

ALCOHOLIC BEVERAGE CODE

TITLE 4. REGULATORY AND PENAL PROVISIONS

CHAPTER 109. MISCELLANEOUS REGULATORY PROVISIONS

SUBCHAPTER A. SALVAGED AND INSURED LOSSES; UNINSURED LOSSES

Sec. 109.01. SALE OF SALVAGED OR INSURED LOSS. If a person who does not hold a permit or license to sell alcoholic beverages acquires possession of alcoholic beverages as an insurer or insurance salvor in the salvage or liquidation of an insured damage or loss sustained in this state by a qualified licensee or permittee, he may sell the beverages in one lot or parcel as provided in this subchapter without being required to obtain a license or permit.

Acts 1977, 65th Leg., p. 523, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 109.02. REGISTRATION OF BEVERAGES WITH COMMISSION. Immediately after taking possession of the alcoholic beverages, the insurer or insurance salvor shall register them with the commission, furnishing the commission a detailed inventory and the exact location of the beverages. At the time of registration, the registrant shall post with the commission a surety bond in an amount that the administrator finds adequate to protect the state against the taxes due on the beverages, if any are due. The registrant shall remit with the registration a fee of \$10. The fee only permits the sale of the beverages listed in the registration.

Acts 1977, 65th Leg., p. 523, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 109.03. PREREQUISITE TO SALABILITY. An alcoholic beverage is salable under this subchapter only if it has not been adulterated, it is fit for human consumption, all tax stamps required by law have been affixed, and the labels are legible as to contents, brand, and manufacturer.

Acts 1977, 65th Leg., p. 523, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 109.04. SALE OF MALT BEVERAGES: PROCEDURE. (a) When the commission is notified under this subchapter of the acquisition

of malt beverages or malt beverage containers or original packages, it shall immediately notify a holder of a general or branch distributor's license who handles the brand of malt beverages and who operates in the county where the malt beverages are located or, if the malt beverages are located in a dry area or if no distributor operates in the county, the nearest distributor handling the brand or the brewer who brewed the malt beverages.

(b) The insurer or insurance salvor, the commission, and the distributor or brewer shall jointly agree whether the malt beverages are salable. If the malt beverages are determined to be unsalable, the commission shall destroy the malt beverages. If the malt beverages are determined to be salable, the brewer or distributor shall be given the opportunity to purchase the malt beverages. A distributor may purchase malt beverages at the cost price less any state taxes that have been paid, F.O.B. its place of business. A brewer may purchase malt beverages at the cost price to the nearest distributor of the brand, less any state taxes that have been paid, F.O.B. that distributor's place of business. A brewer or distributor may purchase returnable bottles, containers, or packages at their deposit price.

(c) If the distributor or brewer does not exercise the right to purchase the merchandise within 10 days after being given the opportunity to purchase it, the insurer or insurance salvor may sell it to any qualified licensee or permittee as provided in Section [109.01](#).

Acts 1977, 65th Leg., p. 523, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 350, eff. September 1, 2021.

Sec. 109.05. SALE OF LIQUOR: PROCEDURE. (a) When the commission is notified under this subchapter of the acquisition of liquor or its containers or original packages, it shall immediately notify the holder or holders of wholesaler's or class B wholesaler's permits who handle and regularly sell the brand or brands of liquor involved and who operate in the area where the liquor is located, or who operate in the nearest wet area if the liquor is in a dry

area. The commission shall also notify the nonresident seller's permittees who handle the brand or brands of liquor involved, or the nonresident seller's agents who represent those nonresident seller's permittees.

(b) The commission, the permittees who are notified, and the insurer or insurance salvor shall jointly determine whether the liquor is salable. If the liquor is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, it shall first be offered for sale to the wholesaler and nonresident seller of the brand or brands at their cost price, less any state taxes that have been paid on the liquor.

(c) If the wholesaler does not exercise the right to purchase the liquor, container, or packages within 10 days after it is offered, the commission shall sell it at a public or private sale.

Acts 1977, 65th Leg., p. 524, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 351, eff. September 1, 2019.

Sec. 109.06. PURCHASER'S RIGHT TO USE BEVERAGES. A permittee or licensee who purchases alcoholic beverages under this subchapter may treat them as other alcoholic beverages acquired by him as provided in this code.

