

By: Madla

S.B. No. 1674

A BILL TO BE ENTITLED

AN ACT

1
2 relating to regulation of alcoholic beverage manufacturers,
3 wholesalers, and retailers.

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

5 SECTION 1. Section 6.03(k), Alcoholic Beverage Code, is
6 amended to read as follows:

7 (k) A requirement under this code that 51 percent or more of
8 the stock of a corporation be owned by a person or persons who were
9 citizens of this state for a one-year period preceding the date of
10 the filing of an application for a license or permit does not apply
11 to a corporation organized under the laws of this state that applies
12 for a license or permit under Chapters 25-34, Chapter 44, Chapters
13 48-51, Chapters 69-72, or Chapter 74 [~~of this code~~] if:

14 (1) all of the officers and a majority of directors of
15 the applicant corporation have resided within the state for a
16 one-year period preceding the date of the application and each
17 officer or director possesses the qualifications required of other
18 applicants for permits and licenses;

19 (2) [~~the applicant corporation and the applicant's~~
20 ~~shareholders have no direct or indirect ownership or other~~
21 ~~prohibited relationship with others engaged in the alcoholic~~
22 ~~beverage industry at different levels as provided by Chapter 102 of~~
23 ~~this code and other provisions of this code,~~

24 [(3)] the applicant corporation is not precluded by

1 law, rule, charter, or corporate bylaw from disclosing the
2 applicant's shareholders to the commission; and

3 (3) [~~(4)~~] the applicant corporation maintains its
4 books and records relating to its alcoholic beverage operations in
5 the state at its registered office or at a location in the state
6 approved in writing by the commission.

7 SECTION 2. Section 11.091(b), Alcoholic Beverage Code, is
8 amended to read as follows:

9 (b) The commission shall promptly notify each wholesaler[~~,~~
10 ~~as that term is ordinarily used and understood in Section 102.01,~~]
11 who regularly supplies retailers in the geographic area that the
12 holder's retail permit has expired or has been suspended.

13 SECTION 3. Section 11.45, Alcoholic Beverage Code, is
14 amended to read as follows:

15 Sec. 11.45. "APPLICANT" DEFINED. The word "applicant," as
16 used in Section [~~Sections~~] 11.46 [~~through 11.48 of this code~~], also
17 includes, as of the date of the application, each member of a
18 partnership or association and, with respect to a corporation, each
19 officer and the owner or owners of a majority of the corporate
20 stock. [~~This section shall not be construed as prohibiting~~
21 ~~anything permitted by Section 22.06, 24.05, or 102.05 of this~~
22 ~~code.~~]

23 SECTION 4. Sections 11.61(a) and (b), Alcoholic Beverage
24 Code, are amended to read as follows:

25 (a) As used in Subsection (b) [~~of this section~~], the word
26 "permittee" also includes each member of a partnership or
27 association and, with respect to a corporation, each officer and

1 the owner or owners of a majority of the corporate stock. [~~This~~
2 ~~section shall not be construed as prohibiting anything permitted~~
3 ~~under Section 22.06, 24.05, or 102.05 of this code.~~]

4 (b) The commission or administrator may suspend for not more
5 than 60 days or cancel an original or renewal permit if it is found,
6 after notice and hearing, that any of the following is true:

7 (1) the permittee has been finally convicted of a
8 violation of this code;

9 (2) the permittee violated a provision of this code or
10 a rule of the commission;

11 (3) the permittee was finally convicted of a felony
12 while holding an original or renewal permit;

13 (4) the permittee made a false or misleading statement
14 in connection with his original or renewal application, either in
15 the formal application itself or in any other written instrument
16 relating to the application submitted to the commission, its
17 officers, or employees;

18 (5) the permittee is indebted to the state for taxes,
19 fees, or payment of penalties imposed by this code, by a rule of the
20 commission, or by Chapter 183, Tax Code;

21 (6) the permittee is not of good moral character or his
22 reputation for being a peaceable and law-abiding citizen in the
23 community where he resides is bad;

24 (7) the place or manner in which the permittee
25 conducts his business warrants the cancellation or suspension of
26 the permit based on the general welfare, health, peace, morals, and
27 safety of the people and on the public sense of decency;

1 (8) the permittee is not maintaining an acceptable
2 bond;

3 (9) the permittee maintains a noisy, lewd, disorderly,
4 or unsanitary establishment or has supplied impure or otherwise
5 deleterious beverages;

6 (10) the permittee is insolvent or mentally or
7 physically unable to carry on the management of his establishment;

