

By: Driver

H.B. No. 2880

A BILL TO BE ENTITLED

AN ACT

relating to alcoholic beverage industry sponsorship at public entertainment facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 108, Alcoholic Beverage Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. INDUSTRY PUBLIC ENTERTAINMENT FACILITIES ACT

Sec. 108.71. PURPOSE. This subchapter governs the statutory duties, rights, and relations among licensees and permittees operating under this code, including their relations with the owners and operators of public entertainment facilities. This subchapter expressly authorizes alcoholic beverage distillers, manufacturers, and wholesale distributors to promote and sponsor events and advertise alcoholic beverage brands and products at public entertainment facilities provided the distillers, manufacturers, or wholesale distributors do not establish unlawful relations with retail permittees operating at such facilities.

Sec. 108.72. SHORT TITLE. This subchapter may be cited as the "Industry Public Entertainment Facilities Act."

Sec. 108.73. DEFINITIONS. In this subchapter:

(1) "Independent concessionaire" means a licensed or permitted member of the retail tier or a holder of a private club permit, caterer's permit, or food and beverage certificate.

1 (2) "Public entertainment facility" means an arena,
2 stadium, amphitheater, auditorium, theater, civic center,
3 convention center, or similar facility that is primarily designed
4 and used for live artistic, theatrical, cultural, educational,
5 charitable, musical, sporting, or entertainment events. The term
6 does not include a facility the primary purpose of which is the sale
7 of food or alcoholic beverages such as a bar, night club,
8 restaurant, pool hall, or dance hall, or a facility that derives 75
9 percent or more of the facility's annual gross revenue from the
10 on-premise sale of alcoholic beverages.

11 (3) "Public entertainment facility property" means
12 any licensed or permitted premises and related surrounding uses.

13 (4) "Sponsorship signs" means any manner of
14 advertising, promotional, or sponsorship signage, or any
15 representation, device, display, regalia, insignia, indicia,
16 design, slogan, trade name, brand name, product name, permittee or
17 licensee name, advertising specialties, or such other materials
18 indicating participation in or sponsorship of all or part of a
19 public entertainment facility, event, or venue in connection with
20 or pertaining thereto, wherever located, whether indoor or outdoor,
21 including billboards, awnings, electric signs, or however
22 manufactured or comprising whatever materials, and however
23 disseminated including via written, printed, graphic, radio,
24 television, cable, internet, electronic, satellite, or other media
25 or communication modalities.

26 Sec. 108.74. ADVERTISING AND PROMOTION IN PUBLIC
27 ENTERTAINMENT FACILITY. (a) A member of the manufacturing and

1 wholesale distributors tiers may promote and sponsor an
2 entertainment event or advertise and promote an alcoholic beverage
3 brand or product at a public entertainment facility, if the
4 alcoholic beverage promoted, sold, or served at such event or
5 facility is furnished by an independent concessionaire.

6 (b) The independent concessionaire may not receive direct
7 monetary benefit from advertising, promotional, or sponsorship
8 revenues generated by operation of the public entertainment
9 facility. The public entertainment facility owner, operator, or
10 upper tier members may not directly or indirectly control the
11 quantity or brand of alcoholic beverages bought or sold by the
12 independent concessionaire. The independent concessionaire must
13 enter into a written concession agreement with the owner, lessee,
14 or operator of the public entertainment facility.

15 (c) Notwithstanding any provision in this code or the
16 commission rules to the contrary, a member of the manufacturing and
17 wholesale tiers who has entered into an advertising, promotional or
18 sponsorship agreement may provide, and a concessionaire who has
19 entered into a concessionaire agreement under this subchapter may
20 place sponsorship signs at, in, within, and on a public
21 entertainment facility property. To the extent of any conflict
22 between this subchapter and any other provision of this code or
23 other state law, or of commission rules, this subchapter controls.

