Interim Report

to the 87th Texas Legislature

House Committee on Licensing and Administrative Procedures

January 2021

HOUSE COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2020

A REPORT TO THE
HOUSE OF REPRESENTATIVES
87TH TEXAS LEGISLATURE

TRACY O. KING
CHAIRMAN

COMMITTEE CLERK
SAM BACARISSE

Committee On
Licensing and Administrative Procedures

January 7, 2021

Tracy O. King
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Dennis Bonnen
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Licensing and Administrative Procedures of the Eighty-sixth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-seventh Legislature.

Respectfully submitted,

Tracy O. King

Craig Goldman

Charlie Geren

Ryan Guillen

Sam Harless

Ana Hernandez

Abel Herrero

Ken King

John Kuempel

Chris Paddie

Senfronia Thompson

Craig Goldman
Vice-Chairman

Members: Charlie Geren, Ryan Guillen, Sam Harless, Ana Hernandez, Abel Herrero, Ken King, John Kuempel, Chris Paddie, Senfronia Thompson

Craig Goldman
Vice-Chairman

Members: Charlie Geren, Ryan Guillen, Sam Harless, Ana Hernandez, Abel Herrero, Ken King, John Kuempel, Chris Paddie, Senfronia Thompson

TABLE OF CONTENTS

CHARGE 1: Agency Oversight and Legislation Implementation Monitoring

Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation.

H.B. 1545: TABC Sunset Bill

Summary of Sunset Bill Implementation Status

The Legislature passed H.B. 1545, the TABC Sunset bill, during the 86th Legislative Session in 2019. The 325-page bill contains the most significant changes to the Alcoholic Beverage Code ("Code") in TABC's history. H.B. 1545 makes major changes to several aspects of alcoholic beverage regulation in Texas, chief among them include:

- streamlining the license and permit structure with a new fee structure to be set in rule;
- eliminating the beer and ale distinction based on alcohol content;
- simplifying the malt beverage product registration process;
- eliminating outdoor advertising restrictions; and,
- restructuring and applying best practices to the application review and protest process.

The Sunset Commission also directed TABC to implement several management directives, which are recommendations that do not require legislation to accomplish.

Since June 2019, TABC has used a dedicated team to plan, coordinate, and execute the Sunset bill's many different provisions and management actions of varying complexity. The bill's provisions and the due dates for the management actions vary and occur over two years. TABC implemented changes effective on September 1, 2019; has nearly completed tasks required to implement changes effective December 31, 2020; and is in the intensive planning stages to implement provisions effective September 1, 2021.

Implementation of this legislation and the Sunset Commission management actions requires major efforts to update rules, policies, procedures, forms, and IT systems. For example, TABC has either already updated or scheduled for update all of the agency's approximately 200 rules, most of which are impacted in some way by the changes made by the Sunset bill. In addition, extensive communication and training for both staff and industry require actions ranging from website updates to staff training on the new laws and changes, to agency policies and processes. Furthermore, TABC is simultaneously building a new Alcohol Industry Management System (AIMS), which has required significant coordination efforts to ensure the new system reflects the policy changes enacted by the Legislature. Ensuring that final decisions in AIMS accurately reflect policy and rule changes requires a continuation of ongoing coordination.

The following section highlights TABC's major accomplishments so far and provides a status update on provisions not yet effective. While the Sunset bill and the Sunset Commission management actions cover many aspects of alcohol industry regulation and internal agency operations, highlighted below are some of the most significant affecting industry and the public.

Licensing Transition, Beer and Ale Consolidation, and Adoption of New Fees

The Sunset bill cut the number of alcohol licenses and permits in half — reducing the total number from 75 to 37 — and simplified the production, distribution, and sale of malt beverages

by eliminating the legal distinction between beer and ale based on alcohol content. The bill also eliminated all statutory license and permit fees and requires TABC to set new fees in rule to be effective on September 1, 2021, simultaneously with the licensing structure overhaul. The following information describes TABC's implementation activities and progress for licensing structure provisions already implemented and those that will go into effect September 1, 2021.

Elimination of 14 Licenses and Permits – 2019

Effective September 1, 2019, the Sunset bill eliminated 14 licenses and permits, many of which were already obsolete and not used by industry members. Currently, the number of licenses and permits stands at 62. The largest impact of this change was eliminating four different types of agents' permits, which were permits for individuals working for certain types of distributors or manufacturers. Because the Legislature repealed this requirement, TABC could eliminate approximately 30,000 individual licenses and permits. This reduced workload for staff and red tape for companies that already have alcohol permits and, therefore, are already subject to oversight by TABC.

- TABC implemented these changes by cutting off renewals and new applications for all 14 licenses and permits before September 1, 2019, the effective date. TABC sent out targeted guidance/communication to these specific permit holders informing them of the new laws.
- TABC is working to clean up references to these permits in rules, procedures, publications, etc. as they come up for regular review.
- In January 2020, TABC updated several marketing practices advisories, including Advisory MPA062 *Outdoor Advertising Regulations*, to reflect the elimination of the 200-foot limit on signage due to the elimination of the billboard permit.

Licensing Consolidation, Beer/Ale Consolidation, and Adoption of New Fees – 2021

H.B. 1545 eliminates an additional group of 25 licenses and permits on September 1, 2021. These changes primarily merge similar types of licenses or permits or consolidate the authority provided by certain subordinate permits into the related primary permits. For example, the authority to hold events at a temporary location will be part of certain permit holders' authorities, without them having to obtain a separate permit from TABC, such as Mixed Beverage and Winery permittees. Other examples include the ability to transport and store products without obtaining a separate subordinate permit from TABC.

The bill also consolidates beer and ale into a single malt beverage category that will be treated in the same manner for licensing, tax, and other regulatory purposes. For example, consolidating beer and ale allows for the application of the same excise tax rate, greatly reducing the number of tax reports that producers must complete and TABC must process. It also affects the authorities of certain permit types, generally reducing the need for companies to hold multiple licenses and permits. For example, Package Store and Wine Only Package Store permittees will already have the authority to sell all malt beverages as part of their permit, eliminating the need for them to also hold a separate beer license under current law.

