

1-1 By: Brimer S.B. No. 904
1-2 (In the Senate - Filed February 28, 2007; March 7, 2007,
1-3 read first time and referred to Committee on Government
1-4 Organization; March 20, 2007, reported favorably by the following
1-5 vote: Yeas 6, Nays 0; March 20, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the continuation and functions of the Texas Alcoholic
1-9 Beverage Commission; providing penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 1.04, Alcoholic Beverage Code, is
1-12 amended by adding Subdivision (25) to read as follows:

1-13 (25) "Executive management" includes the
1-14 administrator, the assistant administrator, individuals who report
1-15 directly to the administrator, and the head of each division of the
1-16 commission.

1-17 SECTION 2. Subsection (b), Section 5.01, Alcoholic Beverage
1-18 Code, is amended to read as follows:

1-19 (b) The Texas Alcoholic Beverage Commission is subject to
1-20 Chapter 325, Government Code (Texas Sunset Act). Unless continued
1-21 in existence as provided by that chapter, the commission is
1-22 abolished and Subchapter A, Chapter 5, ~~[of this code]~~ expires
1-23 September 1, 2019 ~~[2007. In the review of the commission by the~~
1-24 ~~Sunset Advisory Commission, as required by this section, the sunset~~
1-25 ~~commission shall limit its review to the appropriateness of~~
1-26 ~~recommendations made by the sunset commission to the 79th~~
1-27 ~~Legislature. In the Sunset Advisory Commission's report to the~~
1-28 ~~80th Legislature, the sunset commission may include any~~
1-29 ~~recommendations it considers appropriate].~~

1-30 SECTION 3. Subsection (c), Section 5.02, Alcoholic Beverage
1-31 Code, is amended to read as follows:

1-32 (c) Appointments to the commission shall be made without
1-33 regard to the race, color, disability ~~[handicap]~~, sex, religion,
1-34 age, or national origin of the appointees.

1-35 SECTION 4. Subchapter A, Chapter 5, Alcoholic Beverage
1-36 Code, is amended by adding Section 5.022 to read as follows:

1-37 Sec. 5.022. TRAINING. (a) A person who is appointed to and
1-38 qualifies for office as a member of the commission may not vote,
1-39 deliberate, or be counted as a member in attendance at a meeting of
1-40 the commission until the person completes a training program that
1-41 complies with this section.

1-42 (b) The training program must provide the person with
1-43 information regarding:

1-44 (1) the legislation that created the commission and
1-45 the commission's programs, functions, rules, and budget;

1-46 (2) the results of the most recent formal audit of the
1-47 commission;

1-48 (3) the requirements of laws relating to open
1-49 meetings, public information, administrative procedure, and
1-50 conflicts of interest; and

1-51 (4) any applicable ethics policies adopted by the
1-52 commission or the Texas Ethics Commission.

1-53 (c) A person appointed to the commission is entitled to
1-54 reimbursement, as provided by the General Appropriations Act, for
1-55 the travel expenses incurred in attending the training program
1-56 regardless of whether the attendance at the program occurs before
1-57 or after the person qualifies for office.

1-58 SECTION 5. Section 5.04, Alcoholic Beverage Code, is
1-59 amended to read as follows:

1-60 Sec. 5.04. PRESIDING OFFICER ~~[CHAIRMAN]~~. The governor
1-61 shall designate a ~~[one]~~ member of the commission as the presiding
1-62 officer of the commission to serve in that capacity at the pleasure
1-63 of the governor ~~[chairman]~~.

1-64 SECTION 6. Subsections (c) through (f), Section 5.05,

2-1 Alcoholic Beverage Code, are amended to read as follows:

2-2 (c) A person may not be ~~[serve as]~~ a member of the commission
2-3 or act as the general counsel to the commission if the person is
2-4 required to register as a lobbyist under Chapter 305, Government
2-5 Code, because of the person's activities for compensation on behalf
2-6 of a profession related to the operation of the commission.

2-7 (d) A person may not be a member of the commission and may
2-8 not be a commission employee employed in a "bona fide executive,
2-9 administrative, or professional capacity," as that phrase is used
2-10 for purposes of establishing an exemption to the overtime
2-11 provisions of the federal Fair Labor Standards Act of 1938 (29
2-12 U.S.C. Section 201 et seq.), if:

2-13 (1) the person is an ~~[An]~~ officer, employee, or paid
2-14 consultant of a Texas trade association in the field of alcoholic
2-15 beverages; or

2-16 (2) the person's ~~[beverage manufacture, distribution,~~
2-17 ~~service, or sales may not be a member or employee of the commission.~~

