



CSHB 1545

Testimony Before the Texas House Licensing & Administrative Procedures Committee

by Carine Martinez, Senior Policy Analyst

Chairman King, Members of the Committee:

My name is Carine Martinez. I am a senior policy analyst at the Texas Public Policy Foundation. Thank you for the opportunity to testify today on CSHB 1545.

We really appreciate the work that has been done by the staff and the members of the Sunset Advisory Commission to review the Texas Alcoholic Beverage Commission, listen to stakeholders in the process, and try to improve the functioning of an agency that finds its functions rooted in laws dating almost one century ago.

At the Foundation, we strive to take the perspective of taxpayers and consumers when we analyze the impact of policies, and we believe some of the recommendations made by this sunset bill will have a positive effect, while others will simply perpetuate the harmful effects of the current system.

The positive effects of the changes made to the Texas Alcoholic Beverage Code include the streamlining of the licensing as well as the label application process. Making it easier for businesses to operate as well as reducing uncertainty created by unclear and complicated statutes allow businesses to save time and money, which eventually will benefit consumers in lower prices and more choice.

The same reasoning applies for getting rid of the difference in statutes between beer and ale—changing the category to the single “malt beverages”—and we applaud the choice to go with the lower tax rate for both.

The bill also allows for more transparency and accountability in the protest process.

However, some of the commission recommendations in the bill will likely make the market less efficient to the detriment of consumers.

CSHB 1545 would remove licensing fees from statutes and allow for TABC to fix the fees according to the cost incurred by the commission. The fees could vary for the same original or renewal license, permit, or certificate if the commission estimates that the level of regulatory activity varies. The commission would also have to periodically review and adjust these fees. Considering the recent scandals related to mismanagement of funds, regulatory abuse, or unjustified sanctions imposed on some retailers, leaving the possibility for TABC to adjust fees for each license, permit, or certificate is a recipe for potential abuse and disincentivizes the agency from “living within its means,” since increases in spending can be compensated by increases in fees. Additionally, it creates uncertainty for license, permit, and certificate holders and makes it difficult for them to make financial plans for their business if they are unsure what the cost of their license, permit, or certificate will be in a couple of years.

Three other recommendations would increase TABC’s authority despite the recent problems with the agency:

- **Taking into account the profit a licensee or permittee potentially made in the case of a repeated violation to establish the civil penalty**—This may force businesses to settle claims instead of fighting those they deem unfounded simply because the potential fine makes it too risky to fight the accusation;

- **Temporarily suspending a license or permit if the agency finds a continuing threat to the public welfare**—While one of the recommendations of the commission required that TABC “clearly inform applicants of their due process rights,” this provision turns due process on its head by setting a hearing after the suspension has been enacted;
- **Making noncompliance with a commission order a statutory violation and authorizing TABC to take disciplinary action or deny license or permit renewal for noncompliance**—The intent of this proposal is to allow TABC decision making in terms of licensee violations to fall both outside the purview of the courts and administrative process, again lessening constitutional due process protections.

We would like to focus the attention on the system as it is today. A system that mandates the existence of a party to the business, and that makes it unnecessarily complicated and burdensome for other parties to be in business, is likely to create for all parties the temptation to circumvent the law or to look for some form of protection from government, and in the end, less choice and higher prices for consumers. Similarly, a system that gives excessive power to an agency to regulate and sanction parties is likely to lead to abuse of power.

The authors of the report *Toward Liquor Control*, which probably inspired a lot of alcoholic beverages laws in the U.S. today, remarked:

Any licensing system tends to project the whole question into politics and to keep it there. Indeed, it compels the traffic to be in politics of self-protection. The licensing body becomes a powerful political engine. Every licensee ... begins to marshal his own political strength to serve his own ends.

The TABC sunset bill goes in the right direction in some areas but could have been more ambitious in increasing the efficiency of government regulation—the very purpose of sunset provisions—in the alcoholic beverage industry. We recommend going further than CSHB 1545 already goes, by reducing—not increasing—government intervention in this industry.

Thank you for your time. I am glad to answer any questions you may have. ★

ABOUT THE AUTHOR



Carine Martinez is senior managing editor and policy analyst at the Texas Public Policy Foundation.

Prior to working at the Foundation, she worked as a research associate for the Charles Koch Institute in Washington, D.C., and previously as a policy analyst for Texas Action during the 84th Texas Legislature.

The areas of research and policy she has explored and worked on include economic development and cronyism, business ethics and corporate social responsibility, economic freedom, and K-12 education reform. Carine holds a bachelor’s degree in international business administration from the Sorbonne and a master’s degree in American studies from the Sorbonne Nouvelle.

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