Lastly, all fees currently set in statute will be eliminated on September 1, 2021, and TABC is required to have new fees in place in rule by that date. The bill eliminates TABC's current authority to charge surcharges, and instead requires a single fee be set for each license and permit type. Because statute only allows counties and cities to charge fees to applicants based on fees set in statute and not rule, the bill specifies they can continue charging based on statutory fees in place as of August 31, 2021. TABC is required to provide this information on its website to ensure local governments know what fees they may charge.

- In August 2020, TABC created the cross-divisional Licensing Transition Workgroup to ensure input from nearly all divisions in determining TABC's approach to transitioning to the new licensing and fee structure effective September 1, 2021. TABC is currently in the intensive planning stages and determining the mechanics and timelines of when and how license and permit holders will transition to both the new AIMS and their new license types and new fees. All of these events will occur simultaneously, thus requiring continued coordination. Based on the workgroup's input, TABC's Strategic Initiatives and Performance Improvement office will create a comprehensive implementation plan with timelines, tasks, and divisions responsible for completing them. Tasks will include communication with industry; internal training; updates to administrative rules; and updates to marketing practices advisories, policies, procedures, publications, and forms; among others.

- TABC has already been reviewing agency rules and marketing practices advisories to prepare for stakeholder input next summer before the statutory changes take effect. Additionally, rules to implement temporary event changes were already proposed at the September 22, 2020, commission meeting for publication in the *Texas Register*. TABC expects the final adoption of prior to the start of 2021, with a September 1, 2021, effective date to align with the statutory changes.

- TABC has developed a strategy and criteria for setting fees to align with the authorities of each permit type, regulatory effort required by TABC, risks to public safety, and other factors that will be used to determine the new fees. Until TABC has a greater understanding of the budgetary outlook for fiscal year 2022 and the impact the COVID-19 pandemic has had on revenues, recommendations of new fees cannot be presented to commissioners for consideration.

Outdoor Advertising Restrictions

Effective September 1, 2019, H.B. 1545 eliminated various outdoor advertising restrictions from the Code. These restrictions applied to all retailers except for Mixed Beverage permittees, creating an unequal regulatory standard. Restrictions included aspects such as font size, a limitation to one sign, prohibition on the use of brand insignia or wording, and limitations on the type of wording allowed on signs. The bill also set a deadline of December 31, 2019, for TABC to adopt rules aligning all retailers under the same requirements. The following information summarizes the actions TABC took to implement these changes in the fall of 2019.

- In November 2019, TABC commissioners adopted amendments to Rule 41.105 to align

all retail license and permit types under the same outdoor advertising restrictions. These new amendments became effective in December 2019. Under this rule, TABC restricts the advertising of price, a restriction that previously applied to Mixed Beverage permittees with a Food and Beverage Certificate. Under the revised rules, any retailer with a Food and Beverage Certificate may display price using menus placed on the exterior of a location. As a result of the statutory changes and TABC rulemaking, all retailers now operate under the same regulations related to outdoor advertising.

- TABC updated and consolidated multiple advisories to develop the new Outdoor Advertising Advisory. TABC distributed this revised advisory to the public on January 6, 2020.

- TABC also developed an FAQ for staff to assist them in answering frequently asked industry questions.

Regulatory Penalties

TABC has nearly completed and implemented the Sunset Commission management action to adopt penalties for all regulatory violations in rule. The Sunset Commission established a deadline for rulemaking by December 31, 2020. TABC is scheduled to adopt rules by this deadline, but the new process's effective date will be March 1, 2021. The Sunset Commission made this recommendation because TABC had a completed penalty matrix for public safety violations but not for regulatory violations.

- After nearly a year of work by staff and four stakeholder meetings, TABC commissioners voted to publish a revised rule and new penalty policy in the *Texas Register* for public comment at their September 22, 2020 commission meeting. The commission is expected to vote on final adoption at the commission meeting on November 17, 2020.

- Based on a process used for many years by the Texas Commission on Environmental Quality, TABC developed three components — a rule, a policy, and a penalty calculation worksheet — that together form a new methodology for calculating regulatory penalties. Once finally adopted, the TABC rule will include base penalties for each regulatory violation. Alongside the rule, TABC will adopt a penalty policy detailing the process for calculating penalties. TABC staff will use this policy, which will be available to the public via the TABC website, as required by the new rule. Lastly, TABC staff will use the penalty calculation worksheet to demonstrate transparency and show the calculations to permit holders when proposing an initial settlement amount. TABC also anticipates this new methodology will promote more consistency across the state regarding penalty amounts for similar violations and similarly situated permit holders.

- While the methodology is finalized and expected to be adopted by the commission at the November 17, 2020 meeting, the new process's effective date is March 1, 2021. The main reason for this short delay is the time needed to train staff to thoroughly use the methodology. Training is already scheduled for affected TABC staff and will be conducted from December 2020 through February 2021. Training will consist of

presenting the material and practical exercises on applying the new rule, policy, and penalty calculation worksheet.

Product Registration

Effective December 31, 2020, H.B. 1545 eliminates the state label approval process for malt beverages. Instead, it requires TABC to accept a valid federal Certificate of Label Approval (COLA) for product registration (previously known as label approval). H.B. 1545 also authorizes TABC to deny label approval and registration for any product with a COLA that violates Texas law, and the bill eliminates alcohol content testing for malt beverages as a condition of approval.

- Beginning in February 2020, TABC completed an overhaul of Chapter 45 product registration rules, not just to meet the requirements of H.B. 1545 but also to reorganize and streamline the rules to make them more intuitive and user friendly. TABC needed to make rule revisions to conform with the statutory changes but identified the need for a more holistic revision to Chapter 45.

- The commission adopted the new product registration rules at their September 2020 meeting, effective December 31, 2020, meeting the bill's deadline.

- TABC will also update website content, such as frequently asked questions, and send guidance to industry members in anticipation of the effective date.

Application Review and Protests

Effective December 31, 2020, H.B. 1545 restructures TABC's application review and protest processes to improve overall consistency and align the processes with the Administrative Procedure Act. For example, all contested applications will go to the State Office of Administrative Hearings (SOAH) for a hearing instead of some going to county judges and others going to SOAH, as occurs under current law. The changes also require TABC staff to make an initial determination to approve or deny an application, with an eventual decision to be made by the commission. TABC will no longer internally protest applications but will use its new authority under the Code to approve or deny an application. Once TABC staff make their determination, applicants may then appeal. The new statute also gives protestants a right to a hearing even if TABC would normally approve an application.

