



Public Comments of the Texas Hemp Business Council

Submitted to: Texas Alcoholic Beverage Commission

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December 26, 2025

Re: Proposed 16 TAC §35.5, Prohibited Sales of Consumable Hemp Products to Minors and Proposed 16 TAC §35.6, Mandatory Age Verification for Consumable Hemp Product Sales

Introduction and Acknowledgment of Improvements

The Texas Hemp Business Council respectfully submits these comments regarding the Commission's proposed permanent rules at 16 TAC §§35.5 and 35.6, implementing Governor Abbott's Executive Order GA-56 with respect to consumable hemp products (CHPs) sold or delivered by TABC licensees and permittees.

We appreciate the Commission's prompt response to GA-56 and recognize the refinements made since the initial emergency rules, particularly the addition of suspension as an intermediate sanction and the recognition of a defense where the ultimate consumer is clearly over forty (40) years of age. These changes reflect a good-faith effort to calibrate enforcement while protecting minors.

These rules are a critical component of the unified regulatory approach contemplated by Executive Order GA-56 and the filed version of House Bill 309, intent on achieving consistency across TABC, the Department of State Health Services (DSHS), and the Department of Public Safety (DPS) in protecting minors while sustaining lawful hemp commerce. GA-56 expressly directs agencies to *"take immediate action to protect Texas children from hemp-derived products, while respecting federal law and protecting the liberties of responsible adults,"* and to act in a coordinated fashion rather than in isolation.

Our comments are respectfully submitted and intended to strengthen youth protections, preserve due-process safeguards in the Alcoholic Beverage Code, and avoid destabilizing an already regulated hemp market that the Legislature placed primarily under DSHS oversight.

Scope and Jurisdiction under GA-56 and the Alcoholic Beverage Code

THBC recognizes and appreciates the Commission's expertise and longstanding authority in supervising alcoholic beverage licensees and permittees and supports the Commission's tailored approach by which these rules apply only to TABC-regulated businesses. This jurisdictional focus is consistent with the Alcoholic Beverage Code, which provides that TABC "shall supervise and regulate licensees and permittees and their places of business in matters affecting the public." Tex. Alco. Bev. Code § 5.33. At the same time, THBC acknowledges that TABC does not issue or regulate consumable hemp product registrations, which the Legislature has placed under the jurisdiction of DSHS pursuant to Tex. Health & Safety Code Ch. 443 and 25 TAC Ch. 300.

Accordingly, we respectfully request that the Commission reaffirm this jurisdictional boundary in the preamble to the final rule, clarifying that §§35.5 and 35.6 apply only to TABC-licensed or permitted premises and do not purport to regulate stand-alone CHP retailers registered solely with DSHS. This clarification will avoid potential jurisdictional overlaps or inconsistencies, reduce confusion among retailers, provide appropriate enforcement accountability, and honor the Legislature's deliberate two-agency structure: DSHS regulates the product; TABC regulates its licensees' conduct when selling to the public.

Definition of "Consumable Hemp Product" (§35.5(a)(1))

The proposed rules appropriately cross-reference DSHS's definition of "consumable hemp product" in 25 TAC § 300.101, which excludes hemp seed and hemp-seed ingredients that are generally recognized as safe (GRAS) by the FDA.

To avoid confusion and promote inter-agency consistency, we recommend that TABC track the operative statutory and regulatory language more closely in rule text or in explanatory preamble, by clarifying that a covered CHP is one that:

"...contains cannabinoids in concentrations above a de minimis threshold established under 7 U.S.C. § 1639o or Texas Health & Safety Code Chapter 443, and does not include hemp seed, hemp seed oil, or hemp-derived ingredients recognized as GRAS by the U.S. Food and Drug Administration, or non-intoxicating cannabidiol (CBD) wellness products formulated without psychoactive effect."

This proposed framing better aligns with the Legislature's intent in HB 1325 and DSHS's rulemaking, avoiding inadvertently treating benign GRAS ingredients and non-intoxicating CBD products as if they were psychoactive products subject to age-gating. The proposed language would also reduce the risk that TABC's definition would diverge subtly from DSHS's, which could create conflicting interpretations of the same product in different regulatory forums.