8 (11) the permittee is in the habit of using alcoholic
9 beverages to excess;

10 (12) the permittee knowingly misrepresented to a
11 customer or the public any liquor sold by him;

12 (13) the permittee was intoxicated on the licensed
13 premises;

14 (14) the permittee sold or delivered an alcoholic
15 beverage to an intoxicated person;

16 (15) the permittee possessed on the licensed premises
17 an alcoholic beverage that he was not authorized by his permit to
18 purchase and sell;

19 (16) a package store or wine only package store
20 permittee transported or shipped liquor, or caused it to be
21 transported or shipped, into a dry state or a dry area within this
22 state;

23 (17) ~~[the permittee is residentially domiciled with a
24 person who has a financial interest in an establishment engaged in
25 the business of selling beer at retail, other than a mixed beverage
26 establishment, except as authorized by Section 22.06, 24.05, or
27 102.05 of this code,~~

1 ~~[(18)]~~ the permittee is residentially domiciled with a
2 person whose permit or license was cancelled for cause within the
3 12-month period preceding his own application;

4 (18) ~~[(19)]~~ the permittee is not a citizen of the
5 United States or has not been a citizen of Texas for a period of one
6 year immediately preceding the filing of his application, unless he
7 was issued an original or renewal permit on or before September 1,
8 1948, and has been a United States citizen at some time;

9 (19) ~~[(20)]~~ the permittee permitted a person to open a
10 container of alcoholic beverage or possess an open container of
11 alcoholic beverage on the licensed premises unless a mixed beverage
12 permit has been issued for the premises; or

13 (20) ~~[(21)]~~ the permittee failed to promptly report to
14 the commission a breach of the peace occurring on the permittee's
15 licensed premises.

16 SECTION 5. Section 22.14(d), Alcoholic Beverage Code, is
17 amended to read as follows:

18 (d) Subsections (a), (b), and (c) shall not apply to a
19 package store that qualifies for exemption under Section 11.50 [~~or~~
20 ~~to a package store in a hotel that qualifies for exemption under~~
21 ~~Section 102.05]~~].

22 SECTION 6. Section 61.031(b), Alcoholic Beverage Code, is
23 amended to read as follows:

24 (b) The commission shall promptly notify each wholesaler [~~7~~
25 ~~as that term is ordinarily used and understood in Section 102.017]~~
26 who regularly supplies retailers in the geographic area that the
27 holder's retail license has expired or has been suspended.

1 SECTION 7. Section 61.71, Alcoholic Beverage Code, is
2 amended to read as follows:

3 Sec. 61.71. GROUNDS FOR CANCELLATION OR SUSPENSION: RETAIL
4 DEALER. (a) The commission or administrator may suspend for not
5 more than 60 days or cancel an original or renewal retail dealer's
6 on- or off-premise license if it is found, after notice and hearing,
7 that the licensee:

8 (1) violated a provision of this code or a rule of the
9 commission during the existence of the license sought to be
10 cancelled or suspended or during the immediately preceding license
11 period;

12 (2) was finally convicted for violating a penal
13 provision of this code;

14 (3) was finally convicted of a felony while holding an
15 original or renewal license;

16 (4) made a false statement or a misrepresentation in
17 his original application or a renewal application;

18 (5) with criminal negligence sold, served, or
19 delivered an alcoholic beverage to a minor;

20 (6) sold, served, or delivered an alcoholic beverage
21 to an intoxicated person;

22 (7) sold, served, or delivered an alcoholic beverage
23 at a time when its sale is prohibited;

24 (8) entered or offered to enter an agreement,
25 condition, or system which would constitute the sale or possession
26 of alcoholic beverages on consignment;

27 (9) possessed on the licensed premises, or on adjacent

1 premises directly or indirectly under his control, an alcoholic
2 beverage not authorized to be sold on the licensed premises, or
3 permitted an agent, servant, or employee to do so[, ~~except as~~
4 ~~permitted by Section 22.06, 24.05, or 102.05 of this code~~];

5 (10) does not have at his licensed premises running
6 water, if it is available, and separate toilets for both sexes which
7 are properly identified;

8 (11) permitted a person on the licensed premises to
9 engage in conduct which is lewd, immoral, or offensive to public
10 decency;

11 (12) employed a person under 18 years of age to sell,
12 handle, or dispense beer, or to assist in doing so, in an
13 establishment where beer is sold for on-premises consumption;