2-18 ~~[(e) A person who is the] spouse is~~ ~~[of]~~ an officer,
2-19 manager, or paid consultant of a Texas trade association in the
2-20 field of alcoholic beverages ~~[beverage manufacture, distribution,~~
2-21 ~~or sales may not be a member or employee of the commission].~~

2-22 (e) In ~~[(f) For the purposes of]~~ this section, "Texas trade
2-23 association" means ~~[a Texas trade association is]~~ a ~~[nonprofit,~~
2-24 ~~cooperative,~~ and voluntarily joined statewide association of
2-25 businesses or professional competitors in this state ~~[persons]~~
2-26 designed to assist its members and its industry or profession in
2-27 dealing with mutual business or professional problems and in
2-28 promoting their common interest.

2-29 SECTION 7. Section 5.051, Alcoholic Beverage Code, is
2-30 amended to read as follows:

2-31 Sec. 5.051. GROUNDS FOR REMOVAL FROM COMMISSION. (a) It
2-32 is a ground for removal from the commission that ~~[if]~~ a member:

2-33 (1) does not have at the time of taking office
2-34 ~~[appointment]~~ the qualifications required by Section 5.02 ~~[of this~~
2-35 ~~code];~~

2-36 (2) does not maintain during ~~[the]~~ service on the
2-37 commission the qualifications required by Section 5.02 ~~[of this~~
2-38 ~~code for appointment to the commission];~~

2-39 (3) is ineligible for membership under ~~[violates a~~
2-40 ~~prohibition established by]~~ Section 5.05 ~~[of this code];~~

2-41 (4) cannot, ~~[is unable]~~ because of illness or
2-42 disability, ~~[to]~~ discharge the member's duties for a substantial
2-43 part ~~[portion]~~ of the member's term ~~[for which the member was~~
2-44 ~~appointed];~~ or

2-45 (5) is absent from more than half ~~[one-half]~~ of the
2-46 regularly scheduled commission meetings that the member is eligible
2-47 to attend during a ~~[each]~~ calendar year without an excuse
2-48 approved, ~~[, except when the absence is excused]~~ by a majority vote of
2-49 the commission.

2-50 (b) The validity of an action of the commission is not
2-51 affected by the fact that it was taken when a ground for removal of a
2-52 ~~[member of the] commission member exists~~ ~~[existed]~~.

2-53 (c) If the administrator has knowledge that a potential
2-54 ground for removal exists, the administrator shall notify the
2-55 presiding officer ~~[chairman]~~ of the commission of the potential
2-56 ground. The presiding officer ~~[chairman of the commission]~~ shall
2-57 then notify the governor and the attorney general that a potential
2-58 ground for removal exists. If the potential ground for removal
2-59 involves the presiding officer, the administrator shall notify the
2-60 next highest ranking officer of the commission, who shall then
2-61 notify the governor and the attorney general that a potential
2-62 ground for removal exists.

2-63 SECTION 8. Section 5.12, Alcoholic Beverage Code, is
2-64 amended to read as follows:

2-65 Sec. 5.12. ~~[CONCURRENT]~~ DUTIES OF ADMINISTRATOR. The
2-66 commission shall specify the duties and powers of the administrator
2-67 by printed rules and regulations entered in its minutes and shall
2-68 develop and implement policies that clearly separate the
2-69 policy-making ~~[define the respective]~~ responsibilities of the

3-1 commission and the management responsibilities of the
 3-2 administrator[~~, the assistant administrator,~~] and the staff of the
 3-3 commission. The commission or administrator may develop a
 3-4 procedure under which the commission or administrator, or the
 3-5 designee of either, may negotiate the repayment of debts owed the
 3-6 commission, including fees and delinquent taxes. When this code
 3-7 imposes concurrent powers or duties on the commission and the
 3-8 administrator, the commission shall designate those powers and
 3-9 duties which it delegates to the administrator. An order,
 3-10 decision, or judgment rendered and entered by the administrator in
 3-11 a matter in which the administrator has been authorized to act is
 3-12 not subject to change, review, or revision by the commission. A
 3-13 concurrent power or duty which has not been specifically delegated
 3-14 to the administrator by the commission's order is retained by the
 3-15 commission, and an order, decision, or judgment rendered and
 3-16 entered by the commission in a matter in which the commission has
 3-17 retained authority is not subject to change, review, or revision by
 3-18 the administrator.