24 Sec. 108.75. VIOLATION. If an alcoholic beverage brand or
25 product is the subject of an advertising, promotional, or
26 sponsorship event or agreement concerning a brand or product sold
27 during a public entertainment event or at a public entertainment

1 facility and the aggregate percentage of such alcoholic beverage
2 product or brand sold at the entire public entertainment facility
3 exceeds by more than five percent the aggregate percentage share of
4 the same brand or product sold during the prior calendar year within
5 the county in which the public entertainment facility is located,
6 such excess percentage sales may constitute prima facie but
7 rebuttable evidence of a violation of Sections 102.01, 102.04, and
8 102.07, Alcoholic Beverage Code; provided, however, that the
9 computation of excess percentage sales may exclude sales made on
10 those occasions when a private party uses such facility and orders
11 specific alcoholic beverages.

12 Sec. 108.76. COST OF ADVERTISEMENT, SPONSORSHIP, OR
13 PROMOTION. Notwithstanding any provision of this subchapter or any
14 other provision of this code, a part of the cost of an
15 advertisement, sponsorship, or promotion authorized by this
16 subchapter may not be charged to or paid, directly or indirectly, by
17 the holder of a wholesale permit, general class B wholesaler's
18 permit, local class B wholesaler's permit, local distributor's
19 permit, general distributor's license, or local distributor's
20 license, except through the price paid by the holder of the permit
21 or license for products purchased from the permit or license
22 holder's supplier.

23 Sec. 108.77. SUBMISSION OF AGREEMENT; CONFIDENTIALITY.
24 (a) An advertising, promotional, sponsorship, or concession
25 agreement made on or after September 1, 2003, by a member of the
26 alcoholic beverage industry under this subchapter must be filed
27 with the office of the commission or administrator not later than

1 the 60th day after the execution of the agreement, or any amendments
2 to the agreement.

3 (b) An advertising, promotional, sponsorship, or concession
4 agreement as described by this subchapter that is in effect on
5 September 1, 2003, must be filed with the commission or
6 administrator not later than the 180th day after that date;
7 provided, however, that a failure to file the agreement within the
8 180-day period for good cause shown will not subject the parties to
9 such agreement to legal liability.

10 (c) An agreement filed under this subchapter is
11 confidential under Section 5.48(b).

12 Sec. 108.78. APPROVAL OR DENIAL OF AGREEMENT; JUDICIAL
13 REVIEW. (a) Not later than the 10th business day after a party
14 applies for approval by filing with the commission or administrator
15 under Section 108.77(a), the proposed or final concession,
16 sponsorship, promotion, or advertising agreement the commission or
17 administrator shall notify the applicant in writing of the
18 approval, disapproval, or conditional approval of all tendered
19 agreements. If the commission or administrator does not provide a
20 written response within the 10-day period, the agreement is deemed
21 approved for all purposes.

22 (b) If an agreement is disapproved or conditionally
23 approved under Subsection (a), the commission or administrator
24 shall, not later than the 10th business day after the disapproval or
25 conditional approval, specify in writing the basis for its
26 determination, referencing specific code provisions or commission
27 rules violated and any necessary deletions or amendments required

1 to effect compliance.

2 (c) If on the applicant's resubmission to the commission or
3 administrator, the approval is directly or indirectly denied or
4 withheld or the applicant contests the commission's or
5 administrator's determinations, acts, or omissions concerning this
6 subchapter, then notwithstanding anything to the contrary in this
7 code, the commission rules, or Chapter 2001, Government Code, the
8 applicant or any party to the agreements at issue desiring a
9 declaration of rights, or alleging threatened or actual damage or
10 injury by violation of this subchapter, this code, commission
11 rules, or at law or in equity, shall be deemed to have exhausted all
12 administrative and other requirements and may bring suit in any
13 district court in any county in which the rights in this subchapter
14 are at issue, or a threatened or actual violation is alleged to have
15 occurred, to require, contest, or suspend enforcement, including by
16 injunctive relief, or may bring an action for declaratory relief.
17 The court in its discretion may allow the prevailing party to
18 recover its court costs and reasonable attorney's fees incurred in
19 the defense or prosecution of such action.

20 SECTION 2. This Act takes effect September 1, 2003.