

ALCOHOLIC BEVERAGE CODE
TITLE 3. LICENSES AND PERMITS
SUBTITLE A. PERMITS
CHAPTER 37. NONRESIDENT SELLER'S PERMIT

Sec. 37.01. AUTHORIZED ACTIVITIES. (a) The holder of a nonresident seller's permit may:

(1) solicit and take orders for liquor from permittees authorized to import liquor into this state; and

(2) ship liquor into this state, or cause it to be shipped into this state, in consummation of sales made to permittees authorized to import liquor into the state.

(b) The holder of a nonresident seller's permit who owns a winery outside of the state may conduct samplings of the kinds of alcoholic beverages the permit holder is authorized to produce, including tastings, at a retailer's premises. An employee of the winery may open, touch, or pour the alcoholic beverages, make a presentation, or answer questions at a sampling event.

(c) Any alcoholic beverages used in a sampling event under Subsection (b) must be purchased from the retailer on whose premises the sampling event is held. Subsection (b) does not authorize the holder of a nonresident seller's permit or the permit holder's agent to withdraw or purchase alcoholic beverages from the holder of a wholesaler's permit or provide alcoholic beverages for a sampling event on a retailer's premises that is not purchased from the retailer. The amount of alcoholic beverages purchased from the retailer may not exceed the amount of alcoholic beverages used in the sampling event.

(d) The holder of a nonresident seller's permit or an agent or employee of the permit holder may provide samples or tastings of the kinds of distilled spirits the permit holder is authorized to produce in the manner authorized by Section [14.07](#) for the holder of a distiller's and rectifier's permit or the agent or employee of the holder of a distiller's and rectifier's permit. Distilled spirits may legally be transported by the holder of a nonresident seller's permit or the permit holder's agent or employee to a retailer's premises for the purpose of providing a sample or a tasting under

this subsection. The cost of the distilled spirits provided for a sampling or tasting under this subsection is the responsibility of the holder of the nonresident seller's permit providing the sampling or tasting.

Acts 1977, 65th Leg., p. 445, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2005, 79th Leg., Ch. 192 (H.B. 937), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1073 (H.B. 2723), Sec. 7, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 792 (H.B. 1997), Sec. 9, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 141, eff. September 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 142, eff. September 1, 2019.

Sec. 37.011. OPERATING AGREEMENT WITH IN-STATE DISTILLERY.

(a) The holder of a nonresident seller's permit who owns a distillery outside of the state or whose affiliate owns a distillery outside of the state and holds a distiller's and rectifier's permit may enter into an agreement with the holder of a distiller's and rectifier's permit that allows the nonresident seller to engage in the following activities on the distiller's and rectifier's permitted premises:

- (1) manufacture distilled spirits;
- (2) rectify, purify, and refine distilled spirits and wines;
- (3) mix wines, distilled spirits, or other liquors;
- (4) bottle, label, and package the nonresident seller's finished products; and
- (5) sell the finished products in this state to holders of distiller's and rectifier's permits and holders of wholesaler's permits and to authorized wholesalers and manufacturers outside the state.

(b) The agreement is subject to approval by the commission and must describe with specificity the nature, duration, and extent

of the activities authorized by the agreement.

(c) The holder of a distiller's and rectifier's permit on whose premises the holder of a nonresident seller's permit contracts under this section to manufacture, bottle, package, or label alcoholic beverages may not:

(1) consider or treat the alcoholic beverages manufactured, bottled, packaged, or labeled under the agreement as being owned by the distiller's and rectifier's permit holder; or

(2) sell those alcoholic beverages on the distiller's and rectifier's permit holder's premises.

(d) The commission shall adopt rules regulating the shared use of the permitted premises under this section to ensure administrative accountability of each permit holder and a strict separation between the businesses and operations of the permit holders.

Added by Acts 2023, 88th Leg., R.S., Ch. 10 (S.B. 60), Sec. 2, eff. September 1, 2023.

Sec. 37.03. PERMIT REQUIRED. A nonresident seller's permit is required of any distillery, winery, importer, broker, or person who sells liquor to permittees authorized to import liquor into this state, regardless of whether the sale is consummated inside or outside the state.

Acts 1977, 65th Leg., p. 445, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 37.05. APPOINTMENT OF AGENT FOR SERVICE OF NOTICE. (a) No person may be issued a nonresident seller's permit until he shows that he has filed a certificate with the secretary of state certifying that he has appointed a resident of this state as his agent for the purposes of this section. The certificate shall contain the name, street address, and business of the agent.

(b) A notice of a hearing for the refusal, cancellation, or suspension of a permit may be served on any of the following:

(1) the agent designated in the certificate on file with the secretary of state;

(2) any person authorized to sell liquor in this state as agent of the permittee; or

(3) the permittee or, if the permittee is a corporation, any officer of the corporation.

(c) If a permittee fails to maintain a designated agent, notice of a hearing may be served on the secretary of state. In that case, the secretary of state shall forward the notice to the permittee by registered mail, return receipt requested, and the receipt shall be prima facie evidence of service on the permittee.

(d) Provisions of this code generally applicable to hearings for the refusal, cancellation, or suspension of a permit also to apply to proceedings relating to the refusal, cancellation, or suspension of a nonresident seller's permit.