3-19 SECTION 9. Section 5.31, Alcoholic Beverage Code, is
 3-20 amended to read as follows:

3-21 Sec. 5.31. GENERAL POWERS AND DUTIES. (a) The commission
 3-22 may exercise all powers, duties, and functions conferred by this
 3-23 code, and all powers incidental, necessary, or convenient to the
 3-24 administration of this code. It shall inspect, supervise, and
 3-25 regulate every phase of the business of manufacturing, importing,
 3-26 exporting, transporting, storing, selling, advertising, labeling,
 3-27 and distributing alcoholic beverages, and the possession of
 3-28 alcoholic beverages for the purpose of sale or otherwise. It may
 3-29 prescribe and publish rules necessary to carry out the provisions
 3-30 of this code.

3-31 (b) The commission shall:

3-32 (1) protect the public safety by deterring and
 3-33 detecting violations of this code;

3-34 (2) promote legal and responsible alcohol
 3-35 consumption;

3-36 (3) ensure fair competition within the alcoholic
 3-37 beverage industry;

3-38 (4) ensure consistent, predictable, and timely
 3-39 enforcement of this code;

3-40 (5) ensure a consistent, predictable, and timely
 3-41 licensing and permitting process;

3-42 (6) promote and foster voluntary compliance with this
 3-43 code; and

3-44 (7) communicate the requirements of this code clearly
 3-45 and consistently.

3-46 SECTION 10. Subchapter B, Chapter 5, Alcoholic Beverage
 3-47 Code, is amended by adding Sections 5.361 and 5.362 to read as
 3-48 follows:

3-49 Sec. 5.361. ENFORCEMENT. (a) The commission shall develop
 3-50 a risk-based approach to conducting its enforcement activities that
 3-51 focuses on:

3-52 (1) detecting serious violations that impact public
 3-53 safety;

3-54 (2) monitoring entities that have a history of
 3-55 complaints and violations of this code; and

3-56 (3) any other factors the commission considers
 3-57 important.

3-58 (b) The commission shall develop benchmarks and goals to
 3-59 track key enforcement activities and the results of those
 3-60 activities. For each type of enforcement activity, the commission
 3-61 shall track the number of violations detected by the enforcement
 3-62 activity, the amount of time spent on the enforcement activity, and
 3-63 any other information the commission considers necessary. The
 3-64 commission shall use the information collected under this
 3-65 subsection and other information to compare the enforcement
 3-66 performance of each region and to determine the most effective
 3-67 enforcement activities.

3-68 (c) The commission shall track, on a statewide and regional
 3-69 basis, the type of violations detected, the disposition of the

4-1 violations, and the entities that committed the most serious
 4-2 violations.

4-3 (d) The commission shall compile detailed statistics and
 4-4 analyze trends related to its enforcement activities. The
 4-5 commission shall:

4-6 (1) summarize the statistics and trends for executive
 4-7 management on a monthly basis and for the members of the commission
 4-8 on a quarterly basis; and

4-9 (2) make summary information available to the public,
 4-10 including by posting the information on the commission's Internet
 4-11 website.

4-12 Sec. 5.362. SCHEDULE OF SANCTIONS. (a) The commission by
 4-13 rule shall adopt a schedule of sanctions that may be imposed on a
 4-14 license or permit holder for violations of this code or rules
 4-15 adopted under this code. In adopting the schedule of sanctions, the
 4-16 commission shall ensure that the severity of the sanction imposed
 4-17 is appropriate to the type of violation that is the basis for
 4-18 disciplinary action.

4-19 (b) For each violation for which a license or permit may be
 4-20 suspended, the schedule of sanctions must include the number of
 4-21 days a permit or license would be suspended and the corresponding
 4-22 civil penalty under Section 11.64.

4-23 (c) In determining the appropriate sanction for a violation
 4-24 under the schedule, the commission or administrator shall consider:

4-25 (1) the type of license or permit held by the person
 4-26 who committed the violation;

4-27 (2) the type of violation;

4-28 (3) any aggravating or ameliorating circumstances
 4-29 concerning the violation; and

4-30 (4) the license or permit holder's previous violations
 4-31 of this code.

4-32 (d) The schedule must:

4-33 (1) allow deviations from the schedule for clearly
 4-34 established mitigating circumstances, including circumstances
 4-35 listed in Section 11.64(c), or aggravating circumstances; and

4-36 (2) include a list of the most common violations by
 4-37 members of the manufacturing, wholesaling, and retailing tiers of
 4-38 the alcoholic beverage industry and the sanctions assessed for
 4-39 those violations.

4-40 (e) The commission shall develop policies to guide
 4-41 commission staff in determining the circumstances when it is
 4-42 appropriate to deviate from the schedule of sanctions. The
 4-43 policies must identify the circumstances when approval is required
 4-44 in order to deviate from the schedule.

4-45 (f) The commission shall make the schedule of sanctions
 4-46 available to the public, including by posting the schedule on the
 4-47 commission's Internet website.

