

By: Armbrister

S.B. No. 1380

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 subchapter, including their relations with the owners and operators of public entertainment facilities. This subchapter expressly authorizes alcoholic beverage distillers, manufacturers, distributors, and wholesalers, except as provided by Section 108.74, to promote and sponsor events and advertise alcoholic beverage brands and products at public entertainment facilities without establishing unlawful intertier relations, including with retail permittees operating at those 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 who:

1           (A) has a written concession agreement from the  
2 owner, operator, or lessee of a public entertainment facility;

3           (B) receives no monetary benefit, directly or  
4 indirectly, by any scheme or device or in any form or degree from  
5 the alcoholic beverage industry including a benefit in the form of  
6 capital improvements, furniture, fixtures, or equipment, unless  
7 otherwise authorized by this code or commission rules; and

8           (C) is not owned, in whole or in part, by the  
9 public entertainment facility, or a subsidiary, agent, manager, or  
10 company managing the facility, and who does not own, in whole or in  
11 part, or manage the public entertainment facility.

12           (2) "Public entertainment facility" means an arena,  
13 stadium, automobile race track, amphitheater, auditorium, theater,  
14 civic center, convention center, or similar facility that is  
15 primarily designed and used for live artistic, theatrical,  
16 cultural, educational, charitable, musical, sporting, nationally  
17 sanctioned automobile racing, or entertainment events. The term  
18 does not include a facility the primary purpose of which is the sale  
19 of food or alcoholic beverages, including a bar, nightclub,  
20 restaurant, hotel, bowling alley, pool hall, or dance hall, or a  
21 facility that derives 75 percent or more of the facility's annual  
22 gross revenue from the on-premise sale of alcoholic beverages.

23           (3) "Public entertainment facility property" means  
24 property on which a public entertainment facility and a licensed or  
25 permitted premises are located and related surrounding property.

26           (4) "Sponsorship signs" means any manner of  
27 advertising, promotional, or sponsorship signage, or any

1 representation, device, display, regalia, insignia, indicia,  
2 design, slogan, trade name, brand name, product name, permittee or  
3 licensee name, advertising specialties, marketing services, or  
4 other materials indicating participation in or sponsorship of all  
5 or part of a public entertainment facility or an event or venue at a  
6 public entertainment facility, including the sponsorship or naming  
7 of all or part of the facility or event, wherever located, whether  
8 indoor or outdoor, including billboards, awnings, and electric  
9 signs, however manufactured, comprising whatever materials, and  
10 however disseminated, including by writing, printing, graphics,  
11 newspaper, periodicals, radio, television, cable, Internet,  
12 electronic, satellite, and other media or communication  
13 modalities.

14 Sec. 108.74. EXCEPTION OF CERTAIN WHOLESALER FROM  
15 APPLICATION OF THIS SUBCHAPTER. A person who holds a permit under  
16 Chapter 19 and whose revenues from the sale of alcoholic beverages  
17 are predominately obtained from the sale of distilled spirits and  
18 wine may not enter into advertising, sponsorship, or promotional  
19 agreements as authorized by Section 108.75.

20 Sec. 108.75. ADVERTISING AND PROMOTION IN PUBLIC  
21 ENTERTAINMENT FACILITY. (a) A member of the distiller,  
22 manufacturing, distributor, or wholesaler tier may promote,  
23 sponsor, or advertise an entertainment event or venue or promote or  
24 advertise an alcoholic beverage brand or product at a public  
25 entertainment facility if the alcoholic beverage promoted, sold, or  
26 served at the event, venue, or facility is furnished by an  
27 independent concessionaire.

1       (b) An independent concessionaire may not receive direct  
2 monetary benefit from advertising, promotional, or sponsorship  
3 revenues generated by operation of a public entertainment facility.  
4 A member of the manufacturing or distributing tier may not,  
5 directly or indirectly through the owner or operator of a public  
6 entertainment facility, furnish, give, rent, lend, or sell any  
7 equipment, fixtures, or supplies to an independent concessionaire.  
8 A public entertainment facility owner or operator or a member of the  
9 distiller, manufacturing, distributor, or wholesaler tier may not  
10 directly or indirectly control the quantity or brand of alcoholic  
11 beverages bought or sold by an independent concessionaire. An  
12 independent concessionaire must enter into a written concession  
13 agreement with an owner, lessee, or operator of a public  
14 entertainment facility.

15       (c) A member of the distiller, manufacturing, distributor,  
16 or wholesaler tier who has entered into an advertising,  
17 promotional, or sponsorship agreement may provide sponsorship  
18 signs at a public entertainment facility property and as otherwise  
19 authorized in this code and commission rules.

20       (d) An independent concessionaire who has entered into a  
21 concessionaire agreement under this subchapter may place  
22 sponsorship signs at, in, or on public entertainment facility  
23 property.

24       (e) The owner or operator of a public entertainment facility  
25 who has entered into a concessionaire agreement and a sponsorship  
26 agreement under this subchapter shall not be precluded from placing  
27 and displaying sponsorship signs provided by sponsoring members of

1 the distiller, manufacturing, distributor, or wholesaler tier, at,  
2 in, or on an independent concessionaire's venues at a public  
3 entertainment facility property, including the area where  
4 alcoholic beverages are displayed, served, or poured.

5 (f) Nothing in this subchapter shall limit the independent  
6 concessionaire's right to place and display sponsorship and other  
7 signs authorized under this code and commission rules.

8 (g) All advertising, promotional, sponsorship, and  
9 concession agreements authorized by this subchapter shall contain  
10 an affirmative provision disavowing the right of any party to  
11 engage in conduct prohibited by this subchapter.