Acts 1977, 65th Leg., p. 524, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 109.07. SALVOR MAY REJECT BID. A salvor may reject a bid made on only a part of a whole salvage.

Acts 1977, 65th Leg., p. 524, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 109.08. EXCLUSION. Notwithstanding any other provision of this code, a person engaged in business as a distiller, brewer, winery, or any other manufacturing level producer of liquor or malt beverages, or their wholesalers or distributors, may not directly or indirectly or through an affiliate require, by agreement or otherwise, that any retailer engaged in the sale of liquor or malt beverages purchase any such products from such

person to the exclusion in whole or in part of liquor or malt beverages sold or offered for sale by other persons, or prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to any retailer.

Added by Acts 1993, 73rd Leg., ch. 934, Sec. 88, eff. Sept. 1, 1993.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 352, eff. September 1, 2021.

Sec. 109.09. REMOVAL, DESTRUCTION, AND DISPOSAL OF UNINSURED BEVERAGES UNFIT FOR CONSUMPTION. (a) Uninsured ale, malt liquor, or beer that becomes unfit for public consumption, as described by Section 103.07(b), may be removed from the inventory of a retailer and destroyed and disposed of if the holder of the brewer's permit or manufacturer's license who manufactured the beverage and the wholesaler or distributor who distributed the beverage jointly determine that the beverage:

(1) became unfit for public consumption as the result of a natural disaster in an area declared to be a disaster under Section 418.014, Government Code; and

(2) should be removed from the inventory of the retailer.

(b) A brewer or manufacturer and a wholesaler or distributor who jointly agree to the removal of a beverage under Subsection (a) shall jointly provide for the delivery and replacement of the removed beverage at no cost to the retailer from whose inventory the beverage is removed. The brewer or manufacturer who manufactured the removed beverage is responsible for the cost of a replacement beverage provided under this section. The wholesaler or distributor who distributed the removed beverage is responsible for the cost of delivering a replacement beverage provided under this section.

(c) A retailer from whose inventory a beverage is removed under this section is responsible for the costs associated with the removal, destruction, and disposal of the removed beverage.

(d) The commission by rule shall provide requirements governing the removal, destruction, and disposal by a retailer of

uninsured ale, malt liquor, or beer that is determined to be unfit for public consumption under this section. Rules adopted under this subsection must include provisions requiring verification by a retailer from whose inventory a beverage is removed that the beverage has been removed, destroyed, and disposed of in the manner required by the commission.

Added by Acts 2019, 86th Leg., R.S., Ch. 982 (S.B. [1210](#)), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. HOME PRODUCTION OF WINE, ALE, MALT LIQUOR, OR BEER

Sec. 109.21. HOME PRODUCTION OF WINE OR MALT BEVERAGES.

(a) The head of a family or an unmarried adult may produce for the person's use or the use of the person's family not more than 200 gallons of wine or malt beverages per year. No license or permit is required.

(b) The commission may prohibit the use of any ingredient it finds detrimental to health or susceptible of use to evade this code. Only wine made from the normal alcoholic fermentation of the juices of dandelions or grapes, raisins, or other fruits may be produced under this section. Only malt beverages made from the normal alcoholic fermentation of malted barley with hops, or their products, and with or without other malted or unmalted cereals, may be produced under this section. The possession of wine or malt beverages produced under this section is not an offense if the person making it complies with all provisions of this section and the wine or malt beverages are not distilled, fortified, or otherwise altered to increase their alcohol content.

(c) There is no annual state fee for beverages produced in compliance with this section.

Acts 1977, 65th Leg., p. 524, ch. 194, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 863, ch. 387, Sec. 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1351, ch. 278, Sec. 50, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 310, Sec. 1, eff. June 14, 1989.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 353,

eff. September 1, 2021.

Sec. 109.22. DELIVERY OF HOME-PRODUCED WINE OR MALT BEVERAGES FOR CERTAIN PURPOSES. (a) This section applies only to a person who is authorized under Section 109.21(a) to produce wine or malt beverages.

