufacturer to not assign any part of the assigned territory to more than one distributor. A territorial agreement in effect on April 11, 1995, in which a manufacturer has previously assigned all or part of the same sales territory to more than one distributor is not affected by the amendment to Section 102.51, Alcoholic Beverage Code, enacted by Section 1 of this Act. A territorial agreement in effect on April 11, 1995, in which a manufacturer has previously assigned all or part of the same sales territory to more than one distributor is governed by Section 102.51, Alcoholic Beverage Code, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose. (Chapter 152, Acts of the 74th Legislature, Regular Session, 1995.)

**Sec. 102.56. APPLICATION OF TERRITORIAL LIMITS TO CERTAIN PERMIT HOLDERS.** (a) This section applies only to a holder of a local distributor's permit under Chapter 23 that operates in a county in which 8,000 or more alcoholic beverage licenses or permits of any type have been issued under this code and are in effect. Subsections (b) and (d) apply only to the delivery of a brand of ale, beer, or malt liquor to a holder of a mixed beverage permit or a private club permit whose premises is located in a county in which 8,000 or more alcoholic beverage licenses or permits of any type have been issued under this code and are in effect.

(b) A holder of a local distributor's permit under Chapter 23 who has purchased a brand of ale, beer, or malt liquor from the holder of a general, local, or branch distributor's license or from the holder of a general class B wholesaler's or local class B wholesaler's permit may not deliver the brand of ale, beer, or malt liquor to any holder of a mixed beverage permit or private club permit whose premises is located inside that county and outside the territory assigned to the distributor or wholesaler who sold the product under a territorial limit agreement authorized by this subchapter.

(c) Except as provided by Subsection (d), a holder of a local distributor's permit may purchase a brand of ale, beer, or malt liquor only from a distributor or wholesaler who has been assigned the territory where the premises of the holder of the local distributor's permit is located.

(d) A holder of a local distributor's permit who delivers a brand of ale, beer, or malt liquor to a holder of a mixed beverage permit or private club permit whose premises is located inside that county and outside the assigned territory where the premises of the holder of a local distributor's permit is located must purchase the brand of ale, beer, or malt liquor from a distributor or wholesaler who has been assigned the territory where the premises of the holder of the mixed beverage or private club permit is located.

## 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 of 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 Subsection (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.

**Sec. 102.81. ALE AND MALT LIQUOR.** This subchapter and Subchapter C of this chapter apply to agreements concerning ale and malt liquor in the same manner as they apply to agreements concerning beer, and each particular class of permittee dealing with ale and malt liquor is subject to those provisions that apply to functionally corresponding licensees within the beer industry.

**Sec. 102.82. STATUTE OF LIMITATIONS.** A person must bring suit on an action arising under this chapter not later than four years after the day the cause of action accrues. If a termination related to a change in ownership of the brand occurs, the cause of action accrues when either the new brand owner or the transferring or selling brand owner provides notice of termination to the distributor.

**NOTE:** The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

## CHAPTER 103. ILLICIT BEVERAGES

**Sec. 103.01. 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 [Texas Department of Criminal Justice \[penitentiary\]](#) 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.** (a) The commission may not sell alcoholic beverages seized by a peace officer, as provided in Section 103.03, that are unfit for public consumption or are of illicit manufacture.

- (b) Alcoholic beverages are unfit for public consumption if:
- (1) the manufacturer or wholesaler of the beverages determines that the beverages are inappropriate for sale to a consumer;
  - (2) the beverages are damaged; or
  - (3) the code date affixed by the manufacturer to the beverages has expired.

(c) If the commission determines that seized alcoholic beverages are unfit for public consumption or are of illicit manufacture, the commission shall destroy the alcoholic beverages.

**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 if 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 fund.

**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 is entitled to recover from the proceeds of a forfeiture sale all costs of a forfeiture suit brought under this chapter, including:

- (1) all usual court costs, including the cost of serving process;
- (2) expenses of the forfeiture sale; and
- (3) reasonable attorney's fees.

**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) being intoxicated 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.

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

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

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

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

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

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

(e) To assure and control product quality, the holder of a distributor's license, wholesaler's permit, or class B wholesaler's permit, at the time of a regular delivery, may withdraw, with the permission of the retailer, a quantity of beer, ale, or malt liquor in its undamaged original packaging from the retailer's stock, if:

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

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

(3) the quantity of stock withdrawn does not exceed the equivalent of 25 cases of 24 12-ounce containers.

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

**Sec. 104.06. MONITORING OF GROSS RECEIPTS.** (a) On the issuance and renewal of a license or permit that allows on-premises consumption of any alcoholic beverage the commission shall determine whether the holder receives, or for the issuance of a license or permit is to receive, 51 percent or more of the gross receipts of the premises for which the license or permit is issued from the holder's sale or service of alcoholic beverages for on-premises consumption.

(b) The commission shall:

(1) adopt rules for making a determination under Subsection (a); and

(2) require a holder of a license or permit to provide any information or document that the commission needs to make a determination.

(c) If the commission makes a determination under Subsection (a) that a holder of a license or permit receives 51 percent or more of the gross receipts of the premises from the sale or service of alcoholic beverages, the holder shall comply with the requirements of Section 31, Article 4413(29ee), Revised Statutes, and shall continue to comply with those requirements until the commission determines that the holder receives less than 51 percent of the gross receipts of the premises from the sale or service of alcoholic beverages for on-premises consumption.

**Sec. 104.07. POSTING OF CERTAIN NOTICES REQUIRED.** (a) The holder of a permit or license under Chapter 25, 26, 28, 32, 69, or 71, other than the holder of a food and beverage certificate, shall display a sign containing the following notice in English and in Spanish:

WARNING: Obtaining forced labor or services is a crime under Texas law. Call the national human trafficking hotline: 1-888-373-7888. You may remain anonymous.

(b) The sign must be at least 8-1/2 inches high and 11 inches wide and displayed in a conspicuous manner clearly visible to the public and employees of the permit or license holder. The English notice must cover approximately two-thirds of the sign, and the Spanish notice must cover approximately one-third of the sign.

## CHAPTER 105. HOURS OF SALE AND CONSUMPTION

**Sec. 105.01. HOURS OF SALE: LIQUOR.** (a) Except as provided in Sections 105.02, 105.03, 105.04, and 105.08, 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) ~~A holder of a wholesaler's permit [Except as provided by Subsection (b) of this section, a wholesaler or a local distributor's permittee]~~ may sell, offer for sale, or deliver liquor to a retailer anytime [between 5 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 to a retailer between 5 a.m. and 9 p.m. on any day except:

- (1) Sunday;
- (2) Christmas Day; or
- (3) 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 10 a.m. and midnight, except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to the customer.

