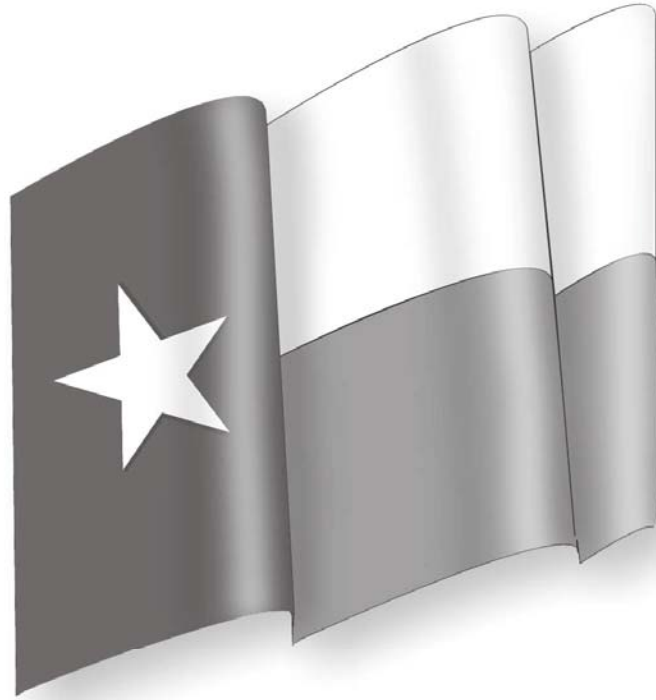


*Summary of Sunset
Commission Recommendations*



Texas Alcoholic Beverage Commission

February 2007





Texas Alcoholic Beverage Commission

Special Purpose Review

The Texas Alcoholic Beverage Commission (TABC) underwent Sunset review in 2004, and the Sunset Commission forwarded recommendations to improve the agency to the Legislature in 2005. However, the Sunset legislation did not pass. Instead, the Legislature, through separate legislation, continued TABC for two years and required a follow-up Sunset review to focus on the appropriateness of the Sunset Commission’s 2004 recommendations. The results of that special purpose review are contained in this material.

Agency at a Glance

TABC regulates all phases of the alcoholic beverage industry to ensure the protection of the welfare, health, peace, temperance, and safety of the people of Texas. The Legislature created the agency, originally called the Liquor Control Board, in 1935, in response to the repeal of Prohibition. Today, the agency endeavors to protect the people of Texas while facilitating fairness, balanced competition, and responsible behavior in the alcoholic beverage industry through voluntary compliance. To accomplish its mission, the Commission:

- ◆ licenses alcoholic beverage manufacturers, wholesalers, and retailers;
- ◆ enforces administrative and criminal laws in the Alcoholic Beverage Code;
- ◆ collects taxes on alcoholic beverages; and
- ◆ provides educational programs to address issues such as underage drinking.



*For additional information,
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Key Facts

- ◆ **Funding.** The agency spent more than \$38.2 million for its operations in fiscal year 2006 – all of which came from licensing fees and surcharges.
- ◆ **Staffing.** In fiscal year 2006, the agency had 686 employees, including 300 commissioned law enforcement officers. About a quarter of these employees are located at the Headquarters in Austin, and the rest work in the agency’s many field offices around the state and ports of entry along the Mexico border.
- ◆ **Licensing.** The agency issued or renewed 118,657 licenses in fiscal year 2006, including 79,108 retailer, 1,009 wholesaler, and 2,754 manufacturer licenses. Some businesses require more than one license to operate, and so the agency actually licensed 42,414 locations that year.
- ◆ **Enforcement.** In fiscal year 2006, the agency issued citations for 13,019 administrative violations and 20,487 criminal violations. As a result, the agency collected \$2.9 million in fines, temporarily suspended licenses or required civil penalties in 2,783 cases, and cancelled 77 licenses, among other enforcement actions. The agency also received 4,837 complaints and resolved 4,735.

- ◆ **Tax Collection.** In fiscal year 2006, TABC collected more than \$180 million in excise, personal importation, airline and passenger train taxes, and associated fees on alcoholic beverages.
- ◆ **Education.** The agency presented its educational programs to more than 153,400 people in fiscal year 2006, including school children, college students, local law enforcement personnel, civic and community group members, and licensed businesses. In that same year, the agency received \$380,000 in federal grants for educational programs, most of which it passed through to local law enforcement, advocacy, and university groups.