- In January 2020, TABC began a significant collaborative cross-divisional effort to update and develop agency processes, new rules, workflows, procedures, forms, and form letters; train staff; and execute other related tasks.

- **Workflow development and IT coordination.** First, TABC had to determine how the new statutory process will work with the new AIMS system. The workgroup created numerous flowcharts and thoroughly vetted them with agency leadership before providing these documents to TABC's Innovation and Technology Division (ITD) and the vendor contracted to build AIMS. The workgroup has also coordinated with ITD throughout 2020 to make changes necessary to current systems to accommodate the

process changes between the statutory effective date of December 31, 2020, and the AIMS launch date of September 1, 2021.

- **Rules.** In February 2020, TABC began working on new rules to govern the application review and protest process. After multiple stakeholder meetings, TABC finally adopted these rules on September 22, 2020, effective December 31, 2020.

- **Policy, procedures, and forms.** The workgroup completed a revamp of policy and procedures related to the application review and protest processes. In total, one policy and six procedures were developed or updated, 16 new form letters, and a new protest form were added. The website will be updated with revised instructions and the new protest form.

- **Training.** TABC has conducted six two-day trainings for TABC staff in four divisions and all regions. Roughly 350 agency employees have taken this training.

In implementing the new statutory provisions, TABC identified an opportunity for the Legislature to improve this new process's efficiency. Applicants have a statutory right to appeal a denial decision by TABC. However, if the applicant does not request a hearing, the TABC commission is still required to make a final decision on the staff's recommendation to deny. Having commissioners decide contested applications is consistent with their overall role of making decisions on all contested cases. Nevertheless, if an applicant does not contest a TABC denial decision, the commission's final decision is unnecessary and prolongs the process of arriving at a final decision.

Emergency Suspensions

Effective September 1, 2019, H.B. 1545 authorized TABC to issue an emergency order without a hearing if TABC determines continued operations of a regulated business would be a continuing threat to public welfare. The bill required that any emergency order must have a hearing within 10 days after the date SOAH either affirmed, modified, or set aside the emergency order. The bill also authorized TABC to adopt rules to set out the process for determining and appealing emergency orders, including a rule allowing the commission to affirm, modify, or set aside a decision made by SOAH.

- TABC has used this new authority, particularly during the COVID-19 pandemic, to enforce the Governor's orders regarding safety protocols at bars and restaurants as well as bar closures.

- As of November 13, 2020, TABC had issued 169 emergency suspensions in the calendar year 2020. Of the 169 emergency suspensions, 15 went to hearing at SOAH, and the administrative law judge affirmed them.

TABC developed a written procedure to document the internal process for using this authority. In September 2020, the commission voted to post new Emergency Orders rules (Chapter 33, Subchapter G) in the *Texas Register* for public comment. These rules are authorized by Section

11.614 to establish a process for the determination and appeal of emergency orders. TABC expects the final adoption of these rules at the November 17, 2020 commission meeting.

Recommendations:

- The Sunset bill requires TABC to post statutory fees effective August 31, 2021, so that local governments will know how to set their local fees, which by statute can be up to one-half of the statutory fee. However, many of the permits will be abolished or merged on September 1, 2021, resulting in several instances in which there will be a lack of clarity in terms of which statutory fee local governments may use to set their own fees. The Legislature may want to consider an alternative approach for local governments to maintain this revenue stream.

- The 86th Legislature passed S.B. 1232, authorizing Beer and Wine Retailer's permittees to deliver alcoholic beverages to consumers if they obtain a Local Cartage subordinate permit. However, H.B. 1545 eliminates the need to have a Local Cartage for other permittees, such as Package Stores. TABC will need to maintain the Local Cartage permit specifically for Beer and Wine Retailers even though the Legislature intended to eliminate the need for this separate permit in the Sunset bill for other retailers.

- Statute allows cities and counties to charge fees to permittees based on fees set in statute, not rule. The Sunset bill both eliminated statutory fees and renamed, eliminated, or combined an array of permits. While the bill provides that cities and counties can continue charging based on statutory fees in place as of August 31, 2021, some confusion still exists and cities and counties are still waiting on the final permit crosswalk. The crosswalk will assist cities and counties in determining what fees and how much they are now able to charge. This is an area to monitor for the upcoming session.

S.B. 1450: Alcohol Delivery

Summary of S.B. 1450 Implementation Status

Effective September 1, 2019, Senate Bill 1450 (86th Legislature) created two separate paths authorizing certain retailers to deliver alcohol directly to consumers. Chapter 28 of the Code provides an independent delivery authority to Mixed Beverage permittees (MB) who have a Food and Beverage Certificate (FB). Chapter 57 of the Code establishes a Consumer Delivery Permit (CD) authorizing the holder to make deliveries to consumers on behalf of a:

- Package Store (P),
- Wine Only Package Store (Q),
- Wine and Beer Retailer (BG/BQ),
- Retail Dealer On/Off-Premise (BE/BF), and
- Mixed Beverage permittees with a Food and Beverage Certificate.

By December 2019, to effectuate the provisions in Chapter 57 of the Code, TABC established a $10,000 fee for a two-year Consumer Delivery (CD) Permit. As of October 1, 2020, there are 15 active CD permits.

In January 2020, TABC issued an advisory, *Alcohol Delivery to Consumers from Certain Retailers*, to provide necessary information for conducting deliveries to consumers legally when utilizing Chapter 28 or 57 of the Code. The eight-page advisory offers guidance on eligibility and authority to conduct deliveries, requirements for completing a delivery, limitations on time, delivery location, product size, and liability limitations.

S.B. 1450 directed TABC to administer an alcohol delivery training program for training and certifying delivery drivers contracting with or employed by the holder of a CD permit or Mixed Beverage permit. In March 2020, new rule 50.32, TABC adopted the Alcohol Delivery Driver Training Program. It provides that the commission will offer delivery driver training and that persons who successfully complete the training will receive a two-year certification. The new rule includes the rebuttable presumption laid out in Section 57.08(c) of the Code. Under this section, a delivery driver did not act with criminal negligence in delivering to a minor or intoxicated person if the delivery driver holds a training certificate and made the delivery as the result of a malfunction of a conforming consumer delivery compliance software application. The rule also provides circumstances under which the commission may suspend or revoke a training certificate.