(c) In a city or county having a population of 800,000 or more, according to the last preceding federal census, or 500,000 or more, according to the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001, 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 city or county other than a city or county described by Subsection (c), 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, except that no sale shall be allowed between 2 a.m. and noon on Sunday.

**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, except that permittees or licensees authorized to sell for on-premise consumption may sell beer between 10:00 a.m. and noon if the beer is served to a customer during the service of food to the customer.

(c) In a city or county having a population of 800,000 or more, according to the last preceding federal census, or 500,000 or more, according to the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001, 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 city or county other than a city or county described by Subsection (c), the extended hours prescribed in Subsection (c) of this section, or any part of the extended hours prescribed in Subsection (c) of this section are effective for the sale, offer to sell, and delivery of beer by a holder of a retail dealer's on-premise late hours license:

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

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

(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. 105.051. SALE OF BEER BY DISTRIBUTOR'S LICENSEE.** ~~The [In addition to the hours specified for the sale of beer in Section 105.05(b) of this code, the]~~ holder of a general, local, or branch distributor's license may sell, offer for sale, or deliver beer 24 hours a day Monday through Saturday and between midnight and 1 a.m. and between noon and midnight on [beginning at 5 a. m. on any day except] Sunday.

~~**Sec. 105.052. SALE OF BEER BY DISTRIBUTOR'S LICENSEE IN CERTAIN METROPOLITAN AREAS.** In addition to the hours specified for the sale of beer in Section 105.05(b), the holder of a general, local, or branch distributor's license whose premises is located in a county with a population of 1.8 million or more or in a county adjacent to a county with a population of 1.8 million or more may sell, offer for sale, or deliver beer beginning at 4 a.m. on any day except Sunday.~~

**Sec. 105.06. HOURS OF CONSUMPTION.** (a) In this section:

(1) "Extended hours area" means an area 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.

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

(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 Class C misdemeanor.

**Sec. 105.07. HOURS OF SALE AND CONSUMPTION: SPORTS VENUE.** (a) In this section, "sports venue" means a public entertainment facility property, as defined by Section 108.73, that is primarily designed and used for live sporting events.

(b) Notwithstanding any other provision of this code, in addition to any other period during which the sale and consumption of alcohol is authorized under this code:

(1) a licensed or permitted premises located in a sports venue may sell alcoholic beverages between 10 a.m. and noon;

(2) a person may consume alcoholic beverages at a sports venue between 10 a.m. and noon.

**Sec. 105.08. HOURS OF SALE AND CONSUMPTION: WINERY.** The holder of a winery permit may sell, offer for sale, and deliver wine, and a person may consume wine on the premises of a winery:

- (1) between 8 a.m. and midnight on any day except Sunday; and
- (2) between 10 a.m. and midnight on Sunday.

**Sec. 105.09 [105.08]. HOURS OF SALE AND CONSUMPTION: CERTAIN EVENTS.** Notwithstanding any other provision of this code, in addition to any other period during which the sale and consumption of alcohol is authorized under this code:

- (1) a licensed or permitted premises located at a festival, fair, or concert may sell alcoholic beverages between 10 a.m. and noon; and
- (2) a person may consume alcoholic beverages at a festival, fair, or concert between 10 a.m. and noon.

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

- (1) sells or offers for sale an alcoholic beverage during prohibited hours; or
- (2) consumes or permits the consumption of an alcoholic beverage on the person's licensed or permitted premises during prohibited hours.

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

## CHAPTER 106. PROVISIONS RELATING TO AGE

**Sec. 106.01. DEFINITION.** In this code, "minor" means a person under 21 years of age.

**Sec. 106.02. PURCHASE OF ALCOHOL BY A MINOR.** (a) A minor commits an offense if the minor purchases an alcoholic beverage. A minor does not commit an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

(b) An offense under this section is punishable as provided by Section 106.071.

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

(b) An offense under this section is punishable as provided by Section 106.071.

**Sec. 106.03. SALE TO MINORS.** (a) A person commits an offense if with criminal negligence he 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 21 years old or older by displaying an apparently valid proof of identification that contains [Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing] a physical description and photograph consistent with the minor's [his] appearance, purports to establish that the minor is 21 years of age or older, and was issued by a governmental agency [for the purpose of inducing the person to sell him an alcoholic beverage]. The proof of identification may include a driver's license or identification card issued by the Department of Public Safety, a passport, or a military identification card.

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

(d) Subsection (b) does not apply to a person who accesses electronically readable information under Section 109.61 that identifies a driver's license or identification certificate as invalid.

**NOTE: The defenses added by this Act to Subsection (b), Section 160.03, Alcoholic Beverage Code, are available to a person regardless of when the offense was committed but only for trials commencing on or after the effective date of this Act.**

**Sec. 106.04. CONSUMPTION OF ALCOHOL BY A MINOR.** (a) A minor commits an offense if he consumes an alcoholic beverage.

(b) It is an affirmative defense to prosecution under this section that the alcoholic beverage was consumed in the visible presence of the minor's adult parent, guardian, or spouse.

(c) An offense under this section is punishable as provided by Section 106.071.

(d) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition. For the purposes of this subsection:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction of an offense under this section; and

(2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

**Sec. 106.041. DRIVING OR OPERATING WATERCRAFT UNDER THE INFLUENCE OF ALCOHOL BY MINOR.** (a) A minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$500 or more than \$2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115, the court shall order a minor convicted of an offense under this section to perform community service for:

(1) not less than 20 or more than 40 hours, if the minor has not been previously convicted of an offense under this section; or

(2) not less than 40 or more than 60 hours, if the minor has been previously convicted of an offense under this section.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol.

(f) A minor who commits an offense under this section and who has been previously convicted twice or more of offenses under this section is not eligible for deferred disposition or deferred adjudication.

(g) An offense under this section is not a lesser included offense under Section 49.04, 49.045, or 49.06, Penal Code.

(h) For the purpose of determining whether a minor has been previously convicted of an offense under this section:

(1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and

(2) an order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section.

(i) A peace officer who is charging a minor with committing an offense under this section is not required to take the minor into custody but may issue a citation to the minor that contains written notice of the time and place the minor must appear before a magistrate, the name and address of the minor charged, and the offense charged.

- (j) In this section:
- (1) "Child" has the meaning assigned by Section 51.02, Family Code.
  - (2) "Motor vehicle" has the meaning assigned by Section 32.34(a), Penal Code.
  - (3) "Public place" has the meaning assigned by Section 1.07, Penal Code.
  - (4) "Watercraft" has the meaning assigned by Section 49.01, Penal Code.

**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 the minor's employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code;
  - (2) if the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; or
  - (3) if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.
- (c) An offense under this section is punishable as provided by Section 106.071.

**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 with criminal negligence 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) An offense under this section is a Class A misdemeanor.