Acts 1977, 65th Leg., p. 445, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 37.06. DESIGNATION OF AGENTS. Every holder of a nonresident seller's permit shall designate, in the manner required by the commission and on forms prescribed by it, those persons authorized as agents to represent the permittee in this state. The failure to do so is a violation of this code.

Acts 1977, 65th Leg., p. 446, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 37.07. PROHIBITED ACTIVITIES. No holder of a nonresident seller's permit, nor any officer, director, agent, or employee of the holder, nor any affiliate of the holder, regardless of whether the affiliation is corporate or by management, direction, or control, may do any of the following:

(1) hold or have an interest in the permit, business, assets, or corporate stock of a person authorized to import liquor into this state for the purpose of resale unless the interest was acquired on or before January 1, 1941, or unless the permittee is a Texas corporation holding a manufacturer's license and a brewer's permit issued before April 1, 1971;

(2) fail to make or file a report with the commission as required by a rule of the commission;

(3) sell liquor for resale inside this state that fails to meet the standards of quality, purity, and identity prescribed by the commission;

(4) advertise any liquor contrary to the laws of this

state or to the rules of the commission, or sell liquor for resale in this state in violation of advertising or labeling rules of the commission;

(5) sell liquor for resale inside this state or cause it to be brought into the state in a size of container prohibited by this code or by rule of the commission;

(6) solicit or take orders for liquor from a person not authorized to import liquor into this state for the purpose of resale;

(7) induce, persuade, or influence, or attempt to induce, persuade, or influence, a person to violate this code or a rule of the commission, or conspire with a person to violate this code or a rule of the commission; or

(8) exercise a privilege granted by a nonresident seller's permit while an order or suspension against the permit is in effect.

Acts 1977, 65th Leg., p. 446, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 37.08. CANCELLATION OR SUSPENSION: NOTICE TO IMPORTERS. When a nonresident seller's permit is cancelled or suspended, the commission shall immediately notify in writing all permittees authorized to import liquor into the state.

Acts 1977, 65th Leg., p. 447, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 37.09. RESTRICTION ON IMPORTATION. No person who holds a permit authorizing the importation of liquor, nor his agent or employee, may purchase or order liquor for importation from any person other than a nonresident seller's permittee. An importer may not purchase or order liquor from a nonresident seller's permittee whose permit is under suspension after the importer has received notice of the suspension.

Acts 1977, 65th Leg., p. 447, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 37.10. RESTRICTION AS TO SOURCE OF SUPPLY. (a) No holder of a nonresident seller's permit may solicit, accept, or fill an order for distilled spirits or wine from a holder of any type of wholesaler's or winery permit unless the nonresident seller

is the primary American source of supply for the brand of distilled spirits or wine that is ordered.

(b) In this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler, or the exclusive agent of any of those. To be the "primary American source of supply" the nonresident seller must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by Texas wholesalers and Texas wineries. Except as provided by Subsection (c), a product may have only one primary American source of supply to Texas.

(c) A product may have more than one primary American source of supply to Texas if the product is a wine that is bottled or produced outside of the United States.

Acts 1977, 65th Leg., p. 447, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1181 (S.B. 950), Sec. 1, eff. September 1, 2013.

Sec. 37.12. INSPECTION OF RECORDS, DOCUMENTS, ETC. (a) In this section, "officer" means a representative of the commission, the attorney general, or an assistant or representative of the attorney general.

(b) If an officer wishes to examine the books, accounts, records, minutes, letters, memoranda, documents, checks, telegrams, constitution and bylaws, or other records of a nonresident seller's permittee, he shall make a written request to the permittee or his duly authorized manager or representative or, if the permittee is a corporation, to any officer of the corporation. An officer may examine the records as often as he considers necessary.

(c) When a request for an examination is made, the person to whom it is directed shall immediately allow the officer to conduct the examination, and the person shall answer under oath any question asked by the officer relating to the records.

(d) The officer may investigate the organization, conduct,

and management of any nonresident seller's permittee and may make copies of any records which in the officer's judgment may show or tend to show that the permittee has violated state law or the terms of his permit.

(e) An officer may not make public any information obtained under this section except to a law enforcement officer of this state or in connection with an administrative or judicial proceeding in which the state or commission is a party concerning the cancellation or suspension of a nonresident seller's permit, the collection of taxes due under state law, or the violation of state law.

(f) The commission shall cancel or suspend a nonresident seller's permit in accordance with this code if a permittee or his authorized representative fails or refuses to permit an examination authorized by this section or to permit the making of copies of any document as provided by this section, without regard to whether the document is inside or outside the state, or if the permittee or his authorized representative fails or refuses to answer a question of an officer incident to an examination or investigation in progress. Acts 1977, 65th Leg., p. 448, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 37.13. SOLICITATION FROM HOLDER OF MIXED BEVERAGE OR PRIVATE CLUB PERMIT. A holder of a nonresident seller's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

Acts 1977, 65th Leg., p. 448, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 37.14. MONTHLY REPORTS. The commission shall promulgate rules requiring holders of nonresident seller's permits to file monthly reports of liquor sold to persons within this state. The reports shall be supported by copies of invoices. The commission shall prescribe and furnish forms for this purpose.

Acts 1977, 65th Leg., p. 448, ch. 194, Sec. 1, eff. Sept. 1, 1977.