

# 2018 General Session Summary

## SB 236 - Alcohol Modifications

**Bill Sponsor: Senator Jerry W. Stevenson; Floor Sponsor: Representative Brad Wilson**

### Modifications to the Attire and Conduct Act

Amended the attire and conduct act to ensure that the provisions are constitutional both as written and in application. This change is necessary as portions were held unconstitutional in the recent Brewvies case.

### Modifications to Hard Cider Manufacturing and Pricing

Created a definition for Hard Cider within the statute which mirrors the Federal Definition and because cider is technically a wine but manufactured in quantities like a beer, this changed the manufacturing threshold for cider to match beer when applying for the small manufacturing markup in the State Stores.

## HB 149 - Department of Alcoholic Beverage Control Funding Amendments

**Bill Sponsor: Representative Gage Froerer; Floor Sponsor: Senator Wayne A. Harper**

Created a land acquisition fund of \$5,000,000 to allow the department to purchase land for state stores in compliance with statutory oversight provisions. This bill also required that the money be repaid by DABC with proceeds from any related revenue bond.

## HB 456 - Alcohol Modifications

**Bill Sponsor: Representative Brad Wilson; Floor Sponsor: Senator Jerry W. Stevenson**

### Modifications to General Licensing and Renewal Requirements

- **Multiple Licenses on the Same Premises** - Multiple licenses cannot share the same premises unless it is a restaurant, a banquet catering license, reception center license, or on-premises beer recreational license, and they are operational at different times. This change is codifying portions of an administrative rule and clarifies extension of premises requests into licensed areas.
- **Multiple Licenses in the same Room - EFFECTIVE JULY 1, 2018** – Except for a hotel licensed under 32B-8b or resort licensed under 32B-8, a bar or tavern premises may not be in the same room as a restaurant premises. To be considered separate rooms, the licenses must be in compliance with the following:
  - A bar or tavern must be separated from the restaurant by a permanent wall that is at least eight feet high;
  - Each premises must have a separate entryway that does not require passing through a bar or tavern to get to the restaurant (with the exception of a hotel or resort below, minors may never pass through the premises of a bar or tavern);
  - If entry to bar or tavern requires passing through the restaurant, then the separation must be such that a patron in the restaurant cannot see the bar structure in the bar or tavern.

- **Transfer of Ownership Timelines:** This law extended the time for a business entity to transfer a retail license following a change in ownership of the entity to 60 days and removes automatic forfeiture, but allows the commission to void the transfer if they do not comply.
- **Responsible Alcohol Service Plans -** H.B. 442 passed in the 2017 General Session required a responsible alcohol service plan (RASP) to be submitted with EACH renewal. H.B. 456 modified the requirement. Now a RASP shall be submitted as part of renewal if there is a substantial change in the plan or the licensee had a violation. Changes also allows the department to review the plan as part of our regular audit.

### Modifications to Restaurant Licenses:

- **Private Restaurants Allowed:** Modified the definition of restaurant to allow restaurants to be private.
- **Stand-alone storage is not a dispensing structure -** Changes the definition of dispensing to exclude storage in areas of the restaurant where dispensing does not occur - examples are wine cabinets and a sole beer cooler behind a point of sale system.
- **Scanner Requirements -** Effective July 1, 2018, requires electronic age verification of individuals who appear under 35 when they order a drink within 10 feet of a grandfathered bar structure. Addressed a gap in which dining clubs and grandfathered restaurants would not need scanners in dispensing areas until 2022 when all other restaurants would need to meet the requirements as of 2018.
- **Small Restaurant Exemption -** H.B. 442 passed in the 2017 General Session allowed all grandfathered bars (to include converted dining clubs) to allow minors to sit in the dispensing area, if they are accompanied by someone over 21 year of age or older and seating in the dispensing area is the only seating available. This exemption was to expire June 30, 2022. H.B. 456 allows small restaurants who apply for and receive approval to keep the exemption beyond 2022. A "Small Restaurant" means a restaurant which has a grandfathered bar structure (to include converted dining clubs), whose "dispensing area" (the area measured at least 10 feet out from the nearest edge of the visible bar or 5 feet with a pony wall or railing in place) covers more than 45% of the inside seating of the restaurant.
- **Minors Bussing Tables -** H.B. 442 passed in the 2017 General Session required that any activity related to the storage, sale, offer for sale, furnishing, consumption, manufacture, or distribution of an alcoholic product be expressly permitted under this title or a rule authorized under this title and made by the commission. Minors bussing tables was not expressly permitted until H.B. 456 clarified the issue to allow minors at least 18 years of age to bus tables only in premises licensed as a restaurant.
- **Signage -** H.B. 442 passed in the 2017 General Session required signage stating that the restaurant was a restaurant not a bar. H.B. 456 repealed the requirement.
- **Point of Measurement of the Dispensing Structure -** H.B. 442 passed in the 2017 General Session had differing language for the beginning point of measurement for a dispensing area. H.B. 456 clarified the point of measurement for the 10 foot buffer so that it is consistent with the measurement for the 5 foot structure/barrier (from the edge of the dispensing structure).
- **Seating Requirements for Alcohol Service -** H.B. 442 passed in the 2017 General Session required that a person be seated prior to ordering an alcoholic product. H.B. 456 clarified that a person must be furnished a beverage after they are seated at their table but is allowed to order at a counter.