(b) For the purpose of participating in an organized tasting, evaluation, competition, or literary review, a person to whom this section applies may deliver wine or malt beverages produced and manufactured by the person to locations that are not licensed under this code for the purpose of submitting those products to an evaluation at an organized tasting competition that is closed to the general public or by a reviewer whose reviews are published if:

(1) no charge of any kind is made for the wine or malt beverages, for their delivery, or for attendance at the event; and

(2) the commission consents in writing to the delivery.

(c) Nothing in this section shall be construed to authorize an increase in the quantity of wine or malt beverages authorized to be produced by a person under the authority of Section 109.21(a).

Added by Acts 1989, 71st Leg., ch. 310, Sec. 2, eff. June 14, 1989.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 354, eff. September 1, 2021.

SUBCHAPTER C. LOCAL REGULATION OF ALCOHOLIC BEVERAGES

Sec. 109.31. MUNICIPAL REGULATION OF LIQUOR. A city by charter may prohibit the sale of liquor in all or part of the residential sections of the city.

Acts 1977, 65th Leg., p. 525, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 109.32. MUNICIPAL AND COUNTY REGULATION OF MALT BEVERAGES. (a) An incorporated city or town by charter or ordinance may:

(1) prohibit the sale of malt beverages in a

residential area; and

(2) regulate the sale of malt beverages and prescribe the hours when malt beverages may be sold, except the city or town may not permit the sale of malt beverages when the sale of malt beverages is prohibited by this code.

(b) In a county that has only one incorporated city or town that has a majority of the population of the county, according to the most recent federal census, and where the city or town has shortened the hours of sale for malt beverages on Sundays by a valid charter amendment or ordinance before January 1, 1957, the commissioners court may enter an order prohibiting the sale of malt beverages on Sundays during the hours the sale of malt beverages is prohibited in the city or town. The order may apply to all or part of the area of the county located outside the city or town. The commissioners court may not adopt the order unless it first publishes notice for four consecutive weeks in a newspaper of general circulation in the county published in the county or a nearby county.

(c) In exercising the authority granted by this section, the city, town, or county may distinguish between retailers selling malt beverages for on-premises consumption and retailers, brewers, or distributors who do not sell malt beverages for on-premises consumption.

Acts 1977, 65th Leg., p. 525, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 355, eff. September 1, 2021.

Sec. 109.33. SALES NEAR SCHOOL, CHURCH, OR HOSPITAL. (a) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within:

(1) 300 feet of a church, public or private school, or public hospital;

(2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007, Education Code; or

(3) 1,000 feet of a private school if the commissioners court or the governing body receives a request from the governing body of the private school.

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:

(1) in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or

(2) if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

(c) Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public or private school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public or private school before filing the application with the commission. A copy of the notice must be submitted to the commission with the application. This subsection does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under Section 109.53.

(d) As to any dealer who held a license or permit on September 1, 1983, in a location where a regulation under this

section was in effect on that date, for purposes of Subsection (a), but not Subsection (c), of this section, the measurement of the distance between the place of business of the dealer and a public or private school shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

(e) The commissioners court of a county or the governing board of a city or town that has enacted a regulation under Subsection (a) of this section may also allow variances to the regulation if the commissioners court or governing body determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the court or governing board, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

(f) Subsections (a)(2) and (3) do not apply to the holder of:

(1) a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages;

(2) a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or

(3) a wholesaler's, distributor's, brewer's, distiller's and rectifier's, or winery permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102.

(f-1) Subsections (a)(2) and (3) do not apply to a performing arts facility leased to a nonprofit organization under a policy adopted under Section 11.179, Education Code.

(g) Subsection (a)(3) does not apply to the holder of:

(1) a permit issued under Chapter 30 who is operating on the premises of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 1,000 feet of a private school.

(h) Subsection (a)(1) does not apply to the holder of:

(1) a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 300 feet of a private school.

(i) In this section, "private school" means a private school, including a parochial school, that:

(1) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and

(2) has more than 100 students enrolled and attending courses at a single location.

Acts 1977, 65th Leg., p. 526, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by Acts 1983, 68th Leg., p. 4038, ch. 629, Sec. 1, eff.

Sept. 1, 1983; Acts 1995, 74th Leg., ch. 260, Sec. 7, eff. May 30,

1995; Acts 2001, 77th Leg., ch. 388, Sec. 2, eff. May 28, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 834 (H.B. 2633), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 356, eff. September 1, 2021.