Enforcement Framework and Penalty Proportionality (§35.5, §35.6)

A. Current Structure

As drafted, §§35.5 and 35.6 establish an enforcement regime for consumable hemp product (CHP) sales by TABC licensees that is both comprehensive and significantly more punitive than corresponding alcohol-related provisions.

1. Prohibition on Sales to Persons Under 21 (§35.5(b))

Section 35.5(b) provides that a licensee or permittee *violates Alcoholic Beverage Code §§11.61(b)(7) or 61.71(a)(16)* if the business “sells, offers to sell, serves, or delivers a consumable hemp product to a minor,” with “minor” defined in §35.5(a)(3) as any person under 21 years of age.

The proposed language establishes a categorical prohibition without reference to intent, knowledge, or negligence.

2. Strict Liability and Limited Defense for False Identification (§35.5(f))

Under §35.5(f), the rules impose an effectively strict-liability standard: a licensee is not shielded from enforcement unless all of the following conditions are met:

- The minor presents an apparently valid ID that complies with §35.6(a);
- The licensee inspects the ID as required under §35.6(b); and
- The licensee “reasonably believes” the purchaser is at least 21.

In sum, this narrow safe harbor contrasts with broader statutory defenses available in comparable alcohol-sale cases under Chapter 106.14 of the Texas Alcoholic Beverage Code, designed to encourage responsible practices by shielding compliant employers from liability for an employee’s isolated violations, while still allowing the prosecution of an individual employee.

Without similar language, the TABC would ensure a chilling effect on alcohol licensees from carrying hemp products. The same safeguards should be afforded the retailer:

1. Require TABC approved training, mandated by the employer;
2. Employee completion of training;
3. Maintenance of responsible, written policies, making sure each employee reads and understands them;
4. No encouragement of violations: The employer must not directly or indirectly encourage employees to break the law.

If all criteria are met, the TABC would not take administrative actions against the retailers permit or license, such as suspension, revocation or fines.

3. Mandatory Age Verification with Limited Exception (§35.6(a)–(c))

Section 35.6(a) requires an “apparently valid, unexpired proof of identification” before completing any sale, service, or delivery of a CHP.

Section 35.6(b) further mandates careful inspection of such identification.

A limited exception appears in §35.6(c), which provides a defense to enforcement if the ultimate consumer “is 40 years of age or older,” irrespective of whether ID was checked. This defense is substantially narrower than traditional “apparent age” or “reasonable reliance” defenses in the alcohol context.

4. Mandatory Minimum Sanctions and Elimination of Civil-Penalty Alternatives (§35.5(c), §35.5(d), §35.6(d), §35.6(e))

The enforcement provisions impose mandatory minimum suspensions and allow cancellation *even for a first violation*:

- Under §35.5(c)(1), a *first violation* for selling CHPs to a minor must result in a minimum 30-day suspension or cancellation.
- Under §35.5(c)(2), a *second violation* requires a minimum 60-day suspension or cancellation.
- Under §35.5(c)(3), any subsequent violation results in mandatory cancellation.

For failure to follow age-verification procedures:

- §35.6(d)(1)–(4) imposes mandatory suspensions ranging from 7 to 30 days for the first three violations, escalating to cancellation for any subsequent violation.

Importantly, §§35.5(d) and 35.6(e) expressly eliminate the Commission’s statutory discretion to offer a civil penalty in lieu of suspension or cancellation. This is a departure from the treatment of many alcohol-related violations under Tex. Alco. Bev. Code §11.64, where civil-penalty alternatives remain central to proportional enforcement.

5. Multi-Year Ineligibility Following Cancellation (§35.5(e); §35.6(f))

Finally, the proposed rules impose significant reapplication bans:

- Under §35.5(e), cancellation for selling CHPs to a minor, renders the licensee and related persons or entities ineligible to hold any TABC license for five years.
- Under §35.6(f), cancellation for failure to verify age triggers a similar one-year ineligibility period.