**Sec. 106.07. MISREPRESENTATION OF AGE BY A MINOR.** (a) A minor commits an offense if he falsely states that he is 21 years of age or older or presents any document that indicates he is 21 years of age or older to a person engaged in selling or serving alcoholic beverages.

(b) An offense under this section is punishable as provided by Section 106.071.

**Sec. 106.071. PUNISHMENT FOR ALCOHOL-RELATED OFFENSE BY MINOR.** (a) This section applies to an offense under Section 106.02, 106.025, 106.04, 106.05, or 106.07.

(b) Except as provided by Subsection (c), an offense to which this section applies is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense to which this section applies, the offense is punishable by:

- (1) a fine of not less than \$250 or more than \$2,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115:

- (1) the court shall order a minor placed on deferred disposition for or convicted of an offense to which this section applies to perform community service for:
  - (A) not less than eight or more than 12 hours, if the minor has not been previously convicted of an offense to which this section applies; or
  - (B) not less than 20 or more than 40 hours, if the minor has been previously convicted once of an offense to which this section applies; and
- (2) the court shall order the Department of Public Safety to suspend the driver's license or permit of a minor convicted of an offense to which this section applies or, if the minor does not have a driver's license or permit, to deny the issuance of a driver's license or permit for:

(A) 30 days, if the minor has not been previously convicted of an offense to which this section applies;

(B) 60 days, if the minor has been previously convicted once of an offense to which this section applies; or

(C) 180 days, if the minor has been previously convicted twice or more of an offense to which this section applies.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

(f) In this section:

(1) a prior adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction; and

(2) a prior order of deferred disposition for an offense alleged under this section is considered a conviction.

(g) In this section, "child" has the meaning assigned by Section 51.02, Family Code.

(h) A driver's license suspension under this section takes effect on the 11th day after the date the minor is convicted.

(i) A defendant who is not a child and who has been previously convicted at least twice of an offense to which this section applies is not eligible to receive a deferred disposition or deferred adjudication.

**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), (c), and (e) 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 permit or license providing for the on-premises consumption of alcoholic beverages may employ a person under 18 years of age to work in any capacity other than the actual selling, preparing, or serving of alcoholic beverages.

(d) The fact that a person is 18, 19, or 20 years of age is not a ground for refusal of an original or renewal permit or license issued under Chapter 35 or 73 of this code, provided that such person to whom a permit or license is issued may carry out the activities authorized by those chapters only while in the actual course and scope of the person's employment.

(d) The holder of a permit or license providing for the on-premises consumption of alcoholic beverages who also holds a food and beverage certificate may employ a person under 18 years of age to work as a cashier for transactions involving the sale of alcoholic beverages if the alcoholic beverages are served by a person 18 years of age or older.

**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. 106.115. ATTENDANCE AT ALCOHOL AWARENESS COURSE; LICENSE SUSPENSION.** (a) On the placement of a minor on deferred disposition for an offense under Section 49.02, Penal Code, or under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, the court shall require the defendant to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse. On conviction of a minor of an offense under one or more of those sections, the court, in addition to assessing a fine as provided by those sections, shall require a defendant who has not been previously convicted of an offense under one of those sections to attend the alcohol awareness program. If the defendant has been previously convicted once or more of an offense under one or more of those sections, the court may require



the defendant to attend the alcohol awareness program. If the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the program with the defendant. The Texas Commission on Alcohol and Drug Abuse:

(1) is responsible for the administration of the certification of approved alcohol awareness programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of the approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding alcohol awareness programs approved under this section; and

(4) shall monitor, coordinate, and provide training to a person who provides an alcohol awareness program.

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

(c) The court shall require the defendant to present to the court, within 90 days of the date of final conviction, evidence in the form prescribed by the court that the defendant, as ordered by the court, has satisfactorily completed an alcohol awareness program or performed the required hours of community service. For good cause the court may extend this period by not more than 90 days. If the defendant presents the required evidence within the prescribed period, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.

(d) If the defendant does not present the required evidence within the prescribed period, the court:

(1) shall order the Department of Public Safety to:

(A) suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; or

(B) if the defendant has been previously convicted of an offense under one or more of the sections listed in Subsection (a), suspend the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; and

(2) may order the defendant or the parent, managing conservator, or guardian of the defendant to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence to the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service.

(e) The Department of Public Safety shall send notice of the suspension or prohibition order issued under Subsection (d) by first class mail to the defendant. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the period covered by the suspension or prohibition.

**Sec. 106.116. REPORTS OF COURT TO COMMISSION.** Unless the clerk is otherwise required to include the information in a report submitted under Section 101.09, the clerk of a court, including a justice court, municipal court, or juvenile court, shall furnish to the commission on request a notice of a conviction of an offense under this chapter or an adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter. The report must be in the form prescribed by the commission.

**Sec. 106.117. REPORT OF COURT TO DEPARTMENT OF PUBLIC SAFETY.** (a) Each court, including a justice court, municipal court, or juvenile court, shall furnish to the Department of Public Safety a notice of each:

(1) adjudication under Title 3, Family Code, for conduct that constitutes an offense under this chapter;

- (2) conviction of an offense under this chapter;
- (3) order of deferred disposition for an offense alleged under this chapter;

and

- (4) acquittal of an offense under Section 106.041.

(b) The notice must be in a form prescribed by the Department of Public Safety and must contain the driver's license number of the defendant, if the defendant holds a driver's license.

(c) The Department of Public Safety shall maintain appropriate records of information in the notices and shall provide the information to law enforcement agencies and courts as necessary to enable those agencies and courts to carry out their official duties. The information is admissible in any action in which it is relevant. A person who holds a driver's license having the same number that is contained in a record maintained under this section is presumed to be the person to whom the record relates. The presumption may be rebutted only by evidence presented under oath.

(d) The information maintained under this section is confidential and may not be disclosed except as provided by this section. A provision of Chapter 58, Family Code, or other law limiting collection or reporting of information on a juvenile or other minor or requiring destruction of that information does not apply to information reported and maintained under this section.

**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 21 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.

(d) The court shall charge an applicant a fee in the amount of \$30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

**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 90 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that the licensee or permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor or with criminal negligence 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 six 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.

**Sec. 106.14. ACTIONS OF EMPLOYEE.** (a) For purposes of this chapter and any other provision of this code relating to the sales, service, dispensing, or delivery of alcoholic beverages to a person who is not a member of a private club on the club premises, a minor, or an intoxicated person or the consumption of alcoholic beverages by a person who is not a member of a private club on the club premises, a minor, or an intoxicated person, the actions of an employee shall not be attributable to the employer if:

(1) the employer requires its employees to attend a commission-approved seller training program;

(2) the employee has actually attended such a training program; and

(3) the employer has not directly or indirectly encouraged the employee to violate such law.