Commission Members (3)

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 Jose Cuevas, Jr. (Midland)
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Agency Head

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Recommendations

1. Update TABC's mission and strategic planning process to better reflect today's alcoholic beverage regulatory environment.
2. Improve TABC's management of its enforcement activities to best protect the public's safety.
3. Reduce regulation of certain business practices that serve no consumer interest, impose costs and delays on the industry, and create excessive burdens for the agency.
4. Require TABC to develop a formal process for making and communicating policy decisions regarding marketing practices regulations.
5. Require the agency to create a more formal and consistent approach to investigating and resolving complaints against its employees.
6. Ensure licensees have access to online license application, renewal, and fee payment.
7. Require establishments that serve alcohol to post signs warning the public of the risks of drinking alcohol during pregnancy.
8. Expand TABC's authority to take enforcement action against establishments that sell or serve alcohol during prohibited hours.
9. Continue TABC for 12 years.

Issue 1

TABC Lacks the Clear Focus and Strategic Direction Needed in Today's Alcoholic Beverage Regulatory Environment.

The Alcoholic Beverage Code does not reflect the modern environment in which TABC operates. The Code also does not provide clear guidance to the agency on what its priorities or strategic direction should be. Without such direction, TABC has had difficulty focusing its efforts on issues with the greatest impact on public safety. Although the agency has improved its strategic planning process in response to the 2004 Sunset recommendations, it would still benefit from having its mission better defined in statute.

Recommendations

Change in Statute

1.1 Update TABC's mission to better reflect today's alcoholic beverage regulatory environment and the agency's role in public safety issues.

This recommendation would better define the agency's mission in statute by updating the existing language to focus the agency on:

- ◆ protecting the public safety by deterring and detecting violations of the law;
- ◆ promoting legal and responsible alcohol consumption;
- ◆ ensuring fair competition within the alcoholic beverage industry;
- ◆ ensuring consistent, predictable, and timely enforcement of the law;
- ◆ ensuring a consistent, predictable, and timely licensing process;
- ◆ promoting and fostering voluntary compliance with the law; and
- ◆ communicating the requirements of the law clearly and consistently.

These changes would provide a framework for TABC to have a clear mission that better reflects the modern alcoholic beverage regulatory environment and the public safety needs of the State.

Management Action

1.2 TABC should continue refining its new performance measures and developing the capabilities necessary to effectively analyze this data.

TABC should continue working with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy to ensure its performance measures accurately reflect its new statutory mission, as laid out in Recommendation 1.1. The agency also needs to continue developing its data collection and analysis capabilities to be able to report the kind of data necessary to support its new strategic planning process and performance measures. Further, since the agency is making many changes to its operations as a result of the 2004 Sunset recommendations, it will need to ensure that its strategic planning process reflects these changes and that it effectively measures the performance of its new and restructured functions.

Issue 2

Statutory Changes Are Needed to Ensure TABC's Enforcement Efforts Are Fair, Consistent, and Focused on Public Safety.

TABC performs a variety of enforcement activities to protect the public's safety and ensure compliance with alcoholic beverage regulations. In 2004, the Sunset Commission determined that the agency lacked the necessary procedures and oversight to ensure fair, consistent, and effective enforcement of the law. Consequently, the Sunset Commission adopted a series of statutory and management recommendations designed to strengthen the agency's enforcement process, ensure the fair and consistent application of penalties, and redirect its enforcement efforts toward more serious violations.

TABC has taken numerous steps to implement the Sunset Commission's recommendations regarding enforcement, especially all of the management changes. However, since the Sunset legislation did not pass, statutory changes are still necessary to ensure that the agency has the authority to fully enact the improved enforcement procedures, and continues these practices in the future.

Recommendations

Change in Statute

2.1 Require TABC to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties.

This recommendation would require TABC to replace its existing standard penalty chart with one that reflects its full penalty authority and provides more complete guidance in assessing penalties. The agency's schedule of sanctions should include both the number of days of suspension for a particular violation and the corresponding fine amount. In developing the schedule, the agency needs to reflect the range of fines it can assess, from \$150 to \$25,000, according to the seriousness of the offense, the history of compliance, and other criteria set forth in the Alcoholic Beverage Code. The agency's schedule should address the most common types of violations, including those that apply to wholesalers and manufacturers.