Sec. 109.331. SALES NEAR DAY-CARE CENTER OR CHILD-CARE FACILITY. (a) This section applies only to a permit or license holder under Chapter 25, 28, 32, 69, or 74 who does not hold a food and beverage certificate.

(b) Except as provided by this subsection, the provisions of Section 109.33 relating to a public school also apply to a day-care center and a child-care facility as those terms are defined by Section 42.002, Human Resources Code. Sections 109.33(a)(2) and (c) do not apply to a day-care center or child-care facility.

(c) This section does not apply to a permit or license holder who sells alcoholic beverages if:

(1) the permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building; or

(2) the permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building.

(d) This section does not apply to a family home, specialized child-care home, or agency foster home as those terms are defined by Section 42.002, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 723, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 1, eff. September 1, 2017.

Sec. 109.35. ORDERS FOR PROHIBITION ON CONSUMPTION.

(a) If the governing body of a municipality determines that the possession of an open container or the public consumption of alcoholic beverages in the central business district of the municipality is a risk to the health and safety of the citizens of the municipality, the governing body may by charter or ordinance prohibit the possession of an open container or the public consumption of alcoholic beverages in that central business district.

(b) If a municipality prohibits the possession of an open container or the public consumption of alcoholic beverages in the central business district of the city, the municipality must adopt a map, plat, or diagram showing the central business district that is covered by the prohibition.

(c) The municipality's charter or ordinance may not prohibit the possession of an open container or the consumption of alcoholic beverages in motor vehicles, buildings not owned or controlled by the municipality, residential structures, or licensed premises located in the area of prohibition.

(c-1) In accordance with Section 1.06, this section does not authorize municipal regulation of the possession of an open

container or the public consumption of alcoholic beverages except as expressly provided by this section.

(d) In this section, "central business district" means a compact and contiguous geographical area of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that is the area that has historically been the primary location in the municipality where business has been transacted.

(e) In this section, "open container" means a container that is no longer sealed.

Added by Acts 1993, 73rd Leg., ch. 934, Sec. 89, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 555 (H.B. [2296](#)), Sec. 1, eff. September 1, 2015.

Sec. 109.36. CONSUMPTION OF ALCOHOLIC BEVERAGES NEAR HOMELESS SHELTER OR SUBSTANCE ABUSE TREATMENT CENTER. (a) In this section:

(1) "Central business district" means a compact and contiguous geographical area of a municipality used for commercial purposes that has historically been the primary location in the municipality where business has been transacted.

(2) "Homeless shelter" means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals who lack a fixed regular and adequate residence.

(3) "Open container" has the meaning assigned by Section [109.35](#).

(b) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the possession of an open container or the consumption of an alcoholic beverage on a public street, public alley, or public sidewalk within 1,000 feet of the property line of a homeless shelter that is not located in a central business district or a substance abuse treatment center that is not located in a central business district.

(c) If the commissioners court of a county or the governing board of an incorporated city or town enacts a prohibition under Subsection (b), the commissioners court or the governing board may enact regulations allowing special temporary events for which Subsection (b) may be suspended.

Added by Acts 2007, 80th Leg., R.S., Ch. 988 (S.B. 1238), Sec. 1, eff. September 1, 2007.

SUBCHAPTER D. OTHER MISCELLANEOUS PROVISIONS

Sec. 109.51. SACRAMENTAL WINE. Nothing in this code limits the right of a minister, priest, rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any lawful source inside or outside the state. No fee or tax may be directly or indirectly charged for the exercise of this right. The commission by rule and regulation may regulate the importation of sacramental wine and prevent unlawful use of the right granted by this section.

Acts 1977, 65th Leg., p. 526, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 109.52. WAREHOUSE RECEIPTS. A bank, trust company, or other financial institution that owns or possesses warehouse receipts for alcoholic beverages as security for a loan, after receiving permission from the commission or administrator, may sell the beverages to a licensee or permittee authorized to purchase them.

