

## **BILL ANALYSIS**

Senate Research Center

H.B. 273  
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Intergovernmental Relations  
5/21/2005  
Committee Report (Amended)

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Due to the lack of zoning in Houston, neighborhoods frequently contain bars located in residential areas. Neighborhood groups attempting to limit the number of nuisance bars in their areas report problems in keeping problematic bars closed due to family members re-applying for permits at the same locations. In many cases, a judge will deny a permit only to have a relative of the applicant immediately re-apply for the same permit.

H.B. 273 creates certain prohibitions and requirements concerning the application and procedures regarding a wine and beer retailer's permit or a retail dealer's on-premises licenses in counties with a population of 1.4 million or more and only when the permit is not in connection with a food and beverage license.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Alcohol and Beverage Commission in the Committee Amendment, SECTION 2 (Section 11.09, Alcoholic Beverage Code) and SECTION 5 (Section 61.03, Alcoholic Beverage Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 11, Alcoholic Beverage Code, by adding Section 11.13, as follows:

Sec. 11.13. CERTAIN APPLICATIONS PROHIBITED. (a) Defines "person."

(b) Provides that this section applies only to an application for a license or permit under this code in connection with premises located in a county with a population of 1.4 million or more.

(c) Prohibits a person who is related within the fourth degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Relationships), Government Code, to a person against whom a proceeding is pending to determine whether to suspend or cancel the person's wine and beer retailer's permit, other than a permit held with a food and beverage certificate, from applying for any permit or license under this code for the premises covered by the wine and beer retailer's permit while the proceeding is pending, notwithstanding any other provision of this code.

(d) Prohibits a person who is related within the fourth degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person whose wine and beer retailer's permit, other than a permit held with a food and beverage certificate, has been suspended or canceled, for a period of two years from the date of the cancellation, from applying for any permit or license under this code for the premises covered by the suspended or canceled permit, notwithstanding any other provision of this code.

SECTION 2. Amends Subchapter B, Chapter 11, Alcoholic Beverage Code, by adding Section 11.321, as follows:

Sec. 11.321. FALSE OR MISLEADING STATEMENT IN CERTAIN APPLICATIONS; ADMINISTRATIVE PENALTY. (a) Provides this section applies only to an original or renewal application made in connection with premises located in a county with a population of 1.4 million or more.

(b) Authorizes the Texas Alcohol and Beverage Commission (commission), in addition to any other applicable civil or criminal penalty, to impose an administrative penalty not to exceed \$4,000 on a person who makes a false or misleading statement in or in connection with an original or renewal application for a wine and beer retailer's permit, other than an application for a wine and beer retailer's permit with a food and beverage certificate.

SECTION 3. Amends Section 11.61, Alcoholic Beverage Code, by adding Subsection (i), as follows:

(i) Requires a hearing under Subsection (b) regarding the suspension of a wine and beer retailer's permit for premises located in a county with a population of 1.4 million or more, other than a permit held with a food and beverage certificate, to be concluded not later than the 60th day after the date notice is provided under that subsection. Prohibits the provisions of this subsection from being waived by the commission or the permit holder.

SECTION 4. Amends Subchapter C, Chapter 11, Alcoholic Beverage Code, by adding Section 11.614, as follows:

Sec. 11.614. CERTAIN WINE AND BEER RETAILERS: SURETY BOND REQUIREMENTS. (a) Provides that this section applies only to a wine and beer retailer's permit for premises located in a county with a population of 1.4 million or more.

(b) Requires a person who applies for a wine and beer retailer's permit, other than a wine and beer retailer's permit with a food and beverage certificate, must file with the commission a surety bond, in an amount determined by the commission, conditioned on the permit holder's compliance with the alcoholic beverage law, notwithstanding Section 204.01 (Bond Required) or any other provision of this code.

