

By: Hamric, Solomons, Dunnam, Truitt

H.B. No. 2544

Substitute the following for H.B. No. 2544:

By: Chisum

C.S.H.B. No. 2544

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 1.04, Alcoholic Beverage Code, is amended by amending Subdivision (18) and adding Subdivision (25) to read as follows:

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

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

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

(b) The Texas Alcoholic Beverage Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and Subchapter A, Chapter 5, of this code expires September 1, 2011 ~~[2005]~~.

SECTION 3. Section 5.02(c), Alcoholic Beverage Code, is

amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. Sections 5.05(c)-(f), Alcoholic Beverage Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) The commission shall:

27 (1) protect the public safety by deterring and

1 detecting violations of this code;

2 (2) promote legal and responsible alcohol
3 consumption;

4 (3) ensure fair competition within the alcoholic
5 beverage industry;

6 (4) ensure consistent, predictable, and timely
7 enforcement of this code;

8 (5) ensure a consistent, predictable, and timely
9 licensing and permitting process;

10 (6) promote and foster voluntary compliance with this
11 code; and

12 (7) communicate the requirements of this code clearly
13 and consistently.

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

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

20 (1) detecting serious violations that impact public
21 safety;

22 (2) monitoring entities that have a history of
23 complaints and violations of this code; and

24 (3) any other factors the commission considers
25 important.

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

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

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

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

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

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

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

1 disciplinary action.

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

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

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

10 (2) the type of violation;

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

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

15 (d) The schedule must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (c) The commission shall:

6 (1) compile:

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

9 (i) the nature of the complaints;

10 (ii) their disposition; and

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

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

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

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

21 SECTION 14. Section 5.55, Alcoholic Beverage Code, as added
22 by Chapter 1221, Acts of the 78th Legislature, Regular Session,
23 2003, is amended to read as follows:

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

1 (b) The commission or administrator may enter into an
2 agreement with another agency of this state to provide for the
3 issuance of original or renewal licenses or permits through the use
4 of electronic means, including use of the Internet, to facilitate
5 the licensing process.

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

14 SECTION 15. Subchapter B, Chapter 5, Alcoholic Beverage
15 Code, is amended by adding Sections 5.57, 5.58, 5.59, and 5.60 to
16 read as follows:

17 Sec. 5.57. MARKETING PRACTICES REGULATORY DECISIONS. (a)
18 The commission shall develop a formal process for making policy
19 decisions regarding marketing practices regulations and for
20 communicating those decisions to agency staff and the alcoholic
21 beverage industry.

22 (b) The commission shall create and consult with a marketing
23 practices work group to improve and promote effective communication
24 within the commission and between the commission and the alcoholic
25 beverage industry. The work group shall discuss and be consulted
26 with regard to marketing practices issues and any other matter the
27 commission considers appropriate.

1 (c) The work group shall serve as a forum for discussing
2 interpretations of this code and commission rules to guide agency
3 staff and the alcoholic beverage industry on acceptable practices.

4 (d) The commission shall make a reasonable attempt to have
5 balanced representation on the work group, including having:

6 (1) alcoholic beverage industry representatives from:

7 (A) the manufacturing, distribution, and retail
8 tiers of the industry; and

9 (B) the liquor, beer, and wine segments of the
10 industry; and

11 (2) nonindustry representatives from public advocacy
12 groups or the general public.

13 (e) Subsection (d) does not require the commission to ensure
14 that all representatives to the work group attend a scheduled
15 meeting.

16 (f) The commission shall monitor the activities of the work
17 group by preparing and keeping minutes of each meeting of the work
18 group. The minutes must:

19 (1) state the subject discussed at the meeting; and

20 (2) summarize the discussion and any recommendations
21 of the work group.

22 (g) In making policy decisions regarding marketing
23 practices regulations, the commission shall:

24 (1) take into consideration recommendations of the
25 work group;

26 (2) document its policy decisions by:

27 (A) using a precedents manual; or

1 (B) drafting formal advisories; and

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

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

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

10 (c) The office of internal affairs has original
11 departmental jurisdiction over complaints involving commission
12 personnel.

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

19 (e) At least once each month, the head of the office of
20 internal affairs shall report to the administrator information
21 about the nature and status of each complaint investigated by the
22 office of internal affairs.

23 (f) The head of the office of internal affairs shall submit
24 a quarterly report to the members of the commission. The report
25 must contain a summary of information relating to investigations
26 conducted under this section, including an analysis of the number,
27 type, and outcome of investigations, trends in the investigations,

1 and recommendations to avoid future complaints.

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

5 Sec. 5.59. USE OF TECHNOLOGY. The commission shall
6 implement a policy requiring the commission to use appropriate
7 technological solutions to improve the commission's ability to
8 perform its functions. The policy must ensure that the public is
9 able to interact with the commission on the Internet.