4-48 SECTION 11. Section 5.38, Alcoholic Beverage Code, is
 4-49 amended to read as follows:

4-50 Sec. 5.38. QUALITY AND PURITY OF BEVERAGES. (a) The
 4-51 commission shall require by rule that any alcoholic beverage sold
 4-52 in this state conform in all respects to its advertised quality.

4-53 (b) The commission shall promulgate and enforce rules
 4-54 governing the labeling and advertising of all alcoholic beverages
 4-55 sold in the state, and shall adopt and enforce a standard of
 4-56 quality, purity, and identity of all alcoholic beverages. The
 4-57 commission shall promulgate and enforce necessary rules to
 4-58 safeguard the public health and to insure sanitary conditions in
 4-59 the manufacturing, refining, blending, mixing, purifying,
 4-60 bottling, rebottling, and sale of alcoholic beverages.

4-61 (c) The commission may test the contents of any alcoholic
 4-62 beverage manufactured or sold in the state to protect the public
 4-63 health and safety and to ensure that the product:

4-64 (1) is accurately represented to the public; and

4-65 (2) complies with state law and commission rules.

4-66 SECTION 12. Section 5.53, Alcoholic Beverage Code, is
 4-67 amended to read as follows:

4-68 Sec. 5.53. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

4-69 (a) The commission shall adopt rules that clearly define the

5-1 agency's complaint process from the time the complaint is received
 5-2 until it is resolved.

5-3 (b) The commission shall make [prepare] information [of
 5-4 public interest] describing its [the functions of the commission
 5-5 and the commission's] procedures for complaint investigation and
 5-6 resolution [by which complaints are filed with and resolved by the
 5-7 commission. The commission shall make the information] available
 5-8 to the public and appropriate state agencies, including by posting
 5-9 the information on the commission's Internet website.

5-10 (c) The commission, by rule, shall adopt a standardized form
 5-11 for filing complaints against a licensed or permitted entity. The
 5-12 commission shall make the complaint form available to the public,
 5-13 including by posting the complaint form on the commission's
 5-14 Internet website.

5-15 (d) [(b)] The commission by rule shall establish methods by
 5-16 which consumers and service recipients are notified of the name,
 5-17 mailing address, and telephone number of the commission for the
 5-18 purpose of directing a complaint to the commission. The commission
 5-19 may require that the notification be provided on a sign prominently
 5-20 displayed in the place of business of each individual or entity
 5-21 regulated under this code.

5-22 SECTION 13. Section 5.54, Alcoholic Beverage Code, is
 5-23 amended by amending Subsection (a) and adding Subsections (a-1) and
 5-24 (c) to read as follows:

5-25 (a) The commission shall maintain a system to promptly and
 5-26 efficiently act on complaints [~~keep an information file about each~~
 5-27 ~~complaint~~] filed with the commission. The commission shall assign
 5-28 priorities to complaint investigations based on risk so that the
 5-29 commission handles the most serious complaints first.

5-30 (a-1) The [~~that the~~] commission shall maintain information
 5-31 about parties to the complaint, the subject matter of the
 5-32 complaint, a summary of the results of the review or investigation
 5-33 of the complaint, and its disposition [~~has authority to resolve~~].

5-34 (c) The commission shall:

5-35 (1) compile:

5-36 (A) detailed statistics and analyze trends on
 5-37 complaint information, including:

5-38 (i) the nature of the complaints;

5-39 (ii) their disposition; and

5-40 (iii) the length of time to resolve
 5-41 complaints; and

5-42 (B) complaint information on a statewide and a
 5-43 regional basis;

5-44 (2) report the information on a monthly basis to
 5-45 executive management and on a quarterly basis to members of the
 5-46 commission; and

5-47 (3) make general information about the nature and
 5-48 disposition of complaints available to the public, including by
 5-49 posting the information on the commission's Internet website.

5-50 SECTION 14. Section 5.55, Alcoholic Beverage Code, is
 5-51 amended to read as follows:

5-52 Sec. 5.55. [~~AGREEMENTS FOR~~] ELECTRONIC PROCESSING OF
 5-53 LICENSES OR PERMITS. (a) The commission shall expedite the
 5-54 processing of original and renewal applications for licenses and
 5-55 permits by using electronic means, including the Internet.

5-56 (b) The commission or administrator may enter into an
 5-57 agreement with another agency of this state to provide for the
 5-58 issuance of original or renewal licenses or permits through the use
 5-59 of electronic means, including use of the Internet, to facilitate
 5-60 the licensing process.