The schedule of sanctions should allow for deviations due to mitigating or aggravating factors. However, the agency should develop clear policies to guide its staff in evaluating mitigating or aggravating factors in different circumstances, and how these factors could affect the penalty assessment. As part of this recommendation, the agency should require staff to report to Headquarters for approval of all cases in which executive management determines such approval is needed to allow deviation from the schedule.

2.2 Require TABC to develop a risk-based approach to enforcement and to better measure the impact of its enforcement activities on public safety.

This recommendation would require the agency to develop policies and procedures for more effectively conducting and overseeing its enforcement activities according to the following provisions.

- ◆ Require TABC to develop a risk-based approach to conducting its enforcement activities by focusing on detecting serious violations with an impact on public safety, and monitoring businesses with a history of complaints and violations, and any other factors the agency deems important.
- ◆ Require TABC to develop benchmarks and goals to track key enforcement activities and their results. The agency should track the number of enforcement activities by type, the number of violations detected from each activity, the amount of time spent on specific enforcement activities,

and any other information determined necessary by executive management. TABC should also make use of this and other information to compare regional performance and determine best practices.

- ◆ Require TABC to track and analyze the nature of violations detected, their disposition, and the businesses that produce the most serious violations, statewide and per region. The agency should compile detailed statistics and analyze trends to get a clearer picture of problems facing the state. The agency should summarize these statistics and trends for executive management on a monthly basis and on a quarterly basis for the Commission, as well as make this information available on its website.

This recommendation would ensure that the agency places its limited enforcement resources where they are needed most.

2.3 Require TABC to develop standard procedures for handling complaints and for tracking and analyzing complaint data.

This recommendation would require the agency to develop policies and procedures for effectively managing the complaints the agency receives according to the following provisions.

- ◆ Require the Commission to adopt rules that clearly define the agency's complaint process from receipt to disposition.
- ◆ Require the agency to address complaints according to risk by placing complaints in priority order so that the agency handles the most serious problems first.
- ◆ Require TABC to develop a standard form for the public to make a complaint against an establishment. The complaint form should be available to the public on the agency's website.
- ◆ Require TABC to compile detailed statistics and analyze trends on complaint information to get a clearer picture of problems people have with its licensees. This complaint data should include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. The agency should also track this information on a regional basis. The agency should report this information monthly to executive management and quarterly to the Commission. As part of this recommendation, TABC should make general information about the nature and disposition of complaints available on its website.

This recommendation would allow the agency to identify problems and trends, and focus resources where they are needed most.

Issue 3

Over-Regulation of Certain Business Practices Serves No Consumer Interest, Imposes Costs and Delays on the Industry, and Creates Excessive Burdens for the Agency.

The 2004 Sunset review examined a broad range of regulations that TABC enforces regarding the production, approval, and distribution of alcoholic beverages. The Sunset Commission found that eliminating regulation that is duplicative, unnecessarily burdensome for the agency, or not clearly tied to public safety or consumer interests, would improve TABC's oversight of the industry. Though the agency has implemented some of the 2004 Sunset recommendations, it still needs statutory authority to effect all of the changes envisioned by the Commission.

Recommendations

Change in Statute

3.1 Eliminate label approval and testing for liquor and wine, and instead authorize TABC to register federal certificates of approval for these products.

This recommendation would authorize the agency to implement a label registration program to accept federal Certificates of Label Approval for liquor and wine. This recommendation would eliminate statutory requirements for state approval of liquor labels, and clearly authorize TABC to implement a process to accept federal approvals for liquor and wine instead. Once TABC registers a federal certificate, the manufacturer would be in full compliance with agency standards. Allowing the agency to accept federal certificates of approval for liquor and wine would reduce delays to business in getting products to market.

3.2 Give beer manufacturers the option of submitting laboratory analyses of their products to TABC or having their products tested by TABC.

This recommendation would eliminate the requirement that the agency perform chemical analyses of all new beer products. Instead, beer manufacturers would have the option of submitting to TABC analyses from independent, reputable laboratories indicating the alcohol content of their products. TABC would have the authority to establish standards for which labs it considers acceptable. If a manufacturer chooses not to submit an independent lab analysis, TABC would test their product. TABC would still approve all beer labels since Texas has additional labeling requirements that go beyond federal regulations.

3.3 Eliminate fees set in statute for the approval of new alcoholic beverage products.

This recommendation would remove the \$25 dollar fee set in statute for the approval of liquor and wine, and add language that the fee should be set to cover the costs of regulation, including implementing a label registration program. This recommendation would also eliminate the fee set in statute for the testing and approval of beer, and the agency would set this fee to cover the cost of these activities. Eliminating statutory caps on fees for product approval would give the agency the flexibility to set fees at the level necessary to recover liquor and wine registration and beer testing program costs as conditions change.