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

13 (1) negotiated rulemaking procedures under Chapter
14 2008, Government Code, for the adoption of commission rules; and

15 (2) appropriate alternative dispute resolution
16 procedures under Chapter 2009, Government Code, to assist in the
17 resolution of internal and external disputes under the commission's
18 jurisdiction.

19 (b) The commission's procedures relating to alternative
20 dispute resolution must conform, to the extent possible, to any
21 model guidelines issued by the State Office of Administrative
22 Hearings for the use of alternative dispute resolution by state
23 agencies.

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

25 (1) coordinate the implementation of the policy
26 adopted under Subsection (a);

27 (2) serve as a resource for any training needed to

1 implement the procedures for negotiated rulemaking or alternative
2 dispute resolution; and

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

5 SECTION 16. Section 6.02(c), Alcoholic Beverage Code, is
6 amended to read as follows:

7 (c) The commission may not abate or refund a license or
8 permit fee because of a change in the expiration date made under
9 this section but may authorize a license or permit period of less
10 than one year for the period during which the expiration date is
11 changed. The commission may not authorize a license or permit
12 period of greater than two years [~~one year~~].

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

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

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

24 SECTION 18. Section 11.09, Alcoholic Beverage Code, is
25 amended by amending Subsections (a) and (b) and adding Subsections
26 (d) and (e) to read as follows:

27 (a) A permit issued under this code expires on the second

1 anniversary of ~~[one year after]~~ the date it is issued, except as
2 ~~[otherwise]~~ provided by Subsections (d) and (e) or another
3 provision of this code. Notwithstanding Section 5.50(b), the
4 commission shall double the amount of fees and surcharges otherwise
5 applicable under this code for a permit with a two-year term.

6 (b) A secondary permit which requires the holder of the
7 permit to first obtain another permit, including a late hours
8 permit or temporary permit, expires on the same date the basic or
9 primary permit expires. The commission may not prorate or refund
10 any part of the fee for the secondary permit ~~[if the application of~~
11 ~~this section results in the expiration of the permit in less than~~
12 ~~one year]~~.

13 (d) The commission by rule may require that the expiration
14 date for an individual permit holder's permit is the first
15 anniversary of the date on which the permit is issued due to the
16 permit holder's violation history.

17 (e) The commission may issue a permit with an expiration
18 date less than two years after the date the permit is issued in
19 order to maintain a reasonable annual distribution of renewal
20 application review work and permit fees. If the commission issues a
21 permit with an expiration date less than two years after the date
22 the permit is issued, the commission shall prorate the permit fee on
23 a monthly basis so that the permit holder pays only that portion of
24 the permit fee that is allocable to the number of months during
25 which the permit is valid.

26 SECTION 19. Section 61.03, Alcoholic Beverage Code, is
27 amended by amending Subsections (a) and (b) and adding Subsections

(d) and (e) to read as follows:

(a) Except as provided by Subsections (d) and (e) or another provision of this code, any ~~[Subsection (b), a license may not be issued for a term longer than one year. Any]~~ license except a branch, importer's, importer's carrier's, or temporary license expires on the second anniversary of ~~[one year after]~~ the date on which it is issued. Notwithstanding Section 5.50(b), the commission shall require double the amount of fees and surcharges otherwise applicable under this code for a license with a two-year term.

(b) A secondary license which requires the holder of the license to first obtain another license, including a late hours license or temporary license, expires on the same date the basic or primary license expires. The commission may not prorate or refund any part of the fee for the secondary license ~~[if the application of this section results in the expiration of the license in less than one year]~~.

(d) The commission by rule may require that the expiration date for an individual license holder's license is the first anniversary of the date on which the license is issued due to the license holder's violation history.

(e) The commission may issue a license with an expiration date less than two years after the date the license is issued in order to maintain a reasonable annual distribution of renewal application review work and license fees. If the commission issues a license with an expiration date less than two years after the date the license is issued, the commission shall prorate the license fee on a monthly basis so that the license holder pays only that portion

1 of the license fee that is allocable to the number of months during
2 which the license is valid.

3 SECTION 20. Subchapter A, Chapter 61, Alcoholic Beverage
4 Code, is amended by adding Section 61.111 to read as follows:

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

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

13 SECTION 21. Section 101.67, Alcoholic Beverage Code, is
14 amended by amending Subsections (a) and (d) and adding Subsection
15 (e) to read as follows:

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

20 (1) a sample of the beverage or a sample of the same
21 type and quality of beverage has been first submitted to a
22 laboratory certified by the United States Alcohol and Tobacco Tax
23 and Trade Bureau or the commission for analysis to verify the
24 alcohol content of the beverage [~~and been found by the commission or~~
25 ~~its representative to comply with all rules and regulations of the~~
26 ~~commission relating to quality, purity, and standards of measure~~];
27 and

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

5 (d) If the commission determines that the product analysis
6 provided by the federally certified laboratory or the sample, and
7 the label, required by Subsection (a) [~~of this section~~] comply with
8 the provisions of this code and the rules of the commission, the
9 commission shall issue a certificate of approval upon receipt of a
10 fee in an [the] amount that is sufficient to cover the cost of
11 administering this section [~~of \$25~~]. A copy of the certificate
12 shall be kept on file in the office of the commission.