TABC contracted with eStrategy Solutions in January 2020 to deliver the online training program, coined as Texas Responsible Alcohol Delivery training (TRAD). The agency developed the TRAD curriculum to explain the retailer's responsibilities (providing the alcoholic beverage), the responsibilities of the driver, and how to complete a delivery legally and safely. The certification course covers how to deliver alcoholic beverages to consumers legally, check IDs, monitor for signs of intoxication, and other best practices for safe and successful deliveries. Considering the volume of deliveries conducted by drivers for CD permit holders, it behooves the driver, permit holder, and the consumer for every driver to receive a TRAD certification.

Concurrent to the training for delivery drivers, TABC worked on another deliverable: assessment of software applications. A CD permit holder may use a software application to deliver alcohol to the consumer to qualify for certain limitations on liability. Section 57.09(a)(2) directs TABC to adopt minimum standards for such software applications. Stakeholder meetings were held with interested parties in February and April of 2020 to discuss drafts of a new rule to establish these requirements.

Effective August 2020, Rule 35.7 establishes TABC's minimum standards for alcohol delivery compliance software applications. Among other things, Rule 35.7 includes requirements designed to ensure that alcoholic beverages are not delivered to persons who are intoxicated or under the age of 21. The software application must also ascertain whether a particular type of alcoholic beverage can be delivered legally to the consumer's address (wet/dry status).

A CD applicant or permit holder may request an evaluation of its software application. TABC contracted with Loblolly Consulting to conduct these assessments. Loblolly will provide an opinion as to the application's compliance with the requirements of the rule. CD permittees are strongly encouraged to have their software application assessed to determine if the application meets the requirements in Rule 35.7. Even though the assessment is not mandatory, it does ensure the CD permittee that the software application meets the rule's requirements. This is important because a CD permittee is not liable for the conduct of a delivery driver acting on behalf of the permittee if:

(1) the permittee has not directly or indirectly encouraged the driver to violate the law, and
(2) the delivery driver either:
    (a) holds a valid TRAD certification, or
    (b) completes the delivery using a software application that meets the requirements in Rule 35.7.

It is illegal to sell or deliver (for commercial purposes) an alcoholic beverage to a minor or an intoxicated person. However, there is a presumption that an alcoholic beverage was not sold or delivered with criminal negligence if the driver:
(1) held a valid TRAD certification at the time of delivery, and
(2) completed the delivery due to a technical malfunction of a software application that meets the requirements in Rule 35.7.

Section 57.08 provides an affirmative defense related to the responsibility of the CD permit holder for the actions of an alcohol delivery driver making deliveries under its permit. In September 2020, the commission voted to publish Rule 34.6 in the *Texas Register* to implement in rule the affirmative defense enacted in statute by the legislature. The rule is expected to be adopted by the commission in November 2020 and effective in early December.

The Committee takes the fact that it did not hear directly from any companies now delivering alcohol as proof that this legislation is working as intended. It comes to no surprise then that when asked if there had been any violations of the law, TABC reported there had been none. While the Committee may not have heard from delivery companies, it did receive a written

submission from DISCUS, a national industry group representing various aspects of the alcohol business. In their letter DISCUS highlights the impact COVID-19 has had on restaurants in Texas and urges the legislature to make permanent Governor Abbott's temporary waiver allowing restaurants and certain other mixed beverage permittees to sell for carryout and delivery alcohol in original manufactures' containers and carryout and delivery of mixed drinks under certain rules, known as "cocktails to go." Due to the popularity of these waivers, the legislature should be familiar with this issue, but it is the Committee's opinion that it is not material to the function of S.B. 1450 and is an entirely separate policy discussion.

H.B. 892: County Regulation of Game Rooms

Prior to the passage of H.B. 892, Chapter 234, Local Government Code, Subchapter E gave county governments in only certain counties the authority to regulate game rooms. Game rooms are defined as being a for-profit business located in a building or place that contains six or more amusement redemption machines or other machines that, for consideration, afford a player the opportunity to obtain a prize or thing of value, the award of which is determined solely or partially by chance, regardless of whether the contrivance is for bona fide amusement purposes. An amusement redemption machine is defined as one being for bona fide amusement purposes with noncash prizes or a redeemable prize with a value from a single play of up to 10 times the charge to play the game or $5, whichever is less. Commissioners courts were able to restrict the location of game rooms; prohibit game rooms from being within certain distances from a school, place of worship, or residential neighborhoods; and restrict the number of game rooms that operated inside the county. Those counties identified in statute also had the authority to license or permit game rooms and charge up to $1000 for said permit or license.

Chapter 234 Subchapter E gives peace officers or county employees the ability to inspect businesses to determine the number of machines they have on premises and allows them to inspect businesses with six or more machines to determine if any laws are being broken. Violations of statute or regulation may be a civil penalty while intentionally operating a game room in violation of a regulation is a class A misdemeanor.

Put into statute by the 83rd Legislature, Subchapter E bracketed the authority to regulate game rooms only to counties with populations less than 25,000, adjacent to the Gulf of Mexico and within 50 miles of an international border. Since 2013, the legislature has extended that authority to include counties:

- with a population of 4 million or more;
- adjacent to the Gulf of Mexico and adjacent to a county that has a population of 4 million or more;
- on the Texas-Mexico border with a population of less than 300,000 and that contains a city with a population of 200,000 or more;
- with a population of 550,000 or more and adjacent to a county with a population of 4 million or more;
- in the Permian Basin within 25 miles of the Texas border with another state and with a population of more than 130,000;
- on the Texas border with Louisiana, with a population of more than65,000, and within 50 miles of a city in Louisiana with a population of more than 150,000;
- with a population of more than 200,000 and less than 220,000; and
- with a population of more than 1.8 million and adjacent to a county with a population of more than 2.2 million.

