

2019 Texas Legislative Update By: Kyle Hill ☐ Martin Frost & Hill

Greetings! What a busy spring we had in the Lone Star State. The 86th Legislature wrapped up with some Texas-sized changes to everyone's favorite Alcoholic Beverage Code, and TABC as an agency will keep on keepin' on for another 12 years with Sunset approval. Kudos to the Commission and our industry friends for surviving and, in some cases, even thriving this session.

Whether you're at your desk with summer vacation plans on the horizon or you've already got your toes in the sand, grab an alcoholic beverage of your choice and join us in some collective responsible consumption while we review* the highlights...

[HB 1545](#) – Sunset...On My Shoulders...Makes Me Happy

It's a big bill, folks. 325 pages big. We're still processing and will dedicate a separate newsletter to it in the near future. Big changes on the not too distant horizon include beer to-go at breweries and, looking further out, streamlined permits and licenses, no more beer and ale distinction (all hail, malt beverages), streamlined label approval process, and so much more. Stay tuned.

All new laws below become effective 9/1/19.

[SB 1232](#) – Buckle Up, Wine and Beer Retailer's permittees (BG), Unless You Have a Brewpub License

BGs wanting to deliver ale (malt beverage over 5% ABV) and wine effective 9/1 need to apply for a local cartage permit (E, \$262) at every location from which it wants to deliver ASAP. An E will be required whether the BG delivers itself or fulfills deliveries via a Carrier's permittee. BGs will NOT need an E to fulfill deliveries via a Consumer Delivery permittee (CD, more on this new permit below), but TBD as to when the Commission will start issuing CDs. Sadly, a BG with brewpub license (BG-BP) cannot deliver alcoholic beverages "directly" to ultimate consumers for off-premises consumption (indirectly, maybe?). Perhaps the statute can be revised in 2021 to only restrict BG-BPs from delivering malt beverages produced on the BG-BP's premises, which we're pretty sure was the intent, rather than all alcoholic beverages sold by a BG-BP.

[SB 1450](#) – I'd Like to Order 3 Chimichangas, 6 Beers, and 30 Food and Beverage Certificates, Please.

Heeeyyy Mixed Beverage permittees (MB). [No, not you, Mixed Beverage Restaurant with Food and Beverage Certificate permittees (RM). Y'all are cool, but this is about our MB buddies.] What's up!? We know you heard the good news about being able to deliver alcoholic beverages effective 9/1. Cray, right?! Cray. So, here's the thing. MBs can deliver alcoholic beverages or arrange delivery via a CD permittee. The delivery has to be with delivery of food prepared on the premises, and MBs can only deliver to areas wet for off-premises consumption. Beer, ale, and wine must be delivered in original, sealed containers, and – check this out – MBs can deliver distilled spirits in original, sealed, single-serving containers not exceeding 375 milliliters. Wha wha!? What's that? No, surprisingly, there are no quantity limits. MB delivery drivers must be at least 21 and, of course, they need to ensure the recipient is at least 21. Yes, we agree this makes for the most exciting MB news since the mixed beverage gross receipts tax rate dropped to 6.7%.

OH, hey, one more thing, **MBs must hold a subordinate Food and Beverage Certificate (FB) to deliver themselves or via a CD permittee.** WHAT!?! You don't hold any FBs because you've been exempt from posting a conduct surety bond for 15 years and didn't want to pay \$776 every two years to renew a subordinate permit you didn't need?!?!? Well, **if you want to deliver alcoholic beverages effective 9/1, start applying for FBs ASAP** because no deliveries without one. [See, RMs, I told you y'all were good.]

OH, one last thing, remember how a BG-BP cannot deliver alcoholic beverages directly to consumers? Well, the exact same BG-BP language somehow ended up in this bill, which is a revision to the MB permit chapter of the Code. Yeah. We know. BG has its own chapter. We're pretty sure the intent was to restrict MBs with brewpubs (MB-BP) from being able to deliver, but that's not how the statute reads. Depending on how this plays out, MB-FB-BPs may be able to deliver alcoholic beverages themselves or through a CD permittee effective 9/1.

[SB 1450 CONT.](#) – I Can Haz Consumer Delivery Permit, Please?!