13 (e) The commission by rule shall establish the procedures
14 for accepting analysis of beer, ale, or malt liquor by laboratories
15 certified by the United States Alcohol and Tobacco Tax and Trade
16 Bureau.

17 SECTION 22. Subchapter D, Chapter 101, Alcoholic Beverage
18 Code, is amended by adding Section 101.671 to read as follows:

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

20 (a) Before an authorized permittee may ship distilled spirits or
21 wine into the state or sell distilled spirits or wine within the
22 state, the permittee must register the distilled spirits or wine
23 with the commission. The registration application must include a
24 certificate of label approval issued by the United States Alcohol
25 and Tobacco Tax and Trade Bureau for the product.

26 (b) On registration of a certificate of label approval
27 issued by the United States Alcohol and Tobacco Tax and Trade

1 Bureau, the commission shall approve the product under this section
2 and issue a letter to that effect to the permittee. The permittee
3 is not required to obtain additional approval for the product
4 unless there is a change to the label or product that requires
5 reissuance of the federal certificate of label approval.

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

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

14 SECTION 23. Subchapter A, Chapter 102, Alcoholic Beverage
15 Code, is amended by adding Section 102.21 to read as follows:

16 Sec. 102.21. ALTERNATIVE METHODS OF PAYMENT. For the
17 purposes of Sections 61.73 and 102.31, the commission by rule shall
18 authorize payment by electronic funds transfer initiated on or
19 before the day of delivery.

20 SECTION 24. Section 102.32(d), Alcoholic Beverage Code, is
21 amended to read as follows:

22 (d) Each delivery of liquor shall be accompanied by an
23 invoice giving the date of purchase. If a retailer becomes
24 delinquent in the payment of an account for liquor, the wholesale
25 dealer immediately shall report that fact in writing, including by
26 electronic mail or facsimile transmission, to the commission or
27 administrator. A ~~No~~ wholesale dealer may not sell any liquor to a

1 retailer who is delinquent until the delinquent account is paid in
2 full and cleared from the records of the commission. An account
3 becomes delinquent if it is not paid when it is required to be paid
4 under Subsection (c) [~~of this section~~].

5 SECTION 25. Section 103.07, Alcoholic Beverage Code, is
6 amended to read as follows:

7 Sec. 103.07. BEVERAGE OF ILLICIT MANUFACTURE OR UNFIT FOR
8 CONSUMPTION. (a) The commission may not sell [but may destroy]
9 alcoholic beverages seized by a peace officer, as provided in
10 Section 103.03, that are unfit for public consumption or are of
11 illicit manufacture.

12 (b) Alcoholic beverages are unfit for public consumption
13 if:

14 (1) the manufacturer or wholesaler of the beverages
15 determines that the beverages are inappropriate for sale to a
16 consumer;

17 (2) the beverages are damaged; or

18 (3) the code date affixed by the manufacturer to the
19 beverages has expired.

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

23 SECTION 26. Section 103.22, Alcoholic Beverage Code, is
24 amended to read as follows:

25 Sec. 103.22. COSTS OF FORFEITURE SUITS. The commission is
26 entitled to recover from the proceeds of a forfeiture sale [shall
27 pay] all costs of a forfeiture suit brought under this chapter,

1 including:

2 (1) all usual court costs, including the cost of
3 serving process;

4 (2) expenses of the forfeiture sale; and

5 (3) reasonable attorney's fees ~~[suits out of the~~
6 ~~confiscated liquor fund or any other fund available to the~~
7 ~~commission for that purpose].~~

8 SECTION 27. Section 103.23, Alcoholic Beverage Code, is
9 amended to read as follows:

10 Sec. 103.23. ALLOCATION OF PROCEEDS OF SALE. Proceeds from
11 a forfeiture sale and proceeds in escrow which are forfeited to the
12 state in a forfeiture suit shall be applied first to reimburse the
13 commission for its expenses as provided by Section 103.22. The
14 remaining proceeds shall be deposited ~~[disposed of by depositing 35~~
15 ~~percent of the proceeds in a separate fund in the state treasury~~
16 ~~designated as the confiscated liquor fund and depositing 65 percent~~
17 ~~of the proceeds]~~ in the general revenue fund. ~~[The confiscated~~
18 ~~liquor fund may be appropriated to the commission to defray the~~
19 ~~expenses of accumulating evidence pertaining to violations of this~~
20 ~~code, assembling, storing, transporting, selling, and accounting~~
21 ~~for confiscated alcoholic beverages, containers, devices, and~~
22 ~~property, and any other purposes deemed necessary by the~~
23 ~~commission in administering and enforcing this code. Any~~
24 ~~unexpended balance in the confiscated liquor fund at the end of a~~
25 ~~biennium shall remain in the fund subject to further appropriation~~
26 ~~for the same purposes.]~~

27 SECTION 28. (a) The legislature shall establish a joint

1 interim committee to study the revision of the regulatory structure
2 for the alcoholic beverage industry in the state.

