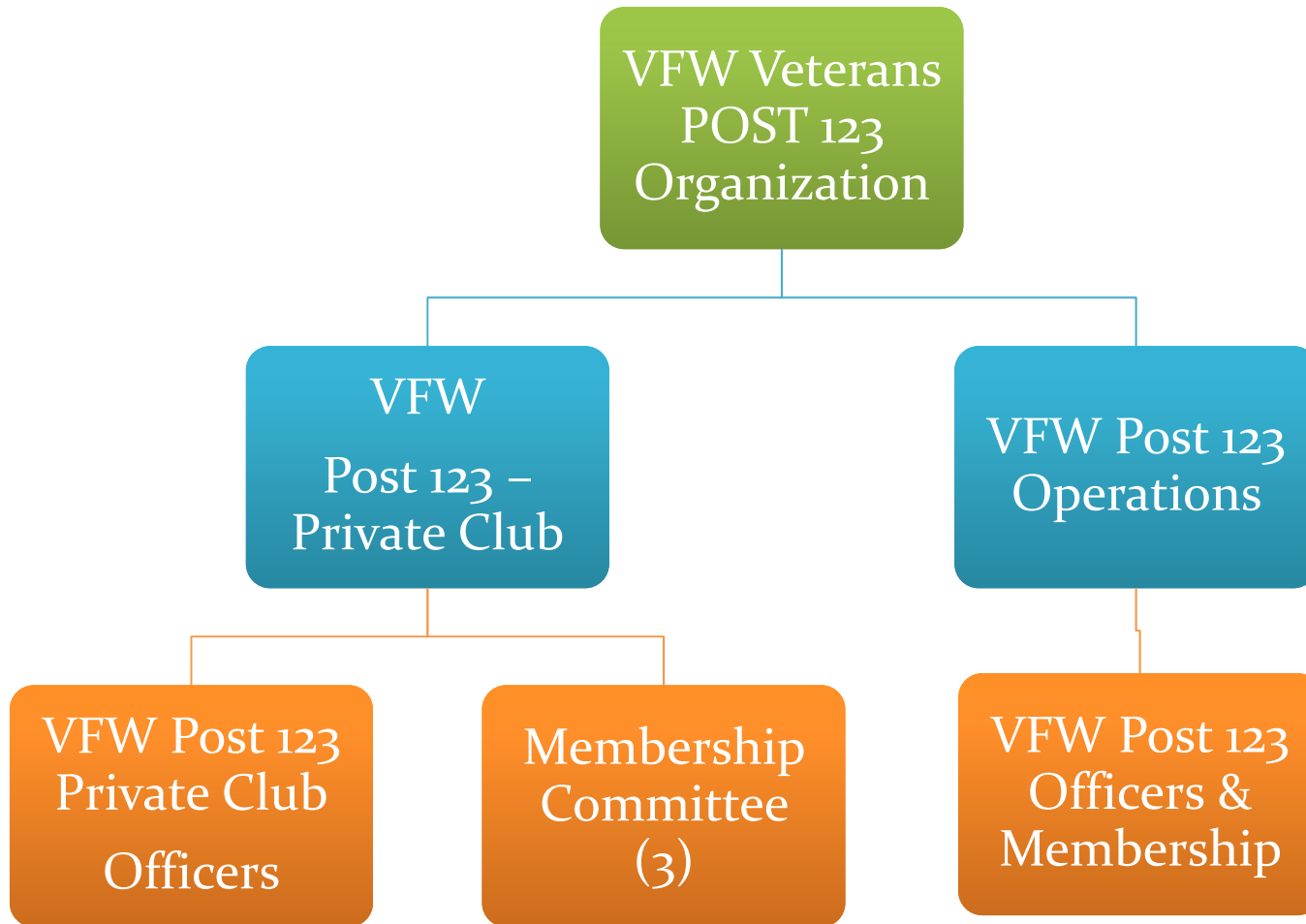


VFW



TEXAS ALCOHOLIC BEVERAGE COMMISSION

PRIVATE CLUB EXEMPTION CERTIFICATE PERMIT

PERMITTEE ENTITY

- **Qualification to hold a Private Club Exemption Certificate:** A Private Club Exemption Certificate permit shall **only be issued** to a qualified fraternal or veterans organization [Sec. 32.11(a)]
- **GUESTS:** Guests shall be limited to those individuals who **accompany** a club member onto the premises or for whom a **club member has made prior arrangements**
- **HOUSE BILL 2064** – Effective 09/01/2005 - Amended Chapter 32 of the Texas Alcoholic Beverage Code in the following sections:

Texas Alcoholic Beverage Code

Section 32.11 (b)

- The permit fee imposed by Section 32.02 and the provisions of Sections 32.03 and 32.10 requiring **regular food service and prohibiting guests from paying in cash** do not apply to a private club established by a fraternal or veterans organization.
- The private club is also **exempt from Sections 32.05 (LOCKER) and 32.06 (POOL)**, and the members of the club **may use any club funds owned by them jointly**, including revenue from the service of alcoholic beverages, to replenish their joint stock of alcoholic beverages

Texas Alcoholic Beverage Code

Section 32.11 (e)

- A fraternal or veterans organization that holds a permit under this chapter and the private club established under that permit are **considered separate entities** for the purposes of determining compliance with and enforcing this code.
- The fraternal or veterans organization shall **establish a membership committee** for the permitted entity for the purposes of Sections 32.03(c) and (d). Membership in the private club is governed by this code.
- **Membership in the fraternal or veterans organization is not subject to the requirements of this code.**

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HB-2064 BILL ANALYSIS
AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

- Many fraternal organizations in Texas have been issued a private club alcoholic beverage permit by the Texas Alcoholic Beverage Commission under provisions of the Alcoholic Beverage Code that exempt such organizations from payment of fees. However, **the present statute is unclear as to the status of persons being served alcoholic beverages under the permit.** For instance, if all members of the fraternal organization would be considered to be members of the club and therefore eligible to be served an alcoholic beverage, some of those persons might not be of legal age for consumption.
- Fraternal organizations also sometimes stage events that are open to the public and **it is unclear whether a nonmember of that fraternal organization has to become a member in order to enjoy the privileges of the club.**

H.B. 2064 clarifies those questions:

- 1) **Members of the club entity would be added and dropped independently from the exempt fraternal organization.** By administrative rule, the club membership committee must have the power to terminate a membership which would not extend to termination in the fraternal organization.
- 2) The **rules of the club should be distinct and separate** from the governing rule of the fraternal or veterans organization.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency. **(TABC is not authorized or required to pass a rule to implement these changes)**

Members of the fraternal or veterans organization are not automatically granted membership privileges under the Private Club Exemption Certificate permit held by the organization. The fraternal or veterans organization must organize a separate private club entity for the purpose of determining those persons who have membership privileges under its TABC permit.

- 1) The private club must be an association of persons, whether incorporated or unincorporated, under the laws of this state.
- 2) It must have its **own bylaws or rules and regulations separate** from the fraternal or veterans organization.

Requirements cont...

3) The club's affairs and management must be conducted by a **board of directors, executive committee, or similar body** chosen by its members at an annual meeting.

4) The **club must establish a membership committee consisting of at least three (3) members** and vested with authority by charter, bylaw or regulation to approve or reject membership applications and terminate existing memberships. The governing body of the club may serve as the membership committee.

Note: These officers and committee personnel may be one and the same as the local chapter VFW officers and committee personnel.

Requirements cont...

- 5) **Club minutes** must be recorded and maintained for audit purposes of the election or appointment of officers, membership committee personnel and subsequent changes in these persons.
- 6) An **annual election of officers of the club** must be held as required by the club by-laws.
- 7) **Minutes of membership committee meetings** to approve and/or delete membership must be maintained.
- 8) **Membership applications** for new members must be maintained for all membership into the club.
- 9) **Management / Lease Agreement** must exist between VFW and Club – **May be for token amount - \$1.00**

PURCHASE AND REPLACEMENT OF ALCOHOLIC BEVERAGES

Fraternal and veterans organizations are exempt from the locker and pool systems requirements for storing, purchasing, and maintaining a stock of alcoholic beverages.

Any funds, be they separately or jointly held by the private club or fraternal or veterans organization, may be used to replenish the stock of alcoholic beverages [Sec. 32.11(b)].

- All **distilled spirits and wine** may be purchased only from the holder of a local distributor's permit [Sec. 32.08(a) and Rule 41.51(c)].
- **Ale and malt liquor** may be purchased from either a local distributor or a wholesaler.

***TAX: TAX SUBCHAPTER B. MIXED BEVERAGE
GROSS RECEIPTS TAX***

Sec. 183.021. TAX IMPOSED ON GROSS RECEIPTS OF PERMITTEE FROM MIXED BEVERAGES. A **tax at the rate of 6.7 [~~14~~]** percent is imposed on the gross receipts of a permittee received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

Sec. 183.041. TAX IMPOSED ON SALES OF MIXED BEVERAGES AND RELATED ITEMS.