12 Sec. 108.76. VIOLATION. The provision, placement, and use  
13 of sponsorship signs as authorized by and in compliance with this  
14 subchapter by members of the distiller, manufacturing,  
15 distributor, or wholesaler tier, independent concessionaires, and  
16 public entertainment facility owners and operators does not  
17 constitute an illegal inducement, subterfuge, or a surrender of  
18 exclusive control.

19 Sec. 108.77. COST OF ADVERTISEMENT, SPONSORSHIP, OR  
20 PROMOTION. No part of the cost of an advertisement, sponsorship, or  
21 promotion authorized by this subchapter may be charged to or paid by  
22 a distributor or wholesaler, except as provided by Section 108.74,  
23 unless the distributor or wholesaler:

24 (1) contracts directly with the owner or operator of  
25 the public entertainment facility for the advertisement,  
26 sponsorship, or promotion; or

27 (2) is a party to the advertising, sponsorship, or

1 promotion agreement between a member of the manufacturing tier and  
2 the owner or operator of the public entertainment facility.

3 Sec. 108.78. CONFIDENTIALITY. Any concessionaire,  
4 sponsorship, advertisement, or promotional agreement, or related  
5 agreement and exhibits to such an agreement, entered into,  
6 submitted, filed, or requested by the administrator or commission  
7 is deemed confidential under Section 5.48(b).

8 Sec. 108.79. OPTIONAL PREAPPROVAL PROCESS. (a) Subject to  
9 the terms of the relevant agreement, a permittee or licensee may by  
10 certified mail, return receipt requested, submit to the  
11 administrator in writing the permittee's or licensee's original or  
12 amended advertising, promotional, sponsorship, or concessionaire  
13 agreement relating to a public entertainment facility, requesting  
14 the administrator's approval.

15 (b) Not later than the 30th day after the date the  
16 administrator receives the request for preapproval under this  
17 section, the administrator shall notify the permittee or licensee  
18 in writing, by certified mail, return receipt requested, whether  
19 the administrator approves, conditionally approves, or disapproves  
20 the submission. If the administrator does not provide the  
21 notification in that time and the permittee or licensee does not  
22 agree to a timely and reasonable written request for an extension by  
23 the administrator giving the reason for the request, the agreement  
24 is considered approved as submitted.

25 (c) If the administrator conditionally approves or  
26 disapproves a submission under Subsection (b), the administrator  
27 shall specify in the notice provided under that subsection the

1 basis for the administrator's determination, referencing any  
2 specific provisions of this code or other law involved in the  
3 determination and any necessary and reasonable actions the  
4 permittee or licensee may take to obtain approval of the  
5 submission.

6 (d) On receipt of the administrator's conditional approval  
7 or disapproval, the permittee or licensee may:

8 (1) revise and resubmit the agreement in compliance  
9 with the administrator's specific comments and instructions,  
10 including any discussions between the administrator and permittee  
11 or licensee to resolve the issues involved in the administrator's  
12 determination; or

13 (2) contest the commission's or administrator's  
14 determinations, acts, or omissions related to this subchapter and  
15 engage in informal mediation to resolve the dispute regarding the  
16 submission.

17 (e) A submission under Subsection (d)(1) is subject to the  
18 approval period prescribed by Subsection (b) unless the  
19 administrator and the permittee or licensee agree otherwise.

20 Sec. 108.80. JUDICIAL REVIEW. (a) If a permittee,  
21 licensee, or other party to an agreement under this subchapter  
22 alleges that the administrator is or has been, directly or  
23 indirectly, unfairly, arbitrarily, capriciously, or wrongly  
24 exercising or withholding the exercise of the administrator's  
25 authority under Section 108.79, desires a declaration of rights  
26 under this subchapter, or alleges threatened or actual damage or  
27 injury arising out of a violation of this subchapter or any other

1 law relating to the process and rights provided by this subchapter,  
2 the aggrieved party may bring suit in a district court in Travis  
3 County:

4 (1) to require, contest, or suspend enforcement of any  
5 act or omission by the administrator or commission; or

6 (2) concerning any administrative, regulatory, legal,  
7 or judicial act or omission, including seeking mandatory and  
8 prohibitory injunctive and extraordinary relief or declaratory  
9 relief.

10 (b) The court in its discretion may allow the permittee,  
11 licensee, or other party to an agreement to recover court costs and  
12 reasonable attorney's fees incurred in the defense or prosecution  
13 of the action.

14 SECTION 2. (a) Except as provided by Subsection (b) of  
15 this section:

16 (1) this Act supersedes 16 T.A.C. Section 45.100(b) in  
17 its entirety as it existed on the effective date of this Act; and

18 (2) to the extent of any conflict between 16 T.A.C.  
19 Section 45.100 and the provisions of Subchapter C, Chapter 108,  
20 Alcoholic Beverage Code, as added by this Act, the provisions of  
21 Subchapter C shall prevail.

22 (b) An agreement entered into before April 15, 2003, that is  
23 in compliance with 16 T.A.C. Section 45.100, as that section  
24 existed on January 1, 2003, shall be deemed in compliance with 16  
25 T.A.C. Section 45.100, and Subchapter C, Chapter 108, Alcoholic  
26 Beverage Code, as added by this Act. An agreement entered into  
27 before April 15, 2003, that is authorized under the provisions of



1 Subchapter C, Chapter 108, Alcoholic Beverage Code, as added by  
2 this Act, may not be deemed to violate 16 T.A.C. Section 45.100 to  
3 the extent that section conflicts with or is superseded by  
4 Subchapter C.

5 SECTION 3. This Act takes effect September 1, 2003.