3 (b) As part of the study, the committee shall investigate:

4 (1) placing all responsibility for assessing and
5 collecting taxes with the comptroller;

6 (2) licensing or permitting only persons or entities
7 that:

8 (A) produce, manufacture, brew, or distill
9 regulated substances; or

10 (B) sell regulated substances to the public;

11 (3) placing all responsibility for the issuance and
12 renewal of licenses or permits with the Texas Department of
13 Licensing and Regulation;

14 (4) charging the Texas Alcoholic Beverage Commission
15 with enforcing all laws, rules, and regulations relating to
16 alcoholic beverages regulation to:

17 (A) foster, protect, and maintain the health and
18 safety of the citizens of the state; and

19 (B) promote open markets and competition in the
20 sale of alcoholic beverages; and

21 (5) abolishing provisions in the Alcoholic Beverage
22 Code relating to marketing practices and retailer independence and
23 authorizing the commission to adopt and enforce regulations on
24 those subjects that are similar to the regulations adopted by the
25 United States Alcohol and Tobacco Tax and Trade Bureau for liquor,
26 beer, and wine.

27 (c) Not later than January 1, 2007, the committee shall

1 report its findings and recommendations to the governor, lieutenant
2 governor, and speaker of the house of representatives.

3 (d) The lieutenant governor and speaker shall determine the
4 composition of the committee.

5 (e) This section expires September 1, 2007.

6 SECTION 29. Sections 37.11 and 101.44, Alcoholic Beverage
7 Code, are repealed.

8 SECTION 30. (a) Not later than September 1, 2006, the Texas
9 Alcoholic Beverage Commission shall adopt the rules and policies
10 necessary to implement Sections 5.361, 5.362, 11.042, 61.111, and
11 101.671, Alcoholic Beverage Code, as added by this Act, and
12 Sections 5.53, 5.54, 5.55, and 101.67, Alcoholic Beverage Code, as
13 amended by this Act.

14 (b) Not later than March 1, 2006, the Texas Alcoholic
15 Beverage Commission shall adopt the rules and policies necessary to
16 implement Sections 5.57, 5.58, 5.59, and 5.60, Alcoholic Beverage
17 Code, as added by this Act, and Section 5.12, Alcoholic Beverage
18 Code, as amended by this Act.

19 SECTION 31. The change in law made by Section 5.022,
20 Alcoholic Beverage Code, as added by this Act, and Sections 5.05 and
21 5.051, Alcoholic Beverage Code, as amended by this Act, regarding
22 the prohibitions on, qualifications of, and training for members of
23 the Texas Alcoholic Beverage Commission does not affect the
24 entitlement of a member serving on the commission immediately
25 before September 1, 2005, to continue to serve and function as a
26 member of the commission for the remainder of the member's term.
27 The change in law described by this section applies only to a member

1 appointed on or after September 1, 2005.

2 SECTION 32. The change in law made by this Act related to
3 the filing or investigation of a complaint under Chapter 5,
4 Alcoholic Beverage Code, as amended by this Act, applies only to a
5 complaint filed with the Texas Alcoholic Beverage Commission on or
6 after the effective date of this Act. A complaint filed before the
7 effective date of this Act is governed by the law as it existed
8 immediately before that date, and the former law is continued in
9 effect for that purpose.

10 SECTION 33. The change in law made by this Act to Sections
11 6.02, 11.09, and 61.03, Alcoholic Beverage Code, applies only to a
12 license or permit issued or renewed on or after the effective date
13 of this Act. A license or permit issued or renewed before the
14 effective date of this Act expires on its own terms and is governed
15 by the law in effect when the license or permit was issued or
16 renewed, and the former law is continued in effect for that purpose.

17 SECTION 34. The change in law made by Sections 103.22 and
18 103.23, Alcoholic Beverage Code, as amended by this Act, applies
19 only to a forfeiture suit brought on or after the effective date of
20 this Act. A forfeiture suit brought before the effective date of
21 this Act is governed by the law in effect immediately before that
22 date, and that law is continued in effect for that purpose.

23 SECTION 35. This Act takes effect September 1, 2005.