Acts 1977, 65th Leg., p. 526, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 109.53. CITIZENSHIP OF PERMITTEE; CONTROL OF PREMISES; SUBTERFUGE OWNERSHIP; ETC. A person who has not been a citizen of Texas for a period of one year immediately preceding the filing of the person's application therefor is not eligible to receive a permit under this code. No permit shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least 51 percent of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of one year and who possess the qualifications required of

other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corporations that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this code which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the attorney general, when any such violation is called to the attorney general's attention, to file a suit for such cancellation in a district court of Travis County. The provisions of this section that require Texas citizenship or require incorporation in Texas do not apply to the holders of carrier's permits. A person may not sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow the person's permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. An applicant for a package store permit or a renewal of a package store permit may not designate as "premise" and the commission shall not approve a lesser area than that specifically defined as "premise" in Section 11.49(a). Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons

other than the permittee shall be unlawful. No minor, unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a package store permit. The prohibition against the presence of a minor on the premises of the holder of a package store permit does not apply to the presence on the premises of the holder or a person lawfully employed by the holder. Any package store permittee who shall be injured in the permittee's business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages sustained by the permittee; plus costs of suit including a reasonable attorney's fee. The provisions prohibiting the licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in this code.

Acts 1977, 65th Leg., p. 526, ch. 194, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 258, ch. 107, Sec. 15, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 285, Sec. 13, eff. Sept. 1, 1986; Acts 1985, 69th Leg., ch. 462, Sec. 14, eff. Sept. 1, 1986; Acts 1993, 73rd Leg., ch. 934, Sec. 90, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 191, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 357, eff. September 1, 2021.

Sec. 109.531. ADDITIONAL REQUIREMENTS FOR APPLICATION OR RENEWAL OF PERMIT, LICENSE, OR CERTIFICATE BY OUT-OF-STATE RESIDENTS. In addition to any other requirement for a license, permit, or certificate under this code, a person who has not been a citizen of this state for a period of one year preceding the date the person filed an application for a permit, license, or certificate under Chapter [25](#), [26](#), [28](#), [29](#), [30](#), [32](#), [48](#), [50](#), [69](#), [71](#), or [74](#) shall:

- (1) designate an agent, who is a citizen of this state,

to represent the person in matters before the commission and to be responsible for the proper conduct of any activity of the licensee or permittee; and

(2) submit to a criminal history background check.

Added by Acts 1993, 73rd Leg., ch. 934, Sec. 91, eff. Sept. 1, 1993.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 358, eff. September 1, 2021.

Sec. 109.532. CRIMINAL HISTORY BACKGROUND CHECKS. (a) The commission shall establish a uniform method of obtaining criminal history information. The uniform method must require:

(1) either a complete set of fingerprints or the complete name of the person being investigated to be submitted to the Department of Public Safety or to another law enforcement agency; and

(2) if fingerprints are submitted, the fingerprints must be submitted to the Federal Bureau of Investigation for further information if a relevant disqualifying record or other substantive information is not obtained from a state or local law enforcement agency.

(b) The commission may deny a license or permit or the renewal of a license or permit for an applicant if:

(1) the commission determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a license or permit; or

(2) the applicant fails to provide a complete set of fingerprints if the commission establishes that method of obtaining conviction information.

(c) All criminal history information received by the commission is privileged information and is for the exclusive use of the commission. The information may be released or otherwise disclosed to any other person or agency only:

(1) on court order; or

(2) with the consent of the person being investigated.

(d) The commission shall collect and destroy criminal history information relating to a person immediately after the

commission makes a decision on the eligibility of the person for registration.

(e) A person commits an offense if the person releases or discloses in violation of this section criminal history information received by the commission. An offense under this subsection is a felony of the second degree.

(f) The commission may charge a fee to cover the cost of a criminal history background check.

Added by Acts 1993, 73rd Leg., ch. 934, Sec. 91, eff. Sept. 1, 1993.

Sec. 109.54. FESTIVALS AND CIVIC CELEBRATIONS. (a) Any licensee who has purchased malt beverages for sale at the site of a festival or civic celebration which has been held annually for at least 15 years during a specified period not exceeding 10 days shall be authorized for 24 hours following the official close of the celebration to sell any malt beverages remaining at the site to any licensee or permittee authorized to purchase malt beverages for resale.

(b) Records of any such transactions shall be kept as may be required by the administrator.