(c) Provides that a bond filed under Subsection (b) is forfeited to the commission on the first suspension of the permit. Requires the permit holder, before the suspended permit may be reinstated following that suspension, to file a second surety bond, in an amount determined by the commission, conditioned on the permit holder's compliance with the alcoholic beverage law.

(d) Provides that if the permit is suspended a second time, the bond filed under Subsection (c) is forfeited to the commission. Requires the permit holder, before the permit may be reinstated following that suspension, to file a third surety bond, in an amount determined by the commission, conditioned on the permit holder's compliance with the alcoholic beverage law.

(e) Provides that if the permit is suspended a third time, the bond filed under Subsection (d) is forfeited to the commission and the commission is required to cancel the permit.

SECTION 5. Amends Subchapter A, Chapter 61, Alcoholic Beverage Code, by adding Section 61.15, as follows:

Sec. 61.15. CERTAIN APPLICATIONS PROHIBITED. (a) Defines "person."

(b) Provides that this section applies only to an application for a license or permit under this code in connection with premises located in a county with a population of 1.4 million or more.

(c) Prohibits a person who is related within the fourth degree by consanguinity or affinity, as determined under Chapter 573, Government Code, of a person against whom a proceeding is pending to determine whether to suspend or cancel the person's retail dealer's on-premise license, other than a license held with a food and beverage certificate, from applying for any permit or license under this code for the premises covered by the retail dealer's on-premise license while the proceeding is pending, notwithstanding any other provision of this code.

(d) Prohibits a person who is related within the fourth degree by consanguinity or affinity, as determined under Chapter 573, Government Code, of a person whose retail dealer's on-premise license, other than a license held with a food and beverage certificate, has been suspended or canceled, for a period of two years from the date of the cancellation, from applying for any permit or license under this code for the premises covered by the suspended or canceled permit, notwithstanding any other provision of this code,.

SECTION 6. Amends Subchapter B, Chapter 61, Alcoholic Beverage Code, by adding Section 61.52, as follows:

Sec. 61.52. FALSE OR MISLEADING STATEMENT IN CERTAIN APPLICATIONS; ADMINISTRATIVE PENALTY. (a) Provides that this section applies only to an original or renewal application made in connection with premises located in a county with a population of 1.4 million or more.

(b) Authorizes the commission, in addition to any other applicable civil or criminal penalty, to impose an administrative penalty not to exceed \$4,000 on a person who makes a false or misleading statement in or in connection with an original or renewal application for a retail dealer's on-premise license, other than an application for a retail dealer's on-premise license with a food and beverage certificate.

SECTION 7. Amends Section 61.71, Alcoholic Beverage Code, by adding Subsection (j), as follows:

(j) Requires a hearing under Subsection (a) regarding the suspension of a retail dealer's on-premise license for premises located in a county with a population of 1.4 million or more, other than a license held with a food and beverage certificate, to be concluded not later than the 60th day after the date notice is provided under that subsection. Prohibits the provisions of this subsection from being waived by the commission or the license holder.

SECTION 8. Amends Subchapter C, Chapter 61, Alcoholic Beverage Code, by adding Section 61.713, as follows:

Sec. 61.713. CERTAIN RETAIL DEALER'S ON-PREMISE LICENSES: SURETY BOND REQUIREMENTS; CANCELLATION AND SUSPENSION ON CERTAIN GROUNDS. (a) Provides that this section applies only to a retail dealer's on-premise license for premises located in a county with a population of 1.4 million or more.

(b) Requires a person who applies for a retail dealer's on-premise license, other than a retail dealer's on-premise license with a food and beverage certificate, to file with the commission a surety bond, in an amount determined by the commission, conditioned on the license holder's compliance with the alcoholic beverage law, notwithstanding Section 204.01 or any other provision of this code,.

(c) Provides that a bond filed under Subsection (b) is forfeited to the commission on the first suspension of the license. Requires the license holder, before the suspended license may be reinstated following that suspension, to file a second surety bond, in an amount determined by the commission, conditioned on the license holder's compliance with the alcoholic beverage law.