These ineligibility bars exceed many analogous sanctions for alcohol violations and underscore the punitive weight of the CHP rules as drafted.

Proportionality and the Alcoholic Beverage Code

THBC strongly agrees that selling psychoactive CHPs to minors is a serious public-safety concern. However, the proposed penalty structure is significantly more severe than the Commission’s

traditional approach to analogous alcohol violations and appears to sidestep key due-process safeguards built into the Code. For example:

- Under Tex. Alco. Bev. Code § 11.64, even drug-related violations are subject to a range of sanctions, and the Commission may offer the option to pay a civil penalty in lieu of suspension in many cases.
- Under Ch. 106 (e.g., § 106.06), criminal furnishing-to-a-minor offenses typically require a culpable mental state (e.g., criminal negligence) and recognize defenses in certain ID-related circumstances.

By contrast, the proposed hemp rules create an almost pure strict-liability regime, mandate minimum suspensions, or cancellations, and categorically remove the civil-penalty-in-lieu option in §§35.5(d) and 35.6(e), even for first-time or non-willful violations.

Equally important is the absence of any consequences for retail clerks willfully selling hemp products to minors. Retail clerks as well as licensees need to have “skin in the game” for the prohibition to be taken seriously.

This divergence raises several significant concerns:

- **Proportionality:** A single inadvertent sale, even where reasonable ID checks are performed, could result in cancellation and a five-year bar from any TABC license under §35.5, a sanction more severe than many alcohol violations involving alcoholic beverages.
- **Statutory consistency:** The rules effectively narrow the Commission’s discretion under § 11.64 by foreclosing civil-penalty options and mitigating-factor analysis the Legislature contemplated.
- **Market distortion:** Texas-based processors and retailers have collectively invested tens of millions of dollars in compliant inventory, testing, and labeling systems. Sudden license jeopardy for an isolated infraction would destabilize this regulated market, create a competitive disadvantage for TABC-licensed retailers relative to non-TABC outlets, and incentivize unlicensed gray-market operators.

Recommended Revisions to §§35.5(c)–(f) and 35.6(d)–(f)

To reconcile the Commission’s enforcement goals with statutory protections and economic stability, we recommend the following adjustments:

1. **Adopt a tiered penalty matrix** that distinguishes between inadvertent clerical violations and willful or repeated misconduct, consistent with Tex. Alco. Bev. Code §§ 11.64 and 61.71. For example:
 - First violation: written warning or modest suspension with the option of a civil penalty in lieu of suspension;

- Second violation: longer suspension, with civil-penalty option at the Commission’s discretion;
 - Subsequent violations or egregious circumstances: cancellation.
2. **Restore civil-penalty discretion** by revising §§35.5(d) and 35.6(e) to allow the Commission, in appropriate cases, to offer a civil penalty in lieu of suspension or cancellation, as it may do in other contexts under § 11.64. This preserves the Commission’s flexibility to calibrate sanctions to the facts and keeps enforcement capabilities consistent.
 3. **Recognize mitigating factors and safe-harbor behavior** explicitly in rule or preamble, including:
 - Good faith reliance on an apparently valid ID;
 - Use of a Commission-approved electronic age-verification system;
 - Self-reporting of violations and prompt corrective action (e.g., additional staff training, enhanced ID protocols).

THBC recommends adding language such as:

“The Commission shall consider mitigating factors, including good-faith efforts to comply with this chapter, use of Commission-approved age-verification technology, and prompt corrective actions, in determining whether to issue a warning, impose a civil penalty, suspend, or cancel a license or permit. A retailer that self-reports or promptly corrects a violation following notice from the Commission may be eligible for a reduced penalty or written warning.”

These adjustments we believe would maintain robust deterrence while aligning more closely with the Legislature’s intent in §§ 11.64 and 61.71 to provide a range of sanctions and to avoid treating all violations as equally culpable.

