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Judiciary and Jurisprudence, Licensing and Regulation

Ongoing litigation seeks to end ban on liquor sales by public corporations

February 5 — The 86th Legislature last year revised laws governing the sale of alcohol in Texas but did not eliminate a ban on public corporations selling hard liquor. The ban is being challenged in a long-running lawsuit brought by Walmart against the state. In December 2019, a panel of the 5th U.S. Circuit Court of Appeals ruled for the state and sent the case back to be reconsidered by a district court that had ruled the ban unconstitutional.

Ban on sales by public corporations. Under current law, retailers must have a package store permit from the Texas Alcoholic Beverage Commission (TABC) to sell hard liquor in Texas. The permits are regulated under chapter 22 of the Alcoholic Beverage Code. [Sec. 22.16](#) bans public corporations from obtaining permits and defines a public corporation as an entity listed on a public stock exchange or one in which more than 35 persons hold an ownership interest.

Retailers must have a permit for each location selling liquor, and permits may be obtained by individuals who are part of family-owned businesses. As of late January 2020, TABC had issued 2,719 package store permits, with 648 of those going to 22 retail chains, which are defined as entities holding six or more permits.

Before legislative revisions last year, Alcoholic Beverage Code sec. 22.04 limited individuals to five package store permits. Sec. 22.05 allowed family members who were closely related to consolidate their individual package store permits into one legal entity, which allowed a company to operate more than five stores.

[HB 1545](#) by Paddie, enacted last year, continued the Texas Alcoholic Beverage Commission for 12 years and increased from five to 250 the number of liquor store permits that an individual

may hold. The bill also prohibited TABC from issuing more than 15 original package store permits to a person in a calendar year and removed provisions that allowed close family members to consolidate permits into one business.

Litigation responding to ban on public corporations. In 2015, Walmart sued Texas in federal court, challenging several of the state's restrictions on who may be issued a package store permit, including the ban on liquor sales by public corporations. In March 2018, a federal district court sided with Walmart in the original lawsuit, ruling that the ban was unconstitutional. However, the state, Walmart, and the Texas Package Store Association all appealed parts of the ruling to the 5th U.S. Circuit Court of Appeals.

In December 2019, a three-judge panel of the 5th Circuit ruled that the district court committed errors in its findings on the public corporation ban and sent the case back to the district court for reconsideration. The panel noted that while the appeal was pending, legislation went into effect increasing the per-person limit on package store permits and eliminating the consolidation of permits by family members. Walmart withdrew challenges to these issues, leaving the ban on sales by public corporations as the sole issue in the suit.

Debate on liquor sales by public corporations. Proposals also have been made in recent legislative sessions to eliminate the ban on public corporations selling hard liquor. During the regular session of the 86th Legislature no bills that would have eliminated the ban were heard in committee.

Supporters of eliminating the ban say that the state should not pick winners and losers in the market by prohibiting a

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category of retailers from selling liquor. They say the law allows non-public corporations to grow into large chains that can dominate markets and that should not be considered “mom-and-pop” stores. This gives retailers that are not public corporations an unfair advantage over public corporations such as Walmart, they say, which limits consumer choice and can result in higher prices. Supporters of eliminating the ban say that public corporations are allowed to sell beer and wine, and there is no public health or safety reason to prohibit them from selling liquor.

Opponents of eliminating the ban say prohibiting large public corporate retailers from obtaining package store permits ensures that those who obtain a permit can be identified easily and held

accountable for liquor sales. They say the ban helps ensure that those selling liquor are known to the communities they serve and have an interest in the communities’ well being. Ownership of public corporations can change frequently, making accountability difficult. Eliminating the ban would move away from the Texas model of sellers who are close to the market, say opponents of eliminating the ban, and could vastly increase the number of retailers, leading to increased alcohol consumption and potential health and safety problems. In addition, opponents say, large retailers could take over markets and drive out smaller businesses that make up the majority of package stores in the state.

— Kellie A. Dworaczyk

Public Education

TEA offers options for schools considering longer school year

February 25 — As part of its school finance overhaul, the 86th Legislature last year provided a funding incentive for schools to extend their school calendar for up to 30 days beyond the required minimum operation time. Education Code [sec. 25.081\(a\)](#) requires school districts to operate for at least 75,600 minutes, and districts commonly adopt a 180-day calendar to meet this requirement.

As enacted by HB 3 by Huberty, Education Code [sec. 48.0051](#) provides half-day formula funding for districts and charter schools that want to add up to 30 days of half-day instruction for students in prekindergarten through grade 5. To qualify for the funding, districts must provide the required minimum minutes over the course of at least 180 days of instruction.

The new law states that students may not be required to attend school for any extra instructional days added under the funding incentive.

Under the new law, the Texas Education Agency (TEA) must assist school districts and open-enrollment charter schools in qualifying for the funding. As part of its ongoing [video series](#) on HB 3, the agency presents options for campuses to extend their school year based on the school’s goals for the extra days.

TEA advises local school leaders to first decide on their goals, which could include mitigating the drop in student achievement over the summer months known as the “summer slide,” providing shorter, intermittent breaks to allow teachers to work with struggling students, or building non-instructional time into each school day for student recess and teacher planning.

In the video, the agency outlines three possible options for revising a traditional school calendar, including:

- using a voluntary summer program of up to 30 days to target remediation and enrichment to better prepare students for the upcoming school year and help families save money on child care costs;
- creating an intersessional calendar with intermittent breaks placed strategically throughout the year during which certain students could receive targeted remediation and a shorter summer break that would minimize the summer slide risk for all students; and
- redesigning the school day and extending the school year into the summer to provide more non-instructional time each day for additional student recess and enrichment (art, music, physical education) and more teacher planning time.

TEA says in the video that research shows that a full-year redesign will lead to greater student achievement by offering elementary students more “brain breaks” and teachers more time for collaboration and curriculum development.

The agency is offering \$5 million in planning grants for schools wanting to extend their school calendars. Awards of up to \$125,000 will be made this spring to help districts fund a project manager to plan for a redesign and build family support for calendar changes, TEA says. Districts that receive those grants could receive an additional \$25,000 this fall to implement their revised calendars.

Districts are encouraged to test calendar revisions at selected campuses or try different options at several campuses. The

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requirement that districts start their academic calendar on the fourth Monday of August remains, although many districts have voided this requirement by organizing as districts of innovation.

Supporters of extending the school year say that adding days to the school year would reduce the drop in student achievement levels that often happens during the summer break, especially for lower income students who may not have the opportunity to attend camps and other summer activities that provide learning opportunities. Supporters say the funding for additional school days could be used to increase teacher pay and provide more instructional time to cover the required learning standards.

Critics of extending the school year say that adding days to the school year would interrupt the traditional summer break, which is an important time for children to rejuvenate and for families to reconnect and go on vacation. Some children will lose access to other important learning opportunities through traditional summer activities outside of school, critics say, and summer camps, tourism, and related industries could be affected.

— Janet Elliott