5-61 (c) A reasonable service fee may be charged to applicants
 5-62 who choose to use electronic or Internet service to apply for
 5-63 original licenses or permits or to renew licenses or permits,
 5-64 subject to other laws limiting or defining those fees; provided,
 5-65 that no service fee may be charged by the commission or by another
 5-66 agency to those applicants who choose not to utilize the electronic
 5-67 or Internet method to apply for an original or a renewal license or
 5-68 permit.

5-69 SECTION 15. Subchapter B, Chapter 5, Alcoholic Beverage

6-1 Code, is amended by adding Sections 5.57 through 5.61 to read as
6-2 follows:

6-3 Sec. 5.57. MARKETING PRACTICES REGULATORY DECISIONS.

6-4 (a) The commission shall develop a formal process for making
6-5 policy decisions regarding marketing practices regulations and for
6-6 communicating those decisions to agency staff and the alcoholic
6-7 beverage industry.

6-8 (b) The commission shall gather input from a diverse group
6-9 of representatives of the alcoholic beverage industry regarding
6-10 regulatory issues and interpretations of this code and commission
6-11 rules.

6-12 (c) The commission shall make a reasonable attempt to meet
6-13 with alcoholic beverage industry representatives from:

6-14 (1) the manufacturing, distribution, and retail tiers
6-15 of the industry; and

6-16 (2) the liquor, beer, and wine segments of the
6-17 industry.

6-18 (d) In making policy decisions regarding marketing
6-19 practices regulations, the commission shall:

6-20 (1) take into consideration recommendations of the
6-21 industry representatives consulted under this section;

6-22 (2) document its policy decisions by:

6-23 (A) using a precedents manual; or

6-24 (B) drafting formal advisories; and

6-25 (3) make those documents available to regional staff
6-26 and industry members through its Internet website, electronic mail,
6-27 or commission publications.

6-28 Sec. 5.58. INTERNAL AFFAIRS. (a) The administrator shall
6-29 establish an office of internal affairs to ensure fair and
6-30 impartial investigations of alleged employee misconduct.

6-31 (b) The administrator shall appoint and directly oversee
6-32 the head of the office of internal affairs.

6-33 (c) The office of internal affairs has original
6-34 departmental jurisdiction over complaints involving commission
6-35 personnel.

6-36 (d) The office of internal affairs staff shall coordinate
6-37 and be the central reporting point for all employee investigations.
6-38 The staff may initiate investigations of complaints; however, the
6-39 staff must obtain the approval of the appropriate division director
6-40 or higher-level executive management to investigate an employee
6-41 when no complaint has been made.

6-42 (e) At least once each month, the head of the office of
6-43 internal affairs shall report to the administrator information
6-44 about the nature and status of each complaint investigated by the
6-45 office of internal affairs.

6-46 (f) The head of the office of internal affairs shall submit
6-47 a quarterly report to the members of the commission. The report
6-48 must contain a summary of information relating to investigations
6-49 conducted under this section, including an analysis of the number,
6-50 type, and outcome of investigations, trends in the investigations,
6-51 and recommendations to avoid future complaints.

6-52 (g) The commission shall inform the public about how to file
6-53 a complaint against an employee of the commission and the steps the
6-54 agency takes to address complaints against employees.

6-55 Sec. 5.59. USE OF TECHNOLOGY. The commission shall
6-56 implement a policy requiring the commission to use appropriate
6-57 technological solutions to improve the commission's ability to
6-58 perform its functions. The policy must ensure that the public is
6-59 able to interact with the commission on the Internet.

6-60 Sec. 5.60. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION
6-61 PROCEDURES. (a) The commission shall develop and implement a
6-62 policy to encourage the use of:

6-63 (1) negotiated rulemaking procedures under Chapter
6-64 2008, Government Code, for the adoption of commission rules; and

6-65 (2) appropriate alternative dispute resolution
6-66 procedures under Chapter 2009, Government Code, to assist in the
6-67 resolution of internal and external disputes under the commission's
6-68 jurisdiction.

6-69 (b) The commission's procedures relating to alternative

7-1 dispute resolution must conform, to the extent possible, to any
 7-2 model guidelines issued by the State Office of Administrative
 7-3 Hearings for the use of alternative dispute resolution by state
 7-4 agencies.

7-5 (c) The commission shall designate a trained person to:

7-6 (1) coordinate the implementation of the policy
 7-7 adopted under Subsection (a);

7-8 (2) serve as a resource for any training needed to
 7-9 implement the procedures for negotiated rulemaking or alternative
 7-10 dispute resolution; and

7-11 (3) collect data concerning the effectiveness of those
 7-12 procedures, as implemented by the commission.