3.4 Allow distributors to report retailers who are delinquent in making payments for liquor and wine by electronic mail or other means authorized by the agency.

This recommendation would modify requirements for liquor and wine distributors to report in writing delinquent retailers by allowing for alternative means, such as e-mail or fax, for providing this information to the agency.

Issue 4

TABC Should Continue Efforts to Resolve and Communicate Marketing Practices Issues.

The 2004 Sunset review found that TABC struggles to formulate, and communicate to the industry, important regulatory policies. Consequently, the Sunset Commission recommended that TABC improve its processes for consistently and reliably interpreting its regulations. In addition, the Sunset Commission recommended that TABC provide better quality information on regulatory policies to

assist with compliance, and provide more regulatory certainty for the industry. Though the agency has begun to implement these changes, placing these requirements in law would help ensure the processes are continued into the future.

Recommendation

Change in Statute

4.1 Require TABC to develop a formal process for making policy decisions regarding marketing practices regulations, and for communicating these decisions to agency staff and the industry.

This recommendation would require the agency to develop a formal process to improve both its overall decision-making processes for marketing practices regulatory issues, and how the agency communicates these decisions to its staff and to the regulated community. In implementing this recommendation, TABC staff should meet with a cross section of industry members to discuss regulatory issues and gather input for the drafting of marketing practices policies. The agency should document its decisions by using a precedents manual, or drafting formal advisories, and making these documents available to regional staff, as well as to industry members, through the agency's website, electronic mail, and agency publications. This recommendation would improve TABC's ability to effectively regulate marketing practices by providing better information to the regulated community.

Issue 5

TABC Should Ensure a Consistent and Formal Approach to Investigating and Resolving Complaints Against Its Employees.

As a law enforcement agency, TABC must ensure that its employees maintain high standards of conduct by quickly and impartially investigating any complaints that allege misconduct on the part of an employee. The 2004 Sunset review found that because the agency's internal affairs function had no statutory or other formal basis for existence, and no written policies and procedures, it had come and gone over the years according to the management style of the agency's administrators. As a result, the Sunset Commission made a series of recommendations to formalize this function. While the agency has implemented the 2004 recommendations, statutory changes are still necessary to ensure an effective internal affairs function into the future.

Recommendations

Change in Statute

5.1 Require TABC to maintain an internal affairs function to ensure fair, effective, and impartial investigations of alleged misconduct by law enforcement officers and other employees.

This recommendation would establish TABC's internal affairs function in statute, with original jurisdiction over all personnel complaints. The Commission, by rule, should outline general guidelines to inform the public of how to file a complaint and what steps the agency will take to address that complaint. The Administrator should appoint and directly oversee the head of internal affairs. These

changes would result in a more consistent handling of complaints against agency employees within and across administrations, and would help ensure due process for employees who have complaints filed against them.

5.2 Require the agency to track and report complaint information to the Administrator and the Commission on a regular basis.

This recommendation would require the internal affairs staff to report to the Administrator, at least monthly, information about the nature and status of each complaint. It would also require the staff to report to the Alcoholic Beverage Commission, quarterly, a summary of information relating to investigations, including analysis of the number, type, and outcome of investigations, trend information, and recommendations to avoid future complaints. This recommendation would ensure internal affairs staff report necessary information to the Commission, the Administrator, division directors, and other appropriate personnel that can be used to help facilitate good management and policy decisions.

Issue 6

TABC Should Continue Working to Make as Much of Its Licensing Process Available Online as Possible.

Applying for and receiving a TABC license is paper-intensive and can be a lengthy process. In 2004, the Sunset Commission recommended that TABC provide for online license application, renewal, and payment of fees. While TABC is computerizing its licensing functions, statutory change is still needed to ensure that online licensing is fully implemented and becomes standard procedure.

Recommendation

Change in Statute

6.1 Direct TABC to reduce delays in the licensing process by providing for online license application, renewal, and payment of fees.

This recommendation would ensure that applicants have access to an automated system that reduces delays in the licensing process by making license applications available online. Licensees could use the automated system to renew their licenses, check the status of license applications and renewals, and pay licensing fees.

Issue 7

The State Has Not Made Sufficient Efforts to Inform the Public of the Health Risks of Drinking Alcohol During Pregnancy.