(b) The commission shall adopt rules or policies establishing the minimum requirements for approved seller training programs. Upon application, the commission shall approve seller training programs meeting such requirements that are sponsored either privately, by public community colleges, or by public or private institutions of higher education that offer a four-year undergraduate program and a degree or certificate in hotel or motel management, restaurant management, or travel or tourism management. The commission may charge an application fee to be set by the commission in such amount as is necessary to defray the expense of processing the application.

(c) The commission may approve under this section a seller training program sponsored by a licensee or permittee for the purpose of training its employees whether or not such employees are located at the same premises. This subsection shall only apply to licensees or permittees who employ at least 150 persons at any one time during the license or permit year who sell, serve, or prepare alcoholic beverages.

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

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

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

**Sec. 106.15. PROHIBITED ACTIVITIES BY PERSONS YOUNGER THAN 18.** (a) A permittee or licensee commits an offense if he employs, authorizes, permits, or induces a person younger than 18 years of age to dance with another person in exchange for a benefit, as defined by Section 1.07, Penal Code, on the premises covered by the permit or license.

(b) An offense under Subsection (a) is a Class A misdemeanor.

(c) In addition to a penalty imposed under Subsection (b), the commission or administrator shall:

(1) suspend for a period of five days the license or permit of a person convicted of a first offense under Subsection (a);

(2) suspend for a period of 60 days the license or permit of a person convicted of a second offense under Subsection (a); and

(3) cancel the license or permit of a person convicted of a third offense under Subsection (a).

(d) This section does not apply to a gift or benefit given for a dance at a wedding, anniversary, or similar event.

(e) A person does not commit an offense under Subsection (a) if the person younger than 18 years of age falsely represents the person's age to be at least 18 years of age by displaying an apparently valid Texas driver's license or an identification card issued by the

Department of Public Safety containing a physical description consistent with the person's appearance.

## **CHAPTER 107. TRANSPORTATION AND IMPORTATION**

**Sec. 107.01. TRANSPORTATION OR 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 an administrative fee of 50 cents and must affix the required tax stamps. No minor 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 any one thirty-day period. He must pay the state tax on beer and an administrative fee of 50 cents.

(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.

(e) The administrative fees collected under this section shall be used by the commission for the administrative costs of enforcing the requirements of Subsections (a) and (b) of this section.

(f) Except as provided by Chapter 54, any person in the business of selling alcoholic beverages in another state or country who ships or causes to be shipped any alcoholic beverage directly to any Texas resident under this section is in violation of this code.

(g) In computing the total amount of taxes and administrative fees to be collected on alcoholic beverages imported by a person into the state for personal use, the commission may round the amount up to the nearest quarter of a dollar.

**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.

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

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

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

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

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

**Sec. 107.12. DIRECT SHIPMENT OF WINE.** Notwithstanding Section 107.07, a person who purchases wine while at a winery located in this state may ship or cause to be shipped the wine to the person's residence if the winery verifies that the person purchasing the wine is 21 years of age or older. The person must be present when the wine is delivered to the person's residence.

## 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, distilled spirits, or wine by brand name on caps, regalia, or uniforms worn by employees of manufacturers, distributors, distillers, or wineries or by participants in a game, sport, athletic contest, or revue if the participants are sponsored by a manufacturer, distributor, distiller, or winery.

**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 102.07, 102.14, 102.15, and 108.06, 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
- (4) acts of a purely courtesy nature.

**Sec. 108.041. CARBON DIOXIDE FILTERS PROVIDED TO RETAILERS.** (a) A manufacturer or distributor of beer may provide carbon dioxide filters to beer retailers for draught systems using carbon dioxide or a carbon dioxide and nitrogen blend, commonly referred to as "beer gas."

(b) The cost of providing, maintaining, and replacing the carbon dioxide filters shall be borne by the manufacturer.

**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. 108.061. SWEEPSTAKES PROMOTIONS AUTHORIZED.** Notwithstanding the prohibition against prizes given to a consumer in Section 108.06 and subject to the rules of the commission, a manufacturer or nonresident manufacturer may offer a prize to a consumer if the offer is a part of a promotional sweepstakes activity. A purchase or entry fee may not be required of any person to enter in a sweepstakes authorized under this section. A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

**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.

**Sec. 108.08. ADVERTISING IN CERTAIN ECONOMIC DEVELOPMENT FACILITIES.** (a) Notwithstanding any other provision of this code or any rule adopted under the authority of this code, the provisions of this code relating to the regulation of or limitations on outdoor advertising signage, advertising revenue, or advertising signage in or on a licensed premises do not apply to an entity which owns a professional sports franchise which plays a majority of its home games in a municipally owned or leased regional economic development facility that is in a station or terminal complex of a rapid transit authority and to which Subchapter E, Chapter 451, Transportation Code, applies or to such a facility.

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

**Sec. 108.09. CERTAIN ADVERTISING BY WINERY.** (a) Notwithstanding Section 102.07 or any other provision of this code, a winery may include information in the winery's advertising that informs the public of where the winery's products may be purchased.

(b) A winery may not give compensation to or receive compensation from a permitted member of the wholesale or retail tier for advertising described by Subsection (a).

## **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

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

(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.

(h) In addition to the signs authorized by this section, any retail licensee or permittee whose trade name or corporate name includes one or more of the words or phrases regulated by Subsection (c) of this section may also have one sign designating the trade name or corporate name of the retail licensee's or permittee's business. The commission or administrator may permit a retail licensee or permittee to erect and maintain one sign at each entrance or side of a building occupied by the retail licensee or permittee if the building faces more than one street or highway. Signs erected pursuant to this subsection shall comply with all local regulations concerning the erection of signs.

**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.

(d) Notwithstanding the restrictions imposed by this section, but consistent with other provisions of this code, the commission shall promulgate rules allowing for signs advertising alcoholic beverages at charitable or civic events such as fairs, rodeos, or other events of a temporary nature. This subsection does not authorize, nor shall any rule of the commission authorize, a retailer of alcoholic beverages to derive, directly or indirectly, any money or consideration of any kind as a result of alcoholic beverage advertising, and the commission's rules shall reflect the intent that the charity or civic endeavor receive the proceeds, if any, from such advertising signs.

**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.** (a) Except as provided by Subsection (b), 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.

(b) A person may erect or maintain a billboard in an area or zone where the sale of alcoholic beverages is prohibited by law if:

(1) the premises that the billboard advertises is located in a county with a population of 250,000 or less; and

(2) the billboard is within 1,500 feet of the premises that the billboard advertises; and

(3) a United States highway that merges into and becomes an interstate highway separates the premises and the billboard; or

(4) the billboard is located adjacent to a wet precinct separated by a United States highway that merges into and becomes an interstate highway in a county with a population of 250,000 or less and advertises directions to a winery located in the adjacent wet precinct.