7-13 Sec. 5.61. REPORT TO LEGISLATURE ON CERTAIN ENFORCEMENT
 7-14 EFFORTS. (a) Not later than October 31 of each even-numbered
 7-15 year, the commission shall report to the legislature on the
 7-16 commission's enforcement efforts concerning alcohol sales and
 7-17 consumption during prohibited hours.

7-18 (b) The report must specify the number of individuals or
 7-19 establishments found to be:

7-20 (1) engaging in an activity for which a permit or
 7-21 license is required by this code without the required permit or
 7-22 license;

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

7-26 (3) consuming or permitting consumption of an
 7-27 alcoholic beverage on a permitted or licensed premises during
 7-28 prohibited hours in violation of Chapter 105 or Section
 7-29 11.61(b)(22), 32.17(a)(7), or 61.71(a)(18); or

7-30 (4) violating Section 11.61(b)(2), 32.17(a)(2),
 7-31 32.17(a)(3), 61.71(a)(14), or 101.04 by:

7-32 (A) refusing to allow entry to a permitted or
 7-33 licensed premises by an inspector, investigator, or law enforcement
 7-34 official;

7-35 (B) refusing to furnish information to an
 7-36 inspector, investigator, or law enforcement official; or

7-37 (C) interfering with or refusing to permit an
 7-38 inspection or investigation being conducted by an inspector,
 7-39 investigator, or law enforcement official.

7-40 (c) The commission shall report the information required by
 7-41 Subsection (b) on a statewide basis and for each region and major
 7-42 metropolitan area.

7-43 SECTION 16. Subchapter A, Chapter 11, Alcoholic Beverage
 7-44 Code, is amended by adding Section 11.042 to read as follows:

7-45 Sec. 11.042. HEALTH RISKS WARNING SIGN. (a) The
 7-46 commission by rule shall require the holder of a permit authorizing
 7-47 the sale of alcoholic beverages for on-premises consumption to
 7-48 display a warning sign on the door to each restroom on the permitted
 7-49 premises that informs the public of the risks of drinking alcohol
 7-50 during pregnancy.

7-51 (b) The commission's rules shall specify the language of the
 7-52 warning and the size and graphic design of the sign, including font
 7-53 size and type.

7-54 SECTION 17. Subsection (a), Section 11.64, Alcoholic
 7-55 Beverage Code, is amended to read as follows:

7-56 (a) When the commission or administrator is authorized to
 7-57 suspend a permit or license under this code, the commission or
 7-58 administrator shall give the permittee or licensee the opportunity
 7-59 to pay a civil penalty rather than have the permit or license
 7-60 suspended, unless the basis for the suspension is a violation of
 7-61 Section 11.61(b)(14), 22.12, 28.11, 32.17(a)(2), 32.17(a)(3),
 7-62 61.71(a)(5), 61.71(a)(6), 61.74(a)(14), 69.13, 71.09, 101.04,
 7-63 101.63, 106.03, 106.06, or 106.15, the sale or offer for sale of an
 7-64 alcoholic beverage during hours prohibited by Chapter 105,
 7-65 consumption or the permitting of consumption of an alcoholic
 7-66 beverage on the person's licensed or permitted premises during
 7-67 hours prohibited by Chapter 105 or Section 32.17(a)(7), or an
 7-68 offense relating to prostitution or gambling, in which case the
 7-69 commission or administrator shall determine whether the permittee

8-1 or licensee may have the opportunity to pay a civil penalty rather
 8-2 than have the permit or license suspended. The commission shall
 8-3 adopt rules addressing when suspension may be imposed pursuant to
 8-4 this section without the opportunity to pay a civil penalty. In
 8-5 adopting rules under this subsection, the commission shall consider
 8-6 the type of license or permit held, the type of violation, any
 8-7 aggravating or ameliorating circumstances concerning the
 8-8 violation, and any past violations of this code by the permittee or
 8-9 licensee. In cases in which a civil penalty is assessed, the
 8-10 commission or administrator shall determine the amount of the
 8-11 penalty. The amount of the civil penalty may not be less than \$150
 8-12 or more than \$25,000 for each day the permit or license was to have
 8-13 been suspended. If the licensee or permittee does not pay the
 8-14 penalty before the sixth day after the commission or administrator
 8-15 notifies him of the amount, the commission or administrator shall
 8-16 impose the suspension.

8-17 SECTION 18. Subchapter A, Chapter 61, Alcoholic Beverage
 8-18 Code, is amended by adding Section 61.111 to read as follows:

8-19 Sec. 61.111. HEALTH RISKS WARNING SIGN. (a) The
 8-20 commission by rule shall require the holder of a license
 8-21 authorizing the sale of beer for on-premises consumption to display
 8-22 a warning sign on the door to each restroom on the licensed premises
 8-23 that informs the public of the risks of drinking alcohol during
 8-24 pregnancy.