14 (13) conspired with a person to violate Section
15 101.41-101.43, 101.68, [~~102.11-102.15~~], 104.04, 108.01, or
16 108.04-108.06 [~~of this code~~], or a rule promulgated under Section
17 5.40 [~~of this code~~], or accepted a benefit from an act prohibited by
18 any of these sections or rules;

19 (14) refused to permit or interfered with an
20 inspection of the licensed premises by an authorized representative
21 of the commission or a peace officer;

22 (15) permitted the use or display of his license in the
23 conduct of a business for the benefit of a person not authorized by
24 law to have an interest in the license;

25 (16) maintained blinds or barriers at his place of
26 business in violation of this code;

27 (17) conducted his business in a place or manner which

1 warrants the cancellation or suspension of the license based on the
2 general welfare, health, peace, morals, safety, and sense of
3 decency of the people;

4 (18) consumed an alcoholic beverage or permitted one
5 to be consumed on the licensed premises at a time when the
6 consumption of alcoholic beverages is prohibited by this code;

7 (19) purchased beer for the purpose of resale from a
8 person other than the holder of a manufacturer's or distributor's
9 license;

10 (20) acquired an alcoholic beverage for the purpose of
11 resale from another retail dealer of alcoholic beverages;

12 (21) [~~owned an interest of any kind in the business or~~
13 ~~premises of the holder of a distributor's license~~];

14 [~~(22)~~] purchased, sold, offered for sale,
15 distributed, or delivered an alcoholic beverage, or consumed an
16 alcoholic beverage or permitted one to be consumed on the licensed
17 premises while his license was under suspension;

18 (22) [~~(23)~~] purchased, possessed, stored, sold, or
19 offered for sale beer in or from an original package bearing a brand
20 or trade name of a manufacturer other than the brand or trade name
21 shown on the container;

22 (23) [~~(24)~~] habitually uses alcoholic beverages to
23 excess, is mentally incompetent, or is physically unable to manage
24 his establishment;

25 (24) [~~(25)~~] imported beer into this state except as
26 authorized by Section 107.07 [~~of this code~~];

27 (25) [~~(26) occupied premises in which the holder of a~~

1 ~~manufacturer's or distributor's license had an interest of any~~
2 ~~kind,]~~

3 ~~[(27)]~~ knowingly permitted a person who had an
4 interest in a permit or license which was cancelled for cause to
5 sell, handle, or assist in selling or handling alcoholic beverages
6 on the licensed premises within one year after the cancellation;

7 ~~[(28) was financially interested in a place of~~
8 ~~business engaged in the selling of distilled spirits or permitted a~~
9 ~~person having an interest in that type of business to have a~~
10 ~~financial interest in the business authorized by his license,~~
11 ~~except as permitted by Section 22.06, 24.05, or 102.05 of this code,~~

12 ~~[(29) is residentially domiciled with or related to a~~
13 ~~person engaged in selling distilled spirits, except as permitted by~~
14 ~~Section 22.06, 24.05, or 102.05 of this code, so that there is a~~
15 ~~community of interests which the commission or administrator finds~~
16 ~~contrary to the purposes of this code,~~

17 ~~[(30) is residentially domiciled with or related to a~~
18 ~~person whose license has been cancelled within the preceding 12~~
19 ~~months so that there is a community of interests which the~~
20 ~~commission or administrator finds contrary to the purposes of this~~
21 ~~code, or]~~

22 (26) ~~[(31)]~~ failed to promptly report to the
23 commission a breach of the peace occurring on the licensee's
24 licensed premises.

25 (b) ~~[Subdivisions (9), (28), (29), and (30) of Subsection~~
26 ~~(a) of this section do not apply to a licensee whose business is~~
27 ~~located in a hotel in which an establishment authorized to sell~~

1 ~~distilled spirits in unbroken packages is also located if the~~
2 ~~licensed premises of the businesses do not coincide or overlap.~~

3 ~~[(c)]~~ The grounds listed in Subsection (a) ~~[of this~~
4 ~~section]~~, except the ground contained in Subdivision (2), also
5 apply to each member of a partnership or association and, as to a
6 corporation, to the president, manager, and owner of the majority
7 of the corporate stock. ~~[This subsection shall not be construed as~~
8 ~~prohibiting anything permitted by Section 22.06, 24.05, or 102.05~~
9 ~~of this code.]~~

10 (c) ~~[(d)]~~ The grounds set forth in Subsections (a)
11 ~~[Subdivisions] (1), (4)-(14), (16), (18), (19), and 22 [(21), (23),~~
12 ~~and (26), of Subsection (a) of this section,~~] also apply to an
13 agent, servant, or employee of the licensee.