(d) Provides that if the license is suspended a second time, the bond filed under Subsection (c) is forfeited to the commission. Requires the license holder, before the license may be reinstated following that suspension, to file a third surety bond, in an amount determined by the commission, conditioned on the license holder's compliance with the alcoholic beverage law.

(e) Provides that if the license is suspended a third time, the bond filed under Subsection (d) is forfeited to the commission and the commission is required to cancel the license.

SECTION 9. (a) Makes application of Sections 11.13 and 61.15, Alcoholic Beverage Code, as added by this Act, prospective.

(b) Makes application of Sections 11.321, 11.614, 61.52, and 61.713, Alcoholic Beverage Code, as added by this Act, prospective.

(c) Makes application of Sections 11.61(i) and 61.71(j), Alcoholic Beverage Code, as added by this Act, prospective.

SECTION 10. Effective date: September 1, 2005.

### **SUMMARY OF COMMITTEE CHANGES**

#### **Committee Amendment No. \_\_:**

Amends H.B. 273, as follows:

(1) Inserts the following sections on page 1, line 5, and renumbers the subsequent sections accordingly:

SECTION 1. Amends Section 6.02(c), Alcoholic Beverage Code, to prohibit the commission from authorizing a license or permit period of greater than two years, rather than one year.

SECTION 2. Amends Section 11.09, Alcoholic Beverage Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Provides that a permit under this code expires on the second anniversary of, rather than one year after, the date it was issued, except as provided by Subsections (d) and (e) or another provision of the code. Requires the Texas Alcoholic Beverage Commission (commission), notwithstanding Section 5.50(b), to double the amount of fees and surcharges otherwise applicable under this code for a permit with a two-year term.

(b) Deletes existing text referring to a permit expiring in less than one year.

(d) Authorizes the commission by rule to require that the expiration date for an individual permit holder's permit is the first anniversary of the date in which the permit is issued due to the permit holder's violation history.

(e) Authorizes the commission to issue a permit with an expiration date less than two years after the date the permit is issued in order to maintain a reasonable annual distribution of renewal application review work and permit fees. Requires the commission, if it issues a permit with an expiration date less than two years after the date the permit is issued, to prorate the permit fee on a monthly basis so that the permit holder pays that portion of the permit fee that is allocable to the number of months during which the permit is valid.

SECTION 3. Amends Section 11.11(e), Alcoholic Beverage Code, to delete existing text referring to a pending permit.

(2) Inserts the following sections on page 4, line 3, and renumbers the subsequent sections accordingly:

SECTION 5. Amends Section 61.03, Alcoholic Beverage Code by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Provides that, except as provided by Subsections (d) and (e) or another provision of this code, rather than Subsection (b), any license except a branch, importer's, importer's carrier's, or temporary license expires on the second anniversary of the date it was issued. Requires the Texas Alcoholic Beverage Commission (commission), notwithstanding Section 5.50(b), to double the amount of fees and surcharges otherwise applicable under this code for a license with a two-year term. Deletes existing text pertaining to a license expiring after one year.

(b) Deletes existing text referring to a license expiring in less than one year.

(d) Authorizes the commission by rule to require that the expiration date for an individual license holder's license is the first anniversary of the date in which the license is issued due to the license holder's violation history.

(e) Authorizes the commission to issue a license with an expiration date less than two years after the date the license is issued in order to maintain a reasonable annual distribution of renewal application review work and license fees. Requires the commission, if it issues a license with an expiration date less than two years after the date the license is issued, to prorate the license fee on a monthly basis so that the permit holder pays that portion of the license fee that is allocable to the number of months during which the permit is valid.

SECTION 6. Amends Section 61.13(e), Alcoholic Beverage Code, to delete existing text referring to a pending permit.

(3) Inserts the following subsection on page 7, line 22:

(d) Makes application of the changes in law made by this Act to Sections 6.02, 11.09, and 61.03, Alcoholic Beverage Code, prospective.