8-25 (b) The commission's rules shall specify the language of the
 8-26 warning and the size and graphic design of the sign, including font
 8-27 size and type.

8-28 SECTION 19. Section 101.04, Alcoholic Beverage Code, is
 8-29 amended to read as follows:

8-30 Sec. 101.04. CONSENT TO INSPECTION; PENALTY. (a) By
 8-31 accepting a license or permit, the holder consents to ~~that~~ the
 8-32 commission, an authorized representative of the commission, or a
 8-33 peace officer entering ~~may enter~~ the licensed premises at any
 8-34 time to conduct an investigation or inspect the premises for the
 8-35 purpose of performing any duty imposed by this code.

8-36 (b) A person commits an offense if the person refuses to
 8-37 allow the commission, an authorized representative of the
 8-38 commission, or a peace officer to enter a licensed or permitted
 8-39 premises as required by Subsection (a). An offense under this
 8-40 section is a Class A misdemeanor.

8-41 SECTION 20. Section 101.67, Alcoholic Beverage Code, is
 8-42 amended by amending Subsections (a) and (d) and adding Subsection
 8-43 (e) to read as follows:

8-44 (a) No person may ship or cause to be shipped into the state,
 8-45 import into the state, manufacture and offer for sale in the state,
 8-46 or distribute, sell, or store in the state any beer, ale, or malt
 8-47 liquor unless:

8-48 (1) a sample of the beverage or a sample of the same
 8-49 type and quality of beverage has been first submitted to an
 8-50 independent, reputable laboratory or the commission for analysis to
 8-51 verify the alcohol content of the beverage ~~and been found by the~~
 8-52 commission or its representative to comply with all rules and
 8-53 regulations of the commission relating to quality, purity, and
 8-54 standards of measure]; and

8-55 (2) the label of the beverage has been first submitted
 8-56 to the commission or its representative and found to comply with all
 8-57 provisions of this code relating to the labeling of the particular
 8-58 type of beverage.

8-59 (d) If the commission determines that the product analysis
 8-60 provided by the independent laboratory or the sample, and the
 8-61 label, required by Subsection (a) ~~of this section~~ comply with the
 8-62 provisions of this code and the rules of the commission, the
 8-63 commission shall issue a certificate of approval upon receipt of a
 8-64 fee in an ~~the~~ amount that is sufficient to cover the cost of
 8-65 administering this section ~~of \$25~~. A copy of the certificate
 8-66 shall be kept on file in the office of the commission.

8-67 (e) The commission by rule shall establish the procedures
 8-68 for accepting analysis of beer, ale, or malt liquor by an
 8-69 independent laboratory under Subsection (a)(1).

9-1 SECTION 21. Subchapter D, Chapter 101, Alcoholic Beverage
9-2 Code, is amended by adding Section 101.671 to read as follows:

9-3 Sec. 101.671. PRIOR APPROVAL OF DISTILLED SPIRITS AND WINE.

9-4 (a) Before an authorized permittee may ship distilled spirits or
9-5 wine into the state or sell distilled spirits or wine within the
9-6 state, the permittee must register the distilled spirits or wine
9-7 with the commission. The registration application must include a
9-8 certificate of label approval issued by the United States Alcohol
9-9 and Tobacco Tax and Trade Bureau for the product.

9-10 (b) On registration of a certificate of label approval
9-11 issued by the United States Alcohol and Tobacco Tax and Trade
9-12 Bureau, the commission shall approve the product under this section
9-13 and issue a letter to that effect to the permittee. The commission
9-14 may not require additional approval for the product unless there is
9-15 a change to the label or product that requires reissuance of the
9-16 federal certificate of label approval. The commission shall accept
9-17 the certificate of label approval as constituting full compliance
9-18 with any applicable standards adopted under Section 5.38 regarding
9-19 quality, purity, and identity of distilled spirits or wine.

9-20 (c) The commission may not register a product unless the
9-21 application is accompanied by a fee set by the commission in an
9-22 amount that is sufficient to cover the cost of administering this
9-23 section. A copy of the registration shall be kept on file in the
9-24 office of the commission.

9-25 (d) The commission by rule shall establish procedures for
9-26 accepting federal certificates of label approval for registration
9-27 under this section.