Safe Harbor and Age-Verification Technology (§35.6)

THBC strongly supports mandatory age verification for CHPs and agrees that licensees should bear responsibility for implementing effective ID checks. To maximize compliance and accuracy, we recommend that the rules explicitly recognize electronic and digital solutions and provide a safe harbor for licensees who use such systems in good faith.

Specifically, we recommend adding to §35.6:

1. **Technology-neutral safe harbor:**

“Inspection of identification may be accomplished through manual examination or the use of an electronic or digital age-verification system approved by the Commission. A licensee or permittee that employs such a system in good faith shall be deemed to have exercised reasonable diligence for purposes of this rule.”

2. **Cross-agency alignment:**

“Electronic or digital age-verification solutions certified under comparable standards adopted by DSHS or DPS for CHP or tobacco enforcement shall be deemed approved by the Commission, unless expressly disallowed.”

3. Digital driver’s licenses:

To modernize enforcement, reduce fraud, and coordinate with DPS, we recommend that TABC recognize digital driver licenses consistent with Tex. Transp. Code § 521.126:

“Recognition of digital driver licenses and other secure electronic identification credentials, as authorized under Transportation Code § 521.126, will modernize enforcement, reduce clerical errors, and improve compliance accuracy.”

These safe-harbor provisions would reward early adopters of robust compliance tools, reduce ambiguity in enforcement, and better align TABC’s approach with parallel efforts by DSHS and DPS.

Inter-Agency Coordination and Market Stability

GA-56 expressly directs TABC, DSHS, and DPS to coordinate on a comprehensive regulatory framework for hemp-derived products. The Legislature likewise assigned product-level regulation (definitions, testing, labeling, registration, and primary enforcement) to DSHS under Health & Safety Code Ch. 443, while TABC retains authority only over its licensees’ conduct under the Alcoholic Beverage Code.

To avoid conflicting interpretations and duplicative enforcement, we urge the Commission to:

1. **Affirm in the preamble** that TABC will coordinate with DSHS and the Comptroller on definitions and packaging, labeling, and testing requirements, so that licensees are not subject to divergent standards for the same product.
2. **Clarify that §§35.5 and 35.6 do not supplant DSHS registration or enforcement** but instead operate alongside that framework by regulating who may sell CHPs on TABC-licensed premises and under what age-verification conditions.

A short preamble statement might read:

“TABC will coordinate with the Department of State Health Services and the Comptroller of Public Accounts to ensure that definitions of ‘consumable hemp product’ and applicable packaging, labeling, and testing requirements remain uniform across agencies. Unified definitions and enforcement protocols will simplify compliance for regulated entities and strengthen statewide public-safety outcomes.”

Such coordination will provide better public safety protection, improve compliance rates, lower enforcement costs, and reduce the risk that stringent TABC sanctions push lawful commerce into unregulated or less accountable channels.

VII. Conclusion

The Texas Hemp Business Council shares the Commission's and Governor Abbott's commitment to preventing minors from accessing psychoactive hemp products. At the same time, GA-56 directs agencies to protect children "while respecting federal law and protecting the liberties of responsible adults," and the Legislature has established a dual-agency model in which DSHS regulates consumable hemp as a product while TABC regulates only its licensees' conduct. Balanced regulation, firm on youth access, fair to responsible businesses will best advance the Governor's directive to be protective of the public, ensuring that Texas remain both pro-consumer and pro-commerce in its approach to hemp oversight. We respectfully urge the Commission to:

- Clarify the jurisdictional scope of §§35.5 and 35.6 to avoid overlap with DSHS;
- Align the CHP definition with DSHS's GRAS carve-outs and federal law;
- Adopt a tiered enforcement matrix with civil-penalty options and explicit recognition of mitigating factors;
- Create safe-harbor protections for licensees who use Commission-approved age-verification technologies; and
- Embed inter-agency coordination commitments in the preamble to the final rule.

THBC, We believe these refinements will strengthen compliance, preserve legitimate retail opportunities for TABC licensees, and ensure that public-health protections are balanced with economic stability and statutory consistency.