



F.A.Q.

Protecting Texas Free Markets and Promoting Fair Competition: Leveling the Playing Field for the Retail Sale of Spirits

Why should the legislature modernize Texas laws regulating the sale of spirits?

Texas is a state that prides itself as a champion of free markets and competition, however, the retail tier of the spirits market has for decades operated within a clearly anti-competitive model that prevents competition and consumer choice.

The Texas Alcoholic Beverage Code prohibits publicly traded companies from engaging in the retail sale of spirits, a clear violation of its mission to “ensure fair competition within the alcoholic beverage industry.”

- **No other state in the nation** allows private corporations to compete in the retail sale of spirits while prohibiting publicly traded companies from doing so.
- The law is anti-competitive and anti-free market.
- The government should not be in the business of picking winners and losers.
- The law harms Texas consumers, who expect and deserve choice, convenience, and the lower prices that competition provides.
- The law unfairly punishes companies that employ thousands of Texans, contribute millions of dollars to their communities, and collect and pay hundreds of millions in state taxes.
- The laws are unconstitutional under the Texas and U.S. Constitutions.

The TABC's mission specifically requires the commission to “ensure fair competition within the alcoholic beverage industry,” however, aspects of the code related to the retail sale of spirits are antiquated, anti-competitive, and in need of modernization. In a state that prides itself as a champion of free markets and competition, Texas' package store ownership laws actually **prevent** competition and consumer choice.

As an illustration, Texas allows grocery store chain Fiesta to own and operate 17 package liquor stores in Texas, while prohibiting companies such as Walmart, Costco, Target, Kroger, Walgreens and CVS from doing so.

Is there a limit to the amount of package store permits an individual may hold?

Since 1935, Texas code has limited ownership of liquor stores to no more than five permits per individual. For eighty years, this outdated provision has restricted free market competition and consumer choice.

A glaring exception to this five-store restriction is a loophole that allows members of a package store owner's immediate family (first degree of "consanguinity") to consolidate permits under a holding company and then acquire more permits.

The *Austin American-Statesman*, explained it this way: "The law allows permit holders related to each other within one degree of consanguinity — related by blood — to combine their permits. All it takes is a willing parent, child, brother or sister. Each eligible relative can buy five additional permits...and then put them in a holding company controlled by the liquor magnate-wannabe relative. In that way, a single person can, in effect, acquire multiple permits." (Eric Dexheimer, "Attorney General Asked to Rule on Prohibition-Era Law," *Austin American-Statesman*, 11/03/09)

This loophole has allowed some owners to circumvent the "five store restriction," and amass hundreds of package store permits. Below are the "top ten" private chain permit holders, all of which are exploiting a loophole while also enjoying the state's protection from competition with publicly traded companies:

CHAIN	NUMBER OF PERMITS (as of 2/12/15)
SPEC'S FAMILY PARTNERS LTD.	160
TWIN LIQUORS LP	76
GABRIEL INVESTMENT GROUP INC.	50
WESTERN BEVERAGES LIQUORS OF TEXAS INC.	42
GOODY GOODY LIQUOR INC.	31
D-Z LIQUOR CO.	20
PINKIE'S INC	18
H & H BEVERAGES INC.	18
FIESTA LIQUORS INC.	16
SIGEL'S BEVERAGES L.P.	16

According to TABC spokeswoman Carolyn Beck to *Fort Worth Weekly*: "If I own two or more package stores and my sister goes out and buys one or already owns up to five, hers can be consolidated into my legal entity, and I can end up with five more. If she ends up getting 10 outlets or more through consolidation, I can consolidate her locations into mine. And you can end up with an unlimited amount of stores." (Eric Griffey, "Liquor by the Big Box," *Fort Worth Weekly*, 3/16/13)

Current code has not only sheltered these private chains from competition, it has also allowed them to dominate regional markets. Private chains with at least 6 stores own large, often majority, percentages of liquor stores in many counties, such as:

COUNTY	% of Liquor Stores Owned by Private Chains
Nueces Co. (Corpus Christi)	61%
Hays Co. (San Marcos)	53%
Cameron Co. (Brownsville)	52%
El Paso Co. (El Paso)	45%
Bexar Co. (San Antonio)	43%
Victoria Co. (Victoria)	43%
Midland Co. (Midland)	38%
Brazos Co. (Bryan/College Station)	35%
Potter Co. (Amarillo)	33%
Travis Co. (Austin)	31%

How many package liquor stores are in Texas today compared to the number of stores at end of Prohibition? How has this number expanded as population has grown?

In 1936, Texas had a population of 6.2 million and issued a total of 2,209 package store permits in 53 counties. (201 of Texas' 254 counties were dry.) Today, Texas has a population of 26.9 million and a total of 2,491 package store permits. Since 1936, the total number of package store permits in Texas has increased by only 282 (13%), while the population has increased by more than 20.7 million (334%). Only 10 of Texas' 254 are dry today.

How does the number of package liquor stores compare to other establishments that require a state permit to operate?

Compared to the number of other state regulated businesses, such as pharmacies (7,924), gun dealers (8,500), and cosmetology salons (28,573), it is clear that consumers are not receiving the choice, competition or convenience they deserve.

Texas prides itself as a champion of free markets and competition, but current laws have stifled competition and choice at the expense of Texas consumers.

How would consumers benefit by allowing public companies to own package stores?

Texas consumers expect choice, competition and transparency. Free market

competition drives price down, while increasing consumer choice and convenience.

Should these regulations be changed, would minors have greater access to spirits?

No. Package stores owned by public companies would have entirely separate entrances and would not be accessible from the retail store. Public companies would be required to abide by all current TABC safety and enforcement requirements designed to keep alcohol out of the hands of minors.

Is this legislation designed to allow publicly owned retail companies to distribute spirits?

No. Modernization of the Alcoholic Beverage Code does NOT mean any adjustment to the three-tier system of manufacturers, distributors and retail package stores. Legislation is being pursued specifically to level the playing field and allow publicly owned companies to compete in the retail sale of spirits, not distribution.

Does this legislation seek to modify the Texas Alcohol and Beverage Commission's "blue law" regulations, which set the days and hours spirits may be sold?

No. Public company retailers are not attempting to modify the Texas Alcohol and Beverage Commission's "blue law" regulations with this legislation. Legislation is being pursued specifically to level the playing field and allow publicly owned companies to compete in the retail sale of spirits and to eliminate the "five store restriction."

Can publicly owned retailers be trusted to abide by all current design, safety and marketing requirements with which Texas package stores must currently comply?

Yes. Publicly owned, licensed retailers already abide by state requirements necessary to sell regulated products such as pharmaceuticals, tobacco, beer, wine and firearms. These retailers should not be excluded from competing in the sale of spirits as well.

All TABC safety requirements, day and time sales restrictions, age restrictions, and store design requirements would be followed and enforced by publicly owned retailers.