Faced with the decision of adding more counties by individual brackets via stand alone bills or eliminate the cumbersome and confusing applicability section (Sec. 234.132) altogether, thereby granting all counties in the state the authority to regulate game rooms, the legislature

overwhelmingly chose the latter. Ultimately only two members of the House intended to vote "no" and only one Senator registered a "no" vote.

Counties, such as Victoria and Jefferson, have implemented specific game room regulations since the passage of H.B. 892. These regulations, similar to ones adopted by other counties when they were given express statutory authority, have allowed them to reduce or even eliminate illegal activity at game rooms. The County Judges & Commissioners Association of Texas reports that the passage of H.B. 892 has been particularly important in the fight against illegal gambling, narcotics transactions, human trafficking, and loan sharking.

The Kickapoo Tribe of Texas expressed concern to the Committee that this bill could be used to allow counties to turn a blind eye to illegal gambling. The purpose of H.B.892 was to provide all counties proven regulatory authority to combat illegal activity. It was not and is not a back-door gambling bill and the Committee is unaware of any evidence to the contrary.

H.B. 2847: TDLR Omnibus Bill

During the 86th Legislative Session, the Texas Legislature passed H.B. 2847, providing common-sense updates, improving processes, and eliminating unnecessary regulatory provisions for programs regulated by the Texas Department of Licensing and Regulation (TDLR). Changes, improvements, and eliminations are detailed below.

Program-Specific Changes

The Texas Commission of Licensing and Regulation (Commission) has adopted all required rules necessary to implement the changes listed below.

Barbering and Cosmetology – H.B. 2847 reduced the hours of pre-licensure instruction necessary to obtain a Cosmetology Operator license from 1,500 hours to 1,000 hours. In addition, although a change was not required by any legislation, TDLR worked with the Advisory Board on Barbering and members of the Barbering profession, to make a corresponding reduction in the hours of pre-licensure instruction necessary to obtain a Class A Barber license from 1,500 hours to 1,000 hours. House Bill 2847 also now allows Barbers and Cosmetologists to provide select services to clients in a remote location if they are digitally prearranged. The legislation also modified required inspection intervals for periodic inspections and clarified the scope of practice for some Cosmetology licensees.

Driver Education and Safety – The legislation removed the business impediment that a brick and mortar establishment must first be present before a school could offer online instruction; removed the requirement that a new, physical location receive a physical inspection before opening; and streamlined requirements for becoming an instructor.

Laser Hair Removal – The legislation added a continuing education requirement so that licensees meet the highest standards of safety and training.

Midwives – The legislation now allows a midwife to serve as the presiding officer of the Midwives Advisory Board. Previously, only a public member could serve as presiding officer. On December 20, 2019, the Commission appointed a midwife as that board's presiding officer. In addition, language which could prevent the Commission from lowering fees in this program in the future was removed.

Used Auto Parts Recyclers – The legislation removed the requirement that employees must hold a license, and removed the concept of "risk-based" inspection to eliminate the potential for excessive regulation and penalties, which completed the removal of this type of inspection from any TDLR program. The legislation also modified required inspection intervals for periodic inspections of Used Auto Parts Recycler businesses.

Process Improvements

- The Commission now has the authority to set license terms of one or two years and make

corresponding changes to continuing education requirements and fees for all programs regulated by TDLR. The Commission may adopt future rules to implement these changes to license terms based on input from advisory boards, industry groups and the public;

- TDLR is now authorized to hire outside experts, when needed, to investigate and prosecute complaints; and

- House Bill 2847 also ensured that all complaints, including those in TDLR's medical and health profession programs, use the highest levels of protection and confidentiality for medical records.

Elimination of Outdated Statutes

The Commission has adopted all required rules to complete the repeals listed below.

H.B. 2847:

- removed language stating that a boiler certificate of operation must be placed under glass;
- removed "moral turpitude" as a potential reason to deny a license in the remaining programs where it has not already been removed;
- removed the requirement that a licensed Audiologist first register their intent to perform the occupation for which they are licensed before they fit or dispense a hearing instrument;
- eliminated voluntary and unnecessary Technician Registrations in the Orthotists and Prosthetists program; and
- removed the requirement that Dietitians adopt an official seal.

License Terms, Fees, and Continuing Education Requirements

As noted above, the Commission's authority in Chapter 51, Occupations Code, now clearly states that license terms can be set for one or two years, that fees can be adjusted as needed, and that continuing education requirements may be prescribed. The chart below lists TDLR's programs, the length of license terms in those programs, and whether CE is required to renew a license.

License Terms and CE Requirements

Program	**License Term**	**Continuing Education**
Air Conditioning and Refrigeration-A/C Tech	One Year	Yes
Architectural Barriers-Registered Accessibility Specialist	One Year	Yes
Athletic Trainer	Two Years	Yes
Auctioneer	One Year	Yes
Barbering	Two Years	No