9-28 SECTION 22. Subsection (d), Section 102.32, Alcoholic
9-29 Beverage Code, is amended to read as follows:

9-30 (d) Each delivery of liquor shall be accompanied by an
9-31 invoice giving the date of purchase. If a retailer becomes
9-32 delinquent in the payment of an account for liquor, the wholesale
9-33 dealer immediately shall report that fact in writing, including by
9-34 electronic mail or facsimile transmission, to the commission or
9-35 administrator. A ~~No~~ wholesale dealer may not sell any liquor to a
9-36 retailer who is delinquent until the delinquent account is paid in
9-37 full and cleared from the records of the commission. An account
9-38 becomes delinquent if it is not paid when it is required to be paid
9-39 under Subsection (c) ~~[of this section].~~

9-40 SECTION 23. Section 105.06, Alcoholic Beverage Code, is
9-41 amended by adding Subsection (a-1) to read as follows:

9-42 (a-1) For the purposes of this section, a licensed or
9-43 permitted premises is a public place.

9-44 SECTION 24. Chapter 105, Alcoholic Beverage Code, is
9-45 amended by adding Section 105.10 to read as follows:

9-46 Sec. 105.10. PENALTY. (a) A person commits an offense if
9-47 the person, in violation of this chapter or Section 32.17(a)(7):

9-48 (1) sells or offers for sale an alcoholic beverage
9-49 during prohibited hours; or

9-50 (2) consumes or permits the consumption of an
9-51 alcoholic beverage on the person's licensed or permitted premises
9-52 during prohibited hours.

9-53 (b) An offense under this section is a Class A misdemeanor.

9-54 SECTION 25. Section 49.02, Penal Code, is amended by adding
9-55 Subsection (a-1) to read as follows:

9-56 (a-1) For the purposes of this section, a premises licensed
9-57 or permitted under the Alcoholic Beverage Code is a public place.

9-58 SECTION 26. Section 37.11, Alcoholic Beverage Code, is
9-59 repealed.

9-60 SECTION 27. (a) Not later than March 1, 2008, the Texas
9-61 Alcoholic Beverage Commission shall adopt the rules and policies
9-62 necessary to implement Sections 5.361, 5.362, 11.042, 61.111, and
9-63 101.671, Alcoholic Beverage Code, as added by this Act, and
9-64 Sections 5.53, 5.54, and 101.67, Alcoholic Beverage Code, as
9-65 amended by this Act.

9-66 (b) Not later than March 1, 2008, the Texas Alcoholic
9-67 Beverage Commission shall adopt the rules and policies necessary to
9-68 implement Sections 5.57, 5.58, 5.59, and 5.60, Alcoholic Beverage
9-69 Code, as added by this Act, and Section 5.12, Alcoholic Beverage

10-1 Code, as amended by this Act.

10-2 SECTION 28. The change in law made by Section 5.022,
10-3 Alcoholic Beverage Code, as added by this Act, and Sections 5.05 and
10-4 5.051, Alcoholic Beverage Code, as amended by this Act, regarding
10-5 the prohibitions on, qualifications of, and training for members of
10-6 the Texas Alcoholic Beverage Commission does not affect the
10-7 entitlement of a member serving on the commission immediately
10-8 before September 1, 2007, to continue to serve and function as a
10-9 member of the commission for the remainder of the member's term.
10-10 The change in law described by this section applies only to a member
10-11 appointed on or after September 1, 2007.

10-12 SECTION 29. The change in law made by this Act related to
10-13 the filing or investigation of a complaint under Chapter 5,
10-14 Alcoholic Beverage Code, as amended by this Act, applies only to a
10-15 complaint filed with the Texas Alcoholic Beverage Commission on or
10-16 after the effective date of this Act. A complaint filed before the
10-17 effective date of this Act is governed by the law as it existed
10-18 immediately before that date, and the former law is continued in
10-19 effect for that purpose.

10-20 SECTION 30. Section 11.64, Alcoholic Beverage Code, as
10-21 amended by this Act, applies only to conduct that is a basis for
10-22 suspension of a license or permit that occurs on or after the
10-23 effective date of this Act. Conduct that occurs before the
10-24 effective date of this Act is governed by the law in effect
10-25 immediately before that date, and that law is continued in effect
10-26 for that purpose.

10-27 SECTION 31. (a) Sections 101.04 and 105.06, Alcoholic
10-28 Beverage Code, and Section 49.02, Penal Code, as amended by this
10-29 Act, and Section 105.10, Alcoholic Beverage Code, as added by this
10-30 Act, apply only to an offense committed on or after the effective
10-31 date of this Act. For the purposes of this section, an offense is
10-32 committed before the effective date of this Act if any element of
10-33 the offense occurs before that date.

10-34 (b) An offense committed before the effective date of this
10-35 Act is covered by the law in effect immediately before the effective
10-36 date of this Act, and that law is continued in effect for that
10-37 purpose.

10-38 SECTION 32. This Act takes effect September 1, 2007.

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