- (a) A tax is imposed on each mixed beverage sold, prepared, or served by a permittee in this state and on ice and each nonalcoholic beverage sold, prepared, or served by a permittee in this state for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.
- (b) The rate of the **tax is 8.25 percent** of the sales price of the item sold, prepared, or served.

Regarding actions or steps to compliance, it's proving challenging to compile a list because each Post may want to handle its alcohol operations and club organization differently depending on its needs. That so, following is a list that should help the cause or at least help get them started.

1. The Post should authorize organization of a private club entity for the purpose of ensuring compliance with the TAB Code and TABC's rules related to Private Club Exemption Certificate permittees. Organizing the entity as a unincorporated association of persons, as opposed to a nonprofit corporation, is preferred. The Post can appoint the club's initial officers and/or directors, which can be the same individuals who serve as the Post's officers or commanders, if desired. The Post can help draft the club's rules and regulations.
2. The club's rules and regulations should establish (i) the reason its organized (e.g., for the purpose of determining those persons who have membership privileges under the Post's TABC Private Club Exemption permit), (ii) that its affairs and management are conducted by a board of directors or executive committee (pick one) to be chosen by the club's members at its annual meeting, (iii) the time and date for holding the annual members and director or executive meetings, (iv) procedure for providing notice of meetings, if any, (v) procedure for electing directors or executives in case of vacancies or resignations, (vi) the club's membership committee, which must consist of at least 3 members of the club appointed by club directors or executives and which has the authority to approve or reject membership applications and terminate memberships, (vii) the requirements and qualifications for membership (e.g., must be at least 21) and types of membership (e.g., regular, temporary, preliminary) in the club, and (viii) whatever else the Post desires in the club's rules provided they conform to or do not violate the requirements related to the same in Chapter 32 of the TAB Code and Section 41.52 of the TABC's rules.
3. The club's officers and/or directors should hold an organization meeting or prepare an organizational consent to (i) adopt the rules and regulations for the club, (ii) appoint the club's membership committee, (iii) elect its officers and directors, and (iv) approve a concession, lease, and/or management agreement between the club and post (see #2 below). If desired, it would probably be acceptable for the club's directors or officers to accept as regular club members all Post members who are 21 on the date of the meeting or consent.
4. The club's membership committee, which can be the same individuals who serve as the club's directors or executives, should meet regularly to approve individuals as regular or preliminary members (see #3 below) and in any case not later than 7 days on receiving membership applications. See #1 below for membership committee meeting details.

As a practical matter and barring any complaints, I highly doubt the TABC will start cracking down on posts or fraternal organizations that hold Private Club Exemption permits. Still, on the chance of an audit or investigation, the Posts holding TABC Private Club Exemption permits should take steps to follow the requirements set forth in the Code and Rules and reviewed at the Mid-Winter meeting.

1. Since the club is now operated by an unincorporated association of persons, Do we lose veteran organization exceptions from city ordinances? For example, city ban on smoking in restaurants and bars.

The private club does not hold the Post's TABC Private Club Exemption permit or run the Post's alcoholic beverage operations. The Post, and no other entity or individual, holds, controls, and operates its TABC Private Club Exemption permit.

The private club is organized for the purpose of providing a membership committee to determine what individuals have membership privileges under the Post's permit, i.e., what individuals are authorized to drink alcohol at the Post. Individuals must be a private club member (either regular, temporary, or preliminary) or guest of a regular or temporary club member to drink alcohol under the Post's TABC Private Club Exemption permit. Regular and preliminary club members (see #3 below re: preliminary memberships, which are optional) must be approved by the club's membership committee. The membership committee must consist of at least 3 members of the club appointed by the club's directors or executives. The committee must keep written minutes of its meetings noting the date of meeting, names of committee members present (must be at least 3), and names of persons admitted to or terminated from membership in the club (not the Post). Individuals issued temporary membership cards do not have to be approved by the club's membership committee.

Outside of TABC compliance concerns, the private club should have no effect on any exempt status enjoyed by the Post.

2. How can the state force us to lease our own private property to another party or association of persons? Even if it is only for a token fee of \$1.00.

The Post can decide not to hold a TABC Private Club Exemption permit. However, if the Post wants to hold this permit, then it's responsible for complying with the regulations that go with this privilege. If it doesn't comply, then the TABC can initiate administrative action to cancel or suspend the Post's permit.

One of the qualification requirements related to a Private Club Exemption permits is that the club must "own, lease, or rent a building, or space in a building of such extent and character as in the judgment of the commission is suitable and adequate for the club's members and their guests." (Tex. Alc. Bev Code Sec. 32.03(f)). The private club doesn't own the Post's building, so it must lease or rent the building or space in the building suitable for its purpose. To accommodate this with consideration that the Post holds the TABC Private Club Exemption permit, the TABC has offered that the club and the Post can enter into a token lease agreement for nominal consideration.