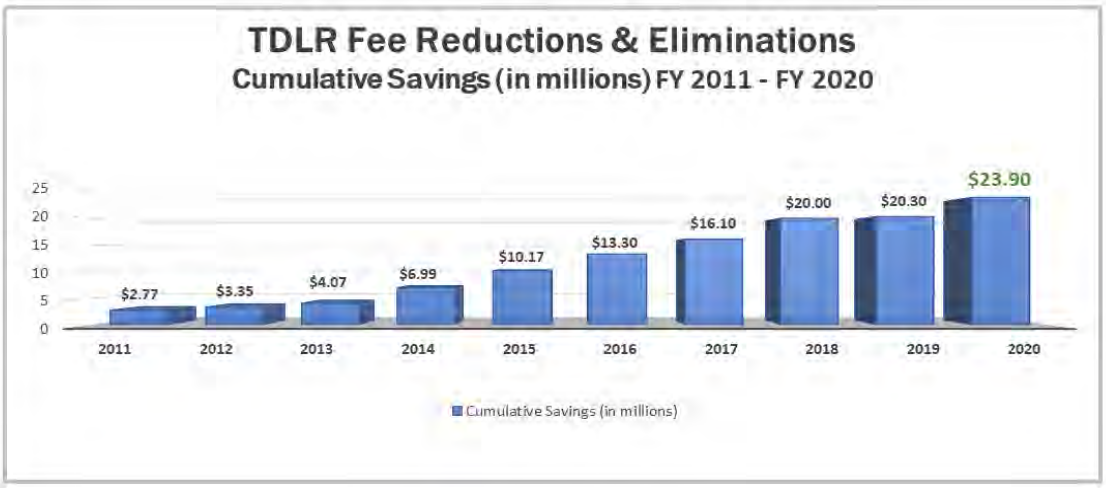
Behavior Analyst	Two Years	Yes
Boiler Safety-Boiler Inspector	One Year	No
Code Enforcement Officer	Two Years	Yes
Combative Sports-Contestant	One Year	No
Cosmetologists	Two Years	Yes
Dietitians	Two Years	Yes
Driver Education and Safety-Instructor	One Year	Yes
Dyslexia Therapy	Two Years	Yes
Electricians-Apprentice Electrician	One Year	Yes
Elevator/Escalator Safety-Elevator Inspector	One Year	No
Hearing Instrument Fitters and Dispensers	Two Years	Yes
Industrial Housing and Buildings-Third Party Inspector	One Year	No
Laser Hair Removal	Two Years	Yes
Licensed Breeders	One Year	No
Massage Therapy	Two Years	Yes
Midwives	Two Years	Yes
Mold Assessors and Remediators-Remediation Worker	Two Years	Yes
Motor Fuel Metering and Quality-Service Technician	Two Years	No
Motorcycle and ATV Operator Safety	Two Years	No
Offender Education Programs-Instructor	Two Years	Yes
Orthotists and Prosthetists	Two Years	Yes
Podiatry	Two Years	Yes
Polygraph Examiners	One Year	Yes
Professional Employer Organizations	One Year	No
Property Tax Professionals	Two Years	Yes
Property Tax Consultants	Two Years	Yes
Sanitarians	Two Years	Yes
Service Contract Providers	One Year	No
Speech-Language Pathologists and Audiologists	Two Years	Yes
Tow Trucks, Operators and Vehicle Storage Facilities	One Year	Yes
Transportation Network Companies	One Year	No
Used Automotive Parts Recyclers	One Year	No
Water Well Drillers and Pump Installers	One Year	Yes
Weather Modification	One Year	No

A History of Fee Reductions

To build on the Commission's history of lowering fees, as noted in the chart *TDLR Fee Reductions* below, TDLR will evaluate programs on a go-forward basis to determine whether changing license terms and continuing education requirements could reduce fee amounts. In cases where fees may be lowered by increasing or decreasing the length of a license term or continuing education requirements, the Commission will consider all input from advisory boards,

industry groups, and the public before making its decision.

TDLR Fee Reductions



- TDLR continually reviews licensing fees against program administration costs to ensure fees are in balance, and we reduce fees accordingly whenever warranted. Due to economies of scale, when existing programs are consolidated at TDLR, program administration costs are typically lowered.
- These savings are then passed on to licensees in the form of reduced or eliminated fees, while at the same time ensuring TDLR meets its obligations in Article VIII-Special Provisions, Section 2 of the General Appropriations Act.
- **From FY 11 through FY 20, the total cumulative savings for TDLR licensees from all fee reductions amounted to more than $23.9 million.**

(TDLR Executive Office, Budget & Policy)

Texas Lottery Commission

Sales and Revenue

The Texas Lottery continues to generate record amounts of revenue through the responsible sale of lottery products. Since the first lottery ticket was sold in 1992, the Texas Lottery has generated over $31.6 billion for the state of Texas, which includes more than $25.7 billion to the Foundation School Fund.

As authorized by the Texas Legislature, certain Texas Lottery revenues benefit other state programs including the Fund for Veterans' Assistance. Since the first veterans' dedicated scratch ticket game was launched in 2009, the Texas Lottery has contributed over $142.7 million to the Fund for Veterans' Assistance.

Below are highlights regarding the record-breaking results for FY 2020, the 28th year of the Texas Lottery.

- In FY 2020, the Texas Lottery Commission transferred $1.66 billion to the Foundation School Fund and the Fund for Veterans' Assistance received $22.2 million, the highest contribution to date to these beneficiaries.

- The Commission's revenue transfer in FY 2020 was based on overall lottery sales of
    - $6.704 billion, breaking the sales record set in fiscal year 2019.

- FY 2020 was the Texas Lottery's tenth consecutive record-breaking sales year, which also resulted in a record total revenue contribution of $1.684 billion generated for the state.

2020 Census

The Texas Secretary of State asked state agencies to help communicate and promote awareness about participation in the census. The Texas Lottery was able to promote awareness of the 2020 census in several ways. Promoting awareness began with a simple, straightforward message: "Shape Your Future, Participate in the 2020 Census". The Texas Lottery was able to print this messaging directly on all draw game tickets such as, Powerball®, Lotto Texas®, etc. The message was also communicated via: digital monitors in over 17,000 lottery retail locations across the state, the Texas Lottery website homepage, the agency's social media channels, posters that were produced and displayed at the Texas Lottery's 16 claim centers across the state, the agency's on-hold phone recording, and as a direct message to the Texas Lottery's email and text subscribers.

The Texas Lottery is in a unique position among most state agencies by having many platforms available to communicate with Texas residents. The census and the information gathered is vital to the state and the agency proudly partnered and participated in this important effort.

Charitable Bingo – H.B. 914

H.B. 914 by Representative Senfronia Thompson was passed during the 86th Legislative Session (2019). Agency staff worked with the Commission's Bingo Advisory Committee and with industry stakeholders regarding the implementation of the bill, including applicable rulemaking. Additionally, the agency sought guidance and clarification from Representative Thompson on two topics – 1) the percentage share of bingo prize fees; and 2) the operating capital calculation. Representative Thompson provided the agency with letters of legislative intent and these are submitted as attachments for reference.

- Attachment 3 – Letter of Legislative Intent from Representative Thompson dated September 19, 2019, regarding the percentage share of prize fees.

- Attachment 4 – Letter of Legislative Intent from Representative Thompson dated May 7, 2020, regarding the operating capital calculation for licensed organizations.

Some of the provisions of the law relate to:

Prize Fees

The most significant changes resulting from H.B. 914 relate to bingo prize fees and the process for the distribution and allocation of prize fees to local jurisdictions. Prize fee payments to local governments are now made directly by the licensed organizations conducting charitable bingo as opposed to these allocations being made by the commission.