Added by Acts 1979, 66th Leg., p. 864, ch. 388, Sec. 1, eff. June 6, 1979.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 359, eff. September 1, 2021.

Sec. 109.541. TASTINGS AT CERTAIN FESTIVALS AND CIVIC CELEBRATIONS. A person who holds a license or permit to manufacture alcoholic beverages in this state may conduct product tastings without the issuance of another license or permit under this code if those tastings are conducted:

(1) as part of and under the direction of the "Go Texan" Partner Program under Chapter 46, Agriculture Code; and

(2) during a festival or civic celebration that:

(A) has been held near-annually for at least 100 years; and

(B) is at least 21 days long.

Added by Acts 2019, 86th Leg., R.S., Ch. 911 (H.B. 3768), Sec. 1, eff. September 1, 2019.

Sec. 109.55. CERTIFICATE. If after June 1, 1987, the certificate is filed under Section 15, Chapter 285, or Section 16, Chapter 462, Acts of the 69th Legislature, Regular Session, 1985, the contingency described by Subsection (c) of each of those sections is effective on the first day of the month following the month in which the certificate is filed.

Added by Acts 1987, 70th Leg., ch. 495, Sec. 5, eff. Aug. 31, 1987.

Sec. 109.56. CONVICTION OF OFFENSE RELATING TO DISCRIMINATION; POLICY OF NONDISCRIMINATION. The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing that:

(1) the permittee has been finally convicted of any offense under state or federal law or a municipal ordinance prohibiting the violation of an individual's civil rights or the discrimination against an individual on the basis of the individual's race, color, creed, sex, or religion; and

(2) the offense was committed on the licensed premises or in connection with the operation of the permittee's business.

Added by Acts 1987, 70th Leg., ch. 303, Sec. 8, eff. June 11, 1987.

Sec. 109.57. APPLICATION OF CODE; OTHER JURISDICTIONS. (a) Except as is expressly authorized by this code, a regulation, charter, or ordinance promulgated by a governmental entity of this state may not impose stricter standards on premises or businesses required to have a license or permit under this code than are imposed on similar premises or businesses that are not required to have such a license or permit.

(b) It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code, a governmental entity of this state may not discriminate against a business holding a license or permit under this code.

(c) Neither this section nor Section 1.06 of this code affects the validity or invalidity of a zoning regulation that was formally enacted before June 11, 1987, and that is otherwise valid, or any amendment to such a regulation enacted after June 11, 1987, if the amendment lessens the restrictions on the licensee or permittee or does not impose additional restrictions on the licensee or permittee. For purposes of this subsection, "zoning regulation" means any charter provision, rule, regulation, or other enactment governing the location and use of buildings, other structures, and land.

(d) This section does not affect the authority of a governmental entity to regulate, in a manner as otherwise permitted by law, the location of:

(1) a massage parlor, nude modeling studio, or other sexually oriented business;

(2) an establishment that derives 75 percent or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages; or

(3) an establishment that:

(A) derives 50 percent or more of the establishment's gross revenue from the on-premise sale of alcoholic beverages; and

(B) is located in a municipality or county, any portion of which is located not more than 50 miles from an international border.

(e) A municipality located in a county that has a population of 2.2 million or more and that is adjacent to a county with a population of more than 600,000 or a municipality located in a county with a population of 600,000 or more and that is adjacent to a county with a population of 2.2 million or more may regulate, in a manner not otherwise prohibited by law, the location of an establishment issued a permit under Chapter 32 if:

(1) the establishment derives 35 percent or more of the establishment's gross revenue from the on-premises sale or service of alcoholic beverages and the premises of the establishment are located in a dry area; and

(2) the permit is not issued to a fraternal or veterans

organization or the holder of a food and beverage certificate.

Added by Acts 1987, 70th Leg., ch. 303, Sec. 8, eff. June 11, 1987.

Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 1, Sec. 3, eff. Aug. 23, 1991; Acts 1995, 74th Leg., ch. 1060, Sec. 9, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 669, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 486 (H.B. [2035](#)), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 360, eff. September 1, 2021.