I believe it would also be acceptable for the Post and club to enter into a no fee concession management agreement whereby the Post agrees to provide space to the club, and the club agrees to provide enrollment and membership committee services for the Post to help ensure compliance with the TAB Code and TABC's rules. The consideration is that the club gets a space and the Post is provided with membership management services, so no money need change hands.

3. How can a nonprofit such as ours be expected purchase temporary membership cards at \$150/50 cards for our hall renters? Or hall rental is \$350 with a capacity of 150 people. That's \$450 worth of temporary cards. We can't afford to lose \$100 and nobody in their right mind will pay \$800 for our hall.

The following only applies to those Post's with a TABC Private Club Exemption permit that covers areas of the Post rented out to the public *and* which alcoholic beverages will be sold as part of the rental or event ...

As noted in #1, Individuals must be a private club member (either regular, temporary, or preliminary) or guest of a regular or temporary club member to drink alcohol under the Post's TABC Private Club Exemption permit. Regular and preliminary club members (see below) must be approved by the club's membership committee. Sec. 32.09(a) of the TAB Code allows the club to issue temporary membership

cards for \$3 a card without membership committee approval. **A temporary member can bring in 3 guests**, so, technically, the Post can allow for 4 people per \$3 membership card. In the question above, the Post would only have to issue a maximum of 38 temporary membership cards to accommodate 150 people, and this is presuming all 150 want to drink alcohol. The total then for a \$350 hall rental and 38 temp cards to accommodate 150 people who want to drink would be around \$460.

Another option to accommodate renters is found in Code Sec. 32.03(d), which authorizes clubs to issue preliminary memberships for a period not exceeding 7 days without charge and without having first obtained membership committee approval. Preliminary members have all the privileges of regular members (i.e., they can purchase and consume alcohol). The catch is that preliminary members must apply for membership (this is accomplished by an individual completing a simple application form to provide their name, address, and date of birth), and the club's membership committee must approve these preliminary member applications within 7 days of application. If the committee fails to approve or denies any of the applications, then the Post will owe \$3 (cost of issuing a temporary membership card) per application/individual.

What this means is that, instead of issuing temporary membership cards, the club could accommodate hall renters by issuing preliminary memberships to the club. (remember, these are memberships to the private club, not the Post). Every person entering the premises who wanted to drink alcohol must apply as a preliminary member, and these applications must be approved by the membership committee within 7 days or the club could owe \$3 per person. Depending on the size of hall and attendees, it may be too difficult logistically to have every person apply for a preliminary membership as they enter the premises or before they're served a drink (versus issuing a \$3 card to 1 person to allow 4 total in). Also, the club's membership committee would be responsible for approving all preliminary members within 7 days and recording meeting minutes for the same.

4. Clarification is needed on how we handle post members under 21. I can't tell an eligible VFW member that they are only allowed on the property for meetings. It would also be illegal to have our VOD/ Patriots Pen banquet on the property, or to rent the hall to anyone that would have persons under 21 present. That would also mean we could not sponsor any youth activity or Scouting unit.

Post membership is separate from membership in the private club. Individuals who are under 21 years of age and qualify for membership in the Post can enjoy full access to the Post's facilities and membership privileges. However, because the legal age to possess and consume alcohol in Texas is 21**, Post members who are under 21 cannot possess or consume alcohol under the Post's TABC permit. As such, those Post members who are under 21 cannot be members of the private club organized to determine who can drink alcohol under the Post's Private Club exemption permit. But, not being able to be a private club member has no effect on their Post membership or privileges that come with it.

There's nothing in TABC regulations that prevents Post's holding TABC Private Club Exemption permits from allowing minors on the Post's premises (just don't serve the minors alcohol), or sponsoring or hosting youth activities or banquets (just don't serve the youth alcohol).

(** While Texas law does allow the parent, legal guardian or spouse (who is at least 21) of a minor to purchase a drink for them while in their presence, there is no practical way to prove the existence of the

required relationship and, therefore, I recommend the Post's policy should be to refrain from serving minors at all.)

5. Every occasion of charitable bingo must be open to the public, does this mean that they must all purchase a temporary membership card? If so, will the Bingo Commission allow that as an allowable Bingo expense? If we write in the by-laws that Bingo players are members of "The Club", then they would be allowed in the post at anytime during the day. And again, all Bingo players under 21 would no longer be allowed to play here.