The payment of prize fees requires licensed organizations to pay the portion due to eligible counties and municipalities directly, and in some cases, to retain that portion in their general charitable fund. H.B. 914 stipulated local governments that had been receiving their 50% share of prize fees would only be entitled to continue receiving it if they voted again to impose the fee by November 1, 2019. If a local government did not vote to impose the fee by the stated November 1 deadline, their 50% share of the prize fee would be deposited in the general charitable fund of the licensed organization to be used for charitable purposes.

Bingo Product Sales

The law clarifies that bingo cards, pull-tab bingo tickets, and the use of card- minding devices for a bingo occasion can be sold at the licensed premises at any time beginning one hour before the occasion and ending at the conclusion of the occasion.

Earnings

The deadline for a licensed authorized organization to deposit bingo earnings into the bingo account is extended to the third business day after the event, rather than the second.

Bingo Workers
The bill extends the period of time that a bingo worker can work while waiting for a pending

background check from 14 days to 30 days for Texas residents. For non-residents, TLC is authorized to set the time period.

CHARGE 2: TABC Efforts to Combat Human Trafficking

Study efforts by the TABC to combat human trafficking at all licensed locations. Make recommendations to increase the TABC's ability to rescue victims and successfully prosecute more criminals, including recommending harsher penalties for permit holders that have been identified as participating in human trafficking, and to make regulatory or statutory changes needed to prevent human trafficking in this state.

TABC Human Trafficking Prevention Efforts

The 86th Legislature included combating human trafficking in the agency's core mission, recognizing TABC's vital role in combating these crimes, while providing funding and assigning the agency to the Human Trafficking Coordinating Council to effectively prevent these criminal activities from taking place in TABC-licensed businesses. As the state's sole regulator of the alcoholic beverage industry, TABC is uniquely positioned to combat human trafficking because those committing these crimes often operate in bars, cantinas, restaurants, hotels, and adult entertainment businesses.

TABC's Special Investigations Unit (SIU) and Criminal Intelligence Unit (CIU) have the primary responsibility of identifying and rescuing victims of human trafficking. Almost 20% of human trafficking victims nationwide have been found in Texas. Unfortunately, victims rarely self-report or disclose any trafficking-related offenses. Even with these challenges, TABC has rescued or assisted in the rescue of over 100 victims since May 2019.

SIU's mission is to dismantle and disrupt the criminal organizations tied to any of the 55,000 TABC-licensed businesses. Since the start of FY 2020, the agency has canceled the permits of 12 locations and arrested or assisted in arresting more than 480 individuals involved in human trafficking or related offenses such as prostitution, drink solicitation, and employment harmful to children. TABC is effective due to coordination and close collaboration with local, state, and federal agencies and organizations.

SIU has reorganized to become more proactive and effective in combating human trafficking. As a result, the agency focused a significant amount of SIU's resources on the Houston area. By implementing an intelligence-based approach, the unit focuses its limited but critical resources on the highest threats involved in human trafficking. However, as the agency becomes more effective in the Houston area, additional resources will be required in other parts of the state as traffickers will relocate operations where investigative efforts are not as concentrated.

The investigation of human trafficking consumes a great deal of the unit's resources and time. With the projected increase in the state's population and the growth in the number of TABC-licensed businesses, the agency will have to increase the number of its human trafficking investigations. The agency has asked for additional resources to support victims by connecting them with victim services organizations, which are critical for assisting human trafficking survivors and ensuring the successful prosecution of traffickers.

CHARGE 3: Control Labels

Examine "control label" products and their impact on the three-tier system and alcoholic beverage industry in the state. Make recommendations to regulate control label products in a way that promotes economic growth, benefits the consumer, and stabilizes the three-tier system.

Control Labels

The Alcoholic Beverage Code is built on the three-tier system of regulation, which mandates the separation of the industry into three tiers: Manufacturers (e.g., breweries), retailers (e.g., liquor stores), and the distribution tier that buys product from manufacturers and sells it to retailers. Without the three-tier system, the industry would vertically integrate so that one tier would absorb the other two. The result would be monopolization of the industry, boxing out independent operators. Historically, vertical integration enabled the large manufacturer to control the retail tier, leading to permanent indebtedness that fostered overconsumption and its consequences. The three-tier concept was designed to prevent this, and it became the most common form of regulation following the repeal of Prohibition. However, the landscape has shifted since then. Due to their enormous purchasing power, modern retail chains exert control over manufacturers and wholesalers.

A control label is a product made by a manufacturer exclusively for a (typically large) retailer. Because of its purchasing power, the retailer can force the wholesaler to sell the product exclusively to that retailer at a low cost. The retailer can then sell its store brands at a low cost to the detriment of other manufacturers' products.

The Code prohibits these arrangements. Chapter 102 of the Code is titled "Intra-Industry Relationships" and governs the interactions between the three tiers. While no provision explicitly addresses control labels, several provisions nonetheless prohibit these arrangements. Exclusivity arrangements are considered unlawful. In addition, the discounted price that the retailer can demand for the control labels are prohibited.

The challenge is that thousands of these products are already in the Texas marketplace. The Code forces TABC to approve a label application for any wine or hard liquor product that has already received federal approval. In contrast, beer label applications undergo TABC scrutiny. Hence, while we have successfully kept beer control labels out of Texas, thousands of wine and liquor products remain. We do not believe that TABC has the discretion to interpret the current Code in a way to authorize control labels.

The Committee heard from numerous groups all in favor of reforming control label regulations. The Texas Distilled Spirits Association, a trade group representing Texas craft distillers, considers control labels a "major concern." They see control label products as having a significant market advantage over other products. TDSA contends that because control label products have a much higher profit margin, a retailer will give them preferential shelf space, offer special promotions, and have staff push the products over others in the form of recommendations. They have reportedly seen such preferential treatment exacerbated during the

Covid-19 pandemic as shopping has shifted from the aisle to an app. As the digital shopping experience is a heavily curated environment, TDSA claims their member's products are becoming even harder to find.

Similarly, Wine Institute, a trade organization representing California wineries and businesses, responded that certain promotions run by retailers with control products actually have the effect of devaluing brands. They contend that those retailers use products with recognizable brand names as loss leaders to attract business and then promote their own control labels. Wine Institute argues that a below profit-margin price cheapens and disparages a brand, as price can be an indicator of worth, reputation, and quality.