## **SUBCHAPTER C. INDUSTRY PUBLIC ENTERTAINMENT FACILITIES ACT**

**Sec. 108.71. PURPOSE.** This subchapter governs the statutory duties, rights, and relations among licensees and permittees operating under this subchapter, including their relations with the owners and operators of public entertainment facilities. This subchapter expressly authorizes alcoholic beverage distillers, manufacturers, distributors, and wholesalers, except as provided by Section 108.74, to promote and sponsor events and advertise alcoholic beverage brands and products at public entertainment facilities without establishing unlawful intertier relations, including with retail permittees operating at those facilities.

**Sec. 108.72. SHORT TITLE.** This subchapter may be cited as the Industry Public Entertainment Facilities Act.

**Sec. 108.73. DEFINITIONS.** In this subchapter:

(1) "Independent concessionaire" means a licensed or permitted member of the retail tier or a holder of a private club permit, caterer's permit, or food and beverage certificate who:

(A) has a written concession agreement from the owner, operator, or lessee of a public entertainment facility;

(B) receives no monetary benefit, directly or indirectly, by any scheme or device or in any form or degree from the alcoholic beverage industry including a benefit in the form of capital improvements, furniture, fixtures, or equipment, unless otherwise authorized by this code or commission rules; and

(C) is not owned, in whole or in part, by the public entertainment facility, or a subsidiary, agent, manager, or company managing the facility, and who does not own, in whole or in part, or manage the public entertainment facility.

(2) "Public entertainment facility" means an arena, stadium, automobile race track, amphitheater, auditorium, theater, civic center, convention center, or similar facility that is primarily designed and used for live artistic, theatrical, cultural, educational, charitable, musical,

sporting, nationally sanctioned automobile racing, or entertainment events. The term does not include a facility the primary purpose of which is the sale of food or alcoholic beverages, including a bar, nightclub, restaurant, hotel, bowling alley, pool hall, or dance hall, or a facility that derives 75 percent or more of the facility's annual gross revenue from the on-premise sale of alcoholic beverages.

(3) "Public entertainment facility property" means property on which a public entertainment facility and a licensed or permitted premises are located and related surrounding property.

(4) "Sponsorship signs" means any manner of advertising, promotional, or sponsorship signage, or any representation, device, display, regalia, insignia, indicia, design, slogan, trade name, brand name, product name, permittee or licensee name, advertising specialties, marketing services, or other materials indicating participation in or sponsorship of all or part of a public entertainment facility or an event or venue at a public entertainment facility, including the sponsorship or naming of all or part of the facility or event, wherever located, whether indoor or outdoor, including billboards, awnings, and electric signs, however manufactured, comprising whatever materials, and however disseminated, including by writing, printing, graphics, newspaper, periodicals, radio, television, cable, Internet, electronic, satellite, and other media or communication modalities.

**Sec. 108.74. EXCEPTION OF CERTAIN WHOLESALER FROM APPLICATION OF THIS SUBCHAPTER.** A person who holds a permit under Chapter 19 and whose revenues from the sale of alcoholic beverages are predominately obtained from the sale of distilled spirits and wine may not enter into advertising, sponsorship, or promotional agreements as authorized by Section 108.75.

**Sec. 108.75. ADVERTISING AND PROMOTION IN PUBLIC ENTERTAINMENT FACILITY.** (a) A member of the distiller, manufacturing, distributor, or wholesaler tier may promote, sponsor, or advertise an entertainment event or venue or promote or advertise an alcoholic beverage brand or product at a public entertainment facility if the alcoholic beverage promoted, sold, or served at the event, venue, or facility is furnished by an independent concessionaire.

(b) An independent concessionaire may not receive direct monetary benefit from advertising, promotional, or sponsorship revenues generated by operation of a public entertainment facility. A member of the manufacturing or distributing tier may not, directly or indirectly through the owner or operator of a public entertainment facility, furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to an independent concessionaire. A public entertainment facility owner or operator or a member of the distiller, manufacturing, distributor, or wholesaler tier may not directly or indirectly control the quantity or brand of alcoholic beverages bought or sold by an independent concessionaire. An independent concessionaire must enter into a written concession agreement with an owner, lessee, or operator of a public entertainment facility.

(c) A member of the distiller, manufacturing, distributor, or wholesaler tier who has entered into an advertising, promotional, or sponsorship agreement may provide sponsorship signs at a public entertainment facility property and as otherwise authorized in this code and commission rules.

(d) An independent concessionaire who has entered into a concessionaire agreement under this subchapter may place sponsorship signs at, in, or on public entertainment facility property.

(e) The owner or operator of a public entertainment facility who has entered into a concessionaire agreement and a sponsorship agreement under this subchapter shall not be precluded from placing and displaying sponsorship signs, as otherwise permitted by law, provided by sponsoring members of the distiller, manufacturing, distributor, or wholesaler tier, at,

in, or on an independent concessionaire's venues at a public entertainment facility property, including the area where alcoholic beverages are displayed, served, or poured.

(f) Nothing in this subchapter shall limit the independent concessionaire's right to place and display sponsorship and other signs authorized under this code and commission rules.

(g) All advertising, promotional, sponsorship, and concession agreements authorized by this subchapter shall contain an affirmative provision disavowing the right of any party to engage in conduct prohibited by this subchapter.

**Sec. 108.755. CERTAIN GOVERNMENTALLY OWNED FACILITIES.** (a) Section 108.75 does not restrict or govern the promotion, sponsorship, or advertising of an entertainment event, or the promotion or advertising of an alcoholic beverage brand or product, at a facility owned by a municipality or county that is financed with public securities, the interest on which is exempt from federal income taxation under the Internal Revenue Code of 1986.

(b) Financial arrangements, including profit sharing, between a concessionaire operating at a facility described by Subsection (a) and a person operating the concession facilities under a contract with the license or permit holder or the municipality or county do not constitute and are not evidence of subterfuge ownership prohibited by Section 109.53.

**Sec. 108.76. VIOLATION.** The provision, placement, and use of sponsorship signs as authorized by and in compliance with this subchapter by members of the distiller, manufacturing, distributor, or wholesaler tier, independent concessionaires, and public entertainment facility owners and operators does not constitute an illegal inducement, subterfuge, or a surrender of exclusive control.

**Sec. 108.77. COST OF ADVERTISEMENT, SPONSORSHIP, OR PROMOTION.** No part of the cost of an advertisement, sponsorship, or promotion authorized by this subchapter may be charged to or paid by a distributor or wholesaler, except as provided by Section 108.74, unless the distributor or wholesaler:

(1) contracts directly with the owner or operator of the public entertainment facility for the advertisement, sponsorship, or promotion; or

(2) is a party to the advertising, sponsorship, or promotion agreement between a member of the manufacturing tier and the owner or operator of the public entertainment facility.