To drink alcohol under the Post's TABC Private Club Exemption permit, individuals must be a private club member (either regular, temporary, or preliminary) or guest of a regular or temporary club member. If the Post's TABC Private Club Exemption permit covers the space where bingo takes place, then anyone who wants to drink alcohol on bingo night must apply to become a regular or preliminary member (must be approved by club's membership committee) or be issued a temporary membership card or be a guest of a regular or temporary member. If they want to play bingo but not drink alcohol, then they don't need to apply for club membership. If they want to drink alcohol but not play bingo, then they need to be a club member or qualified guest to drink alcohol.

Private club membership is not required to access to the Post's premises. If the Post's premises are otherwise restricted to Post members and their guests except for bingo or other occasions when the public is invited, then, just because a non-Post member is a member of the private club doesn't grant that individual access to the Post's premises.

Being a member of the private club only authorizes that individual to drink alcohol under the Post's TABC Private Club Exemption permit and, because of state law, individuals must be at least 21. If minors are allowed onto the Post's premises for bingo or invited otherwise for whatever occasion, then they're still allowed on the Post's premises even though a Post holds a TABC Private Club Exemption permit. They just shouldn't be served alcohol.

6. What prevents any non-member from being elected as an Officer of "The Club"? What prevents members of Post 6012 from taking over Our Post "Club" and doing what they will? After all, those will be the people voting on changes to "The Club" By-laws.

The Post can provide in the club's rules that only Post members who are also members of the club are eligible to serve as the club's directors or executive committee. The club's purpose is to provide membership separation between the Post and Post's TABC Private Club Exemption permit.

7. "Members of the club entity would be added and dropped independently from the exempt organization." So the club entity has the ability to prevent all 450 post members, and 160 Ladies Auxiliary from using the building that we have owned since 1975?

No. Access to the Post and the Post's facilities is under exclusive control of the Post itself. If desired, the Post can provide in the club's rules that all Post and Ladies Auxiliary members who are at least 21 and apply for club membership are approved as regular members.

A Post can provide in the club's rules the terms and conditions, if any, by which a member's membership can be terminated. Private club membership is separate from Post membership or Ladies Auxiliary membership or whatever group members the Post grants access to its facilities.

8. Why does this only apply to posts with a mixed-beverage liquor license and not beer only. Is the state encouraging us to all drop our current license and go with the less expensive beer only?

The TABC regulations and guidance reviewed in this email and at the Mid-Winter Round Up in January 2014 in Austin apply only to those Posts that hold a TABC Private Club Exemption permit. If a Post doesn't hold a TABC permit or holds any other type of TABC permit, then none of the regulations or guidance reviewed in this email or at the aforementioned Mid-Winter meeting apply to the Post and/or its permit. Again and more specifically, this review does NOT apply to Mixed Beverage permits (MB), Beer Retailer's On Premise Licenses (BE), or Wine and Beer Retailer's Permits (BG) or ANY other type of TABC permit.

9. "This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency." TABC is not authorized or required to pass a rule to implement these changes. What happened to the legislative process here, and what prevents them from making a change then coming in a week later and placing fines?

The legislative process occurred between the time House Bill 2064 was filed by the bill's author in March 2005 and then signed by the Governor to be effective immediately in June 2005. The "this bill does not expressly grant additional..." language is typically tacked on to a bill to avoid having to undergo a fiscal note were the administrative agency to have to enact rules to enforce it. It's also tacked on when the Legislature is only seeking to revise a statute to provide clarification, which the bill analysis here suggests was the basis for the bill. In any case, the legislative process occurred, and the Legislature must pass any revisions to this section of the Code.

The TABC has not given any indication that it will commence routine audits or investigations of Posts that hold TABC Private Club Exemption permits, but that doesn't mean the TABC couldn't use its police powers to seek administrative action against those Post that were found not to be in compliance. The TABC's [Standard Penalty chart](#) provides that the first violation for improper record keeping in violation of Rule 41.52 and Code Sec. 32.03 is a 2 to 4 day suspension or fine of \$300 per day.

10. "Membership applications for new members must be maintained for all membership into the club." Does the VFW application satisfy this, or must new members complete a separate application? If so, what are the required items to be listed on the application?

Membership applications for the club should be separate from the Post's membership applications, although the Post could include a club membership application when a prospective Post member completes a Post membership application. The club could also provide in its rules that a Post membership application counts for club membership provided the applicant is at least 21. Otherwise, the club's regular or preliminary membership application can be a simple form. It should ask for the applicant's name, address, and date of birth to verify they are at least 21.