14 (d) ~~[(e)]~~ The commission or administrator without a hearing
15 may for investigative purposes summarily suspend a retail dealer's
16 on-premise license for not more than seven days if the commission or
17 administrator finds that a shooting, stabbing, or murder has
18 occurred on the licensed premises which is likely to result in a
19 subsequent act of violence. Notice of the order suspending the
20 license shall be given to the licensee personally within 24 hours of
21 the time the violent act occurs. If the licensee cannot be located,
22 notice shall be provided by posting a copy of the order on the front
23 door of the licensed premises.

24 (e) ~~[(f)]~~ Except as provided by Subsection (f) ~~[(g)]~~, the
25 commission or administrator shall cancel an original or renewal
26 dealer's on-premises or off-premises license if it is found, after
27 notice and hearing, that the licensee knowingly allowed a person to

1 possess a firearm in a building on the licensed premises. This
2 subsection does not apply to a person:

3 (1) who holds a security officer commission issued
4 under Chapter 1702, Occupations Code, if:

5 (A) the person is engaged in the performance of
6 the person's duties as a security officer;

7 (B) the person is wearing a distinctive uniform;
8 and

9 (C) the weapon is in plain view;

10 (2) who is a peace officer;

11 (3) who is a licensee or an employee of a licensee if
12 the person is supervising the operation of the premises; or

13 (4) who possesses a concealed handgun of the same
14 category the person is licensed to carry under Subchapter H,
15 Chapter 411, Government Code, unless the person is on the premises
16 of a business described by Section 46.035(b)(1), Penal Code.

17 (f) [~~(g)~~] The commission may adopt a rule allowing:

18 (1) a gun or firearm show on the premises of a license
19 holder, if the premises is owned or leased by a governmental entity
20 or a nonprofit civic, religious, charitable, fraternal, or
21 veterans' organization;

22 (2) the holder of a license for the sale of alcoholic
23 beverages for off-premises consumption to also hold a federal
24 firearms license; or

25 (3) the ceremonial display of firearms on the premises
26 of the license holder.

27 SECTION 8. Section 61.74(a), Alcoholic Beverage Code, is

1 amended to read as follows:

2 (a) The commission or administrator may suspend for not more
3 than 60 days or cancel an original or renewal general, local, or
4 branch distributor's license if it is found, after notice and
5 hearing, that the licensee:

6 (1) violated a provision of this code or a rule of the
7 commission during the existence of the license sought to be
8 cancelled or suspended or during the immediately preceding license
9 period;

10 (2) was finally convicted for violating a penal
11 provision of this code;

12 (3) was finally convicted of a felony while holding an
13 original or renewal license;

14 (4) violated Section 101.41-101.43, 101.68,
15 [~~102.11-102.15,~~] 104.04, 108.01, or 108.04-108.06 [~~of this code~~],
16 or a rule or regulation promulgated under Section 5.40 [~~of this~~
17 ~~code~~];

18 (5) failed to comply with a requirement of the
19 commission relating to the keeping of records or making of reports;

20 (6) failed to pay any tax due the state on any beer he
21 sold, stored, or transported;

22 (7) refused to permit or interfered with an inspection
23 of his licensed premises, vehicles, books, or records by an
24 authorized representative of the commission;

25 (8) consummated a sale of beer outside the county or
26 counties in which he was authorized to sell beer by his license;

27 (9) purchased, sold, offered for sale, distributed, or

1 delivered beer while his license was under suspension;

2 (10) permitted the use of his license in the operation
3 of a business conducted for the benefit of a person not authorized
4 by law to have an interest in the business;

5 (11) made a false or misleading representation or
6 statement in his original application or a renewal application;

7 (12) habitually uses alcoholic beverages to excess, is
8 mentally incompetent, or is physically unable to manage his
9 establishment;

10 (13) misrepresented any beer sold by him to a retailer
11 or to the public;

12 (14) with criminal negligence sold or delivered beer
13 to a minor; or

14 (15) purchased, possessed, stored, sold, or offered
15 for sale beer in an original package bearing a brand or trade name
16 of a manufacturer other than the brand or trade name of the
17 manufacturer shown on the container.

18 SECTION 9. Section 64.01(b), Alcoholic Beverage Code, is
19 amended to read as follows:

20 (b) All sales made under the authority of this section
21 except sales to general, local, or branch distributor's licensees
22 must be made in accordance with Section [~~Sections~~] 61.73 [~~and~~
23 ~~102.31 of this code~~].