Sec. 109.58. RELAXATION OF RESTRICTIONS AS TO CHARITABLE EVENTS. (a) This code does not prohibit permit and license holders engaged in the alcoholic beverage industry at different levels from simultaneously or jointly sponsoring a civic, religious, or charitable event, including by providing or lending money, services, or other things of value directly to a civic, religious, or charitable entity in conjunction with the event, provided that:

(1) any license or permit to sell or serve alcoholic beverages at the event is held by a retailer who is independent of the sponsors; and

(2) none of the retailers who sponsor the event, if any, receive any direct benefit or service because of joint sponsorship by a wholesaler or manufacturer of alcoholic beverages.

(b) The commission by rule may set definite limitations consistent with the general provisions of this code that relax the restrictions of this code with respect to the sponsoring of a civic, religious, or charitable event or the making of a gift to civic, religious, or charitable organizations by permit and license holders engaged in the alcoholic beverage industry at different levels.

Added by Acts 1993, 73rd Leg., ch. 934, Sec. 92, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 747 (H.B. [3123](#)), Sec. 1, eff. September 1, 2007.

Sec. 109.59. APPLICATION OF DISTANCE REQUIREMENTS. (a) If at the time an original alcoholic beverage permit or license is granted for a premises the premises satisfies the requirements regarding distance from schools, churches, and other types of premises established in this code and any other law or ordinance of the state or a political subdivision of the state in effect at that time, the premises shall be deemed to satisfy the distance requirements for all subsequent renewals of the license or permit.

(b) On the sale or transfer of the premises or the business on the premises in which a new original license or permit is required for the premises, the premises shall be deemed to satisfy any distance requirements as if the issuance of the new original permit or license were a renewal of a previously held permit or license.

(c) Subsection (b) does not apply to the satisfaction of the distance requirement prescribed by Section 109.33(a)(2) for a public school, except that on the death of a permit or license holder or a person having an interest in a permit or license Subsection (b) does apply to the holder's surviving spouse or child of the holder or person if the spouse or child qualifies as a successor in interest to the permit or license.

(d) Subsection (a) does not apply to the satisfaction of the distance requirement prescribed by Section 109.33(a)(2) for a public school if the holder's permit or license has been suspended for a violation occurring after September 1, 1995, of any of the following provisions:

(1) Section 11.61(b)(1), (6)-(11), (13), (14), or (20); or

(2) Section 61.71(a)(5)-(8), (10), (11), (13), (16), (17), (21), or (23).

Added by Acts 1993, 73rd Leg., ch. 934, Sec. 93, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 260, Sec. 8, eff. May 30, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 544 (S.B. 371), Sec. 5, eff. September 1, 2017.

Sec. 109.60. PURCHASES BY CERTAIN PERMITEES. For the convenience of the commission in performing its regulatory functions and the comptroller in examining tax accounts of mixed beverage permittees and private club permittees, each of these permittees is required to purchase separately and individually for each licensed premises any and all alcoholic beverages to be sold or served on the licensed premises.

Added by Acts 1993, 73rd Leg., ch. 934, Sec. 94, eff. Sept. 1, 1993.

Sec. 109.61. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with this code or a rule of the commission, including for the purpose of preventing the person from committing an offense under this code.

(b) A person may not retain information accessed under this section unless the commission by rule requires the information to be retained. The person may not retain the information longer than the commission requires.

(b-1) Information retained may be printed to hard copy with a time and date confirmation from the transaction scan device or transferred to an electronic encrypted data storage or electronic record. After printing or transferring data, the transaction scan device may clear the scanned information from the device or any memory in the device. The commission by rule may set further requirements for the retention of information under this subsection.

(c) Information accessed under this section may not be marketed in any manner.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under this code, for an offense having as an element the age of a person, that:

(1) a transaction scan device identified the license or certificate of the purchaser as valid and that the person is over 21, and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which alcoholic beverages are sold at retail, the offense occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition;

(B) adequate training in the use of the transaction scan device; and

(C) the defendant did not directly or indirectly encourage the employee to violate the law.

(f) The defense offered in Subsection (e) does not apply in actions to cancel, deny, or suspend the license or permit, except as provided by rules adopted by the commission under Section 5.31.