The ultimate, ultimate consumer delivery permit everyone will be clamoring for. CD permittees

can deliver for package stores, wine only package stores, BG (sans E), wine and beer retailer's off-premises permits, and MB-FBs (gotta have that FB, MBs!). CDs can rely on a map (Maybe [this one](#) ? Maybe a new one is in the works?) for determining legal delivery areas. CDs can deliver to customers in wet areas located in an authorized retailer's county, city, or, if retailer is located in a city, two miles beyond city limits. CDs can deliver outside authorized hours of sale as long as the order was received during authorized hours. CDs can be issued to authorized retail permittees and non-upper tier third parties. Delivery drivers must be at least 21 and have a valid driver's license. Delivery recipients must present proof of identity and age. There's a whole host of responsibilities, training requirements (Commission has until 9/1/20 to adopt training rules), and affirmative defenses packed into the new Chapter 57 of the Code worth reviewing. Big question is – when can we apply? The Session just ended folks – take a beat! [We're anxiously standing by for additional info from the Commission.]

[HB 3768](#) – Texas, Our Texas.

A permitted or licensed alcoholic beverage manufacturer may conduct product tastings without obtaining any additional TABC permit or license *if* the tastings are conducted as part of and under the direction of the Go Texan! Program during a festival or civic celebration that has been held “near-annually” for at least 100 years and is at least 21 days long. Please enjoy these tastings responsibly if you find yourself in Big D in October. And show some Texas courtesy to Sooners visiting the State Fair. Remember, they have to go back to Oklahoma.

[HB 4542](#) – [HAZY IPAs v. JUICY IPAs](#) ! [HOW TO REMOVE BEARD OIL STAINS FROM DICKIES SHIRTS](#) ! [TATTOO BUDGETING 101](#) !

Heeeyyy brewpubs. Sorry for the clickbait, but we really need your attention on this one. [Breweries, 'sup. Y'all can go about your normal brewing biz. This is about brewpubs.] Back in 2017, the Tax Code was amended to require certain permittees authorized to sell to retailers (e.g., wholesalers, distributors, wineries, package stores with LPs, brewers authorized to self-distribute) to file monthly reports of their retail sales with the Comptroller. For some reason, brewpubs authorized to sell to retailers (i.e., BG-BPs that sell only their beer; no guest taps) were excluded from this list. Well, it was a good run, but now BG-BPs that self-distribute have to file these monthly reports, too. The first report will be due by October 25 for period of September 1 – 30, and Comptroller can assess hefty late filing fees. [Check out the Comptroller's Alcohol Reporting web page](#) for additional info and filing instructions.

[HB 2792](#) – To Err Is Human; To Not Face Prosecution For A Typo Is Divine.

This bill clarifies a person must *knowingly* make a false statement or representation to TABC to commit a criminal offense.

[HB 2793](#) – I’ll Say When I’ve Had Enough!

Retail permittees may sell and deliver more than 3 gallons of spirits to a person in a single or continuous transaction without it being evidence of an illegal sale at wholesale, and permittees authorized to sell spirits at wholesale can sell and deliver less than 3 gallons of spirits without it being evidence of a retail sale.

[HB 1443](#) – Tell It To The Judge.

Counties and cities must certify an applicant’s location is wet for the type of permit sought and no local regulations prohibit applicant from holding the permit or license applied for within 30 days after receiving applicant’s request. If the city or county refuses to certify, applicants can request a hearing before the county judge. Currently, there’s no deadline to certify.

[HB 1997](#) ☐ – We’ve Got Spirits, Yes We Do!

Distillers, nonresident seller permittees, and their agents and employees can provide samples of their wares to retail permittees authorized to sell spirits and conduct tastings of the same on retailer’s premises.

[HB 3754](#) – Pay Up, Ya’ Deadbeats!

Authorizes TABC to suspend certain permits if the permittee hasn't paid requisite local fees within 180 days of when fee was levied. Also authorizes cities and counties to engage a private attorney or collection agency to go after unpaid fees.

[SB 1210](#) – How High's the Water, Mama?

Drafted in response to aftermath of Hurricane Harvey, this law will allow industry members to work together to remove, destroy, and replace uninsured alcoholic beverage inventory contaminated as a result of a natural disaster from a retail store. The brewery would be responsible for beverage replacement costs. The wholesaler/distributor would be responsible for delivery costs, and retailer responsible for cost to remove and destroy product.

[SB 2410](#) – Are You Still Reading This? Good Grief. Grab Another Drink.

Definition of public entertainment facility expanded to include adjacent parking areas.

Disclaimer This MFH 86th Legislature bill review is a 10,000' overview of some of the new alcoholic beverage laws that made it through the Leg and is intended to be received as light educational and, dare we say (we do dare!), entertainment purposes. It's certainly not intended as end all be all thorough legal review of these new laws, meaning future attempts at "well, you said this [favorable interpretation that may not be correct] in your email..." or, worse, to the Commission, "MFH said I could do [this thing that may be illegal and is not what we said] in an email.." will be met with howls of derisive laughter and not so mild cursing in your general direction. Any questions, concerns, comments – give us a shout or email.