### **Modifications to Bar Establishment Licenses**

- Amended the voting requirements for equity clubs to allow for qualifying communities that are still owned by the developer to qualify for the license.
- H.B. 442 passed in the 2017 General Session required signage stating that the bar was a bar not a restaurant. H.B. 456 modified the bar sign requirements. The sign must measure at least 8 ½ inches long by 11 inches wide, posted at a conspicuous place at the entrance, and must clearly state that the licensee “is a bar” and “no one under 21 years of age allowed”. The sign does not otherwise have a certain template requirement - though DABC will provide one for ease of the licensee if they choose not to make their own sign.

### **Modifications to Hotel and Resort Licenses**

- Modified the financial reporting for a hotel license to match the resort license. This allows a financial report of the gross receipts of food and alcohol, rather than per sublicense. At least 70% of the annual aggregate of sales must be for food or non-alcohol beverages, (not including a mix or service charge in connection with the service of an alcoholic product).
- HOTELS AND RESORTS - A hotel licensed under 32B-8b or resort licensed under 32B-8, may have a bar or tavern and a restaurant in the same room under the following conditions:
  - Each premises must be clearly delineated by one or more permanent physical structures that separate the sublicense premises – premises must be delineated as a building room or enclosure – a wall would meet this requirement and does not have to be eight feet high;
  - A patron may not transport an alcoholic beverage between the bar/tavern and restaurant and vice versa; and
  - A minor may momentarily pass through a bar to reach another location where a minor may lawfully be, if there is no practical alternative route to the location.

### **Modifications to Off Premises Beer State Licensing**

- HB 442 passed in the 2017 General Session set a deadline for all off-premises beer retailers who hold a city license as of July 1, 2018 to obtain a state license by March, 2019. HB456 modified the deadline. Now the off-premise retailers must apply for the license by March 1, 2019 - but are not yet required to be “licensed”. This is to give DABC time for investigation and approval.

### **Modifications to Label Requirements for Malted Beverages**

- Clarifies and amends labeling requirements for certain malted beverages - Clarified that statements that the product contains alcohol be on the front of the label rather than somewhere on the front label (which can wrap all the way around the container) and allows the alcohol content to be part of the flavor ingredient statement.

### **Modifications to Department Training Program Changes**

- Amends the requirements related to the department training programs. Removes the recertification requirement for manager training at department and server training program request. Training now is required if there is a second violation in a three year period - calculated from adjudication. It previously was required if the same employee had the violation (which rarely if ever happens). Dates for manager training for the off premises licensees was corrected.

## Modifications to Other Provisions

- **Advisory Board** - Allows the Alcoholic Beverage Control Advisory Board to meet at the chair's discretion - requested by the department and the advisory board. Used to be limited to quarterly meetings and there were times where the board and commission would like them to meet more often to review rules.
- **Type 5 Package Agencies** - Allows type 5 package agencies to be open on Sundays if they have a bar license (expanded from restaurant licenses and dining clubs)
- **Airport Lounge Quota** - Changed the quota for airport lounges to account for airport expansion.
- **Disciplinary and Enforcement Provisions** - Adopted commission rule that violations be expunged after 36 consecutive months if the licensee does not violate a provision 32B for a period of 36 consecutive months from the day on which the last violation was adjudicated.
- **Operational requirements for Sports Centers** - Allowed a patron to transport beer between two adjacent licensed premises located in a sports center.
- **Banquet Catering Study** - Required the DABC study issues related to the use of banquet catering contracts and report to the Business and Labor Interim Committee November 2018.
- **Proximity Laws**
  - Clarified the point of measurement for determining proximity to a community location by adding that the entrance to the proposed retail outlet or restaurant is the patron entrance.
  - Addressed the standard for demonstrating a previously approved variance for purposes of proximity to a community location - presumed variance if continuous operation in one location since January 1, 2007.