**Sec. 108.78. CONFIDENTIALITY.** Any concessionaire, sponsorship, advertisement, or promotional agreement, or related agreement and exhibits to such an agreement, entered into, submitted, filed, or requested by the administrator or commission is deemed confidential under Section 5.48(b).

**Sec. 108.79. OPTIONAL PREAPPROVAL PROCESS.** (a) Subject to the terms of the relevant agreement, a permittee or licensee may by certified mail, return receipt requested, submit to the administrator in writing the permittee's or licensee's original or amended advertising, promotional, sponsorship, or concessionaire agreement relating to a public entertainment facility, requesting the administrator's approval.

(b) Not later than the 30th day after the date the administrator receives the request for preapproval under this section, the administrator shall notify the permittee or licensee in writing, by certified mail, return receipt requested, whether the administrator approves, conditionally approves, or disapproves the submission. If the administrator does not provide the notification in that time and the permittee or licensee does not agree to a timely and reasonable written request for an extension by the administrator giving the reason for the request, the agreement is considered approved as submitted.

(c) If the administrator conditionally approves or disapproves a submission under Subsection (b), the administrator shall specify in the notice provided under that subsection the basis for the administrator's determination, referencing any specific provisions of this code or other law involved in the determination and any necessary and reasonable actions the permittee or licensee may take to obtain approval of the submission.

(d) On receipt of the administrator's conditional approval or disapproval, the permittee or licensee may:

(1) revise and resubmit the agreement in compliance with the administrator's specific comments and instructions, including any discussions between the administrator and permittee or licensee to resolve the issues involved in the administrator's determination; or

(2) contest the commission's or administrator's determinations, acts, or omissions related to this subchapter and engage in informal mediation to resolve the dispute regarding the submission.

(e) A submission under Subsection (d)(1) is subject to the approval period prescribed by Subsection (b) unless the administrator and the permittee or licensee agree otherwise.

**Sec. 108.80. JUDICIAL REVIEW.** (a) If a permittee, licensee, or other party to an agreement under this subchapter alleges that the administrator is or has been, directly or indirectly, unfairly, arbitrarily, capriciously, or wrongly exercising or withholding the exercise of the administrator's authority under Section 108.79, desires a declaration of rights under this subchapter, or alleges threatened or actual damage or injury arising out of a violation of this subchapter or any other law relating to the process and rights provided by this subchapter, the aggrieved party may bring suit in a district court in Travis County:

(1) to require, contest, or suspend enforcement of any act or omission by the administrator or commission; or

(2) concerning any administrative, regulatory, legal, or judicial act or omission, including seeking mandatory and prohibitory injunctive and extraordinary relief or declaratory relief.

(b) The court in its discretion may allow the permittee, licensee, or other party to an agreement to recover court costs and reasonable attorney's fees incurred in the defense or prosecution of the action.

**Sec. 108.81. SPONSOR LIABILITY.** A beverage distiller, manufacturer, distributor, or wholesaler who sponsors an event at a public entertainment facility or on public entertainment facility property, or who advertises or displays sponsorship signs in connection with such an event or facility or property, shall not be liable solely because of such sponsorship, advertisement, or display of sponsorship signs for any personal injury, death, or property damage occurring at such a facility or property or as a result of the operation or condition of such facility or property or because of any tort committed by any other party at or in connection with such event, facility, or property.

## 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 of \$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.

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

## **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 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.

**Sec. 109.22. DELIVERY OF HOME-PRODUCED WINE, ALE, MALT LIQUOR, OR BEER FOR CERTAIN PURPOSES.** (a) This section applies only to a person who is authorized under Section 109.21(a) to produce wine, ale, malt liquor, or beer.

(b) For the purpose of participating in an organized tasting, evaluation, competition, or literary review, a person to whom this section applies may deliver wine, ale, malt liquor, or beer produced and manufactured by the person to locations that are not licensed under this code for the purpose of submitting those products to an evaluation at an organized tasting competition that is closed to the general public or by a reviewer whose reviews are published if:

(1) no charge of any kind is made for the wine, ale, malt liquor, or beer, for its delivery, or for attendance at the event; and

(2) the commission consents in writing to the delivery.

(c) Nothing in this section shall be construed to authorize an increase in the quantity of wine, ale, malt liquor, or beer authorized to be produced by a person under the authority of Section 109.21(a) of this code.

## **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:

- (1) 300 feet of a church, public or private school, or public hospital;
- (2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007, Education Code; or

**NOTE:** *Section 38.007, Education Code. Alcohol-free School Zones reads as follows:*

*(a) The board of trustees of a school district shall prohibit the use of alcoholic beverages at a school-related or school-sanctioned activity on or off school property.*

*(b) The board of trustees of a school district shall attempt to provide a safe alcohol-free environment to students coming to or going from school. The board of trustees may cooperate with local law enforcement officials and the Texas Alcoholic Beverage Commission in attempting to provide this environment and in enforcing Sections 101.75, 109.33, and 109.59, Alcoholic Beverage Code. Additionally, the board, if a majority of the area of a district is located in a municipality of a population of 900,000 or more, may petition the commissioners court of the county in which the district is located or the governing board of an incorporated city or town in which the district is located to adopt a 1,000-foot zone under Section 109.33, Alcoholic Beverage Code.*

- (3) 1,000 feet of a private school if the commissioners court or the governing body receives a request from the governing body of the private school.

(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 or private school shall be:

- (1) in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or
- (2) if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

(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 or private school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public or private school before filing the application with the commission. A copy of the notice must be submitted to the commission with the application. This subsection 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 or private school shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

(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.

(f) Subsections (a)(2) and (3) do not apply to the holder of:

(1) a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages;

(2) a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or

(3) a wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102.

(g) Subsection (a)(3) does not apply to the holder of:

(1) a license or permit issued under Chapter 27, 31, or 72 who is operating on the premises of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 1,000 feet of a private school.

(h) Subsection (a)(1) does not apply to the holder of:

(1) a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 300 feet of a private school.

(i) In this section, "private school" means a private school, including a parochial school, that:

(1) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and

(2) has more than 100 students enrolled and attending courses at a single location.

**Sec. 109.331. SALES NEAR DAY-CARE CENTER OR CHILD-CARE FACILITY.**

(a) This section applies only to a permit or license holder under Chapter 25, 28, 32, 69, or 74 who does not hold a food and beverage certificate.

(b) Except as provided by this subsection, the provisions of Section 109.33 relating to a public school also apply to a day-care center and a child-care facility as those terms are defined by Section 42.002, Human Resources Code. Sections 109.33(a)(2) and (c) do not apply to a day-care center or child-care facility.

(c) This section does not apply to a permit or license holder who sells alcoholic beverages if:

(1) the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or

(2) the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.

