

# ALCOHOLIC BEVERAGE CODE

## TITLE 1. GENERAL PROVISIONS

### CHAPTER 1. GENERAL PROVISIONS

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

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

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- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and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

**Sec. 1.02. CONSTRUCTION OF CODE.** The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

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

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

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

(2) "Consignment sale" means:

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

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

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

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

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

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

(3) "Distilled spirits" means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them, and includes spirit coolers that may have an alcoholic content as low as four percent alcohol by

volume and that contain plain, sparkling, or carbonated water and may also contain one or more natural or artificial blending or flavoring ingredients.

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

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

(B) on which a tax imposed by the laws of this state has not been paid and to which the tax stamp, if required, has not been affixed; or

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

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

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

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

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

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

(B) in which are located:

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

(ii) at least five rooms described by Subparagraph (i) if the building being used as a hotel is a historic structure as defined by Section 442.001, Government Code; and

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

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

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

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

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

(13) "Mixed beverage" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.

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

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

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

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

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

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

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

(21) "Minibar" means a closed container in a hotel guestroom with access to the interior of the container restricted by a locking device which requires the use of a key, magnetic card, or similar device.

(22) "Minibar key" means the key, magnetic card, or similar device which permits access to the interior of a minibar.

(23) "Guestroom" means a sleeping room, including any adjacent private living area, in a hotel which is rented to guests for their use as an overnight accommodation.

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

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

**Sec. 1.05. GENERAL PENALTY.** (a) A person who violates a provision of this code for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both.

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

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

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

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

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

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