TABC regulates all aspects of the alcoholic beverage industry to ensure the protection of the health, safety, and welfare of Texans. In 2004, the Sunset Commission recommended that TABC develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy. A change in law is still necessary to ensure that all establishments post this information.

Recommendation

Change in Statute

7.1 Require TABC to develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy.

The recommendation would require TABC to adopt rules that require establishments selling alcohol for on-premise consumption, such as restaurants and bars, to post signs on men's and women's bathroom doors that remind the public of the health risks posed to unborn children when pregnant women drink alcohol.

Issue 8

TABC Lacks Authority to Effectively Enforce Prohibitions Against Selling or Serving Alcohol After Hours.

TABC enforces violations involving the sale, service, or consumption of alcohol during prohibited hours. The agency may take criminal and administrative enforcement action against licensees who sell, serve, or allow consumption on their premises after hours. The agency may also issue citations to or arrest individuals who possess or consume alcohol in public places after hours. However, the scope of TABC's enforcement authority in this area of law is limited.

When TABC finds licensees committing criminal violations of after hours laws, it often has difficulty convincing local prosecutors to take action since the Alcoholic Beverage Code does not define specific sanctions for such violations. Further, the agency often has difficulty gathering evidence and establishing facts for enforcement cases because a licensed establishment that is closed for business is not considered a public place or because the owner or staff of an establishment may refuse entry to the agency's enforcement agents.

TABC's ability to take effective administrative action against an establishment's license is also limited. Licensees have the option of paying a fine or closing their business for a certain number of days. Licensees usually choose the sanction that is the least detrimental to their business, regardless of the harm their violation has caused to the public.

Recommendations

Change in Statute

8.1 Set specific criminal sanctions against licensees who violate after hours laws or hinder TABC's investigation of such violations.

This recommendation would make after hours violations Class A misdemeanors. Local prosecutors may be more likely to take action if a criminal sanction is defined in law. The following violations would be Class A misdemeanors:

- ◆ selling or serving alcohol during prohibited hours;
- ◆ consuming or permitting consumption of alcohol on licensed premises during prohibited hours; and
- ◆ refusing to allow entry to inspectors and law enforcement personnel.

8.2 Define premises licensed under the Alcoholic Beverage Code as public places at all hours.

This recommendation would allow TABC to take enforcement action against individuals who consume alcohol at establishments during prohibited hours by defining these locations as public places. Making these locations public places under the law would allow TABC to arrest or issue citations to individuals who illegally consume alcohol at licensed establishments after they close their doors for business.

8.3 Authorize TABC to suspend a license for violations involving after hours sales and consumption.

This recommendation would allow TABC to suspend a license, rather than offer the option of an administrative penalty, for licensees who commit after hours violations. Under this recommendation, TABC, rather than the licensee, would have the option to decide whether an administrative penalty or suspension is appropriate in each case.

8.4 Require TABC to report to the Legislature on its enforcement efforts concerning violations involving after hours alcohol sales, service, and consumption.

This recommendation would require TABC to report to the Legislature the number of establishments found to be:

- ◆ selling or serving alcohol during prohibited hours;
- ◆ consuming or permitting consumption of alcohol on licensed premises during prohibited hours;
- ◆ refusing to allow entry to inspectors and law enforcement personnel; and
- ◆ operating without a license.

TABC would report these data on a statewide basis, as well as for each region and major metropolitan area. TABC would submit this report to the Legislature in the fall before each Legislative session.

Issue 9

Texas Has a Continuing Need for the Texas Alcoholic Beverage Commission.

Key Finding

- ◆ The agency has made a clear effort to implement as many of the 2004 Sunset Commission recommendations as possible and should be continued for the standard 12-year period.

The Texas Alcoholic Beverage Commission's responsibilities – regulating the production, distribution, and sale of alcoholic beverages, enforcing state laws regarding alcohol, and collecting taxes – are important to the State. Although the Sunset Commission had many concerns about the agency's operations following its review in 2004, the agency has made a clear effort to address those concerns and should be continued for 12 years.

Recommendation

Change in Statute

9.1 Continue the Texas Alcoholic Beverage Commission for 12 years.

This recommendation would continue TABC as an independent agency, responsible for regulating the alcoholic beverage industry.

Fiscal Implication Summary

None of the recommendations regarding the Texas Alcoholic Beverage Commission would have a significant fiscal impact to the State.