There are other control label products that are bottled and packaged to look very similar to well known name brands.

While statute and spirit of the three-tier system might, in fact, prohibit control labels, their ubiquity may make such enforcement impractical. So rather than outright prohibition, the Committee recommends implementing statutory regulations and equipping TABC with the necessary rulemaking authority to ensure transparency, fair play, and basic compliance with the three-tier system. Collaboration within the industry will be key to meeting this goal.

CHARGE 4: Texas Wine Appellation Standards

Evaluate the Texas wine industry and the current labeling requirements associated with the use of "Texas" as an appellation. Determine if current regulations and permitting rules are adequate to support the industry's development.

Texas Wine Appellation standards

Anyone familiar with wine knows that when picking out a bottle, appellation of origin is an important aspect of that decision. Wine is nuanced, and its terroir—the natural environment in which a wine is produced giving it its characteristic taste and flavor—is responsible for that uniqueness. Arguably the most important aspect of the label, without an appellation of origin, consumers would not know what they are drinking.

An appellation of origin generally designates the geographic area in which fruit was grown. Using an appellation of origin indicates not only that a wine has certain qualities or characteristics due to its environment, but that it also meets certain federal or state production requirements. Texas uses the minimum federal standards set by the U.S. Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) (27 CFR 4.25 and 4.34). In general the TTB requires labels to include an appellation of origin if the wine is labeled with:

- A vintage date;
- A varietal designation;
- A type designation of varietal significance;
- A semi-generic designation;
- An "estate bottled" claim; or
- A product name qualified with the word "brand" under the requirements of 27 CFR 4.39(j)

The TTB further sets type size and legibility requirements to prevent the appellation from being obscured.

In order to use a State appellation of origin the TTB requires:

- Not less than 75% of the wine must be derived from fruit or agricultural products (as applicable) grown in the named State; AND
- The wine must be fully finished (except for cellar treatment pursuant to §4.22(c), and blending that does not result in an alteration of class or type under §4.22(b)) in the named State or an adjacent State; AND
- The wine must conform to the laws and regulations of the named appellation area governing the composition, method of manufacture, and designation of wines made in such State.

With no signs of slowing down, the Texas wine industry has grown at an impressively rapid pace over the last decade. At more than 500 wineries, Texas is the 5th largest wine producing state

behind California, Washington, New York, and Oregon, all of which have laws protecting their appellations that surpass the minimum federal percentages.

As the industry has matured over the years, there has been a debate among producers and enthusiasts if Texas should embrace being a serious wine state and tighten its appellation of origin requirement. There are essentially two camps: one that wants to keep the federal minimum status quo and another that wants to require up to 100% percent Texas grown fruit to use the Texas appellation.

The status quo camp contends that the industry is thriving under the current system and the relaxed appellation requirement is at least partially responsible. They argue it would be detrimental to "burden Texas wineries with more government regulation" and that adding "state regulations on top of and inconsistent with federal law will put Texas wineries at a disadvantage." Additionally, they believe there are not enough Texas grapes to sustain the production output of the state if wineries are required to use 100% native fruit. The two camps can coexist, they believe. Producers wishing to use 100% Texas grapes are free to do so and their label can reflect that. For everyone else, the Texas appellation can remain as is.

For the other camp, calling a wine a Texas wine while using only 75% native fruit is disingenuous and deceptive. Because wine is so particular to the environment in which it is grown and produced, this camp believes watering down Texas made wine with bulk juice from other states obfuscates its true origin. This, they contend, has at least two detrimental outcomes: first, consumers do not actually know what they are buying and drinking, and would likely be surprised to learn the true percentage of native fruit in wine labeled Texas; and second, blending significant amounts of foreign juice with Texas juice clouds the native characteristics of Texas wine damaging its profile and worldwide reputation. As a result, they contend that within the trade Texas wine isn't taken seriously and its reach is stunted as national wine distributors are hesitant to carry it and top wine critics won't score it.

Furthermore, they refute the claim that Texas does not produce enough fruit to sustain its wine production and that why producers use out of state bulk wine has more to do with economics than availability. Texas, they estimate, has hundreds of thousands of gallons of unsold bulk wine every year. Nevertheless, with over 600,000 acres of grapes in production, California, for example, will always be a lead exporter of inexpensive bulk wine. So while there may be plenty of native wine available, using the maximum amount of foreign wine allowed will produce the largest profit margins. The argument follows that appellation should highlight wine characteristics, not economic convenience.

Accordingly, this group has pushed for "truth in labeling" legislation for the past couple sessions. H.B. 4233 by Representative Kuempel (86R) would have required wine to use 100% Texas grapes to use the Texas appellation. It, however, gave the Agriculture Commissioner the authority to alter the percentage if the quantity of grapes was projected to be less than estimated production. A committee substitute version of the bill incorporated a graduated phase in percentage requirement stepping up 5% a year until 100%. This was done in hopes of reaching a compromise that never quite materialized.

It is the committee's view that, at its most basic, this argument is about how to use "Texas" as a wine signifier, as both sides clearly see economic value in the term. Should it be a marketing tool allowed to be placed on as many bottles as permissible under federal regulation? Or should the term be used in a more discerning manner, one that is transparent and telling of the product it is on? Critics of the current state might ask is "Texas" a legitimate appellation or is it just an advertisement?

The Committee has found that it would not be contrary to federal regulation to pass a state law regarding appellation standards. In fact, the federal percentage requirement is set up as the baseline with clear language authorizing states to implement stricter standards. Worldwide, wine is strictly regulated and organized. There is harmony across the globe in regards to origin and appellation labeling despite differences in percentage requirements. If Texas were to remain using the federal standard or create its own, it would be consistent with that worldwide practice. Encouraging winemakers to label their bottles with anything but an actual appellation, "100% Texas" for example, would not.

The Committee recognizes that this is a serious issue in the Texas wine industry. It is one of philosophical nuance but also of serious economic realities, both of which are of great importance to the Committee. For this reason, the Committee looks forward to continuing its education on this subject so it can make a decision that ultimately serves the best interest of the entire Texas wine community.