

## **BILL ANALYSIS**

H.B. 2425  
By: Truitt  
Licensing & Administrative Procedures  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Alcoholic Beverage Commission regulates all phases of the alcoholic beverage industry. The Legislature created the agency, originally called the Liquor Control Board, in 1935, in response to the repeal of Prohibition. The agency has four primary functions: licensing alcoholic beverage manufacturers, wholesalers, and retailers; enforcing administrative and criminal laws in the Alcoholic Beverage Code; collecting taxes on alcoholic beverages; and providing educational programs to address issues such as underage drinking.

The Texas Alcoholic Beverage Commission is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the Legislature. The Sunset review found that, while the State still has an interest in regulating the alcoholic beverage industry, TABC and the Alcoholic Beverage Code are in clear need of modernization. The Sunset Commission's recommendations, as contained in this bill, are intended to place the agency's focus more squarely on issues of public safety. H.B. 2425 continues the agency for 12 years, until September 1, 2019, and contains other recommendations of the Sunset Advisory Commission.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Alcoholic Beverage Commission in SECTION 10 (Sec. 5.362 (a), Alcoholic Beverage Code), SECTION 12 (Sec. 5.53 (a) & (c), Alcoholic Beverage Code), SECTION 16 (Sec. 11.042(a), Alcoholic Beverage Code), SECTION 18 (Sec. 61.111(a), Alcoholic Beverage Code), SECTION 20 (Section 101.67(e), Alcoholic Beverage Code), and SECTION 21 (Sec. 101.671(d), Alcoholic Beverage Code) and SECTION 27 of this bill.

### **ANALYSIS**

#### ***Sunset Provision*** (SECTION 2)

H.B. 2425 continues the Texas Alcoholic Beverage Commission for 12 years, until September 1, 2019.

#### ***Standard Sunset Across-the-Board Recommendations*** (SECTIONS 3, 4, 5, 6, 7, 8, 15, and 28)

H.B. 2425 updates and applies standard Sunset across-the-board language regarding unbiased appointments to the Commission; training for Commission members before assuming their duties; designation of the Commission's presiding officer, conflicts of interest of Commission members, grounds for removal of Commission members, separation of policymaking and agency staff functions, use of technology, and use of alternative dispute resolution and negotiated rulemaking. The provisions regarding the prohibitions on, qualifications of, and training for Commission members only apply to members appointed on or after the effective date of the bill.

#### ***Updated Mission*** (SECTION 9)

H.B. 2425 defines TABC's mission in statute by laying out seven specific responsibilities of the agency.

#### ***Risk-based Enforcement and Schedule of Sanctions*** (SECTION 10)

H.B. 2425 requires TABC to develop a risk-based approach to conducting its enforcement activities. The bill requires the commission to develop benchmarks and goals to track enforcement activities and their results and to compare the performance of its regional offices to

determine the most effective enforcement activities. H.B. 2425 requires the agency to track specific types of enforcement data and to compile statistics and analyze trends.

H.B. 2425 requires TABC to adopt, by rule, a schedule of sanctions that ensures each sanction the agency imposes is appropriate to the corresponding violation. The schedule must include certain types of information and the agency may deviate from the schedule according to circumstances that are clearly established in policy.

***Testing of Alcoholic Beverages*** (SECTION 11)

H.B. 2425 authorizes TABC to test any alcoholic beverages as needed to ensure public health and safety, accurate representation of products, and that products meet requirements of state law or agency rules.

***Complaints*** (SECTIONS 12, 13, and 29)

H.B. 2425 requires TABC to adopt rules to clearly define its process for handling complaints from the public about licensed establishments. The agency must prioritize complaints and investigate them according to risk. The bill also requires the agency to compile statistics and analyze trends on specific types of complaint data. These provisions only apply to complaints filed on or after the effective date of the bill.

***Online Licensing*** (SECTION 14)

H.B. 2425 requires TABC to reduce delays in the licensing process by providing for online license application, renewal, and payment of fees.

***Marketing Practices Regulatory Decisions*** (SECTION 15)

H.B. 2425 requires TABC to develop a formal process for making marketing practices regulatory decisions and for communicating these decisions to agency staff and the industry. H.B. 2425 requires TABC to gather input from a diverse group of representatives of the alcoholic beverage industry and to consider this input in making policy decisions. The agency must document its policy decisions relating to marketing practices regulations by using a precedents manual or drafting formal advisories, and make this documentation available to agency staff and the industry.

***Internal Affairs*** (SECTION 15)

H.B. 2425 requires the Administrator to establish an office of internal affairs to ensure fair and impartial investigations of alleged employee misconduct. The bill requires the Administrator to appoint the head of the office of internal affairs. The office has original jurisdiction over complaints involving personnel and must coordinate and be the central reporting point for all investigations. The bill also requires the agency to track and report personnel complaint information to the Administrator and the Commission on a regular basis.

***After Hours Enforcement*** (SECTIONS 15, 17, 19, 23, 24, 25, 30, and 31)

H.B. 2425 requires TABC to report to the Legislature on its enforcement efforts concerning violations involving after hours alcohol sales and consumption. The bill sets specific criminal sanctions against licensees who violate after hours laws or hinder TABC's investigations of such violations. These violations would be Class A misdemeanors. The bill defines premises licensed under the Alcoholic Beverage Code as public places at all hours. The bill authorizes TABC to suspend a license for violations involving after hours sales and consumption. These sanctions only apply to violations that are committed on or after the effective date of the bill.

***Health Risks Warning Signs*** (SECTIONS 16 and 18)

H.B. 2425 requires TABC to establish rules requiring establishments that sell alcohol for on-premise consumption to display health risks warning signs on restroom doors to inform and remind the public of the risks of drinking alcohol during pregnancy.

***Testing and Label Approval*** (SECTIONS 20, 21, and 26)

H.B. 2425 eliminates the requirement for manufacturers to submit samples and labels of their products to TABC for testing and approval. Instead, the bill authorizes the agency to register federal certificates of label approval for liquor and wine. The bill allows beer manufacturers to submit analyses conducted by independent, reputable laboratories of their products' alcohol

content. H.B. 2425 eliminates fees set in statute for approval of liquor, beer, and wine, and instead authorizes the agency to set fees at a level sufficient to administer the regulation.

***Reporting Delinquent Retailers*** (SECTION 22)

H.B. 2425 allows wholesalers to report retailers who are delinquent in making payments for liquor and wine by e-mail or fax.

***Implementation Dates*** (SECTION 27)

Not later than March 1, 2008, the Texas Alcoholic Beverage Commission shall adopt rules and policies necessary to implement certain sections of the bill.

***Effective Date*** (SECTION 32)

September 1, 2007.

**EFFECTIVE DATE**

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