(g) In this section, "transaction scan device" includes an electronic age verification system authorized by commission rule operated in conjunction with a point of sale terminal that scans the purchaser's driver's license or identification certificate upon enrollment, associates the purchaser's personal identifying information, as defined by Section 521.002(1)(C), Business & Commerce Code, with the purchaser's license or identification certificate information, and is capable of allowing a seller to verify a purchaser's age solely by accessing the data and information.

Added by Acts 2001, 77th Leg., ch. 1163, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 391 (S.B. 1465), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1338 (S.B. 1828), Sec. 1, eff. June 15, 2007.

Sec. 109.62. TEMPORARY RELOCATION OF DISTRIBUTOR OR WHOLESALER DURING EMERGENCY. (a) In this section, "period of emergency" means a time during which weather, fire, earthquake, or other natural disaster, act of God, or catastrophe affects a distributor's or wholesaler's premises or an area of this state in a way that disrupts the distributor's or wholesaler's normal business operations to the extent that the business cannot receive

deliveries at or make deliveries from the premises or perform necessary business operations at the premises.

(b) During a period of emergency, a distributor or wholesaler may temporarily operate all or part of the distributor's or wholesaler's business from an alternate location, including storing alcoholic beverages, maintaining required records, receiving alcoholic beverages from suppliers, dispatching orders intended for sale to authorized purchasers, and performing any other function the distributor or wholesaler is authorized by this code to perform at the licensed or permitted premises. The alternate location is considered the distributor's or wholesaler's licensed or permitted premises, as applicable, for the purposes of this code.

(c) A holder of one of the following permits or licenses may make deliveries to and pick up deliveries from the alternate location in the same manner as this code and commission rules provide for the distributor's or wholesaler's licensed or permitted premises:

- (1) a distiller's and rectifier's permit;
- (2) a winery permit;
- (3) a wholesaler's permit;
- (4) a general class B wholesaler's permit;
- (5) a carrier permit;
- (6) a brewer's license; or
- (7) a general distributor's license.

(d) A distributor or wholesaler who temporarily operates all or part of the distributor's or wholesaler's business from an alternate location as provided by Subsection (b) shall immediately notify the administrator, in writing, of the alternate location. The notice must include a statement affirming that the alternate location satisfies the requirements of Subsection (e).

(e) The alternate location must be in an area where the sale of the applicable alcoholic beverages has been approved by a local option election or where the distributor or wholesaler had been operating under Section [251.77](#) or [251.78](#). If malt beverages are handled at the alternate location, the alternate location must be in the area assigned to the distributor under Subchapters [C](#) and [D](#),

Chapter 102.

(f) If the delivery vehicles operated by the affected distributor or wholesaler are wholly or partially disabled, the administrator may grant the distributor or wholesaler the authority to contract with another distributor or wholesaler for the temporary sharing of delivery vehicles. Authority granted under this subsection is in addition to authority granted under other provisions of this code to share delivery vehicles and warehouses.

(g) A distributor's or wholesaler's authority to operate from an alternate location under this section expires on the first anniversary of the date the distributor or wholesaler commences business operations at an alternate location. The administrator may grant the distributor or wholesaler a one-year extension of the authority to operate from an alternate location under this section, after which the distributor or wholesaler must apply for a license or permit for the alternate location in the usual manner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 517 (H.B. 2035), Sec. 3, eff. June 17, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 361, eff. September 1, 2021.

Sec. 109.63. BULK TRANSFERS BETWEEN CERTAIN PERMITTEES AND LICENSEES. (a) This section applies to the holder of a distiller's and rectifier's permit, winery permit, or brewer's license.

(b) Notwithstanding any other provision of this code, a permittee or licensee described by Subsection (a) may transfer in bulk an alcoholic beverage produced by the permittee or licensee to any other permittee or licensee described by that subsection provided that:

(1) the alcoholic beverage transferred is used only for manufacturing purposes by the recipient; and

(2) the transfer is permitted by federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1171 (S.B. 652), Sec. 2, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 362, eff. September 1, 2021.

Sec. 109.64. BULK PURCHASE FOR INDUSTRIAL USE. Section 102.32 applies to the bulk purchase of liquor for purposes described by Section 38.01 from the holder of a wholesaler's permit.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1171 (S.B. 652), Sec. 2, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 363, eff. September 1, 2019.