(d) This section does not apply to a foster group home, foster family home, family home, agency group home, or agency home as those terms are defined by Section 42.002, Human Resources Code.

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

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

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

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

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

**Sec. 109.36. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR HOMELESS SHELTER OR SUBSTANCE ABUSE TREATMENT CENTER.** (a) In this section:

(1) "Central business district" means a compact and contiguous geographical area of a municipality used for commercial purposes that has historically been the primary location in the municipality where business has been transacted.

(2) "Homeless shelter" means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals who lack a fixed regular and adequate residence.

(3) "Open container" has the meaning assigned by Section 109.35.

(b) 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 possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a homeless shelter that is not located in a central business district or a substance abuse treatment center that is not located in a central business district.

(c) If the commissioners court of a county or the governing board of an incorporated city or town enacts a prohibition under Subsection (b), the commissioners court or the governing board may enact regulations allowing special temporary events for which Subsection (b) may be suspended.

#### **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 one year immediately preceding the filing of his application therefore shall be eligible to receive a permit under this code. No permit except a brewer's permit, and such other licenses and permits as are necessary to the operation of a brewer's permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least 51 percent of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of one year 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, and carrier's permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. No applicant for a package store permit or a renewal thereof shall have authority to designate as "premise" and the commission or administrator shall not approve a lesser area than that specifically defined as "premise" in Section 11.49(a) of this code. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No minor, unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a package store permit. The prohibition against the presence of a minor on the premises of the holder of a package store permit does not apply to the presence on the premises of the holder or a person lawfully employed by the holder. Any package store permittee who shall be injured in his business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee. The provisions prohibiting the licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in this code.

**Sec. 109.531. ADDITIONAL REQUIREMENTS FOR APPLICATION OR RENEWAL OF PERMIT OR LICENSE BY OUT-OF-STATE RESIDENTS.** In addition to any other requirement for a license or permit under this code, a person who has not been a citizen of this state for a period of one year preceding the date the person filed an application for a permit or license under Chapters 25-34, 44, 48-51, 69-72, or Chapter 74 of this code shall:

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

(2) submit to a criminal history background check.

**Sec. 109.532. CRIMINAL HISTORY BACKGROUND CHECKS.** (a) The commission shall establish a uniform method of obtaining criminal history information. The uniform method must require:

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

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

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

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

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

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

(1) on court order; or

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

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

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

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

**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.

**Sec. 109.55. CERTIFICATE.** If after June 1, 1987, the certificate is filed under Section 15, Chapter 285, or Section 16, Chapter 462, Acts of the 69th Legislature, Regular Session, 1985, the contingency described by Subsection (c) of each of those sections is effective on the first day of the month following the month in which the certificate is filed.

**Sec. 109.56. CONVICTION OF OFFENSE RELATING TO DISCRIMINATION; POLICY OF NONDISCRIMINATION.** 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, sex, or religion; and

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

**Sec. 109.57. APPLICATION OF CODE; OTHER JURISDICTIONS.** (a) Except as is expressly authorized by this code, a regulation, charter, or ordinance promulgated by a governmental entity of this state may not impose stricter standards on premises or businesses required to have a license or permit under this code than are imposed on similar premises or businesses that are not required to have such a license or permit.

(b) It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code, a governmental entity of this state may not discriminate against a business holding a license or permit under this code.

(c) Neither this section nor Section 1.06 of this code affects the validity or invalidity of a zoning regulation that was formally enacted before June 11, 1987, and that is otherwise valid, or any amendment to such a regulation enacted after June 11, 1987, if the amendment lessens the restrictions on the licensee or permittee or does not impose additional restrictions on the licensee or permittee. For purposes of this subsection, "zoning regulation" means any charter provision, rule, regulation, or other enactment governing the location and use of buildings, other structures, and land.

(d) This section does not affect the authority of a governmental entity to regulate, in a manner as otherwise permitted by law, the location of:

(1) a massage parlor, nude modeling studio, or other sexually oriented business; or

(2) an establishment that derives 75 percent or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages.

(e) A municipality located in a county that has a population of 2.2 million or more and that is adjacent to a county with a population of more than 400,000 or a municipality located in a county with a population of 400,000 or more and that is adjacent to a county with a population of 2.2 million or more may regulate, in a manner not otherwise prohibited by law, the location of an establishment issued a permit under Chapter 32 or 33 if:

(1) the establishment derives 35 percent or more of the establishment's gross revenue from the on-premises sale or service of alcoholic beverages and the premises of the establishment are located in a dry area; and

(2) the permit is not issued to a fraternal or veterans organization or the holder of a food and beverage certificate.

**Sec. 109.58. RELAXATION OF RESTRICTIONS AS TO CHARITABLE EVENTS.** (a) This code does not prohibit permit and license holders engaged in the alcoholic beverage industry at different levels from simultaneously or jointly sponsoring a civic, religious, or charitable event, including by providing or lending money, services, or other things of value directly to a civic, religious, or charitable entity in conjunction with the event, provided that:

(1) any license or permit to sell or serve alcoholic beverages at the event is held by a retailer who is independent of the sponsors; and

(2) none of the retailers who sponsor the event, if any, receive any direct benefit or service because of joint sponsorship by a wholesaler or manufacturer of alcoholic beverages.

(b) The commission by rule may set definite limitations consistent with the general provisions of this code that relax the restrictions of this code with respect to the sponsoring of a civic, religious, or charitable event or the making of a gift to civic, religious, or charitable organizations by permit and license holders engaged in the alcoholic beverage industry at different levels.

**Sec. 109.59. APPLICATION OF DISTANCE REQUIREMENTS.** (a) If at the time an original alcoholic beverage permit or license is granted for a premises the premises satisfies the requirements regarding distance from schools, churches, and other types of premises established in this code and any other law or ordinance of the state or a political subdivision of the state in effect at that time, the premises shall be deemed to satisfy the distance requirements for all subsequent renewals of the license or permit.

(b) On the sale or transfer of the premises or the business on the premises in which a new original license or permit is required for the premises, the premises shall be deemed to satisfy any distance requirements as if the issuance of the new original permit or license were a renewal of a previously held permit or license.

(c) Subsection (b) does not apply to the satisfaction of the distance requirement prescribed by Section 109.33(a)(2) for a public school, except that on the death of a permit or license holder or a person having an interest in a permit or license Subsection (b) does apply to the holder's surviving spouse or child of the holder or person if the spouse or child qualifies as a successor in interest to the permit or license.

(d) Subsection (a) does not apply to the satisfaction of the distance requirement prescribed by Section 109.33(a)(2) for a public school if the holder's permit or license has been suspended for a violation occurring after September 1, 1995, of any of the following provisions:

- (1) Section 11.61(b)(1), (6)-(11), (13), (14), or (20); or
- (2) Section 61.71(a)(5)-(8), (11), (12), (14), (17), (18), (22), or (24).