24 SECTION 10. Section 64.03, Alcoholic Beverage Code, is
25 amended to read as follows:

26 Sec. 64.03. SALE OF BEER TO PRIVATE CLUBS. The holder of a
27 general distributor's license may sell and deliver beer to private

1 clubs located in wet areas without having to secure a prior order.
2 All sales made under the authority of this section must be made in
3 accordance with Section [~~Sections~~] 61.73 [~~and 102.31 of this code~~].

4 SECTION 11. Section 64.08(b), Alcoholic Beverage Code, is
5 amended to read as follows:

6 (b) The beer must be sold in containers of not less than
7 one-half barrel. [~~The sale is subject to the requirements of~~
8 ~~Section 102.31 of this code.~~] The seller shall keep records of
9 shipments and sales of beer in a manner prescribed by the commission
10 or administrator.

11 SECTION 12. Section 65.01(b), Alcoholic Beverage Code, is
12 amended to read as follows:

13 (b) All sales made under the authority of this section
14 except sales to general, local, or branch distributor's licensees
15 must be made in accordance with Section [~~Sections~~] 61.73 [~~and~~
16 ~~102.31 of this code~~].

17 SECTION 13. Section 65.03, Alcoholic Beverage Code, is
18 amended to read as follows:

19 Sec. 65.03. SALE OF BEER TO PRIVATE CLUBS. The holder of a
20 local distributor's license may sell and deliver beer to private
21 clubs located in wet areas without having to secure a prior order.
22 All sales made under the authority of this section must be made in
23 accordance with Section [~~Sections~~] 61.73 [~~and 102.31 of this code~~].

24 SECTION 14. Section 66.07, Alcoholic Beverage Code, is
25 amended to read as follows:

26 Sec. 66.07. SALE OF BEER TO PRIVATE CLUBS. The holder of a
27 branch distributor's license may sell and deliver beer to private

1 clubs located in wet areas without having to secure a prior order.
2 All sales made under the authority of this section must be made in
3 accordance with Section [~~Sections~~] 61.73 [~~and 102.31 of this code~~].

4 SECTION 15. Section 73.011(a), Alcoholic Beverage Code, is
5 amended to read as follows:

6 (a) A holder of an agent's beer license who is an employee or
7 agent of a manufacturer's licensee or a nonresident manufacturer's
8 licensee may not represent that the holder is the agent of or is
9 acting on behalf of a licensed distributor. An agent may not engage
10 in conduct that is prohibited by [~~Section 102.75 of this code or~~
11 ~~other provisions of~~] this code.

12 SECTION 16. Section 108.04, Alcoholic Beverage Code, is
13 amended to read as follows:

14 Sec. 108.04. ACTS OF PROMOTIONAL OR COURTESY NATURE:
15 ADMINISTRATIVE DISCRETION. The commission may promulgate rules
16 which shall set definite limitations consistent with the general
17 provisions of this code, relaxing the restrictions of Section
18 [~~Sections 102.07, 102.14, 102.15, and~~] 108.06, with respect to:

19 (1) the sale or gift of novelties advertising the
20 product of a manufacturer or distributor;

21 (2) the making of gifts to civic, religious, or
22 charitable organizations;

23 (3) the cleaning and maintenance of coil connections
24 for dispensing draught beer;

25 (4) the lending of equipment for special occasions;
26 and

27 (5) acts of a purely courtesy nature.

1 SECTION 17. Section 109.33(f), Alcoholic Beverage Code, is
2 amended to read as follows:

3 (f) Subsection (a)(2) does not apply to the holder of:

4 (1) a retail on-premises consumption permit or license
5 if less than 50 percent of the gross receipts for the premises is
6 from the sale or service of alcoholic beverages;

7 (2) a retail off-premises consumption permit or
8 license if less than 50 percent of the gross receipts for the
9 premises, excluding the sale of items subject to the motor fuels
10 tax, is from the sale or service of alcoholic beverages; or

11 (3) a wholesaler's, distributor's, brewer's,
12 distiller's and rectifier's, winery, wine bottler's or
13 manufacturer's permit or license, or any other license or permit
14 held by a wholesaler or manufacturer [~~as those words are ordinarily~~
15 ~~used and understood in Chapter 102~~].

16 SECTION 18. Sections 6.03(I), 11.47, 11.48, 19.03, 22.06,
17 24.05, 61.44, 64.07(c), and 74.01(d), and Chapter 102, Alcoholic
18 Beverage Code, are repealed.

19 SECTION 19. This Act takes effect September 1, 2003.