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

**Sec. 109.61. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION.**

(a) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with this code or a rule of the commission, including for the purpose of preventing the person from committing an offense under this code.

(b) A person may not retain information accessed under this section unless the commission by rule requires the information to be retained. The person may not retain the information longer than the commission requires.

(b-1) Information retained may be printed to hard copy with a time and date confirmation from the transaction scan device or transferred to an electronic encrypted data storage or electronic record. After printing or transferring data, the transaction scan device may clear the scanned information from the device or any memory in the device. The commission by rule may set further requirements for the retention of information under this subsection.

(c) Information accessed under this section may not be marketed in any manner.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under this code, for an offense having as an element the age of a person, that:

(1) a transaction scan device identified the license or certificate of the purchaser as valid and that the person is over 21, and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which alcoholic beverages are sold at retail, the offense occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition;

(B) adequate training in the use of the transaction scan device; and

(C) the defendant did not directly or indirectly encourage the employee to violate the law.

(f) The defense offered in Subsection (e) does not apply in actions to cancel, deny, or suspend the license or permit, except as provided by rules adopted by the commission under Section 5.31.

(g) In this section, "transaction scan device" includes an electronic age verification system authorized by commission rule operated in conjunction with a point of sale terminal that scans the purchaser's driver's license or identification certificate upon enrollment, associates the purchaser's personal identifying information, as defined by Section 521.002(1)(C), Business & Commerce Code, with the purchaser's license or identification certificate information, and is capable of allowing a seller to verify a purchaser's age solely by accessing the data and information.

## CHAPTER 110. TEXAS WINE MARKETING ASSISTANCE PROGRAM IN DEPARTMENT OF AGRICULTURE

### SUBCHAPTER A. GENERAL PROVISIONS

**Sec. 110.001. DEFINITIONS.** In this chapter:

(1) "Commissioner" means the commissioner of agriculture.

(2) "Program" means the Texas Wine Marketing Assistance Program.

**Sec. 110.002. PROGRAM ESTABLISHED.** (a) The Texas Wine Marketing Assistance Program is established in the Department of Agriculture to assist the Texas wine industry in promoting and marketing Texas wines and educating the public about the Texas wine industry.

(b) The commissioner, in consultation with the advisory committee established under Section [50B.002, Agriculture Code \[110.003\]](#), shall adopt rules as necessary to implement the program.

~~**Sec. 110.003. ADVISORY COMMITTEE.** (a) The commissioner shall appoint an advisory committee to assist the commissioner in establishing and implementing the program. The committee shall be composed of:~~

~~(1) three representatives of Texas wineries;~~

~~(2) one representative of Texas wine wholesalers;~~

~~(3) one representative of Texas package stores;~~

~~(4) one representative of the Department of Agriculture; and~~

~~(5) one representative of the commission.~~

~~(b) The members of the advisory committee serve without compensation or reimbursement of expenses.~~

~~(c) A member of the advisory committee serves at the pleasure of the commissioner for a term of two years. The commissioner may reappoint a member to the advisory committee.~~

~~(d) The members of the advisory committee shall select a presiding officer from among the members and adopt rules governing the operation of the committee. The rules shall specify that four members of the committee constitute a quorum sufficient to conduct the meetings and business of the committee.~~

~~(e) — The advisory committee shall meet as necessary to provide guidance to the commissioner in establishing and implementing the program.~~

## **SUBCHAPTER B. TEXAS WINE MARKETING ASSISTANCE PROGRAM**

**Sec. 110.051. PROMOTION, MARKETING, AND EDUCATION.** The program shall:

- (1) organize a network of package stores to participate in a program promoting wines produced in this state and to deliver wine to consumers under Section 110.053;
- (2) develop and maintain a data base of wineries in this state and package stores that sell wines produced in this state that allows the program's staff to identify the winery in this state that produces a particular wine;
- (3) operate a toll-free telephone number to:
  - (A) receive inquiries from persons who wish to purchase a particular wine produced in this state;
  - (B) make information about the wineries in this state and the package stores participating in the program available to the public; and
  - (C) refer a person who wishes to purchase a Texas wine to the winery that produces the wine and inform the person of arrangements that the person can make under Section 110.053 to pick up the wine at a package store or have the wine delivered to the person's address;
- (4) use market research to develop a wine industry marketing plan to increase the consumption of and access to Texas wine;
- (5) educate the public about wines produced in the state by providing publicity about the information in the program's database to the public and making the information available to the public through the department's toll-free telephone number and electronically available through the Internet;
- (6) promote wineries in this state and package stores that participate in the program; and
- (7) promote and market, and educate consumers about, the wines produced in this state using any other method the commissioner determines is appropriate.

**Sec. 110.052. PARTICIPATION OF PACKAGE STORES.** (a) Participation in the program by a package store is voluntary.

(b) The commissioner by rule may establish standards that a package store that participates in the program must meet.

**Sec. 110.053. SALE AND SHIPMENT OF WINE THROUGH PROGRAM.** (a) A person who purchases wine from a winery in this state may ship the wine in accordance with:

- (1) Section 16.09; or
- (2) this section.

(b) If a person who purchases wine from a winery in this state is not physically present at the winery, the winery may ship the wine to a package store that participates in the program. On receipt of the wine, the package store shall notify the purchaser that the wine is available to be picked up by the purchaser at the package store or shipped to the purchaser by the package store.

(c) A package store that participates in the program may charge a purchaser a handling fee of not more than \$3.50 for each order of wine that the purchaser picks up at the package store. The handling fee is not subject to state or local sales tax.

(d) If a purchaser elects to have the package store ship the wine to the purchaser, the package store and the purchaser must agree on the shipping arrangements.

(e) The package store may return a wine order to the winery if the purchaser does not pick up wine or make arrangements to have the wine shipped to the purchaser before the 30<sup>th</sup>



day after the date the purchaser is notified under Subsection (b). The winery shall accept return of the wine from the package store.

(f) For the purposes of this code, a purchase of wine under this section is considered to have occurred on the premises of the winery.

(g) A package store that ships wine under this section is not liable for the actions of the carrier that delivers the wine.

**Sec. 110.054. DELIVERY OF WINE IN A DRY AREA.** A package store that participates in the program may ship wine under Section 110.053 to a person who resides in a dry area if:

(1) the delivery is made by the holder of a carrier permit; and

(2) the package is clearly labeled as requiring the signature of a person 21 years of age or older for delivery.

**Sec. 110.055. SHIPPING FORM.** The commission by rule shall adopt a standard invoice for shipping wine under Section 110.053 from a winery to a package store and from a package store to a purchaser that allows the commission to monitor the sale and delivery of wine through the program, including the amount of wine sold through the program and the payment of taxes on that wine.